

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

In Re: **Tuckahoe Land Company, L.P.**  
**Benjamin Tucker Hodgson**

**FILE NO.: FW C08-019**  
**AAD NO.: 11-004/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") and Tuckahoe Land Company, L.P. and Benjamin Tucker Hodgson (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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Tuckahoe Land Company, L.P. and Benjamin Tucker Hodgson by RIDEM on June 28, 2011.

**B. *STIPULATED FACTS***

- (1) WHEREAS, the subject property is located approximately 1,000 feet west of Slocum Road, with a gravel drive entrance situated at utility pole number 27/84 (Slocum Road), approximately 500 feet directly west of house 383 (Slocum Road), approximately 900 feet northwest of the intersection of Slocum Road and Glen Hill Drive, approximately 75 feet east of the Amtrak rail lines, and immediately north and south of existing turf grass fields, Assessor's Plat 78, Lots 4-12, 4-15, and 4-16 in the town of Exeter, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on June 28, 2011 RIDEM issued a NOV to the Respondents 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 Respondents 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 and the 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.

- (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 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. 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 Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents 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 Respondents shall record this Agreement with the town of Exeter, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) **CONDITIONS** –
- (a) **By October 31, 2013** the Respondents shall complete all wetland restoration work described below and as depicted and described on plans entitled “Sodco Farm Pond Weir Construction and Wetlands Restoration Slocum, Rhode Island,” sheets 1-11 (the “Design Plans”) and the “Detailed Design Report”, 180 pages, dated August 2012 (the “Design Report”), both documents received by RIDEM on September 11, 2012. The Design Plans and the Design Report are attached hereto and incorporated herein as Attachment A. It is acknowledged that any discrepancy between Attachment A and the requirements of this Agreement shall be governed by the Agreement.
- (i) Screen all soils that have been excavated from the wetlands to remove Phragmites rhizomes.
- (ii) Prior to the commencement of restoration, install a continuous uninterrupted line of erosion and sedimentation controls between those portions of the wetlands that have been altered without authorization and the adjacent undisturbed wetlands. The 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 RIDEM, additional soil erosion and sediment controls must be installed, as deemed necessary, to protect any and all freshwater wetlands.

- (iii) All sediment downstream of the dam must be removed from the Swamp to the original elevation of the Swamp. All sediment that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
  - (iv) All fill removal in each phase of the wetland restoration shall extend one-foot below the proposed final grade as shown on Attachment A and shall be backfilled to finish grade with screened high-organic soils.
  - (v) All disturbed slopes located adjacent to the wetland restoration shall be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.
  - (vi) 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.
  - (vii) The Respondents agree to continue the Invasive Species Control Plan described in Appendix F of the Design Report until **October 31, 2016**.
  - (viii) 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 Respondents 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.
  - (ix) The Respondents agree to retain the services of a qualified environmental consultant to provide continual inspection and monitoring of the required wetland restoration work throughout the completion of the project. Monitoring reports shall be provided by the consultant to RIDEM during the entire course of the required restoration work as outlined in Attachment A.
- (b) Penalty – Respondents shall pay to RIDEM the sum of **Three Thousand Five-Hundred Dollars (\$3,500.00)** in administrative penalties assessed as follows:

- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **Three Thousand Five-Hundred Dollars (\$3,500.00)**.
- (ii) Penalties that the 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 – The Respondents agree to 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 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 as long as they control the Property. The 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 the Respondents successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with items specified in Section C(5) of the Agreement, the Respondents 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 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 the Respondents 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 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 only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**Harold Ellis, Supervising Environmental Scientist**

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360 ext. 7401

**Linda Tucker**

SODCO, Inc.

757 Indian Corner Road

Slocum, Rhode Island 02877

(401) 294-3100

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree 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 Tuckahoe Land Company, L.P**

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

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

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

In my capacity as \_\_\_\_\_ of Tuckahoe Land Company, L.P., I hereby aver that I am authorized to enter into this Agreement and thereby bind Tuckahoe Land Company, L.P. 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 \_\_\_\_\_, 2012, before me personally appeared Linda C. Tucker, the \_\_\_\_\_ of Tuckahoe Land Company, L.P., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Tuckahoe Land Company, L.P., and she acknowledged said instrument by her executed, to be her free act and deed in said capacity and the free act and deed of Tuckahoe Land Company, L.P.

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

**For Benjamin Tucker Hodgson**

\_\_\_\_\_  
By: Benjamin Tucker Hodgson

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

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared Benjamin Tucker Hodgson 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 the State of Rhode Island Department of  
Environmental Management**

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

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