

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Raymond F. Acciardo
Marie E. Acciardo

File Nos.: FW C12-0024
X-Ref C-2201 and C04-0425

AAD No.: 12-003/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 Raymond F. Acciardo (the "Respondent"). 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 and Marie E. Acciardo ("Mrs. Acciardo") by the RIDEM on 10 July 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located approximately 250 feet north of Hartford Avenue, approximately 300 feet north/northeast of (and opposite) the intersection of Hartford Avenue and Dix Avenue and City View Parkway, Assessor's Plat 21, Lots 493, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514 and 515 in the town of Johnston, Rhode Island (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, Mrs. Acciardo owned portions of the Property.
- (4) WHEREAS, on 10 July 2012, the RIDEM issued a NOV to the Respondent and Mrs. Acciardo 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").
- (5) WHEREAS, the Respondent and Mrs. Acciardo requested an administrative hearing to contest the NOV.
- (6) WHEREAS, on 2 January 2015, the RIDEM received a plan entitled "Wetland Restoration Plan DEM NOV. FWC12-0024 Raymond and Marie Acciardo Hartford Ave A.P. 21, Lots 493, 494, 496, 498, 500, 502, 504, 506, 508, 512, 514, 515

Johnston, RI”, 1 sheet, last revision dated 29 December 2014 and prepared by Natural Resource Services, Inc. to resolve the Order section of the NOV (the “Wetland Restoration Plan”). The Wetland Restoration Plan is attached hereto and incorporated herein as Attachment A.

- (7) WHEREAS, Mrs. Acciardo died in January 2015.
- (8) 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 the Respondent 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.
- (9) 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 the Respondent.
- (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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent 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, the Respondent shall record this Agreement with the town of Johnston, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of the Respondent.
- (5) CONDITIONS –
 - (a) **Within 12 months of execution of this Agreement**, the Respondent shall complete the wetland restoration on the Property in accordance with the Wetland Restoration Plan. It is acknowledged that any discrepancy between the Wetland Restoration Plan and the requirements of this Agreement shall be governed by the Agreement.

- (i) If necessary, prior to the commencement of restoration of the freshwater wetlands, a continuous uninterrupted line of soil erosion/sediment controls (e.g., staked haybales, silt fence, and/or fiber logs) shall be installed between those portions of the wetlands that have been altered without authorization and the adjacent 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.
 - (ii) If any or all of the required plantings (including wildlife grasses) fail to survive at least 2 years from the time that planting has been verified by the RIDEM, the Respondent agrees to plant and maintain the same plant species until such time that survival is maintained over 2 full years.
 - (iii) Upon stabilization of all disturbed areas, non-biodegradable soil erosion and sedimentation controls must be removed from the freshwater wetland; 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 any and all freshwater wetlands.
 - (iv) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. Aside from those historical (i.e., pre-existing) improvements allowed to remain within the freshwater wetlands on the Property under this Agreement, no future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other previously undisturbed freshwater wetlands on Property, without first obtaining a permit from the RIDEM, with the exception of any work allowed as an exempt activity under the RIDEM's Freshwater Wetland Regulations, Rule 6.00.
- (b) Penalty – The administrative penalty assessed in the NOV against the Respondent and Mrs. Acciardo is waived.
- (6) RIGHT OF ACCESS – The Respondent provides 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 Respondent 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 Respondent 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, the RIDEM shall issue a Release and Discharge of the NOV and the Agreement to the Respondent for recording. The recordings shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in paragraph C (5)(a) of the Agreement, the Respondent shall pay a stipulated penalty of \$250 per month for each and every 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 the Respondent 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 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 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 the Respondent 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 the 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, 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

Gregory J. Acciardo, Esquire
130 Dorrance Street
Providence, RI 02903
(401) 621-9797

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees 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 RIDEM 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 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.

Raymond F. Acciardo

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2016, before me personally appeared Raymond F. Acciaro 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*

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

Dated: _____