STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901
PHONE
(302) 739-9000

Secretary's Order to Cease and Desist

Issued Pursuant to 7 *Del. C.* § 6018
ORDER NO. 2021-WS-0027

Issued To:

Beazer HomesLLC
Dove Barrington Development LLC
35108 Burbage Road
Frankford, Delaware 19945
302-563-3820

Via Delivery to the Property By An Environmental Crimes Unit Officer

Beazer HomesLLC
Dove Barrington Development LLC
6805 Marshalee Drive, Suite 350
Elkridge, Maryland 21075

Via Certified Mail, Return Receipt Requested

This is to notify Beazer Homes LLC, ("Respondent") the property owner, Sussex County Parcel Numbers: 134-12.00-372.00, 34-12.00-372.01, 134-12.00-372.02, 134-12.00-373.00, 134-12.00-3759.00, 134-12.00-3760.00, 134-12.00-3761.00, 134-12.00-3841.00, 134-12.00-3842.00, 134-12.00-3843.00, 134-12.00-3844.00, 134-12.00-3845.00, 134-12.00-3846.00, 134-12.00-3847.00, 134-12.00-3848.00, 134-12.00-3761.00, that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. C.* § 4186 for willfully or negligently obstructing a portion of the Derrickson Canal Tax Ditch right-of-way. Accordingly, the Department is issuing this Secretary's Order to Cease and Desist, pursuant to 7 *Del. C.* § 6018.

Background

On or about December 12, 2017, the Department provided the Respondent's hired consultant, GMB Architects/Engineers, a Letter of No Objection via email for requested additional changes to the Derrickson Canal Tax Ditch system associated with the Bishop's Landing Development in Millville, DE. The Letter of No Objection bulleted the agreed to tax ditch changes and required that the Respondent obtain a Court Order Change (COC) to reflect the proposed changes to the Derrickson Canal Tax Ditch system prior to starting construction of the Bishop's Landing Development.

On or about October 14, 2019, Respondent's consultant, GMB Architects/Engineers, proposed new modifications to the Derrickson Canal Tax Ditch system, which were required to be addressed in a new COC document.

On or about January 2, 2020, the Respondent's consultant, GMB Architects/Engineers inquired about the status of drafting the COC documents and stated that the Respondent had a start scheduled for some time in February 2020.

On or about March 23, 2020, the Respondent's consultant, GMB Architects/Engineers inquired about the status of drafting the COC documents and stated that additional modifications to the COC(s) were needed.

On or about April 9, 2020, the Department received notification that the Respondent's Sediment and Stormwater Plans were approved by the Sussex Conservation District.

On or about August 19, 2020, the Respondent's consultant, GMB Architects/Engineers, requested that the single COC document be split into two documents to assist in securing landowner signatures and moving the documents forward.

On or about August 19, 2020, Department staff notified Respondent via email that without the execution of a COC, the area designated as "Sub 1 Prong 2" of the Derrickson Canal Tax Ditch system was not authorized to be eliminated or relocated. The Department further advised Respondent that if Sub 1 Prong 2 were to be filled in prior to Respondent obtaining the required COC, that activity would be considered an obstruction to the Derrickson Canal Tax Ditch system.

On or about October 2, 2020, the Department sent one of the COCs to Respondent to obtain the required signatures for the Respondent's proposed development plans which primarily affected both Prong 6 and Prong 2, including associated Sub Prongs of the Derrickson Canal Tax Ditch system.

On or about November 13, 2020, the Department sent the second COC to Respondent to obtain the required signatures for their proposed development plans that would eliminate Sub 1 of Prong 2 of the Derrickson Canal Tax Ditch system.

On or about March 8, 2021, the Department inquired via email about the status of the two COCs with the Respondent's consultant, GMB Architects/Engineers, and referenced a phone conversation about the same topic from February 23, 2021. The email stated that the Department would be consulting the Attorney General's office regarding the issuance of a Cease and Desist Order if the COCs were not completed and returned to the Department by March 23, 2021.

On or about March 22, 2021, the Department was contacted via email from the Respondent's consultant, GMB Architects/Engineers, about issues reaching landowners who were required signers of the COC documents due to COVID. The Department extended the deadline on March 29, 2021 via email to the Respondent's consultant stating that the two COCs signed by all landowners be returned to the Department's office by April 19, 2021.

On or about April 22, 2021, the Department contacted the Respondent's consultant, GMB Architects/Engineers, about the status of the two COCs. The consultant replied that progress had been made.

On or about May 20, 2021, the Respondent mailed letters to landowners requesting signatures on the COC documents.

On or about June 16, 2021, the Department issued another extension via email to the deadline for Respondent to return the COCs due to issues with the Respondent tracking down landowners. The deadline to return the COC documents was extended to June 30, 2021.

On or about July 20, 2021 an email was sent to the Respondent and its consultant, GMB Architects/Engineers, stating that the two COCs need to be signed by all affected landowners and returned to the Department no later than August 2, 2021. If this did not occur, the Department would issue a Cease and Desist Order. To date, neither COC document has been returned to the Department, and Respondent is continuing construction in the Bishop's Landing Development. Additionally, Respondent has filled in Sub 1 of Prong 2.

Subsequently, Department staff has continued to contact Respondent to request the fulfillment and return of the COC documents, however, as of the issuance of this Order, Respondent has not completed the COC documents. Furthermore, Respondent has continued construction of the development in the Derrickson Canal Tax Ditch watershed.

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Finding of Violation(s)

Section 4186 of Title 7 provides, in relevant part:

(a) If any person wilfully [sic] or negligently obstructs or damages any part of a tax ditch, and upon request of the ditch managers fails to remove the obstruction or to repair the damage at the person's own expense, the ditch managers shall see that the obstruction is removed and that the damage is repaired.

(b) The person so obstructing or damaging the tax ditch shall be liable for all loss or injury caused thereby and the expenses or charges for remedying the same, and said loss or injury, expenses or charges may be sued for and recovered by the ditch managers in the name of the tax ditch before any justice of the peace in the county where the obstruction or damage occurred.

(c) Whoever wilfully [sic] obstructs or damages any part of a tax ditch, as specified in subsection (a) of this section, or wilfully [sic] interferes in any way with tax ditch operations as provided for in this chapter or in a ditch order made pursuant to this chapter, shall be fined not more than $100.

The Department finds Respondent in violation of 7 *Del. C.* § 4186 by willfully or negligently obstructing or damaging the Derrickson Canal Tax Ditch by altering the tax ditch channels and constructing structures within the Derrickson Canal Tax Ditch rights-of-way prior to completing the required Court Order Change documents.

Order

IT IS HERBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 *Del. C.* § 6018, that Respondent:

(1) Immediately Cease and Desist any further construction activities within the Derrickson Canal Tax Ditch.

(2) Complete the two COC documents by obtaining signatures of all affected landowners and returning original copies of the document to the Department within 30 days of receipt.

The Department reserves the right to take additional action to address the obstruction(s) of the Derrickson Canal Tax Ditch.

If you have any questions, please contact, or have your attorney contact, William J. Kassab, Deputy Attorney General, at 302-395-2600.

Date: 10/28/21

Shawn M. Garvin, Secretary
Department of Natural Resources
And Environmental Control

Cc: William J. Kassab, Deputy Attorney General