

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Mr. and Mrs. Sam Catalano

File Nos.: COMPLAINT NO. 178  
and OCI-FW-18-62

CONSENT AGREEMENT

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and MacDonald Douglas Realty LLC (“MacDonald”). 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 Mr. and Mrs. Sam Catalano (“Respondents”) by RIDEM on 7 August 1978 and the alleged violations documented by RIDEM on 16 May 2018 under file OCI-FW-18-62.

**B. STIPULATED FACTS**

- (1) WHEREAS, the property is located at 278 Douglas Pike, Assessor’s Plat 42, Lot 60 in the Town of Smithfield, Rhode Island (the “Property”).
- (2) WHEREAS, Respondents formerly owned the Property.
- (3) WHEREAS, on 7 August 1978, RIDEM issued a NOV to Respondents alleging certain violations of Rhode Island’s *Freshwater Wetlands Act*.
- (4) WHEREAS, on 8 August 1978, the NOV was recorded in the land evidence records of the Town of Smithfield, Rhode Island.
- (5) WHEREAS, Respondents failed to request an administrative hearing to contest the NOV and failed to comply with the NOV.
- (6) WHEREAS, on 15 June 2005, Gerald P. Catalano (“Catalano”) acquired the Property.
- (7) WHEREAS, on 16 May 2018, RIDEM inspected the Property. The inspection revealed that additional unauthorized activity within freshwater wetlands occurred on the Property (the “2018 Alterations”).
- (8) WHEREAS, RIDEM believes that Catalano caused the 2018 Alterations.
- (9) WHEREAS, on 17 December 2018, Catalano transferred the Property to Catalano Trust.

- (10) WHEREAS, on 27 February 2019, RIDEM received a plan prepared by Scott Hobson (“Hobson”) of Caputo and Wick Ltd. on behalf of Catalano Trust to restore the freshwater wetlands on the Property (the “Restoration Plan”).
- (11) WHEREAS, on 27 February 2019, RIDEM approved the Restoration Plan.
- (12) WHEREAS, on 3 April 2020, MacDonald acquired the Property.
- (13) On 19 October 2020, RIDEM received correspondence from Hobson stating that the freshwater wetlands were restored in accordance with the Restoration Plan. The correspondence included a sketch titled *Future Property Restrictions – RIDEM Regulated Areas, 278 Douglas Pike, Smithfield, RI, RIDEM OCI-FW-18-62* (the “Restoration Sketch”). The correspondence is attached hereto and incorporated herein as Attachment A.
- (14) WHEREAS, on 28 October 2020, RIDEM inspected the Property and determined that the freshwater wetlands were restored in compliance with the Restoration Plan and as shown on the Restoration Sketch.
- (15) WHEREAS, RIDEM and MacDonald agreed that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV and the 2018 Alterations.
- (16) WHEREAS, 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 *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act* (the “Wetland Regulations”).

### **C. AGREEMENT**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over MacDonald.
- (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 RIDEM, MacDonald and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for MacDonald 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 RIDEM**, MacDonald shall record this Agreement with the Town of Smithfield, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of MacDonald.

(5) CONDITIONS –

- (a) If any of the trees and shrubs planted in accordance with subsection B (13) of the Agreement fail to survive 1 full growing season from the date of planting, replant with the same plant species and maintain the trees and shrubs until such time that the plants survive over 1 full growing season.
  - (b) 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 unless the activity is exempt under Part 1.6 of the Wetland Regulations.
- (6) RIGHT OF ACCESS – MacDonald provides to 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. MacDonald 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. MacDonald 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. Within 7 days of RIDEM receiving notification from Respondent that the conditions set forth in this Agreement have been satisfied and RIDEM’s confirmation of such, RIDEM shall issue a Release and Discharge of the NOV and Consent Agreement to MacDonald for recording. The recordings shall be at the sole expense of MacDonald.
- (2) FAILURE TO COMPLY – If MacDonald fails to comply with subsection C (5) of the Agreement, MacDonald shall pay a stipulated penalty of \$500 per month for each 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 section shall not preclude 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 MacDonald 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 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 MacDonald 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 MacDonald 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, Administrator**

RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7400  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)

**Tricia Quest, Esquire**

RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607  
[tricia.quest@dem.ri.gov](mailto:tricia.quest@dem.ri.gov)

**David MacDonald**

MacDonald Douglas Realty LLC  
245 Quaker Lane  
West Warwick, RI 02893  
(401) 306-3680  
[davemeg@gmail.com](mailto:davemeg@gmail.com)

- (a) At any time prior to full compliance with the terms of this Agreement, MacDonald 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 agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties

[SIGNATURES ON FOLLOWING PAGES]

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

MacDonald Douglas Realty LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

In my capacity, as \_\_\_\_\_ of MacDonald Douglas Realty LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind MacDonald Douglas Realty 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 \_\_\_\_\_, 2020, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of MacDonald Douglas Realty LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of MacDonald Douglas Realty 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 MacDonald Douglas Realty LLC.

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

State of Rhode Island, Department of Environmental  
Management

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

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