

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Beaver Brook Farm, LLC

FILE No.: C09-0023  
AAD No. 12-002/FWE

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Beaver Brook Farm, LLC (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on December 29, 2011.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located immediately south/southeast of Main Street (Route 3) opposite house number 645, in the vicinity of utility pole Number 884, approximately 2,000 feet northeast of the intersection of Main Street and Lawton Foster Road South, immediately north/northwest of Interstate Route 95, Assessor's Plat 11, Lot 32 in the town of Hopkinton, Rhode Island (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on December 29, 2011 RIDEM issued a NOV to the Respondent alleging certain violations of the Rhode Island *Freshwater Wetlands Act* and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on August 13, 2013 RIDEM approved a document entitled "Attachment A, Restoration Plan", 1 sheet, dated April 9, 2012 that was received on July 31, 2013 (the "Restoration Plan"). The Restoration Plan is attached hereto and incorporated herein as Attachment A.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.

- (7) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island *Freshwater Wetlands Act* and RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.

### C. **AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) **FORCE and EFFECT** – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) **APPLICATION** – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **RECORDING OF AGREEMENT** – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the town of Hopkinton, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondent.
- (5) **CONDITIONS** –
- (a) By **December 31, 2014** the Respondent shall complete all wetland restoration work as described below within those altered freshwater wetlands depicted on Attachment A. It is acknowledged that any discrepancy between Attachment A and the requirements of this Agreement shall be governed by the Agreement.
- (i) If necessary, prior to the commencement of restoration, a continuous uninterrupted line of staked haybales or silt fence shall be installed between those portions of the wetlands that have been altered without authorization and the undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of the RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

(ii) Area 3

1. If necessary, a temporary access roadway (corduroy log road or construction mat road) may be installed at the location of the former unauthorized wetland crossing, to allow for the transport of relocated boulders to upland areas situated east of the subject wetlands.
2. All relocated boulders shall be removed from the affected wetlands and deposited in an appropriate upland location, outside of any and all freshwater wetlands, either off-site or in the eastern portions of the Property.
3. Following removal of the relocated boulders from the affected wetlands, and their transport to appropriate upland locations, the temporary access roadway shall be entirely removed and the affected Stream, Swamp, Perimeter and Riverbank Wetlands shall be properly restored. All debris shall be removed from the Stream channel to allow for free, unimpeded flow. All disturbed Perimeter and Riverbank Wetland areas shall be seeded with a wildlife conservation grass seed mixture and stabilized with a mat of loose hay mulch. All disturbed areas within the Swamp shall be seeded with a wetland seed mix and covered with a mat of loose hay mulch.

(iii) Area 5 and Surrounding Locations (including relocated boulder piles)

1. All fill shall be removed down to the original Swamp elevation, matching the grade of the nearby undisturbed Swamp, to re-establish the connection that previously existed between the Swamp areas situated to the west and east of the filled area. The original width of the Swamp corridor in this location varies from 30 to 40 feet.
2. If the original organic surface layer of the restored Swamp is not encountered at the adjacent Swamp grade, an additional 6 inches of soil material shall be excavated from the area and 6 inches of high-organic plantable soil shall be applied to all of the surfaces of the restored Swamp.
3. A stable slope (3:1 maximum grade) shall be established on both sides of the restored Swamp corridor, extending from the limits of the newly restored Swamp into the adjacent Perimeter Wetland.
4. All surface areas within the restored Swamp shall be seeded with a wetland seed mix and covered with a mat of spread hay mulch. The newly established side slopes shall be treated with a minimum of 4 inches of plantable soil (as needed), seeded with a

wildlife conservation seed mix, and covered with a mat of spread hay mulch.

5. All of the stockpiled boulders, as well as any soil material and other debris in those locations situated immediately adjacent to the Swamp and Stream corridor, shall be removed from the Perimeter and Riverbank Wetlands and deposited in an appropriate upland location, outside of any and all wetlands.
6. Following removal of the relocated boulders from the Swamp, Perimeter Wetland, and Riverbank Wetland, the affected wetlands must be properly restored. Surface (organic) soils within the Swamp, which had been compacted from the weight of the boulders, must be properly loosened and scarified, then seeded with a wetland seed mix and covered with a mat of spread hay mulch. All disturbed surfaces in the affected portions of the Perimeter and Riverbank Wetlands shall be covered with 4 inches of plantable soil, seeded with a wildlife conservation seed mix, covered with a mat of hay mulch.
7. Native trees and shrubs shall be planted throughout the restored Perimeter and Riverbank Wetlands, in accordance with provision (vii) below.

(iv) Area 6

1. With the exception of the large building, all other structures (e.g., shed, plant stand, trailer, boat) shall be removed from the Perimeter and Riverbank Wetlands.
2. With the exception of the historically disturbed area (turn-around/parking area) situated immediately adjacent to Main Street, all disturbed surfaces in the affected portions of the Perimeter and Riverbank Wetlands shall be covered with 4 inches of plantable soil, seeded with a wildlife conservation seed mix, covered with a mat of hay mulch, and planted with native trees and shrubs in accordance with provision (vii) below.

