

EFILED

COMMONWEALTH OF MASSACHUSETTS

WORCESTER COUNTY, ss.

SUPERIOR COURT DEPARTMENT

ZOVL PROPERTIES, LLC, AND
MORAGA STORAGE, LLC,

Plaintiffs,

v.

OAKHAM CONSERVATION
COMMISSION,
STEVEN GATULIS,
in his official capacity,
SHAWN SEELEY,
in his official capacity, and
CARL LINDLEY,
in his official capacity,

Defendants.

CIVIL ACTION NO. 2685CV00879A

VERIFIED COMPLAINT

1. This is an action in the nature of certiorari, G.L. c. 249, § 4, brought to invalidate an unlawful, arbitrary, and capricious Enforcement Order issued on April 7, 2026 by the Conservation Commission of the Town of Oakham, Massachusetts (the "Commission") pursuant to the Wetlands Protection Act, G.L. c. 131, § 40 ("WPA"). See Exhibit 1 (Enforcement Order).

2. The Enforcement Order identifies "ZOVL Properties, LLC / Moraga Storage, LLC (Rhyndland Energy)" as responsible for alleged wetlands-related violations at 358 Coldbrook Road, Oakham, Massachusetts (the "Property").

3. The alleged violations relate to the purported presence of "auto debris, solid waste, and associated materials within Wetlands Resource Areas and their 100-foot Buffer Zones" on the Property, due to "prior land use."

4. The “prior land use” identified in the Enforcement Order relates exclusively to the activities of a prior owner who operated an automobile salvage yard at the Property, not any actions by Plaintiffs Moraga Storage, LLC (“Moraga”) and ZOVL Properties, LLC (“ZOVL”) (collectively, “Plaintiffs”).

5. The Enforcement Order is unlawful, arbitrary, and capricious as to Moraga because Moraga does not own the Property and has not altered wetlands there. Moraga is developing a battery energy storage (“BESS”) project at the Property and is currently obtaining permits but has not started construction. The Enforcement Order is also unlawful, arbitrary, and capricious as to Moraga for other reasons stated herein. “Rhymland Energy,” which the Enforcement Order identifies in parentheses beside Moraga, presumably as a corporate alias of Moraga, is not an existing legal entity. No “Rhymland Energy” entity has performed any physical work at the Property or owns the Property. Thus, the Enforcement Order is unlawful, arbitrary, and capricious as it relates to “Rhymland Energy.”

6. The Enforcement Order is also unlawful, arbitrary, and capricious as to ZOVL. ZOVL is the current owner of the Property. ZOVL has not altered wetlands resource areas, nor engaged in physical work at the Property apart from minimally intrusive maintenance work. Because the Enforcement Order relates only to activities of a prior owner, and because ZOVL recorded its deed to the Property on June 1, 2022, the Enforcement Order is barred by the three-year statute of repose in the WPA. *See* G.L. c. 131, § 40; *Conservation Comm’n of Norton v. Pesa*, 488 Mass. 325, 332 (2021) (“The [WPA] prohibits the commission from bringing a cause of action against a person who acquires property on which work has been done in violation of the act three years after either of two numerated events: ‘the recording of the deed or the date of the death by which such real estate was acquired by such person.’”).

7. Even if the Commission had the authority to issue an Enforcement Order against Moraga or ZOVL, the Enforcement Order is unlawful, arbitrary, and capricious because it contains obligations and conditions that are beyond the geographic or subject matter jurisdiction of the Commission.

8. The Enforcement Order lacked any reasonable basis and is unsupported by the record or the WPA.

9. Plaintiffs' only means of appealing the Enforcement Order is a certiorari action filed in Superior Court. *See* G. L. c. 249, § 4; *Garrity v. Conservation Comm'n of Hingham*, 462 Mass. 779, 791–92 (2012) (“[R]eview of [a conservation commission’s] enforcement order is available only through an action in the nature of certiorari pursuant to G. L. c. 249, § 4.”). In support of this action, Plaintiffs state as follows:

PARTIES

10. Plaintiff Moraga Storage, LLC is a Massachusetts-registered foreign limited liability company with a mailing address of 750 Lexington Avenue, 9th Floor, New York, New York 10022.

11. Plaintiff ZOVL Properties, LLC is a Delaware limited liability company with a principal address of 5555 Anglers Avenue, Suite 27, Fort Lauderdale, Florida 33312.

