

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

In Re: Robert Thistle  
Ada Kuszhi

FILE No.: FW C06-0060  
AAD No. 07-008/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 Robert Thistle and Ada Kuszhi (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 the Respondents by RIDEM on September 27, 2007.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located at the terminus of Lakeside Drive, adjacent to house number 29, approximately 1,200 feet north of its intersection with Winsor Road, Utility Pole No. 3, Assessor's Plat 59, Lots 92 and 171, and Assessor's Plat 61, Lot 4 in the town of Johnston, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on September 27, 2007 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, RIDEM approved a document entitled "Exhibit A, DEM Notice of Violation C06-0060, Restoration Plan, #29 Lakeside Drive, A.P. 59, Lot 92" one sheet revised dated December 16, 2013 and approved by RIDEM on December 19, 2013 (incorporated and attached hereto as Exhibit A).
- (6) WHEREAS, in lieu of proceeding with the 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.

- (7) 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 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 and Exhibit A with the town of Johnston, Rhode Island and shall provide a copy of the recorded documents to RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) **CONDITIONS** –
- (a) By **May 1, 2015**, unless otherwise noted below, the Respondents shall complete the following wetland restoration on the Property. It is acknowledged that any discrepancy between Exhibit A and the requirements of this Agreement shall be governed by the Agreement.
- (i) Prior to the initiation of any restoration activity, the Respondents agree to install and maintain a coffer dam, a floating boom with an attached weighted silt curtain, or other sedimentation control device to eliminate the discharge of sediment into Slack Reservoir (the "Pond"). The sedimentation control device must be placed around and immediately adjacent to the Concrete Patio work area. At the discretion and direction of RIDEM, additional sedimentation controls must be installed on-site, as deemed necessary, to protect the Pond.
- (ii) All concrete and rebar associated with the Concrete Patio shall be removed and replaced with topsoil in accordance with the **Restoration Notes for Concrete Patio** on Exhibit A.

- (iii) Immediately upon completion of the work associated with the Concrete Patio, the gravel access way shall be loamed, seeded with a wildlife conservation grass seed, and replanted with trees and shrubs. Balled and burlapped or transplanted Red Maple (*Acer rubrum*), Bebb Willow (*Salix bebbiana*), and Tupelo (*Nyssa sylvatica*) shall be planted throughout the access way, 10 feet on center, 4 feet tall after planting. Balled and burlapped or transplanted Sweet Pepperbush (*Clethra alnifolia*), Highbush Blueberry (*Vaccinium corymbosum*), and Winterberry (*Ilex verticillata*) shall be planted throughout the access way 5 feet on center, 2 feet tall after planting.
- (iv) By **July 1, 2014**, the U-shaped dock on the western side of the Property shall be removed in its entirety. All parts of the dock and the walkway to the dock shall be removed from the Pond and Perimeter Wetland.
- (v) All non-native plants in the terraced area shall be removed and replaced with at least 2 of the following trees: Balled and burlapped or transplanted White Pine (*Pinus strobus*), Northern White Cedar (*Thuja occidentalis*), Black Gum (*Nyssa sylvatica*), White Ash (*Fraxinus americana*), Gray Birch (*Betula populifolia*), and Black Birch (*Betula lenta*) and the following shrubs: Mountain laurel (*Kalmia latifolia*), American cranberrybush (*Viburnum trilobum*), Winterberry (*Ilex verticillata*), Bayberry (*Myrica pennsylvanica*), Highbush blueberry (*Vaccinium corymbosum*), Black huckleberry (*Gaylussacia baccata*), Black chokeberry (*Aronia melanocarpa*), and Witchhazel (*Hamamelis virginiana*). Trees shall be at least 4 feet tall after planting and shrubs shall be at least 2 feet tall after planting.
- (vi) All lighting and wiring shall be permanently removed from the patio and terraced areas.
- (vii) If necessary, prior to the commencement of restoration of the Wetland Complex and Perimeter Wetland identified on Exhibit A, 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.
- (viii) All fill placed into the Wetland Complex and Perimeter Wetland as identified on Exhibit A shall be removed from each area and deposited in an upland location outside any and all freshwater wetlands. Both areas shall be planted according to the notes on Exhibit A.

- (ix) If any or all of the required plantings (including wildlife grasses) fail to survive at least 1 year from the time that planting has been verified by RIDEM, the Respondents agree to plant and maintain the same plant species until such time that survival is maintained over 1 full year.
  - (x) 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 Property, without first obtaining a permit from RIDEM.
- (b) The Respondents shall notify RIDEM within 7 days of the completion of the restoration work required in Section C(5)(a) above.
- (c) Penalty – Respondents shall pay to RIDEM the sum of **Ten-Thousand Dollars (\$10,000.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **Five Thousand Dollars (\$5,000.00)**.
  - (ii) The remainder of the penalty, **Five-Thousand Dollars (\$5,000.00)**, shall be paid to RIDEM by **June 30, 2014**.
  - (iii) In the event that the Respondents fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondents will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (iv) 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 shall 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 recording of the Releases shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with the any of the items specified in Sections C(5)(a) of the Agreement, the Respondents shall pay a stipulated penalty of One Hundred Dollars (\$100.00) 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 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 K. Ellis, Supervising Environmental Scientist**

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360 ext. 7401

**Susan Forcier, Esquire**

RIDEM Office of Legal Services

235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607 ext. 2305

**Timothy J. Robenhymer, Esquire**

303 Jefferson Boulevard

Warwick, RI 02888

(401) 921-4800

- (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 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.**

*Robert Thistle*

\_\_\_\_\_

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared Robert Thistle 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: \_\_\_\_\_

*Ada Thistle*

\_\_\_\_\_

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared Ada Kuszhi 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: \_\_\_\_\_

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

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

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