

WATER ACT

BEING CHAPTER W-3 R.S.A. 2000 (the "Act")

ENFORCEMENT ORDER NO. WA-EO-2016/03-RDNSR

Ronald Henschel
49 Allsop Drive
Red Deer, Alberta T4R 2H1

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Red Deer, Alberta T4R 3B2

Aurora Heights Management Ltd.
600, 4911 – 51 Street
Red Deer, Alberta T4N 6V4

(Collectively "the Parties")

WHEREAS Aurora Heights Management Ltd. (hereinafter referred to collectively as "Aurora Heights") is the registered owner of the lands legally described as SE 34-39-27-W4M and SW 35-39-27-W4M (the "Lands") located within the Town of Blackfalds, Alberta;

WHEREAS prior to the incidents that are the subject of this Order, the Lands contained a Wetland of approximately 8.59 Hectares, and is classified as a semi-permanent class IV Wetland under the Steward and Kantrud classification system (see "Figure 1 – Original Wetlands" for the delineation of the Wetland's pre-disturbance boundaries);

WHEREAS the Wetland is in part bisected by a road described as Range Road 272 (the "Road");

WHEREAS Aurora Heights intend to develop the Lands for a residential subdivision;

WHEREAS on or between August 27 and September 8, 2014, , Aurora Heights caused or directed the infilling of 3.45 hectares of the Wetland without having received an authorization under the *Water Act* as is required;

WHEREAS on September 9, 2014, an Alberta Environment and Parks ("AEP") Environmental Protection Officer inspected the Lands and the Wetland and observed that significant amounts of soil had been deposited in the eastern portion of the Wetland (areas filled in are depicted in "Figure 1 – Original Wetlands"), to the east of the Road that bisects the Wetland;

WHEREAS AEP reviewed historical aerial photographs of the Wetland, as well as the Aurora Heights, Inc. Wetland Assessment (Sept. 2014) prepared by Stantec Consulting Inc. ("Stantec"), and noted that that the Wetland is a permanent wetland, but is not considered a crown claimable waterbody within the meaning of section 3 of the *Public Lands Act* by AEP;

WHEREAS Stantec was contracted by Aurora Heights to prepare and submit an application for a *Water Act* approval for the proposed infilling of the Wetland on their behalf;

WHEREAS on July 16, 2014, Stantec submitted the *Water Act* application for an approval to AEP, which included a proposal to fill in one portion of the Wetland and deepen another portion;

WHEREAS notwithstanding that AEP had not issued any authorization, the Parties proceeded to conduct the proposed activity of filling in the Wetland without having first received the required *Water Act* approval;

WHEREAS Mr. Henschel and Mr. Will, as Directors of Aurora Heights, Inc. directed that the wetland be infilled without a *Water Act* approval, and are also liable for the contraventions;

WHEREAS the Wetland is a "water body" within the meaning of section 1(1)(ggg) of the *Water Act*;

WHEREAS the filling in of the Wetland is an "activity" within the meaning of section 1(1)(b) of the *Water Act*;

WHEREAS the Wetland has a retention and detention function that regulates the flow of surface water to protect lands downstream from flooding, and the Wetland has no defined natural outlet;

WHEREAS the Wetland helps to reduce soil erosion, retain sediments, absorb nutrients, store water to moderate impacts of floods and droughts, provide habitat and other ecological values, and helps to provide clean water, wildlife viewing opportunities and other outdoor recreation activities;

WHEREAS the "Assessment Impact Directive" developed as part of the Alberta Wetland Policy (AEP, 2015) requires in section 4 under the heading: "Unauthorized Impacts to Wetlands", that any "such previous ongoing adverse effects to wetland(s) that were not authorized by a regulatory body must be brought into compliance prior to the consideration of a new *Water Act* or *Public Lands Act* application";

WHEREAS the "Wetland Mitigation Directive" also requires in sections 4, (under The Wetland Mitigation Hierarchy), and 5, (Avoidance), that consideration for wetland impacts must first be "avoided" before consideration of whether impacts to a wetland can be "minimized" in the approval application process;

WHEREAS the Wetland Mitigation Directive further requires in section 7 (Replacement), that "replacement" will only be available "[i]f adverse effects to a wetland cannot be avoided or minimized", and states in section 7.1 that replacement proposals occur only when Wetland loss is "unavoidable."