12. Defendant Oakham Conservation Commission is a municipal conservation commission established pursuant to G.L. c. 40, § 8C, with offices at 2 Coldbrook Road, Unit 7, Oakham, Massachusetts 01068. The Commission is the custodian of the record of the proceedings challenged herein.

13. Defendant Steven Gatulis is the chair of the Oakham Conservation Commission and is named in his official capacity as a signatory to the Enforcement Order.

14. Defendant Shawn Seeley is a member of the Oakham Conservation Commission and is named in his official capacity as a signatory to the Enforcement Order.

15. Defendant Carl Lindley is a member of the Oakham Conservation Commission and is named in his official capacity as a signatory to the Enforcement Order.

VENUE AND JURISDICTION

16. This Court has jurisdiction over this action pursuant to G.L. c. 249, § 4, which provides for judicial review in the nature of certiorari of the actions of municipal bodies exercising judicial or quasi-judicial functions, including the issuance of a WPA enforcement order. *See Garrity*, 462 Mass. at 791–92. The Enforcement Order was issued on April 7, 2026. This action is timely filed within sixty days of its issuance.

17. Venue is proper in Worcester Superior Court pursuant to G.L. c. 223, § 1, because the Property subject to the Enforcement Order is in Worcester County in Oakham, Massachusetts.

FACTS

18. The Property is located at 358 Coldbrook Road, Oakham, Massachusetts, identified on the Town of Oakham Assessors Map 406, Parcel 106.3. The Property consists of approximately 42.9 acres.

19. For approximately thirty years—from around 1986 until around 2017 or 2018—the Property was used for automobile salvage and recycling operations. The operator was “Amherst Oakham Auto Recycling.” The prior owners were Gordon and Cynthia Palley. The salvage operation involved the storage, dismantling, and sale of wrecked vehicles and parts.

20. ZOVL acquired the Property from Cynthia A. Palley by quitclaim deed dated May 25, 2022, recorded on June 1, 2022, in the Worcester South District Registry of Deeds at

Book 67682, Page 276—approximately five years after automobile salvage operations ended. *See Exhibit 2 (ZOVL Deed)*. ZOVL has never engaged in any automobile salvage operations at the Property. It has not conducted any other work at the Property apart from minimally intrusive maintenance and has not altered any wetland resource areas.

21. Moraga and ZOVL executed a Real Estate Purchase and Sale Contract, dated November 12, 2022 and amended August 29, 2024, establishing Moraga’s option to purchase the Property. Moraga has not exercised this option and does not own the Property. A Memorandum of Option to Purchase Agreement was executed on January 16, 2026, and recorded on January 16, 2026. Apart from surveying and technical work to delineate wetlands for permitting purposes, Moraga has not performed any physical work at the Property and has not altered any wetland resource areas. Without limiting the generality of the foregoing, Moraga has never engaged in any automobile salvage operations at the Property.

22. Moraga is developing a BESS project at the Property. BESS facilities generally operate by charging when energy demand is low and renewable electricity is abundant, then discharging during peak demand periods, offsetting the need to run polluting fossil fuel “peaker” plants to meet electricity demand. BESS facilities also strengthen electric grid reliability by increasing capacity during periods of high electricity use. The Commonwealth has identified BESS deployment as critical to its energy policies and is currently seeking to procure up to 5,000 megawatts of energy storage capacity pursuant to the 2024 Climate Act, St. 2024, c. 239. Moraga is obtaining permits for its BESS project and has not started construction.

23. The Commission issued the Enforcement Order on April 7, 2026 at a public meeting of the Commission held that same day that lasted approximately 18 minutes. Commissioners Shawn Seeley, Steven Gatulis, and Carl Lindley signed the Enforcement Order.

The Enforcement Order identifies “ZOVL Properties, LLC / Moraga Storage, LLC (Rhyndland Energy)” as the alleged violators.

24. In a section entitled “Extent and Type of Activity,” the Enforcement Order states that “violations of the Massachusetts Wetlands Protection Act and its implementing regulations (310 CMR 10.00) have occurred and/or are occurring” at the Property, consisting of “the unauthorized placement, storage, and accumulation of auto debris, solid waste, and associated materials within jurisdictional Wetland Resource Areas and within their 100-foot Buffer Zones.” Exhibit 1 at 1.

25. The Enforcement Order characterizes these “conditions” as “ongoing” and “constitut[ing] multiple violations in multiple locations throughout the 42.9-acre property,” concluding that “the presence of these materials has resulted in, or has the potential to result in, the alteration of Wetlands Resource Areas and associated resource area values, including impacts to groundwater, surface water, water quality, and wildlife habitat.”

