

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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PEOPLE OF THE STATE OF NEW YORK, SEAN	:	
MAHAR, as Interim Commissioner of the New York	:	
State Department of Environmental Conservation,	:	
and the NEW YORK STATE DEPARTMENT OF	:	Index No. _____
ENVIRONMENTAL CONSERVATION,	:	
	:	SUMMONS
	:	
Plaintiffs,	:	
	:	
- against -	:	
	:	
ANTHONY LABRIOLA, A.L.A.C. REALTY, LLC	:	
and A.L.A.C. CONTRACTING CORP.,	:	
	:	
Defendants.	:	

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**TO: ANTHONY LABRIOLA
A.L.A.C. REALTY, LLC
A.L.A.C. CONTRACTING CORP.**

YOU ARE HEREBY SUMMONED to answer the attached verified complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to New York Civil Practice Law and Rules § 503(a), the venue for this action is Suffolk County, New York, because a substantial part of the events giving rise to plaintiffs' claims occurred there.

Dated: New York, New York
May 23, 2024

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VERIFIED COMPLAINT

Plaintiffs People of the State of New York, Sean Mahar, as Interim
Commissioner of the New York State Department of Environmental Conservation
(DEC), and the DEC (collectively, “the State”), by their attorney, Letitia James,
Attorney General of the State of New York, allege as follows against defendants
Anthony Labriola (“Labriola”), A.L.A.C. Realty, LLC (“ALAC Realty”), and A.L.A.C.
Contracting Corp. (“ALAC Contracting”) upon information and belief:

PRELIMINARY STATEMENT

1. Freshwater wetlands control stormwater surge and flooding, protect
water quality, and provide important wildlife habitat, among numerous other public
benefits. New York enacted Environmental Conservation Law (ECL) Article 24, the
Freshwater Wetlands Act (the “Act”), to protect its freshwater wetlands, including
buffer zone “adjacent areas.” The Act prohibits clearing trees, removing vegetation,
placing fill, constructing commercial facilities, and other regulated activities in

DEC-designated freshwater wetlands and their adjacent areas without a permit from DEC. ECL § 24-0701(1)-(2); 6 NYCRR §§ 663.4, 663.5(e).

2. Before May 2011 defendants Labriola and his limited liability company ALAC Realty, without obtaining a DEC permit, illegally cleared trees and other vegetation, placed fill, graded, and constructed a parking lot in regulated freshwater wetland and adjacent area on property owned by ALAC Realty at 420 Falmouth Road in West Babylon, Suffolk County (the “Site”). The affected area is within the freshwater wetland designated BW-1 or its adjacent area. BW-1 encompasses the Carlls River, Long Island’s fourth longest freshwater stream, and mapped areas on both sides of the stream.

3. In May 2011 DEC issued Labriola and ALAC Realty a notice of violation of the Act for causing or permitting placement of fill and clearing vegetation within the regulated wetland and its adjacent area. After further discussions DEC agreed to refrain from additional enforcement action provided that Labriola and ALAC Realty built a fence demarcating the boundary of the wetland adjacent area, cleared all of the fill on the wetland side of the fence, and allowed the regulated area to naturally re-vegetate.

4. An early 2015 DEC compliance inspection found that Labriola and ALAC Realty had continued to conduct illegal activities in the wetland adjacent area, including: (a) clearing trees and other vegetation; (b) placing fill and performing grading; and (c) building a parking lot and storage facility for use by defendant

ALAC Contracting, Labriola's construction business. Defendants had not applied for nor received a DEC permit for these activities.

5. Subsequent administrative enforcement by DEC resulted in a 2018 administrative consent order (the "Consent Order") in which Labriola and ALAC Realty (the "Consent Order Defendants") admitted illegally encroaching into the adjacent area and agreed to remove a fence, all debris, fill, and commercial materials from the adjacent area, relocate all materials to the west of a repositioned fence outside that area, and revegetate all disturbed areas with approved native plantings. The Consent Order Defendants further agreed to pay a statutory civil penalty of \$55,000, with \$6,000 payable to DEC upon execution, and the remaining \$49,000 suspended for so long as they strictly complied with the Consent Order.

6. The Consent Order Defendants paid the \$6,000 but failed to comply with the remedial requirements. In 2020 DEC and the Consent Order Defendants agreed to an amendment to the Consent Order in which the latter agreed to pay another \$8,000 of the suspended penalty, with the balance suspended for as long as they strictly complied with an amended schedule of compliance for restoring the wetland adjacent area.

7. The Consent Order Defendants paid the agreed-upon \$8,000 in penalties but again failed to comply with the removal and restoration requirements. Instead they continue to use the wetland adjacent area illegally.

8. The State therefore seeks a judgment against the Consent Order Defendants: (a) finding them liable for violating the amended Consent Order and

Act; (b) enjoining them to comply with the removal and restoration requirements in the amended Consent Order's schedule of compliance; (c) directing entry of judgment against them for the \$41,000 unpaid suspended civil penalty balance, plus applicable interest and fees under State Finance Law § 18; and (d) assessing additional statutory penalties against them of no less than \$330,000 for their ongoing violations.

