

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Syed Husain  
Sadia Husain

File No.: OCI-FW-15-117  
AAD No.: 16-001/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 Syed Husain and Sadia Husain ("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") to resolve the alleged violations set forth in a Notice of Violation ("NOV") issued to Respondents by the RIDEM on 12 May 2016.

**B. STIPULATED FACTS**

- (1) WHEREAS, the property is located at 20 Red Brook Crossing, Assessor's Plat 26, Lot 253 in the Town of Lincoln, Rhode Island (the "Property").
- (2) WHEREAS, Respondents own the Property.
- (3) WHEREAS, on 12 May 2016, the RIDEM issued a NOV to Respondents alleging certain violations of Rhode Island's Freshwater Wetlands Act and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the "Freshwater Wetland Regulations").
- (4) WHEREAS, Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on 20 July 2018, Respondents submitted to the RIDEM a plan dated 7 June 2018 and revised 12 July 2018 prepared by Scott P. Rabideau titled *Concept Wetland Restoration Plan, Syed Husain, 20 Red Brook Crossing, A.P. 26, Lot 253, Lincoln, RI DEM NOV OCI-FW-15-117* to resolve the Order section of the NOV (the "Plan"). The 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, the RIDEM and Respondents 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, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Freshwater Wetlands Act and the RIDEM's Freshwater Wetland Regulations.

### **C. AGREEMENT**

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement 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– **Within 10 days of the receipt of the fully executed Agreement from the RIDEM**, Respondents shall record this Agreement with the Town of Lincoln, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondents.
- (5) CONDITIONS –
- (a) **By 31 October 2019**, Respondents shall complete all work as shown on the Plan.
  - (b) If any of the required plantings fail to survive at least 1 year from the time that planting has been verified by the RIDEM, Respondents agree to plant and maintain the same plant species until such time that survival is maintained over 1 full year.
  - (c) Upon stabilization of all disturbed areas, non-biodegradable soil erosion and sedimentation controls must be removed from the freshwater wetlands; biodegradable controls such as haybales or fiber logs may remain in place. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
  - (d) 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 the RIDEM unless the activity is exempt under Rule 6.00 of the RIDEM's Freshwater Wetlands Regulations.

(e) Penalty – Respondents shall pay to the RIDEM \$5,000 in administrative penalties assessed as follows:

(i) **Upon execution of this Agreement by Respondents**, Respondents shall pay to the RIDEM \$5,000.

(ii) Penalties that Respondents agree 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** – Respondents provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement until the Release described below in Section D (1) is issued. Respondents 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 if they control the Property. Respondents 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 Respondents successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and Agreement to Respondents for recording. The recordings shall be at the sole expense of Respondents.

(2) **FAILURE TO COMPLY** – If Respondents fail to comply with the items in Section C (5)(a) through (d) of the Agreement, Respondents shall pay a stipulated penalty of \$1,000 per month for each month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., 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 violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**David E. Chopy, Chief**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7400

**Joseph J. LoBianco, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2302

**Mary B. Shekarchi, Esquire**  
33 College Hill Road, Suite 15-E  
Warwick, RI 02886  
(401) 828-5030

- (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.
- (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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by 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.**

Syed Husain

\_\_\_\_\_

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

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared Syed Husain 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: \_\_\_\_\_

Sadia Husain

\_\_\_\_\_

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

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared Sadia Husain to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

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

State of Rhode Island Department of Environmental  
Management

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

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