

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

In Re: Mark DePasquale

FILE No.: FW C11-0067  
AAD No. 12-004/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"), Mark DePasquale (the "Respondent"), and the North Kingstown Green Home Owners Association, Inc (the "Association"). 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 August 10, 2012.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located approximately 1,340 feet northeast of the intersection of Roberts Way and Ten Rod Road (Route 102) and 1260 feet north of the intersection of Thornton Way and Rodman Lane within a residential development known as North Kingstown Green in the town of North Kingstown, Rhode Island (the "Property"). The Property is also referred to as a portion of the town of North Kingstown Assessor's Plat/Map 113, Lot 23.
- (2) WHEREAS, the Association owns the Property.
- (3) WHEREAS, on August 10, 2012 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, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM, the Respondent and the Association 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.
- (6) 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 the 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 of the Director 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, the Association and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent and the Association 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 Association shall record this Agreement with the town of North Kingstown, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Association.
- (5) CONDITIONS –
  - (a) The Respondent shall complete all wetland restoration work as described below in that area outlined in red and marked as Trail 1 on 2011 aerial photography available from the Rhode Island Geographic Information System (<http://www.edc.uri.edu/rigis>) (the “Restoration Area”) and further identified in Attachment A, attached hereto and incorporated herein.
    - (i) By **May 31, 2013** the Respondent shall remove all fill and install plantings in the Restoration Area in such a manner that it conforms to the character and condition of Trail 2, as shown on Attachment A.
      1. 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.

2. All unauthorized fill material (including, but not limited to, woodchips and gravel) shall be removed from the Restoration Area and Trail 1 shall be reduced in width to ten (10) feet to match the average width of Trail 2. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
3. Trees and shrubs shall be planted in all unauthorized cleared and altered areas within the Perimeter Wetland of the Restoration Area as follows:

Balled and burlapped or transplanted tree species must be planted in a straight line, eight (8) feet on center, five (5) feet tall after planting, along the outer edge of the original undisturbed trail. Tree species must include an equal distribution of at least two (2) of the following selections:

White pine, *Pinus strobus*  
Red cedar, *Juniperus virginiana*  
Red spruce, *Picea rubens*  
Colorado blue spruce, *Picea pungens*  
Norway spruce, *Picea abies*

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the cleared/altered area. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*  
Red cedar, *Juniperus virginiana*  
Red maple, *Acer rubrum*  
Northern red oak, *Quercus rubra*  
White oak, *Quercus alba*  
Pin oak, *Quercus palustris*  
Gray birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, five (5) feet on center, three (3) feet tall after planting, throughout the cleared/altered area. Shrub species must include an equal distribution of at least three (3) of the following selections:

Mountain laurel, *Kalmia latifolia*  
Giant rhododendron, *Rhododendron maximum*

Arrowwood, *Viburnum dentatum*  
Wild raisin, *Viburnum cassinoides*  
Winterberry, *Ilex verticillata*  
Inkberry, *Ilex glabra*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Witchhazel, *Hamamelis virginiana*

- (ii) If any or all of the required plantings fail to survive at least two (2) years 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 two (2) years.
  - (iii) A wetland seed mix shall be applied to the surface areas of the Swamp and a wildlife conservation seed mix shall be applied to the Perimeter Wetland and any re-established side slopes within the Restoration Area. In addition, all disturbed upland surfaces outside of wetland shall be stabilized to stop the discharge of sediments from occurring into the adjacent wetlands. A mat of spread hay mulch shall be applied over all disturbed surface areas.
  - (iv) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. 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.
- (b) The Respondent and the Association shall allow all restored freshwater wetland areas, including replanted areas, to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in the Restoration Area without first obtaining a valid permit from the RIDEM.
  - (c) 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 or the Association 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.
  - (d) Penalty – Respondent shall pay to RIDEM the sum of **Nine Thousand Dollars (\$9,000.00)** in administrative penalties assessed as follows:
    - (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of **Nine Thousand Dollars (\$9,000.00)**.

- (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) 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 Association shall provide to the Respondent an irrevocable right of access to the Property at all reasonable times for the purpose of complying with this Agreement. The Association shall provide to the 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 Association 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 Association shall provide a copy of this Agreement to any current lessee, sublessee, 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 Association for recording. The recording of the Releases shall be at the sole expense of the Association.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Sections C(5)(a) 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. In the event that the Respondent or the Association fails to comply with the items specified in Sections C(5)(b), C(5)(c) or C(6) of the Agreement, the Respondent or the Association 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 or the Association 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 Respondent or the Association 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 or the Association 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

**Richard M. Bianculli Jr., Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2023

**Mark DePasquale**  
42 Thornton Way  
North Kingstown, RI 02852  
(401) 580-2060

**Steven Boyajian, Esquire**  
Robinson & Cole, LLP  
One Financial Plaza, Suite 1430  
Providence, RI 02903-2485  
(401) 709-3300

- (a) At any time prior to full compliance with the terms of this Agreement, the Association 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 fifteen (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 Mark DePasquale*

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

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared Mark DePasquale to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

\_\_\_\_\_  
 Notary Public  
 My Commission Expires: \_\_\_\_\_

*For North Kingstown Green Home Owners Association, Inc.*

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

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

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

In my capacity as \_\_\_\_\_ of North Kingstown Green Home Owners Association, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind North Kingstown Green Home Owners Association, Inc. 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 North Kingstown Green Home Owners Association, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of North Kingstown Green Home Owners Association, Inc., 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 North Kingstown Green Home Owners Association, Inc.



\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

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

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

Date: \_\_\_\_\_