

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

**In Re: Deborah Johnson
Baird Properties LLC**

**FILE No.: FW C10-0238
AAD No.: 11-002/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 Deborah Johnson and Baird Properties LLC (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 May 5, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 33 Money Hill Road, Assessor's Plat 10A, Lot 30 in the town of Glocester, Rhode Island (the "Property").
- (2) WHEREAS, Deborah Johnson owns the Property.
- (3) WHEREAS, on May 5, 2011 RIDEM issued a NOV to the Respondents alleging certain violations of Rhode Island's Freshwater Wetlands Act and RIDEM's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.
- (4) WHEREAS, Baird Properties, LLC 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 Rhode Island's 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 with the town of Glocester, 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) The Respondents shall complete the following actions to comply with the Order section of the NOV:
 - (i) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between all areas to be restored and the adjacent undisturbed Emergent Plant Community (“EPC”). These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
 - (ii) Remove all remaining unauthorized fill material from the EPC. All unauthorized fill material must be removed down to the grade that existed prior to filling. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
 - (iii) All slopes resulting from fill removal must be graded to a maximum 3:1 slope, with the top of the slope matching the existing surrounding undisturbed areas.

- (iv) Following fill removal a wetland seed mix (containing seed similar to the vegetation that was removed) must be applied to the surface areas of the restored EPC, a wildlife conservation seed mix must be applied to any adjacent re-established side slopes, and all disturbed surface areas must be covered with a mat of spread hay mulch.
 - (v) If any or all of the stabilizing vegetation fails to survive at least two (2) years from the time that planting has been verified by RIDEM, the area shall be reseeded and maintained until such time that survival is maintained over two (2) full years.
 - (vi) All restored wetland areas must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, grading, filling or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the subject property, without first obtaining a permit from RIDEM.
 - (vii) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
 - (viii) The above restoration work shall be completed within ninety (90) days of the execution of this Agreement.
- (b) Contact Mr. Howard Cook at 222-1360 ext. 7161 prior to the commencement of restoration to ensure proper supervision and to review the required restoration details. No restoration work shall commence until such time that you have met in the field with a representative of RIDEM.
- (c) Penalty – Respondents shall pay to RIDEM the sum of One Thousand Five Hundred Dollars (\$1,500.00) in administrative penalties as follows:
- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of One Thousand Five Hundred Dollars (\$1,500.00).
 - (ii) Payments that the Respondents agree to make in this Consent Agreement are payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 - (iii) All payments must 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 Respondents shall provide a copy of the recorded Release to RIDEM. 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 items specified in Section C(5)(a) of the Agreement, the Respondents shall pay the remainder of the administrative penalty assessed in the NOV in the sum of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) and 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 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

Joseph LoBianco, Esquire

RIDEM Office of Legal Services

235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607 ext. 2302

- (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) Communications forwarded to the above-referenced address by certified mail shall be deemed received.
- (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 Deborah Johnson:

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2011, before me personally appeared Deborah Johnston 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 Baird Properties LLC:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Baird Properties LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Baird Properties 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 _____, 2011, before me personally appeared _____, the _____ of Baird Properties LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Baird Properties 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 Baird Properties LLC.

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: _____