WHEREAS the Wetland Mitigation Hierarchy, and section 5. Avoidance, both found in the Wetland Mitigation Directive, also require consideration that Wetland impacts must first be "avoided" before consideration of whether impacts to a Wetland can be minimized in the Water Act approval application process;

WHEREAS the Director rejected replacement of the infilled portion of the Wetland at an offsite location as a remedial and/or mitigation option because the infilling of the Wetland could have been avoided by modifying the development plan proposed by Aurora Heights; and the Assessment Impact Directive clearly requires adverse effects to be brought back into compliance before a Water Act application is considered,

WHEREAS the Director is of the opinion that the: restoration/remediation of the existing Wetland is the alternative required in the circumstances that is consistent with the avoidance/minimization principles found in the Wetland Mitigation Directive and with respect to the impacts to the Wetland;

WHEREAS Michael Aiton, Regional Compliance Manager, (the "Director") has been appointed a Director for the purposes of issuing enforcement orders under the *Water Act*;

WHEREAS the Director is of the opinion that the Aurora Heights and their Directors have contravened section 36(1) and 142(1)(h) of the *Water Act* by the activity of filling in the Wetland without a Water Act approval;

WHEREAS restoration and remedial work, as determined by a qualified Wetlands specialist, is required to restore the Wetland:

- a) to its pre-disturbance condition and extent (Option 1); or
- b) to an equivalent condition and size by enlarging the Wetland on its south and west sides until it is approximately 8.59 hectares in size as it was originally (Option 2);

WHEREAS the Parties are a person responsible for the contravention under section 1(5) of the Water (Ministerial) Regulation (A.R. 98) for the unauthorized infilling of the Wetland as the registered owner of the Land, and as a person who directed or permitted the unauthorized work;

THEREFORE, I, Michael Aiton, the Director, pursuant to section 135(1) and 136(1) of the *Water Act*, DO HEREBY ORDER THAT the Parties shall:

1. On or before **January 31, 2017**, submit to the Director a remedial plan for approval [the "Remedial Plan"]. The Remedial Plan shall have as its objective the removal of all soils placed into the Wetland (Option 1), or alternatively, to expand the existing Wetland to the South, resulting in restoration of the full lateral extent and geographic size of 8.59 hectares (Option 2).
2. The Remedial Plan shall include, but not be limited to, the following:
 - a) A description of the remedial work that will accomplish the objectives stated in paragraph 1, including the type of equipment, methods, and materials that will be used in implementing the Remedial Plan.

- b) A description of the methods by which the original Wetland locations will be restored in Option 1 OR the location to the South and West of the Wetland that will be restored in Option 2, including a detailed description of the plans to remove the fill from the Wetland, and re-vegetation of the Wetland to its pre-disturbance condition with native plants from other portions of the existing Wetland.
 - c) A description of the measures to prevent and minimize any erosion and siltation or other adverse effects to the Wetland during the remedial work required pursuant to the Order.
 - d) A description of where the fill that is removed from the Wetland will be placed and/or disposed of.
 - e) A description of the measures that will be taken, should the alternative to expand the Wetland to the South and West be proposed (Option 2), to ensure that any ecological effects that may occur due to the disturbance of the remaining undisturbed southern shoreline west of the Road will be temporary in nature.
4. The Remedial Plan shall also include a proposed schedule of implementation for the remedial work that shall have no later than **March 30, 2017** as the completion date, unless otherwise authorized in writing by the Director.
5. The Parties shall retain an appropriately qualified environmental professional to prepare the Remedial Plan, who shall supervise the remedial work undertaken pursuant to the Plan.
6. The Parties shall implement the work in the Remedial Plan pursuant to the Schedule of Implementation that is approved in writing by the Director.
7. The Parties shall provide the Director with 5 days notice of the commencement of the work in the Remedial Plan.
8. The Parties shall prepare a Monitoring and Restoration Plan by **March 31, 2017**, with monitoring to begin in the late spring of 2017. The Monitoring and Restoration Plan shall include a schedule by which monitoring will be conducted annually to determine if restoration success has been achieved for the 3.8 hectares of Wetland that are restored.
9. The Monitoring and Restoration Plan will be conducted annually for a minimum of two growing seasons, and every growing season thereafter, until the qualified environmental professional reports that restoration success has been achieved, and the report of restoration success is accepted in writing by the Director.
10. The Parties shall implement the work in the Monitoring and Restoration Plan as approved in writing by the Director.
11. The Parties shall submit a Monitoring and Restoration Plan Annual Report no later than November 30 of each year during the implementation of the Plan.

12. Within 30 days of completion of the remedial work required by this Order, the Parties shall submit to the Director a final written report (the "Final Remedial Report") signed by the qualified environmental professional who supervised the remedial work confirming the work undertaken to comply with this Order, and that restoration success has been achieved.

DATED at the City of Edmonton in the Province of Alberta, this 16th day of December, 2016.

Original Signed by: Michael Aiton
Regional Compliance Manager

Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 115 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 – 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party(ies) shall obtain all necessary approvals in complying with this order.

Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this or any other legislation.

FIGURE 1 - ORIGINAL WETLANDS

ORIGINAL WETLANDS - 8.59 Ha
CURRENT OPEN WATER - 4.15 Ha
INFILLED WETLANDS - 3.45 Ha

