

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Richard Caparco
Delores Caparco

File Nos.: OCI-FW-13-91
and FW C14-0066

AAD No.: 14-001/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 Richard Caparco and Delores Caparco (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 the RIDEM on 14 July 2014.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located approximately 35 feet north of Jade Road, generally opposite utility pole 2, approximately 150 feet south of the southern edge of Ropewalk Pond, adjacent to and approximately 80 feet west of the dwelling at 10 Jade Road, approximately 225 feet east/northeast of the intersection of Jade Road and Myra Road, Assessor's Plat (Map) 14, Lot 30 in the town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on 14 July 2014, the RIDEM issued a NOV to the Respondents 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").
- (4) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on 23 February 2016, the RIDEM received a plan entitled "WETLAND MITIGATION PLAN, CAPARCO RESIDENCE (RIDEM FILE NO. C14-0066), A.P. 14, LOTS 30 & 31, 10 JADE ROAD, COVENTRY, RI", 2 sheets, dated FEBRUARY 2016 and prepared by MILLSTONE ENGINEERING, P.C. to resolve the Order section of the NOV (the "Plan").

- (6) WHEREAS, on 6 April 2016, the RIDEM approved the Plan. The stamped approved plan is attached hereto and incorporated herein as Attachment A (the "Approved Plan").
- (7) 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 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.
- (8) 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 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the 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 10 days of the receipt of the fully executed Agreement from the RIDEM, the Respondents shall record this Agreement with the town of Coventry, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) CONDITIONS –
 - (a) **By 15 September 2016**, the Respondents shall complete the wetland restoration on the Property in accordance with the Approved Plan. It is acknowledged that any discrepancy between the Approved 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 1 year from the time that planting has been verified by the RIDEM, the Respondents agree to plant and maintain the same plant species until such time that survival is maintained over 1 full year.
 - (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 Respondents shall pay to the RIDEM the sum of **\$500** in administrative penalties assessed as follows:
- (i) **Upon execution of this Agreement by the Respondents**, the Respondents shall pay to the RIDEM the sum of **\$500**.
 - (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 provide 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 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, the RIDEM shall issue a Release and Discharge of the NOV and the 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 the items specified in paragraph C (5)(a) of the Agreement, the Respondents 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 Respondents 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 Respondents 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 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 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

Christopher A. D'Ovidio, Esquire
MEROLLA, ACCETTURO, D'OVIDIO & LOUGH
469 Centerville Road, Suite 206
Warwick, RI 02886
(401) 739-2900

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

Richard Caparco

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2016, before me personally appeared Richard Caparco 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: _____

Delores Caparco

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2016, before me personally appeared Delores Caparco 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*

By: _____

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____