

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

*In Re: Manuel Fialho
Ana Fialho*

*FILE NO.: FW C06-0251
AAD NO.: 08-008/FWE*

CONSENT AGREEMENT

A. *INTENT & PURPOSE:*

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection ("RIDEM") and Manuel Fialho and Ana Fialho (the "Respondents"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the *Rhode Island General Laws* ("R.I.G.L.") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents by RIDEM on June 6, 2008.

B. *STIPULATED FACTS:*

- (1) WHEREAS, the subject property is located immediately north of the intersection of Luther Street and Woodcliffe Avenue, immediately northwest of Woodcliffe Avenue (left of house number 24), Assessor's Plat 607 Lot 1.1, in the City of East Providence, RI (the "Property").
- (2) WHEREAS, on June 6, 2008, RIDEM issued a NOV to the Respondents alleging certain violations of R.I.G.L. §2-1-21 et seq. and the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (3) WHEREAS, the Respondents have timely requested an administrative adjudicatory hearing on the NOV.
- (4) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order 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.
- (5) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Freshwater Wetlands Act, R.I.G.L. §2-1-18 et seq. and the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.

C. *AGREEMENT:*

- (1) **JURISDICTION** – RIDEM has jurisdiction over the freshwater wetlands at issue in its NOV File C06-0251 and has personal jurisdiction over the Respondents.
- (2) **FORCE and EFFECT** – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. §42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §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 - The Respondents agree to have the fully executed Consent Agreement recorded in the land evidence records of the Town of East Providence, Rhode Island within ten (10) days of the receipt of the fully executed Consent Agreement from RIDEM. The Respondents shall ensure that the original Consent Agreement is recorded and a copy returned to RIDEM at the sole expense of the Respondents.
- (5) CONDITIONS –
 - (a) Restoration
 - (1) The Respondents shall complete all wetland restoration work as described below in those areas depicted on a plan entitled “Proposed Wetland Restoration Plan DEM File No. C06-0251...”, 1 sheet revised dated 12/07/09, received by RIDEM on December 16, 2009, and approved by RIDEM on February 3, 2010 (incorporated and attached hereto as Exhibit A). It is acknowledged that any discrepancy between Exhibit A and the requirements of this Agreement shall be governed by the Agreement. All restoration shall be completed before **May 31, 2010**.
 - (2) Prior to the commencement of restoration, the Respondents shall, if necessary, install a continuous uninterrupted line of staked haybales or silt fence between those portions of the wetlands that have been altered without authorization and the adjacent undisturbed 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 of the surrounding areas are properly stabilized. At the discretion and direction of representatives of RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
 - (3) The Respondents shall remove all unauthorized fill material from the Wetland Complex. All fill material that is removed shall be deposited in an appropriate upland location outside of any and all wetlands.
 - (4) The Respondents shall regrade any slopes resulting from fill removal to create 3:1 or shallower slopes. Finished slopes shall begin at the edge of the proposed limit of wetland restoration as shown on Exhibit A and shall be graded away from the restored wetland at a 3:1 slope. The slopes shall then be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.

- (5) All disturbed upland surfaces outside of the Wetland Complex must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. If necessary, very steep or extremely unstable surfaces must be covered with an appropriate erosion control matting of some type (e.g., excelsior matting or jute mesh).
 - (6) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. 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.
 - (7) All restored freshwater wetland areas, including replanted slope areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a permit from RIDEM.
 - (8) With the exception of any work required by this Consent Agreement or as allowed as an exempt activity under the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* Rule 6.00, the Respondents shall not alter the character of any freshwater wetland on site by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of RIDEM.
- (b) Penalties
- (1) Respondents agree to pay to RIDEM the sum of Five-Hundred Dollars and no cents (\$500.00) in administrative penalties.
 - (2) All penalties must be received by RIDEM with the signed Consent Agreement.
 - (3) Penalties that the Respondents agree to pay 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.
 - (4) All penalty payments shall be in the form of a certified check, payable to the *R.I. General Treasurer – (Water and Air Protection)*. All payments shall be delivered, along with a copy of this Agreement to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908

- (6) RIGHT OF ACCESS – The Respondents agree to provide to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purposes of monitoring the remediation activities and compliance with this Agreement. The Respondents shall ensure that assignees, successors in interest, lessees, and sublessees 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 or sublessee on 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 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 dated June 6, 2008. Upon Respondents’ successful completion of the requirements set forth in this Agreement and payment of any noncompliance penalties resulting from the failure to comply, RIDEM shall issue a Release and Discharge of the NOV and the Consent Agreement to the Respondents for recording in the Land Evidence Records of the Town of East Providence. The Respondents shall ensure that the releases are recorded and that copies of the releases are returned to RIDEM at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that Respondents fail to comply with any provision of paragraph C5(a) above, the entire penalty assessed in the NOV (Two Thousand Five Hundred Dollars (\$2,500.00)) shall immediately become due and payable, less any amounts paid in accordance with this Agreement. In addition, the Respondents shall pay an administrative penalty of Five Hundred Dollars (\$500.00) per month for each and every month that the Respondents remain in non-compliance with this Agreement, 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 § 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) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

Harold K. Ellis, Supervising Environmental Scientist
Office of Compliance and Inspection
Department of Environmental Management
235 Promenade Street
Providence, RI 02908
(401) 222-4700, ext. 7401

- (a) At any time prior to full compliance with the terms of this Agreement, 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.
- (7) 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. The fact that a review and/or decision is pending on a permit application shall not be considered “good cause” to extend the compliance dates herein.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

RE: *Fialho*
C06-0251

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For the Respondents

_____ Date: _____
Manuel Fialho

In _____, on the _____ day of _____, 2010, before me personally appeared Manuel Fialho to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of himself, he acknowledged said instrument, executed by him, to be his free act and deed.

Notary Public
My Commission expires: _____

_____ Date: _____
Ana Fialho

In _____, on the _____ day of _____, 2010, before me personally appeared Ana Fialho to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of herself, she acknowledged said instrument, executed by her, to be her free act and deed.

Notary Public
My Commission expires: _____

*For the State of Rhode Island Department of
Environmental Management*

_____ Date: _____
David Chopy, Chief
Department of Environmental Management
Office of Compliance and Inspection