(v) Area 7

1. In the westernmost portion of Area 7 the portable fireplace shall be removed from the Perimeter Wetland and deposited in an upland location, outside of any and all Wetlands.
2. The stone wall structures may remain within the Perimeter Wetland.

3. A row of White Pine trees (*Pinus strobus*) shall be planted in a straight line, 8 feet on center and 4 feet tall after planting, along the outer edge of the Perimeter Wetland. All portions of the Perimeter Wetland situated interior (east) of the planted tree line shall be left undisturbed and allowed to revert to a natural wild condition.
- (vi) Area 8 – All portions shall be planted with native trees and shrubs in accordance with provision (vii) below. A minimum of 4 inches of plantable soil shall be applied to all disturbed surfaces (as needed), seeded with a wildlife conservation seed mix, and covered with a mat of hay mulch.
- (vii) Balled and burlapped or transplanted bare-root tree species shall be installed, in an interspersed fashion, 10 feet on center, 4 feet tall after planting throughout the areas defined on Attachment A. Tree species must include an equal distribution of at least 3 of the following selections:

White Oak, *Quercus alba*  
Northern Red Oak, *Quercus rubra*  
Black Birch, *Betula lenta*  
Gray Birch, *Betula populifolia*  
Red Maple, *Acer rubrum*  
Box elder (ashleaf maple), *Acer negundo*  
White Pine, *Pinus strobus*  
Ironwood (Blue Beech), *Carpinus caroliniana*  
Sassafras, *Sassafras albidum*  
White ash, *Fraxinus americana*

In addition, balled and burlapped or transplanted bare-root shrub species shall be installed, in an interspersed fashion, 5 feet on center, 3 feet tall after planting, throughout the areas depicted on Attachment A. Shrub species must include an equal distribution of at least 3 of the following selections:

Witchhazel, *Hamamelis virginiana*  
Mountain Laurel, *Kalmia latifolia*  
Sweet Pepperbush, *Clethra alnifolia*  
Lowbush Blueberry, *Vaccinium angustifolium*  
Highbush blueberry, *Vaccinium corymbosum*  
Gray (stiff, red-panicle) dogwood, *Cornus foemina racemosa*  
Silky dogwood, *Cornus amomum*  
Bayberry, *Myrica pennsylvanica*  
Arrowwood, *Viburnum dentatum*  
Wild raisin, *Viburnum cassinoides*  
Mapleleaf viburnum, *Viburnum acerifolium*

Black chokeberry, *Aronia melanocarpa*

- (b) If any or all of the required plantings fail to survive at least 1 year from the time planting has been verified by the RIDEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least 1 year.
- (c) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from RIDEM.
- (d) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (e) With the exception of any work required by this Agreement or as allowed as an exempt activity under the RIDEM's *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*, Rule 6.00, the Respondent shall not alter the character of any freshwater wetland by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of RIDEM.
- (f) Penalty – Respondent shall pay to RIDEM the sum of **Twenty Thousand Dollars (\$20,000.00)** in administrative penalties assessed as follows:
  - (i) Within 1 year of execution of the Agreement, the Respondent shall pay to the RIDEM the sum of **Twenty Thousand Dollars (\$20,000.00)**.
  - (ii) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
  - (iii) In the event that the Respondents fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12% per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payment and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (iv) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767

- (6) **RIGHT OF ACCESS** – The Respondent shall provide to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. The Respondent shall provide a copy of this Agreement to any current lessee, sublessee, and tenant in possession and/or occupant of the Property as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

#### ***D. COMPLIANCE***

- (1) **EFFECT OF COMPLIANCE** – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV. Upon the Respondent's successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Respondent for recording. The recording of the Releases shall be at the sole expense of the Respondent.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with the items specified in Sections C(5)(a) through (e) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., injunctive relief in Superior Court).

- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondents may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

**Harold K. Ellis, Supervising Environmental Scientist**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7401

**Joseph LoBianco, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2302

**Christopher A. D'Ovidio, Esq.**  
Merolla & Accetturo, Attorneys at Law  
469 Centerville Road, Suite 206  
Warwick, RI 02886  
(401)739.2900 Ext. 308

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.



- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

**IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.**

*For Beaver Brook Farm, LLC*

By: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

Dated: \_\_\_\_\_

In my capacity as \_\_\_\_\_ of Beaver Brook Farm LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Beaver Brook Farm LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND  
 COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Beaver Brook Farm LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Beaver Brook Farm LLC, and he/she acknowledged said instrument by him/her executed, to be his/her free act and deed in said capacity and the free act and deed of Beaver Brook Farm LLC.

\_\_\_\_\_  
 Notary Public

My Commission Expires: \_\_\_\_\_

*For the State of Rhode Island Department of  
Environmental Management*

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_