26. In a section entitled “Findings,” the Commission states the alleged violations are “[b]ased on site observations” and “available information regarding prior land use.” *Id.* at 2. The Enforcement Order does not elaborate further regarding the nature of the “site observations” or the “available information” supporting its conclusion. At the public meeting, the Commission referred generally to “reported” violations, “photos,” and “other evidence” of “debris,” but no such materials were produced at the meeting or with the Enforcement Order.

27. The Enforcement Order does not identify how ZOVL or Moraga altered wetlands or engaged in any activities connected to the alleged violations. At the public meeting, the Commissioners referred only to “general violations that have been seen” requiring further “investigat[ion]” to “collect more evidence.” The Commission’s references in the Enforcement

Order to “auto debris” and “prior land use” confirm that the alleged violations relate to the prior owner’s automobile salvage operations, not any activities of ZOVL or Moraga.

28. That the alleged violations relate to the prior owner’s automobile salvage operations, not any activities of ZOVL or Moraga, is further confirmed by the Commission’s testimony before the Massachusetts Energy Facilities Siting Board (“EFSB”) in adjudicatory proceedings in which Moraga is seeking comprehensive exemptions from zoning requirements for its proposed BESS facility pursuant to G.L. c. 40A, § 3. In those proceedings, on March 11, 2026 (approximately one month before the Enforcement Order was issued), Commissioner Seeley testified that he believed contaminated soils existed at the Property “because of the prior land use of the auto salvage yard.” Other testimony in the same proceedings before the date the Enforcement Order was issued confirms that any “auto debris” or related solid waste at the Property preexisted ZOVL’s ownership.

29. The Enforcement Order’s Findings section states that “the nature and extent of materials present on the property create a significant risk of adverse impacts to Wetlands Resource Areas” and references “potential” buried waste and “likel[y]” soil contamination. Neither the Enforcement Order nor the administrative record substantiates these assertions with further information or evidence. With respect to the portions of the Property outside the geographic jurisdiction of the Commission, neither the Enforcement Order nor the administrative record substantiates any claim that conditions at the Property have actually resulted in the altering of an area subject to protection under the WPA.

30. Prior statements and actions of the Commission contradict these assertions. Approximately five months before issuing the Enforcement Order, on or about October 20, 2025, Commissioner Seeley sent an email to Moraga’s wetlands consultant stating that, based on his

own “observations and soil samples,” there was “no heavy metal contamination” and “incredible biodiversity” at the Property. He stated the “land is in surprisingly decent condition given its history of poor land use.”

31. The Commission issued an Order of Resource Area Delineation (“ORAD”) on December 4, 2024, delineating wetlands resource areas throughout the entire approximately 42.9 acres, without raising auto-debris-related WPA violations or the need for any enforcement activity.

32. An ORAD is a formal determination issued by a conservation commission confirming the exact boundaries, types, and significance of wetland resource areas on a specific property. An ORAD is effective for three years after issuance. 310 CMR 10.05(6)(a)(3).

33. The ORAD for the Property reflects a complete delineation of the boundaries of all wetlands resource areas that were identified on the Property at the time the ORAD was issued. The ORAD was issued by the Commission following the submission of an Abbreviated Notice of Resource Area Delineation (“ANRAD”) to the Commission on October 2, 2024. The ANRAD included, among other things, a complete delineation of WPA wetlands resource areas at the Property undertaken on Moraga’s behalf by wetlands scientists Moraga hired at Epsilon Associates, Inc. (“Epsilon”), a premier environmental consultancy with extensive wetlands expertise in Massachusetts.

34. The ANRAD functions as an application for an ORAD. Moraga’s ANRAD identified as the only wetlands then existing at the Property “Bordered Vegetated Wetlands” and “Isolated Vegetated Wetlands.” The Bordered Vegetated Wetlands exist primarily on the western side of the Property, with a smaller area of Bordered Vegetated Wetlands located on the Property’s southeastern corner. The WPA regulates work within Bordered Vegetated Wetlands

and the 100-foot “Buffer Zones” surrounding Bordered Vegetated Wetlands. Isolated Vegetated Wetlands also exist in the eastern and central portions of the Property. Isolated Vegetated Wetlands are not regulated by the WPA unless they meet certain criteria that did not exist at the time wetlands were delineated at the Property. After Moraga submitted the ANRAD and proposed wetlands delineation for the entire Property, members of the Commission, including Chair Gatulis, accompanied a senior Epsilon wetlands scientist on a walkthrough of the entire Property in October 2024. The Commission also held a public meeting on the ANRAD. Thereafter, on December 4, 2024, the Commission issued the ORAD adopting the wetlands delineation and boundaries proposed in the ANRAD. The BESS project has been designed to largely avoid work within the wetlands resource areas and their associated buffer zones delineated in the ORAD. After the ORAD was issued, three vernal pools were certified on the Property under the volunteer process established by the Massachusetts Natural Heritage and Endangered Species Program. Even though the Commission did not identify those vernal pools in the ORAD or the Property walkthrough, Moraga has designed the BESS project to avoid work that would affect those certified vernal pools.