9. The State also seeks a judgment against ALAC Contracting: (a) finding it liable for violating the Act; (b) enjoining it to remove its vehicles and any other equipment from the regulated area, and otherwise cooperate with Labriola and ALAC Realty in implementing the remedial requirements of the amended Consent Order; and (c) assessing statutory penalties against it of no less than \$220,000 for its ongoing violations of the Act.

THE PARTIES

10. Actions for penalties for violation of ECL Article 24, to the extent not administratively assessed by the DEC Commissioner or a local government, are brought on behalf of plaintiff People of the State of New York. ECL § 71-2303(1). The State's offices and principal place of business are located at the Capitol, Albany, New York 12224.

11. Plaintiff DEC is an executive agency of the State of New York and is responsible for the enforcement of the Freshwater Wetlands Act and its implementing regulations at NYCRR Parts 662-665.

12. Plaintiff Sean Mahar is the DEC Interim Commissioner and possesses all of the authorities of the DEC Commissioner.

13. Defendant Anthony Labriola is a resident of the State of New York with a last known address of 10 Hicks Circle, Hicksville, New York 11801. Labriola is a controlling member of ALAC Realty and its Vice President, who has been responsible for its compliance or non-compliance with the Consent Order. Labriola is also a beneficial owner and Vice President of ALAC Contracting.

14. Defendant A.L.A.C. Realty, LLC is a limited liability company formed in New York in 2007. ALAC Realty's principal place of business is at 421 Broadway Avenue, West Babylon, New York 11704. ALAC Realty owns the real property at the Site, located at 420 Falmouth Road, West Babylon, New York 11704.

15. Defendant A.L.A.C. Contracting Corp. is a corporation formed in New York in 2004. Like ALAC Realty, ALAC Contracting's principal place of business is at 421 Broadway Avenue, West Babylon, New York 11704. Labriola is a beneficial owner of ALAC Contracting and its Vice President.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this case pursuant to ECL §§ 71-2303 and 71-2305 and Judiciary Law § 140-b.

17. Venue is proper in Suffolk County pursuant to CPLR § 503(a) because Defendants reside there and a substantial part of the events or omissions giving rise to the State' claims occurred there.

STATUTORY AND REGULATORY FRAMEWORK

18. Freshwater wetlands include marshes, swamps, sloughs, bogs, flats, and other saturated or submerged lands that support vegetation such as reeds, sedges, water lilies, cattails, rushes, sphagnum mosses, and other characteristic aquatic or semi-aquatic plants. *See* ECL § 24-0107(1).

19. The Legislature enacted the Act to “preserve, protect and conserve freshwater wetlands” and their benefits. ECL § 24-0103. As the Act declares, freshwater wetlands are “invaluable resources for flood protection, wildlife habitat, open space, climate change mitigation through the accumulation and storage of large amounts of carbon. . . and water resources.” *Id.* § 24-0105(1). Any loss of wetlands deprives the public of benefits that include flood and storm control, wildlife habitat, protection of water resources, pollution treatment, and erosion control. *Id.* § 24-0105(7).

20. Wetlands regulated under the Act are areas designated as such on maps of freshwater wetlands created and maintained by DEC. *See* ECL §§ 24-0107(1), 24-0301, 24-0701(1). To buffer the wetlands DEC also regulates “adjacent areas,” which include lands within 100 feet (or more, in some cases) of mapped freshwater wetland boundaries. 6 NYCRR §§ 663.2(b), 663.4.

21. After the enactment of the Act, DEC mapped the freshwater wetlands of New York, classified them, and conducted a public notice and hearing process on proposed wetland boundaries in each mapped area. *See* ECL § 24-0301. The finalized inventory maps for each county are available for public access in DEC’s

regional offices and in the office of each county clerk where such wetlands are located. *See id.* § 24-0301(6). The map for Suffolk County was finalized in 1993, and an amended map filed in 1994.

22. To protect freshwater wetlands and preserve their benefits, the Act and its implementing regulations prohibit “regulated activities” in freshwater wetlands and adjacent areas without a permit from DEC. ECL § 24-0701(1)-(2); 6 NYCRR §§ 663.2(z), 663.4, 663.5(e).

23. DEC regulations classify wetlands as Class I to IV, with Class I providing the most valuable set of benefits. 6 NYCRR § 664.5.

24. To assist the regulated community and DEC staff in determining whether a permit will be required for various activities in regulated wetlands or adjacent area, DEC has promulgated an “activities chart” listing such activities and providing applicable permitting criteria. 6 NYCRR § 663.4(d). Activities include the clearing of trees; removal of other vegetation; placement of fill; grading; construction of commercial facilities and related structures; introducing or storing any substance, including petrochemicals or other pollutants; and other activities that substantially impair any of the wetlands’ functions or benefits. 6 NYCRR § 663.4(d) (Items 20, 22, 23, 38, 43); 663.5(e). For each type of activity, DEC lists whether it is presumptively prohibited as incompatible with wetland or adjacent area functions, or whether it is within DEC’s discretion to allow after balancing the functions to be lost against such factors as whether the activity: (a) is consistent with peoples’ physical health; (b) is consistent with related federal, state and local

laws; (c) is the only practicable alternative; and (d) fulfills a compelling economic and social need.

