

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

In Re: Gerald DelSignore Jr.
Deborah DelSignore

FILE No.: FW C08-0136
AAD No. 11-003-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 Gerald DelSignore Jr. and Deborah DelSignore (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 26, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 191 Pray Hill Road, Assessor's Plat 9, Lot 186, in the town of Glocester, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on May 26, 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, the Respondents are now considered farmers as that term is defined in Rhode Island's *Freshwater Wetlands Act*.
- (6) WHEREAS, RIDEM approved a document entitled "Wetland Restoration Plan" 1 sheet revised dated on October 1, 2012, received on October 4, 2012, and approved by RIDEM on October 9, 2012 (incorporated and attached hereto as Exhibit A).
- (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, 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, 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 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) By **April 30, 2013** 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) Install new fencing and remove a section of the old fencing as depicted on Exhibit A to keep farm animals out of the freshwater wetlands.
- (ii) Stabilize all slopes and disturbed soil within those areas identified as Replanting Area on Exhibit A. Stabilization must include seeding with a wildlife conservation grass seed mixture and mulching all disturbed areas with a mat of loose hay.
- (iii) All disturbed upland surfaces outside of wetland areas must be stabilized to stop the discharge of sediments from occurring into the adjacent wetlands.

- (b) By **June 30, 2013**, the Respondents shall install all plantings depicted and described in those areas on Exhibit A.
- (i) Balled and burlapped or transplanted White Pine (*Pinus strobus*) must be planted along the outer edge of the replanting area, ten (10) feet on center, four (4) feet tall after planting.
- Balled and burlapped or transplanted Arrowwood (*Viburnum dentatum*) and Highbush Blueberry (*Vaccinium corymbosum*) must be planted in an interspersed fashion, six (6) feet on center, three (3) feet tall after planting, throughout the Replanting Area depicted on Exhibit A. An equal distribution of each shrub species must be utilized.
- (ii) If any or all of the required plantings (including wildlife grasses) fail to survive at least two (2) years 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 two (2) full years.
- (iii) 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.
- (c) The Respondents must notify RIDEM within seven (7) days of the completion of the restoration work required in Sections C(5)(a) and C(5)(b) above.
- (d) The Respondents shall comply with the Order section of the NOV when one of the following occurs:
- (i) The Property is no longer being managed by a farmer; or
- (ii) The area of farmland where the violations exist is no longer essential to the agricultural operation.
- (e) Penalty – Respondents shall pay to RIDEM the sum of **One-Thousand Four Hundred Dollars (\$1,400.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **One-Thousand Four Hundred Dollars (\$1,400.00)**.
- (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 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 items specified in Sections C(5)(a), C(5)(b) or C(5)(d) 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

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) 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 Gerald DelSignore, Jr.

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared Gerald DelSignore, Jr. 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 Deborah DelSignore

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared Deborah DelSignore 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: _____