

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

**IN RE: Albert Faella
Debra Parente
A.C.D. Development, LLC**

FILE NO.: FW C10-0078

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On July 10, 2002 DEM issued Debra Parente a permit to alter freshwater wetlands, which included a plan that identified the location of the wetlands. The application fee associated with the permit was paid by Albert Faella. On May 7, 2010 a DEM inspector spoke with Albert Faella regarding the violations and informed Mr. Faella that the work that was ongoing (including the construction of an indoor horse riding rink) was not in compliance with the permit and verbally ordered him to cease all activity in wetlands. On January 6, 2011 the DEM inspector met with Mr. Faella to discuss resolution of the violations. The DEM inspector observed that the Respondents had ignored his verbal order and had completed the construction of the rink.

C. Facts

- (1) The property is located at 114 Danielson Pike, Assessor's Plat 14, Lot 105F, Parcels 1 and 2 in the town of Foster, RI (the “Property”).
- (2) Albert Faella and Debra Parente own Parcel 1 and A.C.D. Development, LLC owns Parcel 2.
- (3) DEM inspected the Property on May 7, 2010 and January 6, 2011. The inspections revealed the following:
 - (a) Clearing, excavation, filling and construction of a building (indoor horse riding rink), deck and shed within 100-foot Riverbank Wetland, portions of which are also 50-foot Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 16,000 square feet of freshwater wetland.

- (b) Clearing within Swamp. This activity has resulted in the unauthorized alteration of approximately 4,800 square feet of freshwater wetland.
 - (c) Clearing and filling (in the form of at least slash and soil material) within 100-foot Riverbank Wetland, portions of which are also 50-foot Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 12,000 square feet of freshwater wetland.
- (4) The Respondents did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas specified above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective April 23, 1998), Rule 7.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **DEM's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective June 1, 2007), Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) Cease and desist **IMMEDIATELY** from any further alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) 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 freshwater wetlands. 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 DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

- (b) Remove all unauthorized structures and fill (including, but not limited to, the riding structure, shed, deck, and storage piles) from the 100-foot Riverbank Wetlands and 50-foot Perimeter Wetlands. All materials removed from the freshwater wetlands must be deposited in an upland location outside of freshwater wetlands.
- (c) Plant all unauthorized cleared and altered areas within the 50-foot Perimeter Wetlands and 100-foot Riverbank Wetlands with trees and shrubs as follows:

Balled and burlapped or transplanted tree species must be planted in a line, eight feet on center, six feet tall after planting, along the outer edge of the 100-foot Riverbank Wetlands. Tree species must include an equal distribution of at least two of the following selections:

White pine, *Pinus strobus*
Red cedar, *Juniperus virginiana*
Colorado Blue Spruce, *Picea pungens*
Norway Spruce, *Picea abies*

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten feet on center, four feet tall after planting, throughout the 100-foot Riverbank Wetlands and 50-foot Perimeter Wetlands. Tree species must include an equal distribution of at least three of the following selections:

White pine, *Pinus strobus*
Red Spruce, *Picea rubens*
Red cedar, *Juniperus virginiana*
Red maple, *Acer rubrum*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
Pin oak, *Quercus palustris*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, fifteen feet on center, three feet tall after planting, throughout the 100-foot Riverbank Wetlands and 50-foot Perimeter Wetlands. Shrub species must include an equal distribution of at least three of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum*
Arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Winterberry, *Ilex verticillata*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Witchhazel, *Hamamelis virginiana*

- (d) Plant a single row of northern white cedar (*Thuja occidentalis*) or rosebay rhododendron (*Rhododendron maximum*) along the edge of the existing gravel road, as shown on the plan approved by DEM on July 10, 2002 as part of Insignificant Alteration Permit 02-0250. A minimum of twenty one plants are required at least three feet in height after planting and spaced ten feet on-center.
 - (e) All areas of disturbed surface soils shall be loamed (if necessary), seeded with a wildlife conservation grass seed mixture and covered with a mat of loose hay mulch. Steeply sloping areas shall be covered with excelsior matting or jute mesh.
 - (f) If any or all of the required plantings fail to survive at least one full year from the time the plantings have been verified by DEM, the same plant species shall be replanted and maintained until such time that survival occurs over one full year.
 - (g) All restored wetland areas, including replanted areas, shall 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 the Property, without first obtaining a permit from the DEM.
 - (h) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall 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 shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.
 - (i) The above restoration work shall be completed prior to **October 31, 2011**.
- (3) Contact Mr. Howard Cook at DEM (401) 222-1360 ext. 7161 prior to the commencement of restoration to ensure proper supervision and to obtain required

restoration details. No work shall commence until such time that you have met in the field with DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Ten-Thousand Dollars (\$10,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**

- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:
- Marisa Desautel, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Foster to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Marisa Desautel at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Howard Cook or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 extensions 7161 and 7401, respectively.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ 2011
the within Notice of Violation was forwarded to:

**Albert Faella
114 Danielson Pike
Foster, RI 02825**

**Debra Parente
114 Danielson Pike
Foster, RI 02825**

**A.C.D. Development, LLC
c/o Debra Parente, Registered Agent
114 Danielson Pike
Foster, RI 02825**

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C10-0078

Respondents: Albert Faella, Debra Parente and A.C.D. Development, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1), (2) and (3) – Alteration of 100-foot Riverbank Wetland (portions of which are also 50-foot Perimeter Wetland); Fact C(3)(a)	Type I <i>(\$ 10,000 Max. Penalty)*</i>	Major	\$5,000	1 violation	\$5,000.00
D (1), (2) and (3) – Alteration of Swamp; Fact C(3)(b)	Type I <i>(\$ 10,000 Max. Penalty)*</i>	Minor	\$2,000	1 violation	\$2,000.00
D (1), (2) and (3) – Alteration of 100-foot Riverbank Wetland (portions of which are also 50-foot Perimeter Wetland); Fact C(3)(c)	Type I <i>(\$ 10,000 Max. Penalty)*</i>	Moderate	\$3,000	1 violation	\$3,000.00
SUB-TOTAL					\$10,000.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 10,000.00

PENALTY MATRIX WORKSHEET

CITATION: Alteration of 100-foot Riverbank Wetland (portions of which are also 50-foot Perimeter Wetland); Fact C(3)(a)

VIOLATION NO.: D (1), (2), and (3)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing, excavating, filling and construction of a building (indoor horse riding rink), deck and shed within 100-foot Riverbank Wetland, portions of which are also 50-foot Perimeter Wetland in non-compliance with a permit that was issued by DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Riverbank Wetland and Perimeter Wetland were previously natural forested areas prior to the unauthorized alterations.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Total duration unknown. The unauthorized alterations were first documented by DEM on May 7, 2010.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 16,000 square feet.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Debra A. Parente obtained a permit from DEM on July 10, 2002. The plans approved with the permit clearly show the limit of disturbance (LOD); however, the respondents failed to comply with the permit. Albert Faella was told to cease all work on May 7, 2010, but despite that verbal order the respondents completed the construction of the indoor horse riding rink.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The respondents had complete control over the project, were aware of the LOD, and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$5,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Swamp; Fact C(3)(b)

VIOLATION NO.: D (1), (2), and (3)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing within Swamp in non-compliance with a permit that was issued by DEM. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was previously a natural forested area prior to the unauthorized alterations.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Total duration unknown. The unauthorized alterations were first documented by DEM on May 7, 2010.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 4,800 square feet.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Debra A. Parente obtained a permit from DEM on July 10, 2002. The plans approved with the permit clearly show the limit of disturbance (LOD); however, the respondents failed to comply with the permit.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The respondents had complete control over the project, were aware of the LOD, and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$2,000	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration of 100-foot Riverbank Wetland (portions of which are also 50-foot Perimeter Wetland); Fact C(3)(c)

VIOLATION NO.: D (1), (2), and (3)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing and filling (in the form of at least slash and soil material) within 100-foot Riverbank Wetland (portions of which are also 50-foot Perimeter wetland) in non-compliance with a permit that was issued by DEM. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Riverbank Wetland and Perimeter Wetland were previously natural forested areas prior to the unauthorized alterations.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Total duration unknown. The unauthorized alterations were first documented by DEM on May 7, 2010.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 12,000 square feet.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Debra A. Parente obtained a permit from DEM on July 10, 2002. The plans approved with the permit clearly show the limit of disturbance (LOD); however, the respondents failed to comply with the permit.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The respondents had complete control over the project, were aware of the LOD, and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$3,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500