25. Activities listed in the activities chart are categorized by levels of compatibility: (a) “C” activities are usually compatible with a wetland and its functions and benefits, although in some circumstances the proposed action may be incompatible; (b) “N” activities are usually incompatible with a wetland and its functions and benefits, although in some cases the proposed action may be insignificant enough to be compatible; and (c) “X” activities are incompatible with a wetland and its functions and benefits. 6 NYCRR § 663.4(d). The level assigned to an activity may vary based on whether the activity is proposed for wetland or adjacent area. (Adjacent areas are generally subject to less restrictive permitting standards than the wetlands proper. *See, e.g.*, 6 NYCRR § 663.4(d), Items 17-42.)

26. DEC applies various weighing criteria to determine whether to issue permits in the exercise of its regulatory discretion based on the specific circumstances of the application, including the Class of the wetland to be affected and the compatibility factors assigned to the proposed activity, such as whether there is no alternative, or whether there is a compelling economic or social need for it. *See* 6 NYCRR § 663.5(e).

27. DEC may only permit activities designated X under extremely limited circumstances. When the proposed activity is less impactful and the class of wetland is lower (with Class I being highest and Class IV lowest), DEC has broader

discretion, and presumptions favoring issuance of a permit tip in the applicant's direction.

28. The activities chart in 6 NYCRR § 663.4(d) is not comprehensive. DEC evaluates activities not listed in the chart using a compatibility test. 6 NYCRR § 663.5(e). An unlisted activity qualifies for a permit if it meets a three-part compatibility test: it is compatible with the public health and welfare, is compatible with preservation, protection and conservation of the wetland and its benefits, and results in no more than insubstantial degradation to, or loss of, any part of the wetland. 6 NYCRR § 663.5(e)(1).

29. If an unlisted activity does not meet that three-part compatibility test, it must meet several weighing standards. If the activity is in a Class I wetland or its adjacent area, a permit may be issued only if the proposed activity is compatible with the public health and welfare; is the only practicable alternative that could accomplish the applicant's objectives; has no practicable alternative on a site that is not a freshwater wetland or adjacent area; will minimize degradation to, or loss of, any part of the wetland or its adjacent area; will minimize any adverse impacts on the functions and benefits the wetland provides; and satisfies a compelling economic or social need that clearly and substantially outweighs the loss of or detriment to the benefit(s) of the Class I wetland. 6 NYCRR § 663.5(e)(2).

30. DEC is authorized to order the cessation of any violation of the Act and direct the violator to conduct necessary restoration work. ECL § 71-2303(1).

31. Any person who violates the Act, its implementing regulations, permits, and DEC administrative orders issued thereunder is liable for civil penalties of up to \$11,000 per violation. ECL § 71-2303(1). As of April 1, 2022 the law was amended so that each day of continuing violations of the Act, including ongoing violations of administrative orders, is deemed a separate and distinct violation. *Id.* The Attorney General may bring an action to enforce an order of the DEC Commissioner issued pursuant to the Act and may seek additional penalties for each violation of such order. ECL § 71-2303(1). All penalties collected for violations of the Act are paid into the environmental protection fund established pursuant to State Finance Law § 92-s. ECL § 71-2303(3). Additionally, the Attorney General may bring an action on their own initiative to recover civil penalties for violation of the Act. ECL §§ 71-2303(1), 71-2305.

32. DEC has developed and published a Civil Penalty Policy (available at <https://www.dec.ny.gov/regulations/25227.html>), based on the statutes it enforces and administrative and judicial case law, to guide the agency's quantification of penalties for violations of the Environmental Conservation Law and implementing regulations. The Policy directs the agency to consider a number of relevant factors, including the gravity of the violation at issue, the violator's level of cooperation in remediating the violation upon notice, and the economic benefit obtained through the violation.

33. DEC also has a specific Freshwater Wetlands Enforcement Policy (available at <https://www.dec.ny.gov/regulations/25233.html>) that emphasizes

enhancement and protection of New York's freshwater wetlands by seeking restoration of wetland benefits and functions lost as the result of illegal activity. Through enforcement DEC seeks to remove any economic incentive violators may seek by engaging in noncompliant activities in wetlands and their adjacent areas.

FACTS

A. The Site and the Carlls River Freshwater Wetland

34. The Site is located on property owned by ALAC Realty at 420 Falmouth Road in West Babylon, New York. The Site currently contains a facility for storage of construction materials and parking of commercial vehicles and is used by ALAC Contracting Corp., a road and bridge construction/contracting business that Labriola owns and controls. The Site is identified on the Suffolk County Tax Map as number 0100-160.00-01.00-030.000. That property is approximately 44,500 square feet, of which 13,400 square feet are regulated wetlands and 26,600 square feet are regulated adjacent area. ALAC Realty acquired the Site in 2007.

