

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS**

In the Matter of:	)	DALA Docket No. DEP-07-7
	)	DEP Docket No. 2006-124
James LaMountain	)	DEP File No. UAO-WE-06-6W009
	)	
	)	Holland
	)	
	)	

**DEPARTMENT'S SUPPLEMENT TO MOTION TO DISMISS**

This is an appeal of a Unilateral Administrative Order ("Order"), issued on August 10, 2006, directing Petitioner James LaMountain to cease and desist from unauthorized activity in wetland resource areas at a site on Mashapaug Road in Holland, MA (the "Site"). The Order requires that the activity stop until either a wetlands permit is obtained or a Forest Cutting Plan is approved. The Order also requires that disturbed areas be stabilized.

The parties appeared at a Prehearing Conference on March 7, 2007 to discuss a hearing schedule, potential issues to be adjudicated, and potential witnesses. On March 9, 2007, Administrative Magistrate Rooney issued a Prehearing Conference Report, noting, inter alia, "I urged the parties to settle. The dispute about whether the work...was covered by the agricultural exemption need not necessarily be resolved to settle this matter, if the order has been complied with." One of the issues identified for adjudication in this appeal is: "Has the order to cease and desist the work enforced against been complied with? Is the stabilization called for by the order needed or, alternatively, has this order been complied with? If so, is this matter moot?"

EX-8-07

Prior to the Prehearing Conference, the Department filed a Motion to Dismiss the instant appeal which does not address the mootness issue. Because that issue was identified at the Prehearing Conference as an issue to be adjudicated herein, and in the interests of conserving the collective resources of the parties and DALA, the Department requested leave to file and serve, on or before Friday, April 13, 2007, a supplement to its Motion to Dismiss in order to add mootness as an alternative ground for dismissal.<sup>1</sup> The Department's Motion for Leave to Supplement was granted, and the existing schedule was amended to permit Petitioner additional time to respond to the Department's Motion as supplemented.

On April 5, 2007, Timothy McKenna, a MassDEP Environmental Analyst with experience in enforcing the Wetlands Protection Act, inspected the Site.<sup>2</sup> Mr. McKenna did not enter the Site, but observed from the adjacent road that there were forestry harvesting activities ongoing at the Site and determined that those activities were being conducted in accordance with a valid Forest Cutting Plan. Mr. McKenna did not observe any activity at the Site that he considered to be in violation of the Wetlands Protection Act and, based on his observations, concluded that the UAO issued herein on August 10, 2006 has been complied with.<sup>3</sup> See Affidavit of Timothy McKenna, attached hereto.

The instant appeal should be dismissed as moot because the appealed enforcement order has been complied with. See *Matter of The Finger Companies, Inc.*, 12 DEPR 224, *Final Decision – Order of Dismissal (December 30, 2005)*. Moreover, the underlying

---

<sup>1</sup> Mootness is an allowable ground for dismissal. See 310 CMR 1.01(d)1.

<sup>2</sup> Mr. McKenna is listed in the UAO as the MassDEP staff contact for questions regarding the enforcement order, and the Notice of Claim for Adjudicatory Appeal indicates that Mr. McKenna met with Petitioner at the Site on July 20, 2006 prior to issuance of the UAO.

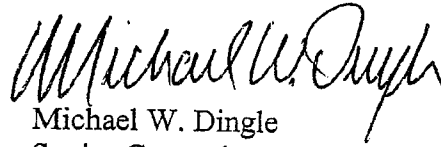
<sup>3</sup> The Notice of Claim, filed on August 16, 2006, states that Petitioner stabilized the affected areas of the Site prior to conducting any of the activities complained of, and notes Petitioner's intention to obtain a Forest Cutting Plan.

EX-8-03

UAO should be held to remain in effect. See *Matter of DB Enterprises, Inc. and Joseph Diemand, Docket No. 2000-086, Final Decision -- Order of Dismissal (April 3, 2001)* and cases cited therein.

Dated: April 13, 2007

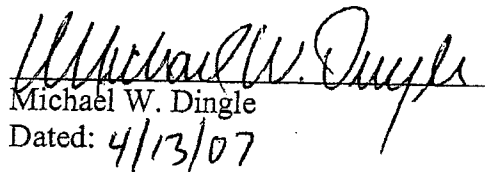
Respectfully submitted



Michael W. Dingle  
Senior Counsel  
(617) 292-5959

#### CERTIFICATE OF SERVICE

I, Michael W. Dingle, do hereby certify under the pains and penalties of perjury, that a true and complete copy of the foregoing Motion for Leave to Supplement was served by First Class, U.S. Mail on this day on all parties listed on the attached Service List.



Michael W. Dingle  
Dated: 4/13/07

EX-8-04