35. The Enforcement Order halts all “activity” at the Property, regardless of type or whether such activity occurs within wetlands resource areas subject to the Commission’s jurisdiction. It specifically bars any “clean up, removal, grading, excavation, surface disturbance, or vegetation removal” until the Enforcement Order’s requirements “have been completed and written authorization is provided by the” Commission.

36. The Enforcement Order requires the property owner to retain, “at [its] sole expense,” a “Massachusetts-licensed Site Professional (LSP),” subject to Commission approval, to conduct a “comprehensive investigation of the entire 42.9-acre property.” This investigation

must include mapping of all surface debris, subsurface investigation for buried waste, and soil and groundwater testing. The LSP must submit a report with a complete inventory, sampling documentation, evaluation of potential impacts, and cleanup recommendations. The Commission also reserves the right to hire a separate peer reviewer at the Property owner's expense to review all work of the approved LSP.

37. Conservation commission jurisdiction is limited to wetlands resource areas identified in the WPA and its implementing regulations. *See* 310 CMR 10.02(2)(d). Conservation commissions lack the authority to regulate activity outside of jurisdictional wetlands resource areas that is not affecting jurisdictional resource areas. Nonetheless, the Enforcement Order applies to the entire 42.9-acre property, even though the Commission's ORAD identifies substantial areas of the Property that do not contain jurisdictional wetlands resource areas. The ORAD states that it "determines that the boundaries of those [wetland] resource areas noted [in the ORAD] have been delineated and approved by the Commission and are binding as to all decisions rendered pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40) and its regulations (310 CMR 10.00)."

38. The Enforcement Order also mandates "a complete delineation of all Wetland Resource Areas on the property," even though the Commission's ORAD remains valid until at least December 4, 2027. In addition to the Enforcement Order, the Commission has sought to re-delineate wetlands via a separate Request for Determination of Applicability for the Property, which the Commission filed with itself and the Massachusetts Department of Environmental Protection ("MassDEP") on or around April 7, 2026. The filing of the Request for Determination of Applicability prompted MassDEP to email the Commission on April 15, 2026, advising the Commission that the existing ORAD for the Property "is valid."

39. Moraga and ZOVL, through counsel, sent a letter to the Commission on May 26, 2026, identifying the deficiencies with the Enforcement Order addressed herein and requesting that the Commission rescind the Enforcement Order to avoid the need for Moraga and ZOVL to file this lawsuit. Moraga and ZOVL committed to working cooperatively with the Commission to address concerns at the Property within its jurisdiction, provided that the Commission withdrew the Enforcement Order at its next scheduled public meeting.

40. The Commission held a public meeting on June 2, 2026. The Commission addressed Moraga's Notice of Intent, which it had separately filed to request that the Commission issue an Order of Conditions under the WPA to allow work on the portion of Moraga's BESS project, the access driveway, part of which is located within the 100-foot buffer zone of the Bordered Vegetated Wetlands as delineated in the ORAD. Moraga and ZOVL, through counsel, requested to be heard on their request to the Commission to rescind the Enforcement Order. The Commission acknowledged receipt of the request but stated that they would not be addressing the request at the June 2, 2026 meeting. The Commission adjourned without rescinding the Enforcement Order, necessitating the filing of this action.

COUNT 1
Certiorari – G.L. c. 249, § 4

41. Plaintiffs incorporate by reference all preceding paragraphs as though fully restated herein.

42. The issuance of an enforcement order by a conservation commission under G.L. c. 131, § 40 and 310 CMR 10.08 constitutes a judicial or quasi-judicial proceeding subject to review under G.L. c. 249, § 4.

43. There is no other reasonably adequate remedy available to the Plaintiffs. An enforcement order issued by a conservation commission cannot be appealed to the Massachusetts

Department of Environmental Protection or any other agency or authority. It may be challenged only in Superior Court. *See Garrity*, 462 Mass. at 791–92.