35. The Carlls River originates in Wyandanch, Suffolk County, and flows generally south to the Great South Bay. Its stream is to the east of the Site and, along with its shore and surrounding areas constitutes the protected Class I freshwater wetland designated as BW-1 on the New York State Freshwater Wetland Map, prepared pursuant to Article 24 and 6 NYCRR Part 664. Class I freshwater wetlands provide "the most critical of [New York] State's wetland benefits." 6 NYCRR § 665.7(c)(2). According to the Long Island Chapter of Trout Unlimited, the Carlls River is the fourth largest river system on Long Island. It is

annually stocked with brown and rainbow trout and hosts a small wild brook trout population. Through much of its course the Carlls River is surrounded by public parkland, including the area near where it flows by the Site.

36. The area of the Site on which the violations at issue occurred was within 100 feet of protected freshwater wetlands and therefore regulated adjacent area. *See* 6 NYCRR § 663.2(b).

B. Defendants' Violations of the Freshwater Wetlands Act and Regulations

37. In or around March 2011 ALAC Realty submitted an application to DEC for a permit to clear vegetation that it asserted to be more than 100 feet from the western boundary of the wetland and therefore outside the adjacent area.

38. DEC inspected to verify the wetland delineation depicted in the application and evaluate whether the proposed activities were in fact outside regulated areas. DEC found clearing and filling in both the wetland and its adjacent area.

39. On or about May 19, 2011, DEC issued Labriola and ALAC Realty a notice of violation for placing fill and clearing vegetation within the wetland and adjacent area.

40. After subsequent discussions DEC agreed to refrain from further enforcement action on the condition that respondents Labriola and ALAC Realty build a fence through the Site along a line 100 feet from the edge of the wetland, clear all the fill east of the fence (the side toward the wetland), and allow the area between the fence and the wetland to revert to natural vegetation.

41. DEC conducted a Site inspection in early February 2015 to determine whether Labriola and ALAC Realty had complied. DEC found that they had not complied and had conducted further activities in the adjacent area without a permit in violation of the Act and regulations, including: (a) clearing trees and other vegetation;¹ (b) placing fill and grading (*i.e.*, raising or lowering the land);² and (c) constructing a parking lot and storage area for use by ALAC Contracting.³

42. Use of wetland adjacent area to construct a commercial facility and related structures – such as a parking lot and storage area for a construction business – is designated “X, Incompatible,”⁴ and construction of such a parking lot and storage area would not be permitted by DEC except under extraordinary conditions not applicable to the Site here.

43. On February 10, 2015, DEC issued Labriola and ALAC Realty a Notice of Violation of the Act for the unpermitted clearing, filling, and construction activities.

C. The 2018 Consent Order

44. Following further discussions, in November 2018, Labriola, on behalf of both himself and ALAC Realty, signed the Consent Order (DEC File No. R1-20180703-135) with DEC (Exhibit A hereto). The Consent Order became effective on December 5, 2018, upon DEC’s signing.

¹ A violation of ECL § 24-0701(1) and 6 NYCRR §§ 663.4(d), Items 22 and 23.

² A violation of ECL § 24-0701(1) and 6 NYCRR §§ 663.4(d), Items 20 and 25.

³ A violation of ECL § 24-0701(1) and 6 NYCRR § 663.4(d), Item 43.

⁴ See 6 NYCRR § 663.4(d), Item 43.

45. In the Consent Order, Labriola and ALAC Realty admitted to violating the Freshwater Wetlands Act and regulations at 6 NYCRR Part 663. They agreed to implement the remedial actions enumerated in the annexed schedule of compliance (the “Compliance Schedule”) and to pay a civil penalty to DEC.

46. The Compliance Schedule required the Consent Order Defendants to immediately cease and desist from any future violations of the Act and applicable DEC regulations. It required them to complete the removal and restoration requirements described in the Compliance Schedule and submit photographs of the completed work to DEC within five days of completion.

47. DEC determined in the Consent Order that the Consent Order Defendants had cleared and otherwise used 11,800 square feet of wetland adjacent area. The Consent Order required that they clear and restore 7,700 square feet of the adjacent area but allowed use of 4,100 square feet of adjacent area furthest from the wetland – a type of concession DEC sometimes makes in the context of settlement.

48. Specifically, the Compliance Schedule required the Consent Order Defendants to submit a restoration plan to DEC within 30 days, which was by January 4, 2019, that included several actions that would be taken by June 1, 2019.

49. First, it required them to move the existing fence in the regulated freshwater wetland adjacent area to a demarcation line designated in the Consent Order.

50. Second, it required them to remove all debris, fill, and commercial materials from the restoration and replanting area east of the new fence, and to relocate all materials to the west of the new fence and outside the restoration and replanting area.

51. Third, it required them to revegetate all areas of disturbance east of the western fence with native plantings, spaced and planted at an appropriate density in the restoration area. Specifically, it required them to:

- Plant 30 native trees of approved species and stocks;
- Plant 30 native shrubs of approved species and stocks;
- Seed the disturbed area with perennial native seed mix at a rate of 15 lbs. per acre;
- Ensure that at least 75% of all plantings survive over a period of five growing seasons and to submit a planting survivorship and species monitoring annually by December 31st of 2020, 2021, 2022, 2023, and 2024.

52. For the civil penalty the Consent Order Defendants agreed to pay \$55,000, with \$6,000 payable to DEC upon execution, and the remaining \$49,000 suspended for so long as they strictly complied with the Consent Order.

