

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

In Re: Michael A. Cloud

File No.: OCI FW C04-0006

CONSENT AGREEMENT

A. INTENT & PURPOSE:

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection ("RIDEM") and Peter Rosiello and Monique Rosiello (the "Respondents"). 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 alleged violations set forth in a Notice of Violation ("NOV") issued to Michael A. Cloud ("Cloud") by the RIDEM on 4 January 2006.

B. STIPULATED FACTS:

- (1) WHEREAS, the property is located approximately 250 feet north of Frenchtown Road, approximately 500 feet east northeast of the intersection of Frenchtown Road and Huguenot Drive at house number 875 Frenchtown Road, Assessor's Plat 16, Lot 137, in the town of East Greenwich, Rhode Island (the "Property").
- (2) WHEREAS, Cloud owned the Property.
- (3) WHEREAS, on 4 January 2006, the RIDEM issued a NOV to Cloud alleging certain violations of R.I. Gen. Laws 2-1-21 *et seq.* and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the "Freshwater Wetland Regulations").
- (4) WHEREAS, the NOV was recorded in the land evidence records of the Property at Book 812 on pages 185 through 193 (the "Recorded NOV").
- (5) WHEREAS, Cloud failed to request an administrative hearing to contest the NOV.
- (6) WHEREAS, Cloud failed to restore the freshwater wetlands as ordered in the NOV.
- (7) WHEREAS, Cloud paid the administrative penalty assessed in the NOV.
- (8) WHEREAS, on 25 July 2008, Respondents purchased the Property.
- (9) WHEREAS, on 14 July 2010, the RIDEM inspected the Property. The inspection revealed that the freshwater wetlands were restored as ordered in the NOV.

- (10) WHEREAS, on or about 13 March 2017, the RIDEM reviewed aerial photographs of the Property. The review revealed that additional alterations of the freshwater wetland that was the subject of the NOV had been undertaken (in a different location) prior to and subsequent to Respondents purchase of the Property without the approval of the RIDEM (the “Newly Altered Wetland Area”). The Newly Altered Wetland Area is shown on the sketch which is attached hereto and incorporated herein as Attachment A.
- (11) WHEREAS, in lieu of issuing a separate Notice of Violation for the Newly Altered Wetland Area and to effect a timely and amicable resolution of the issues associated with the Newly Altered Wetland Area, the RIDEM and Respondents hereby agree that it is in the best interest of the parties and in the public interest to resolve the disputed issues by the terms of the Agreement set forth herein.
- (12) WHEREAS, the RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Freshwater Wetlands Act, R.I. Gen. Laws §2-1-18 et seq. and the RIDEM’s Freshwater Wetland Regulations.

C. AGREEMENT:

- (1) JURISDICTION – The RIDEM has jurisdiction over the freshwater wetlands on the Property and has personal jurisdiction over Respondents.
- (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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV - Respondents agree to have the fully executed Consent Agreement recorded in the land evidence records of the town of East Greenwich, Rhode Island within 10 days of the receipt of the fully executed Consent Agreement from the RIDEM. Upon receipt of a copy of the recorded Agreement, the RIDEM shall issue a Release of the Recorded NOV to Respondents for recording. The recordings shall be at the sole expense of Respondents.

(5) CONDITIONS

- (a) Prior to the commencement of any restoration activities, install proper soil erosion and sedimentation controls (that is, staked haybales or silt fence or both), as needed, between the Newly Altered Wetland Area and any adjacent undisturbed freshwater wetlands. These soil erosion and sedimentation 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 of the 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.
- (b) Remove all of the landscape components (for example, sprinkler systems, pumps, electrical supplies) from the Newly Altered Wetland Area and place the components in an appropriate upland location, outside of any and all wetlands.
- (c) Remove all of the lawn or turn over and scarify the lawn, either by hand or mechanically (for example, by rototiller or a farm tractor tiller) from the Newly Altered Wetland Area.
- (d) Plant trees and shrubs in the Newly Altered Wetland Area as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, twelve feet (12') on center (i.e., on a grid, 12' apart), 5 feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
White spruce, *Picea glauca*
Balsam fir, *Abies balsamea*
Pitch pine, *Pinus rigida*
Eastern hemlock, *Tsuga canadensis*
Eastern larch, *Larix laricina*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, ten feet (10') on center (i.e., on a grid, 10' apart), 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 2 of the following selections:

Mountain laurel, *Kalmia latifolia*
Highbush blueberry, *Vaccinium corymbosum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Witchhazel, *Hamamelis virginiana*

During planting operations a narrow (5' wide maximum) pathway, which provides pedestrian access from the existing driveway or adjacent

authorized improved areas to the nearby River (existing foot-bridge), may remain in an unplanted condition. This pathway may be maintained in a cleared state, but must remain in a naturalized condition, comprised of native gravel/dirt material at the surface, matching the grade of the surrounding natural areas. The path may also be seeded with a wildlife conservation seed mixture, within which intermittent cutting will be allowed.

- (e) If any or all of the required plantings fail to survive at least 1 year from the time that planting has been verified by the RIDEM, the same plant species shall be replanted and maintained until such time that survival occurs over 1 full year.
 - (f) If necessary, as determined by the RIDEM, all disturbed surfaces must be covered with plantable soil/loam (4 inches minimum), seeded with a wildlife conservation grass seed mixture, and stabilized with a thick mat of straw mulch, which is free of any contaminants that might promote to spread of invasive plant species.
 - (g) Upon final stabilization, erosion and sedimentation controls must be removed. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.
 - (h) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. Aside from the allowed pedestrian access pathway (as described above), no future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the Property without first obtaining a permit from RIDEM, unless the activity is exempt under the RIDEM's Freshwater Wetland Regulations.
 - (i) All restoration work must be completed prior to **15 October, 2017**.
- (6) RIGHT OF ACCESS – Respondents agree to provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purposes of monitoring compliance with this Agreement. Respondents shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation as long as they control the Property. Respondents shall provide a copy of this Agreement to any current lessee or sublessee on 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 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 Respondents successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the

Agreement to Respondents for recording. The recording shall be at the sole expense of the Respondents.

(2) FAILURE TO COMPLY – In the event that Respondents fail to comply with any provision of Section C(5) above, Respondents shall pay an administrative penalty of \$500 per month for every month that Respondents remain in non-compliance with this Agreement, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude the RIDEM from seeking any other appropriate remedy (that is, injunctive relief in Superior Court).

- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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, the RIDEM reserves the right to take additional enforcement actions as provided by statute 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 Respondents may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondents 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 limited to the alterations described in Section B(10) above.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Bruce Ahern, Principal Environmental Scientist
Office of Compliance and Inspection
Department of Environmental Management
235 Promenade Street
Providence, RI 02908
(401) 222-1360, ext. 7703

- (a) At any time prior to full compliance with the terms of this Agreement, Respondents agree to notify the 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, return receipt requested.
- (b) Communications forwarded to the above-referenced address by certified mail, return receipt requested, shall be deemed received.

- (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 the 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 Respondents

Peter Rosiello

Dated: _____

In _____, on the _____ day of _____, 2017, before me personally appeared Peter Rosiello, to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of himself, he acknowledged said instrument, executed by him, to be his free act and deed.

Notary Public
My Commission expires: _____

Monique Rosiello

Dated: _____

In _____, on the _____ day of _____, 2017, before me personally appeared Monique Rosiello, to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of herself, she acknowledged said instrument, executed by her, to be her free act and deed.

Notary Public
My Commission expires: _____

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

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____