44. The Enforcement Order causes substantial injury to Plaintiffs. It threatens G.L. c. 131, § 40 criminal penalties of up to \$25,000 or imprisonment for up to two years, or both, and civil penalties of up to \$25,000 per day. It prohibits all activities at the Property, including voluntary cleanup, absent further Commission authorization—freezing productive use of the Property regardless of whether those activities occur within jurisdictional areas as defined by the WPA.

45. The Enforcement Order is unlawful, arbitrary, and capricious as to Moraga, because Moraga does not own the Property and has not altered wetland resource areas at the Property. The Enforcement Order is also unlawful, arbitrary, and capricious to the extent it identifies “Rhyndland Energy,” which is not an existing legal entity or a Property owner.

46. The Enforcement Order is unlawful, arbitrary, and capricious as to ZOVL because ZOVL has not altered wetlands resource areas at the Property. Moreover, to the extent ZOVL is identified as an alleged violator because it owns the Property, it recorded its deed to the Property on June 1, 2022—more than three years and ten months before the Enforcement Order was issued. The WPA’s statute of repose bars any action against a current landowner for a prior owner’s violations if more than three years have passed since the current owner recorded title. G.L. c. 131, § 40; *Pesa*, 488 Mass. at 332.

47. The Enforcement Order is unlawful, arbitrary, and capricious because it bars any activity at the Property regardless of whether it occurs within areas subject to protection under the WPA, thus exceeding the Commission’s jurisdiction.

48. The Enforcement Order is unlawful, arbitrary, and capricious because it requires a Property-wide environmental investigation and remediation which the Commission does not have authority to enforce, at the owner's expense, thus exceeding the Commission's jurisdiction.

49. The Enforcement Order is unlawful, arbitrary, and capricious because it (1) attempts to supersede a valid ORAD that is binding on the Commission; and (2) demands re-delineation of wetlands despite the valid ORAD.

50. The Enforcement Order is also unlawful, arbitrary, and capricious because it lacks factual and evidentiary support for the alleged violations.

COUNT 2
Declaratory Judgment – G.L. c. 231A

51. Plaintiffs incorporate by reference all preceding paragraphs as though fully restated herein.

52. An actual controversy exists between the Plaintiffs and the Defendants regarding the validity and enforceability of the Enforcement Order.

53. Plaintiffs are entitled to a declaratory judgment that the Enforcement Order is void and unenforceable in its entirety; that Moraga has no liability under the Enforcement Order because it does not own the Property and has not performed any work in violation of the WPA; that, as to ZOVL, the Enforcement Order is barred by the three-year statute of repose under the WPA; and that the Enforcement Order otherwise is void and unenforceable because it is unlawful, arbitrary, and capricious.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and grant the following relief:

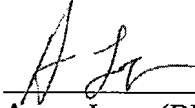
1. An order declaring that the Enforcement Order is arbitrary, capricious, and unlawful;
2. An order vacating and setting aside the Commission's Enforcement Order; and

3. Any such other relief to Plaintiffs that this Court deems just and proper.

Respectfully submitted,

**ZOVL PROPERTIES, LLC, and
MORAGA STORAGE, LLC**

By their attorneys,



Aaron Lang (BBO #693352)
Anjika Pai (BBO #717195)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
(617) 832-1000
alang@foleyhoag.com
apai@foleyhoag.com

Dated: June 5, 2026

VERIFICATION

I, Yaniv Cohen, am an Authorized Representative for ZOVL Properties, LLC. I have reviewed the allegations in the Verified Complaint, have personal knowledge of the facts stated above as they relate to ZOVL Properties, LLC, and hereby swear that those facts are true and accurate.

Signed under the penalties of perjury this 5th day of June, 2026.



Yaniv Cohen

VERIFICATION

I, Brian Benito Jr., am an Authorized Representative for Moraga Storage, LLC. I have reviewed the allegations in the Verified Complaint, have personal knowledge of the facts stated above as they relate to Moraga Storage, LLC, and hereby swear that those facts are true and accurate.

Signed under the penalties of perjury this 5th day of June, 2026.

A handwritten signature in black ink, appearing to read 'B. Benito Jr.', is written above a horizontal line.

Brian Benito Jr.