D. The Consent Order Defendants' Violations of the Consent Order

53. The Consent Order Defendants did not comply with the 2018 Consent Order, resulting in further administrative enforcement action by DEC. Specifically, they did not submit a restoration plan to DEC, move the fence to the demarcation line, remove debris, fill and commercial materials from the area east of the new fence, plant 30 trees and 30 native shrubs and seed the disturbed area with

perennial native seed mix at a rate of 15 pounds per acre, and ensure that at least 75% of those plantings survived over five growing seasons.

E. The 2020 Amendment to the Consent Order

54. In or around July 2020 Labriola and ALAC Realty agreed to resolve their outstanding violations through an amendment to the 2018 Consent Order. On July 21, 2020, Labriola signed the amendment “individually and as Owner and Operator of A.L.A.C. Realty, LLC.”⁵ DEC countersigned and made the amendment effective on August 5, 2020. The 2020 amendment to the Consent Order is included with Exhibit A.

55. As amended, the Consent Order required the Consent Order Defendants to pay \$8,000 of the suspended penalty by July 24, 2020, revised the deadline for planting 30 trees and 30 shrubs to September 30, 2020, and revised the deadline for moving the fence to the demarcation line and removing construction equipment and debris from east of the new fence to October 5, 2020.

F. The Consent Order Defendants’ Violations of the Consent Order as Amended

56. Other than paying DEC \$8,000 in suspended penalties, the Consent Order Defendants failed to comply with the new deadlines. Specifically, they did not

⁵ Amendment of the Consent Order took place in the summer of 2020 during COVID-19 restrictions. The Consent Order Defendants executed the amendment via e-mail between DEC and Labriola and Consent Order Defendants’ counsel. DEC’s file reflects that Consent Order Defendants executed and returned to DEC via e-mail one signature page signed by Labriola but did not return a separate signed signature page on behalf of Labriola’s limited liability company ALAC Realty.

plant 30 trees and 30 shrubs at the Site, did not move the fence to the demarcation line, and did not remove all the debris and construction equipment as required by the amended Consent Order. To address these ongoing violations DEC referred the matter to the New York Attorney General for judicial enforcement.

57. On August 3, 2023 the State sent Labriola and ALAC Realty a demand letter offering a final opportunity to resolve their ongoing violations, without litigation or assessment of new penalties, if they: (a) paid the remaining \$41,000 suspended penalty by September 15, 2023; (b) submitted to DEC an approvable restoration plan by September 5, 2023 and complied with the restoration plan by November 1, 2023; and (c) submitted photographic proof of the completed work within five days of completion. The letter stated that if Labriola and ALAC Realty did not make the specified submissions the State would take further legal action.

58. Labriola and ALAC Realty did not respond to the State's August 3, 2023 demand letter.

G. Consent Order Defendants' Ongoing Violations of the Consent Order as Amended

59. As of the date this complaint is being filed, the Consent Order Defendants have failed to move the existing fence to the demarcation line, remove construction equipment, and debris from east of the new fence, and to revegetate the areas of disturbance with native plants, as required by the Consent Order as amended.

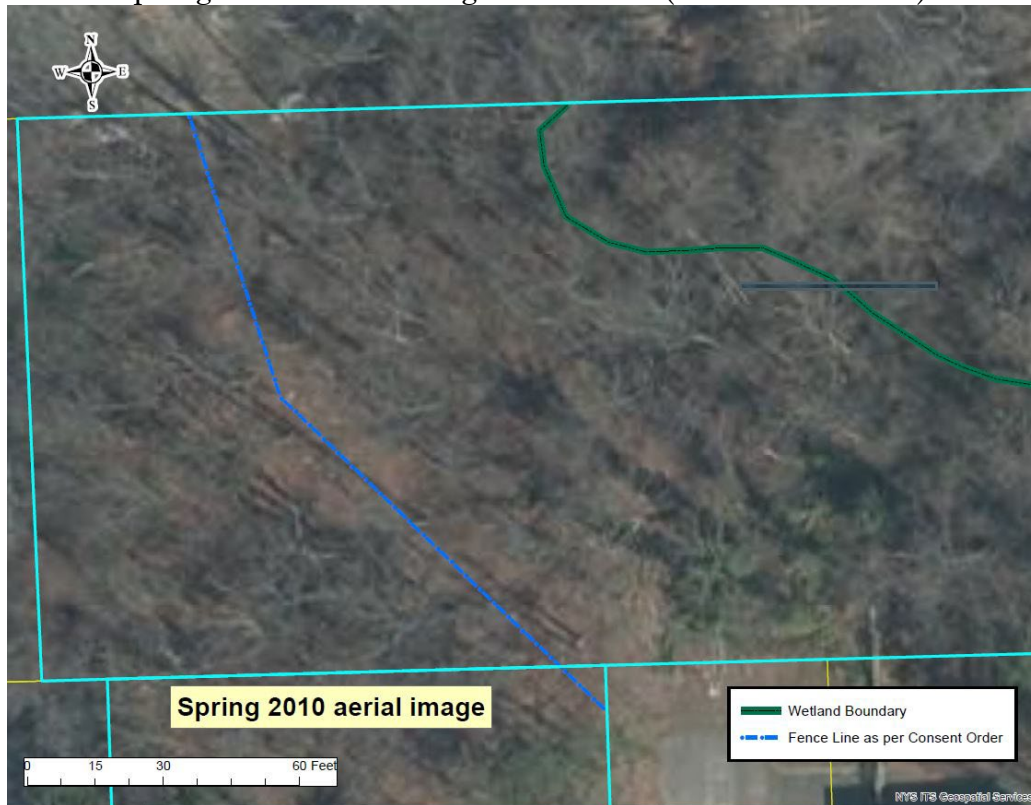
60. Labriola and ALAC Realty have derived substantial economic benefit, shared with ALAC Contracting, from these violations, by continuing to use the

