

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE AND INSPECTION

IN RE: David Duplessis

FILE NO.: OCI-FW-15-142
X-Ref. File No. 14-0020

AAD No.: 17-002/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 David Duplessis (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") to resolve the alleged violations set forth in a Notice of Violation ("NOV") issued to Respondent by the RIDEM on 6 March 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located approximately 40 feet east of Iron Mine Hill Road near utility pole number 109, and approximately 3,900 feet southwest of its intersection with Eddie Dowling Highway (Route 146), Assessor's Plat 17, Lot 310 in the town of North Smithfield (the "Property").
- (2) WHEREAS, on 6 March 2017, the RIDEM issued a NOV to Respondent 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").
- (3) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on 29 September 2017, the RIDEM received a plan titled "Forested Wetland Restoration Plan DEM NOV No. OCI-FW-15-142 David Duplessis 425 Iron Mine Hill Rd A.P. 17, Lot 30 North Smithfield, RI" that was prepared by Natural Resource Services, Inc. on behalf of Respondent (the "Wetland Restoration Plan"), which is attached hereto and incorporated by reference as **Attachment A**.

- (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 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.
- (6) WHEREAS, the Respondent neither admits nor denies liability in regards to the NOV.
- (7) 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 – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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.* and R.I. Gen. Laws Section 42-17.7-1 *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 RIDEM, Respondent and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for 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 RIDEM, Respondent shall record this Agreement with North Smithfield and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondent.
- (5) CONDITIONS –
 - (a) **By 30 October 2017**, complete the wetland restoration 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 RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.

- (ii) If any of the required plantings (including wildlife grasses) fail to survive at least 1 year from the time that planting has been verified by RIDEM, Respondent agrees 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 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 the Property, without first obtaining a permit from RIDEM.
- (b) Penalty – Respondent shall pay to the RIDEM the sum of **\$10,000** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondent, Respondent shall pay to the RIDEM the sum of **\$10,000**.
 - (ii) Penalties that Respondent agrees 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** – Respondent agrees to provide to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. 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 if they control the Property. 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 Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to Respondent for recording. The recordings shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In Respondent fails to comply with items specified in Section C (5)(a) of the Agreement, Respondent shall pay a stipulated penalty of \$500 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 section shall not preclude 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 Respondent 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 statute 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 Respondent 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 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 limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Stephen Tyrrell, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7406

stephen.tyrrell@dem.ri.gov

Christina Hoefsmit, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

christina.hoefsmit@dem.ri.gov

John M. Boehnert, Esquire
50 South Main Street
Providence, RI 02903
(401) 595-5995

jmb@jmblawoffices.com

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

David Duplessis

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared David Duplessis 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: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____