EXHIBIT 1



Town of Oakham
Conservation Commission
2 Coldbrook Road Unit 7
Oakham MA 01068

Phone: 508-882-5549
Fax: 508-882-3060
conservation@oakham-ma.gov

Date: April 7, 2026

To: Brian Benito, Rhyndland Energy, 750 Lexington Avenue, New York, NY 10022

From: Oakham Conservation Commission (Via Certified Mail)

Request for Property Access – 358 Coldbrook Road, Oakham, MA

Dear Mr. Benito,

The Oakham Conservation Commission is writing to formally request access to the property located at 358 Coldbrook Road, Oakham, Massachusetts, for the purpose of investigating reported violations of the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40) and its implementing regulations, 310 CMR 10.00. The Commission has received and documented information indicating that unauthorized activities, including the placement, storage, and accumulation of solid waste, auto debris, and associated materials, have occurred within jurisdictional wetland resource areas and their adjacent buffer zones. These activities constitute violations of the Wetlands Protection Act and require further on-site assessment to determine the extent of alteration and any necessary enforcement actions.

Pursuant to M.G.L. c. 131, § 40 and 310 CMR 10.00, the Commission, its agents, consultants, and representatives are authorized to enter upon private property at reasonable times to perform their duties under the Wetlands Protection Act, including inspection and investigation of potential violations. The Commission is providing reasonable notice of its intent to conduct an inspection and is requesting your cooperation in coordinating access. If access is denied or no response is received, the Commission may seek an administrative inspection warrant or pursue other lawful means to obtain entry for the purpose of carrying out its statutory responsibilities.

Accordingly, the Commission respectfully requests permission to access the Property to conduct a site inspection. This inspection may include, but is not limited to, visual assessment, documentation of site conditions, verification of wetland resource area boundaries, and evaluation of potential impacts to wetlands, groundwater, and surface water. Please contact the Commission as soon as possible, and no later than seven (7) calendar days from receipt to coordinate access. If we do not receive a response within this timeframe, the Commission may pursue all available avenues to obtain access as authorized by law.

We appreciate your cooperation and look forward to resolving this matter in a timely and constructive manner. If you have any questions, please contact the Commission.

Sincerely,
Oakham Conservation Commission



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

A. Violation Information

This Enforcement Order is issued by:

Oakham Conservation Commission
Conservation Commission (Issuing Authority)

April 7, 2026
Date

To:

ZOVL Properties, LLC / Moraga Storage, LLC (Rhyndland Energy)
Name of Violator

5555 Anglers Ave. Fort Lauderdale FL 33312 / 750 Lexington Ave. New York NY 10022
Address

1. Location of Violation:

Property Owner (if different)

358 Coldbrook Road

Street Address

Oakham MA

City/Town

406

Assessors Map/Plat Number

01068

Zip Code

106.3

Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

The Oakham Conservation Commission has determined that violations of the Massachusetts Wetlands Protection Act and its implementing regulations (310 CMR 10.00) have occurred and/or are occurring at the property located at 358 Coldbrook Road, Oakham, Massachusetts.

The violations consist of the unauthorized placement, storage, and accumulation of auto debris, solid waste, and associated materials within jurisdictional Wetland Resource Areas and within their 100-foot Buffer Zones. These conditions are ongoing and constitute multiple violations in multiple locations throughout the 42.9-acre property.

The presence of these materials has resulted in, or has the potential to result in, the alteration of Wetland Resource Areas and associated resource area values, including impacts to groundwater, surface water, water quality, and wildlife habitat.

B. Findings

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310 CMR 10.00), because:

- ☒ the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

B. Findings (cont.)

☐ the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

Name

Dated

File Number

Condition number(s)

- ☐ The Order of Conditions expired on (date): _____ Date _____
- ☐ The activity violates provisions of the Certificate of Compliance.
- ☐ The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.
- ☒ Other (specify): _____

Based on site observations, available information regarding prior land use, and the presence of auto debris, solid waste, and associated materials within Wetland Resource Areas and their 100-foot Buffer Zones, the Oakham Conservation Commission finds that these conditions have resulted in, or have the potential to result in, the alteration of areas protected under the Massachusetts Wetlands Protection Act and its implementing regulations (310 CMR 10.00).

The Commission further finds that the nature and extent of materials present on the property create a significant risk of adverse impacts to Wetland Resource Areas and associated resource area values, including groundwater, surface water, water quality, and wildlife habitat. The presence of potential buried waste and the likelihood of soil contamination introduce uncertainty regarding the extent of impacts and the appropriate method of remediation.