approximately 7,700 square foot of the wetland adjacent area that they agreed to evacuate and restore as an illegal parking lot and storage facility. Comparable ground lease rates within approximately eight miles of the Site indicate that it would have cost an estimated \$136,000 (accounting for estimated inflation) to lease that land over the roughly 60-month period between June 1, 2019, when the Consent Order Defendants were originally required to evacuate and restore that area, and the date of this complaint.

61. As discussed above (¶¶ 32-33), applicable DEC civil penalty policies seek to eliminate economic gain from illegal activity and additionally penalize lack of cooperation to resolve violations and loss of wetland and adjacent area benefits, among other factors intended to deter violations.

62. Approximately 13 years after DEC first found Labriola and ALAC Realty in violation of the Act, they remain in violation of the Act and the Consent Order. The vegetated parcel ALAC Realty acquired in 2007, which provided habitat, natural flood control, and protection for the water quality of the Carlls River remains an impervious storage facility and denuded packed dirt parking area, as the aerial photographs of the Site from spring 2010, spring 2013, and spring 2024, obtained by DEC and shown below, illustrate.

Spring 2010 Aerial Image of the Site (before violations):



Spring 2013 Aerial Image of the Site (after violations):



March 2024 Aerial Image of the Site (showing continuing violations):



H. ALAC Contracting's Continuing Violations of the Act and Regulations

63. ALAC Contracting has stored construction vehicles (e.g., dump trucks), heavy equipment tires, steel barriers, plastic “jersey barriers,” steel pipe and scrap metal, chain link fencing, steel trench boxes, and other construction equipment at the Site since at least June 2019.

64. ALAC Contracting never applied to DEC for a freshwater wetlands permit for storing its construction vehicles and other construction equipment in the regulated wetland adjacent area at the Site. If ALAC Contracting had applied for

the required permit DEC would have denied the application. ALAC Contracting's unpermitted use of the Site has been in violation of the Act since the use began.

65. Storing construction vehicles and other equipment in a wetland adjacent area is not listed on DEC's activities chart. *See* 6 NYCRR § 663.4(d). As a result, DEC would issue a permit for that activity if it met the compatibility test or if it did not meet that test, qualified for a permit under the weighing standards for Class I wetlands. *See* 6 NYCRR § 663.5(e).

66. Under the compatibility test, DEC would issue a permit for storing construction vehicles and other equipment in the adjacent area only if that activity is compatible with the public health and welfare, compatible with preservation, protection and conservation of the wetland and its benefits, and results in no more than insubstantial degradation to, or loss of, any part of the wetland. *See* 6 NYCRR § 663.5(e)(1).

67. Parking heavy construction vehicles and storing this type of equipment and materials in a Class I wetland adjacent area, near multiple locations where parking and storage space is otherwise available, does not meet the compatibility test. That activity is incompatible with the public health and welfare because it eliminates and prevents restoration of the wildlife habitat and flood control benefits that the wetland adjacent area on Site provides. The activity also causes substantial degradation to the wetland adjacent area.

68. Because storing trucks and equipment does not meet the compatibility test, DEC would issue a permit for that activity only if it met several weighing

standards. In a Class I wetland or its adjacent area like the Site, a permit may be issued under those standards only if the proposed activity is compatible with the public health and welfare; is the only practicable alternative that could accomplish the applicant's objectives; has no practicable alternative on a site that is not a freshwater wetland or adjacent area; will minimize degradation to, or loss of, any part of the wetland or its adjacent area; will minimize any adverse impacts on the functions and benefits the wetland provides; and satisfies a compelling economic or social need that clearly and substantially outweighs the loss of or detriment to the benefits of the Class I wetland. 6 NYCRR § 663.5(e)(2).

69. Parking construction vehicles and storing equipment would not qualify for a permit based on the weighing factors. While the adjacent area of the Site may be commercially convenient to ALAC Contracting, there are multiple practicable alternative areas nearby that could accomplish ALAC Contracting's storage and parking objectives. The activity also does not minimize degradation to, or loss of, the affected wetland adjacent area, and does nothing to minimize any adverse impacts on the functions and benefits the wetland provides. Parked commercial vehicles are also known to leave behind petroleum and other contaminants. The bare, compressed soil on which the vehicles are parked spurs stormwater runoff laden with dirt and whatever contaminants may be in it. There is no compelling economic or social need that outweighs the detriments to the Class I wetland.