Accordingly, the Commission finds that a comprehensive site investigation is necessary to determine the full extent of waste materials and potential contamination, and to ensure that any future cleanup or remediation activities are conducted in a manner that maximizes contaminant removal and protects Wetland Resource Areas to the extent possible in the interests of long term ecological recovery on the property, consistent with the Act.

C. Order

The issuing authority hereby orders the following (check all that apply):

- ☒ The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.
- ☒ Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.
- ☒ A restoration plan shall be filed with the issuing authority on or before _____ April 30, 2026
Date

for the following:

No activity, including but not limited to clean up, removal, grading, excavation, surface disturbance, or vegetation removal, shall be conducted by the owner or any party under the owner's control until the requirements of this section have been completed and written authorization is provided by the Oakham Conservation Commission.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

It is further ordered that the property owner shall retain, at their expense, a Massachusetts-licensed Site Professional (LSP), subject to approval by the Oakham Conservation Commission. The Commission reserves the right to require independent peer review of all submissions at the owner's expense.

It further ordered that the LSP shall conduct a comprehensive investigation of the entire 42.9-acre property, including the identification and mapping of all surface auto debris, solid waste, and associated materials; a subsurface investigation sufficient to determine the presence and extent of any buried commercial or solid waste; and soil and groundwater testing at locations and depths determined by the LSP to be at risk for contamination from prior site use.

It is further ordered that the LSP shall submit a written report to the Oakham Conservation Commission that includes a complete map and inventory of all identified waste and debris; documentation of all investigation and sampling methods and results; an evaluation of potential impacts to Wetland Resource Areas, groundwater, and surface water; and specific recommendations for the appropriate means and methods of cleanup, removal, and mitigation.

It is further ordered that no removal, cleanup, or disturbance activities shall occur until the Commission has reviewed the LSP report and approved a remediation and restoration approach. All work shall be conducted in accordance with the approved plan and in a manner that protects Wetland Resource Areas and associated interests.

It is further ordered that the property owner shall reimburse the Town of Oakham for reasonable costs incurred by the Commission in connection with the review of reports, inspections, and any necessary technical or consultant services required to ensure compliance with this Order.

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.

C. Order (cont.)

- ☒ Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

April 30, 2026

Date

for the following:

A complete delineation of all Wetland Resource Areas on the property, identification and mapping of areas containing auto debris, solid waste, and associated materials, and a comprehensive restoration plan addressing removal, remediation, and stabilization of these areas.

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

- ☒ The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Provide the Oakham Conservation Commission and its agents with reasonable access to the property for inspection of existing site conditions and verification of compliance with this Order.

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 9 – Enforcement Order
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

D. Appeals/Signatures

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Oakham Conservation Commission

Name

508-882-5549

Phone Number

9:00am - 5:00pm Monday - Friday

Hours/Days Available

Issued by:

Oakham Conservation Commission

Conservation Commission

Conservation Commission signatures are required below

D. Appeals/Signatures (cont.)

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

Signature Sam N. Seely
Signature [Signature]
Signature [Signature]
Signature _____
Signature _____
Signature _____
Signature _____
Signature _____

Signature Shawn R. Seely
Printed Name
Signature Steven Gatulis
Printed Name
Signature Carol Lindley
Printed Name
Printed Name _____
Printed Name _____
Printed Name _____
Printed Name _____
Printed Name _____

Signature of delivery person or certified mail number

EXHIBIT 2

Worcester South District Registry of Deeds Electronically Recorded Document

This is the first page of the document – Do not remove

Recording Information

Document Number	: 59689
Document Type	: DEED
Recorded Date	: June 01, 2022
Recorded Time	: 01:43:40 PM
Recorded Book and Page	: 67682 / 276
Number of Pages(including cover sheet)	: 5
Receipt Number	: 1447613
Recording Fee (including excise)	: \$6,539.00

MASSACHUSETTS EXCISE TAX
Worcester District ROD #20 001
Date: 06/01/2022 01:43 PM
Ctrl# 238104 07028 Doc# 00059689
Fee: \$6,384.00 Cons: \$1,400,000.00

Worcester South District Registry of Deeds
Kathryn A. Toomey, Register
90 Front St
Worcester, MA 01608
(508) 798-7717

Recording requested by:
Bacon Wilson, P.C.