70. ALAC Contracting's violations of the Act and implementing regulations have continued through the date this complaint is filed.

I. Penalties Sought

71. The State seeks separate additional statutory penalties against the Consent Order Defendants and ALAC Contracting. DEC has applied its penalty policies and calculated proposed penalties based, among other things, on the statutory maximum penalty available, the economic benefit defendants obtained through their violations, defendants' lack of cooperation in resolving their violations, the ecological damage the violations have caused, and the need to deter further violations by defendants and others similarly situated.

72. The State seeks \$330,000 in additional penalties against the Consent Order Defendants. Under DEC penalty guidance the starting point for calculating appropriate penalties is the available statutory maximum penalty. The maximum statutory penalty available against the Consent Order Defendants is over \$17 million. In the Consent Order, they admitted to five distinct violations of the Freshwater Wetlands Act, which can be grouped into two categories for penalty calculation purposes: (a) clearing of trees and other vegetation, and (b) grading, filling in, and constructing a parking lot on the wetlands adjacent area. Each of these two violations carries a statutory civil penalty of \$11,000 pursuant to ECL § 71-2303(1). From April 1, 2022, when the statute was amended to provide that each day a violation continues constitutes a separate violation subject to a penalty of up to \$11,000, the Consent Order Defendants' violations have continued for 783 days through the date of the filing of this complaint. As a result, the maximum penalty is

\$17,226,000 (\$11,000 x 2 violations x 783 days). The \$330,000 additional penalty sought is less than 2% of the available maximum.

73. DEC additionally considered the ecological damage the Consent Order Defendants caused to the wetlands adjacent area, the economic benefit they have obtained for many years by illegally allowing use of the wetlands adjacent area for their affiliate's construction business, and their lack of cooperation with DEC. They entered into a consent order which purportedly represented a willingness to work with DEC to resolve their violations and restore the adjacent area, and its habitat and flood control benefits. They violated that agreement. They agreed to an amendment in which they purportedly manifested a willingness to come into compliance with the first agreement, then violated the amended schedule. The State wrote to the Consent Order Defendants after the matter was referred to the Attorney General for enforcement, extending a final opportunity to comply with their outstanding remedial obligations without litigation, and they did not respond. Instead of restoring the adjacent area as promised and legally required, the Consent Order Defendants provided that area to ALAC Contracting (of which Labriola is a beneficial owner and Vice President) for commercial use that provided an economic benefit conservatively estimated at \$136,000 to date.

74. The State also seeks a penalty of \$220,000 against ALAC Contracting. In arriving at that penalty, the State started with a maximum available penalty of over \$8.6 million. ALAC Contracting has violated the Act by storing construction vehicles and other construction equipment in wetland adjacent area at the Site

without applying for or obtaining a required DEC permit. ALAC Contracting has done so for 783 days, from April 1, 2022 through the date of the filing of this complaint. At \$11,000 per day, this totals an available statutory maximum of \$8,613,000. The \$220,000 additional penalty the State seeks is less than 3% of the available maximum.

75. DEC additionally considered the same habitat and flood protection losses that it applied to the Consent Order Defendants' violations. While liability for violating the Act is strict, the State also took into account that ALAC Contracting, through Labriola, had knowledge that its unpermitted use of the wetland adjacent area was both illegal and in violation of the Consent Order. ALAC Contracting both participated in the Consent Order Defendants' violations of the Order and derived an economic benefit from its illegal use of the Site.

76. In light of the available statutory maximum penalties and the totality of the circumstances, DEC's respective additional penalty demands are reasonable and appropriately tailored to deter continuation of defendants' violations of the Act, as well as similar violations by others.

**FIRST CAUSE OF ACTION
(AGAINST THE CONSENT ORDER DEFENDANTS)**

Violation of the Consent Order as Amended and Freshwater Wetlands Act

77. The State repeats and realleges the allegations in the foregoing paragraphs.

78. The Consent Order Defendants violated the Consent Order as amended by failing to submit a restoration plan, move the fence to the demarcation

line, remove all fill, vehicles, construction equipment and/or debris from the wetland adjacent area east of the demarcation line, and revegetate that area.

79. The Consent Order Defendants' violations are ongoing.

80. In addition to constituting violations of the Act and implementing regulations, the Consent Order Defendants' violations of the Consent Order as amended constitute contract violations.

81. Pursuant to ECL §§ 71-2303(1) and 71-2305, and as a matter of contract, the State is entitled to an injunction directing the Consent Order Defendants to comply with the Consent Order as amended.

82. Pursuant to ECL § 71-2303(1), and as a matter of contract, DEC is entitled to a money judgment against the Consent Order Defendants, jointly and severally, in the amount of \$41,000 for the remaining unpaid suspended portion of the civil penalty in the Consent Order. This suspended penalty became due no later than October 1, 2020, the day after they were required to revegetate the wetland adjacent area under the 2020 amendment to the Consent Order.

83. Pursuant to State Finance Law § 18, DEC is also entitled to interest, late payment penalty charges, and/or collection fees from the Consent Order Defendants on the \$41,000 in unpaid suspended penalties that became due to DEC on October 1, 2020.

84. The Consent Order Defendants' violations of the Consent Order also constitute violations of the Act that are subject to additional statutory penalties. Each such violation that occurred through March 31, 2022 is subject to a penalty of

up to \$11,000. Starting April 1, 2022, when ECL § 71-2303(1) was amended, each day on which a violation has continued constitutes a separate and independent violation that is subject to a penalty of up to \$11,000.

85. Pursuant to ECL § 71-2303(1), DEC is entitled to an award of additional penalties of no less than \$330,000 for the Consent Order Defendants' continuing violation of the Consent Order and Act through the date this complaint is filed and to further penalties after that date.

**SECOND CAUSE OF ACTION
(AGAINST ALAC CONTRACTING)**

Violation of the Freshwater Wetlands Act

86. The State repeats and realleges the allegations in the foregoing paragraphs.

87. ALAC Contracting violated ECL § 24-0701(1)-(2) by storing construction vehicles and other construction equipment on the wetland adjacent area of the Site without obtaining a DEC permit as required under the Act and 6 NYCRR §§ 663.4 and 663.5(e). Starting April 1, 2022, each day in which ALAC Contracting violated the Act constitutes a separate and independent violation that is subject to a statutory penalty of up to \$11,000 per day.

88. Pursuant to ECL §§ 71-2303(1) and 71-2305, the State is entitled to an injunction directing ALAC Contracting to remove its vehicles and other construction equipment from the wetland adjacent area of the Site east of the demarcation line established by the Consent Order.

89. Pursuant to ECL § 71-2303(1), the State is entitled to an award of statutory penalties of no less than \$220,000 for ALAC Contracting's continuing violation of the Freshwater Wetlands Act through the date this complaint is filed and to further penalties after that date.

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that the Court enter judgment:

A. On the First Cause of Action:

1. Finding Anthony Labriola and A.L.A.C. Realty, LLC jointly and severally liable for their continuing violations of the Consent Order, as amended, as well as the Freshwater Wetlands Act, as described in the First Cause of Action;
2. Enjoining Anthony Labriola and A.L.A.C. Realty, LLC, jointly and severally, to comply with the Consent Order as amended within 60 days of service of notice of entry of a judgment, by:
 - a. Moving the fence encroaching upon the wetland adjacent area to a demarcation line at the edge of the area designated by DEC and removing all fill, vehicles, construction equipment and/or debris from east of that line out of the adjacent area, and e-mailing proof of these corrective actions within five days of completion to DEC Region 1's Bureau of Ecosystem Health (R1BEH@dec.ny.gov);
 - b. Planting 30 five-gallon trees and 30 three-gallon shrubs in the wetland adjacent area at the Site in compliance with the specifications in

the Compliance Schedule attached to the 2018 Consent Order and e-mailing proof of planting within five days to DEC Region 1's Bureau of Ecosystem Health (R1BEH@dec.ny.gov); seeding the disturbed area with perennial native seed mix at a rate of 15 lbs. per acre; and ensuring that at least 75% of all plantings survive over a period of five growing seasons and submitting a planting survivorship and species monitoring report annually to DEC Region 1's Bureau of Ecosystem Health (R1BEH@dec.ny.gov) by December 31st of 2024, 2025, 2026, 2027, and 2028; and

c. Allowing inspection of the Site by DEC during ordinary business hours.

3. Directing entry of a money judgment in favor of DEC against Anthony Labriola and A.L.A.C. Realty, LLC, jointly and severally, in the amount of \$41,000 for the unpaid suspended penalty due under the Consent Order, plus applicable interest and other charges, from October 1, 2020; and

4. Awarding DEC an additional statutory penalty of no less than \$330,000 against Anthony Labriola and A.L.A.C. Realty, LLC, jointly and severally, or such other amount as the Court determines to be reasonable and appropriate, for their continuing violations of the amended Consent Order and Freshwater Wetlands Act, through the filing of this verified complaint.

B. On the Second Cause of Action:

1. Finding A.L.A.C. Contracting Corp. liable for continuous violation of the Freshwater Wetlands Act from June 1, 2019, with each day since April 1, 2022 constituting a new and independent violation, by unpermitted storage of construction vehicles and other construction equipment in the wetland adjacent area of the Site;


2. Enjoining A.L.A.C. Contracting Corp., within 60 days of service of notice of entry of a judgment on it, to remove its vehicles and other construction equipment from the wetland adjacent area of the Site east of the demarcation line established by the Consent Order and otherwise cooperate with Anthony Labriola's and A.L.A.C. Realty, LLC's implementation of the remedial requirements of the Consent Order, including, to the extent it is in possession of the Site, facilitating access to the Site by Labriola, A.L.A.C. Realty, LLC or their contractors or consultants for remedial activities and DEC for inspection of the Site during ordinary business hours; and

3. Awarding DEC a statutory penalty of no less than \$220,000 against A.L.A.C. Contracting Corp., or such other amount as the Court determines to be reasonable and appropriate, for its continuing violation of the Freshwater Wetlands Act through the filing of this verified complaint.

C. Awarding such additional relief as may be just and reasonable.

Dated: May 23, 2024
New York, New York

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