Quitclaim Deed

I, **Cynthia A. Palley, a married woman**, of 136 Harkness Road, Pelham, Massachusetts, for consideration paid and in full consideration of **ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,400,000.00)**, hereby grant to **ZOVL Properties LLC**, a Delaware Limited Liability Company, with a principal address of 5555 Anglers Avenue, Suite 27, Fort Lauderdale, FL 33312, with **QUITCLAIM COVENANTS**:

Parcel 1:

The land on Coldbrook Road in Oakham, County of Worcester, Commonwealth of Massachusetts, with buildings and appurtenances thereon, shown as Lot 2 on a plan entitled, "Plan of Land in Oakham, Massachusetts, owned by William N. Wareing" dated December 10, 1986 by George E. Smith, Jr. R.L.S. and recorded at the Worcester District Registry of Deeds in Plan Book 575, Plan 122. See plan for a more particular reference.

Said Lot 2 contains 42.85 acres, more or less.

Excepting from the above referenced description Lot-3A-1 as shown on Plan Book 739, Plan 61 which was conveyed by Cynthia A. Palley to William N. Wareing by deed dated March 31, 1999 and recorded in Book 21277, Page 354.

BEING a portion of the premises conveyed to Cynthia A. Palley by deed of Gordon B. Palley on September 10, 1990 and recorded in the Worcester County Registry of Deeds in Book 12988, Page 370.

Parcel 2:

A certain parcel of land situated on the easterly side of Coldbrook Road in Oakham, County of Worcester, Commonwealth of Massachusetts, shown as Lot 2-1 on a plan entitled, "Plan of Land in Oakham, MA owned by William N. Wareing and Cynthia A. Palley" dated March 10, 1999 by Donald A. Para, Land Surveyor, Inc. and recorded at the Worcester County Registry of Deeds in Plan Book 739, Plan 61. See said plan for a more particular reference.

Beginning at a point at the southwesterly corner of lot to be described, on the easterly side of Coldbrook Road, and at a corner of land of Cynthia A. Palley, recorded in Book 12988,

Property Address: 358 Coldbrook Road, Oakham, MA 01068

QUITCLAIM DEED

Page 370, and as shown on plan recorded in Plan Book 575, Plan 122.

Thence N. 3° 36' 50" W, along the easterly side of Coldbrook Road, 10.03 feet to a point in the end of a stone wall;

Thence N. 4° 51' 30", along a stone wall on the easterly side of Coldbrook Road, 10.97 feet to a drill hole;

Thence N. 86° 23' 10" E, along Lot 1B, land of William Neal Wareing, Jr., 30.24 feet to a re-rod;

Thence S. 3° 36' 50" E, along Lot 1B, 21.00 feet to a point;

Thence S. 86° 23' 10" W, along said Palley land, 30.00 feet to the point of beginning.

Containing an area of 631 square feet and being a portion of land conveyed to said Wareing in a deed recorded in the Worcester Registry of Deeds in Book 5163, Page 584, and being a portion of Lot 1 as shown on plan recorded in Plan Book 575, Page 122.

Said Lot 2-A contains 631 square feet more or less.

BEING the same premises conveyed to Cynthia A. Palley by deed of William N. Wareing, Jr. on April 16, 1999 and recorded in the Worcester County Registry of Deeds in Book 21277, Page 356.

Under the pains and penalties of perjury, I, the Grantor named herein, or my spouse Gordon B. Palley, do hereby voluntarily release any and all rights of homestead, if any, as set forth in M.G.L. Chapter 188, and state that there are no other persons or person entitled to any homestead rights.

Executed under seal this 25th day of May, 2022.

Cynthia A. Palley
Cynthia A. Palley

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF HAMPSHIRE

On this 25th day of May, 2022, before me, the undersigned notary public, personally appeared the above-named, Cynthia A Palley, proved to me through satisfactory evidence of identification, which were Passport, to be the person(s) who signed the preceding or attached document in my presence, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, by her free act and deed.

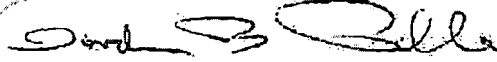
[Signature]
Notary Public Signature

My Commission Expires:



THOMAS R. REIDY
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 28, 2025

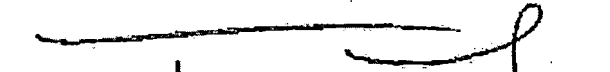
Executed under seal this 25th day of May, 2022.



Gordon B. Palley

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF HAMPSHIRE

On this 25th day of May, 2022, before me, the undersigned notary public, personally appeared the above-named, Gordon B. Palley, proved to me through satisfactory evidence of identification, which were Presently Knowledge, to be the person(s) who signed the preceding or attached document in my presence, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose, by his free act and deed.



Notary Public Signature

My Commission Expires:



THOMAS R. REIDY
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 28, 2025