

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

OFFICE OF COMPLIANCE AND INSPECTION

**In Re: Frederick T. Hone, Jr., Living Trust
Frederick T. Hone, Jr. et ux**

**File Nos.: OC&I/Freshwater Wetland/
C93- 0208 and OC&I/ISDS/
CI05-184**

AAD NO.: 08-001/MM

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 the Craig W. Hone, Mark F. Hone, Bradlee B. Hone and Julie C. Hone Trust and the Craig W. Hone, Mark F. Hone, Bradlee B. Hone, Julie C. Hone and Roblee T. Hone Trust (collectively, the "Trusts"). 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 Frederick T. Hone, Jr., Living Trust and Frederick T. Hone, Jr. et ux (the "Respondents") by the RIDEM on 15 January 2008.

B. *STIPULATED FACTS*

- (1) WHEREAS, the property is located at 339 South County Trail, Assessor's Plat 67-1, Lot 2 ("Lot 2") and 331 A & B South County Trail, Assessor's Plat 67-1, Lot 3 ("Lot 3") in the town of Exeter, Rhode Island.
- (2) WHEREAS, at the time the NOV was issued Frederick Hone, Jr., Living Trust owned Lot 2 and Frederick T. Hone, Jr. et ux owned Lot 3.
- (3) WHEREAS, Craig W. Hone, Mark F. Hone, Bradlee B. Hone and Julie C. Hone Trust currently owns Lot 2.
- (4) WHEREAS, Craig W. Hone, Mark F. Hone, Bradlee B. Hone, Julie C. Hone and Roblee T. Hone Trust currently owns Lot 3.
- (5) WHEREAS, Lot 3 includes a single family dwelling (the "Dwelling").

- (6) WHEREAS, on 12 June 2006, an application to repair the onsite wastewater treatment system (“OWTS”) that serves the Dwelling was submitted to the RIDEM (the “Application”).
- (7) WHEREAS, on 23 June 2006, the RIDEM approved the Application (the “Approval”). The Approval was for a 2 bedroom dwelling.
- (8) WHEREAS, on 31 October 2007, the RIDEM received a Certificate of Construction certifying that the OWTS was constructed in accordance with the Approval.
- (9) WHEREAS, on 6 December 2007, the RIDEM returned the Certificate of Construction as unacceptable (the “Deficiency Notification”). The RIDEM required recorded evidence that the Dwelling was a 2 bedroom dwelling.
- (10) WHEREAS, on 15 January 2008, 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* and the RIDEM’s *Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Individual Sewage Disposal Systems*.
- (11) WHEREAS, on 18 January 2008, the NOV was recorded in the land evidence records of the town of Exeter, Rhode Island (the "Recorded NOV").
- (12) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (13) WHEREAS, on 18 January 2012, Craig W. Hone, Mark F. Hone, Bradlee B. Hone, Julie C. Hone and Roblee T. Hone Trust acquired Lot 3.
- (14) WHEREAS, on 16 January 2014, Craig W. Hone, Mark F. Hone, Bradlee B. Hone and Julie C. Hone Trust acquired Lot 2.
- (15) WHEREAS, the Recorded NOV runs with the land and is binding upon the Trusts.
- (16) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV, except as described in Section C(5)(c), below, and to effect a timely and amicable resolution of all but the penalty portion of the NOV, the RIDEM and the Trusts hereby agree that it is in the best interest of the parties and in the public interest to resolve the remaining issues raised in the NOV.
- (17) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement of all but the penalty portion of the NOV and adequately protects the public interest in accordance with Rhode Island’s Freshwater Wetlands Act, the RIDEM’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*, and the RIDEM’s *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems*.

C. **AGREEMENT**

- (1) **JURISDICTION** – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Trusts.
- (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 the RIDEM, the Trusts and the agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Trusts 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 Trusts shall record this Agreement with the town of Exeter, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of the Trusts.
- (5) **CONDITIONS** –
 - (a) **Within 30 days of execution of the Agreement**, the Trusts shall submit to the RIDEM a copy of a recorded deed restriction with the town of Exeter, Rhode Island. The deed restriction shall restrict the use of the Dwelling to 2 bedrooms, unless and until such time as the RIDEM issues a Certificate of Conformance for an OWTS that is greater than 2 bedrooms.
 - (b) The Trusts shall complete all wetland restoration work as described below and in those areas depicted on plans entitled “Proposed Restoration Plan, Frederick T. Hone, Jr. 339A South County Trail, A.P. 67, Lots 2 7 3 Exeter, Rhode Island, DEM File No. C93-0208”, 1 sheet revised dated 6/15/12, modified by the RIDEM (in red) on 6 August 2012 and approved by the RIDEM on 6 August 2012 (incorporated herein and attached hereto as Attachment A). It is acknowledged that any discrepancy between Attachment A and the requirements of this Agreement shall be governed by the Agreement.
 - (i) Prior to the commencement of restoration, the Trusts 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 the RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

- (ii) The Trusts shall remove all fill/slash piles, debris, walls, and structures, including the northern, steel portion of the existing garage structure, as depicted on Attachment A. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (iii) The Trusts shall re-grade all slopes resulting from fill removal and/or backfilling operations to create 3:1 or shallower slopes. All soils used as backfill shall be the same or similar to the material that was originally in the area prior to the unauthorized alterations. Finished slopes shall be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.
- (iv) The existing lawn within the designated Restoration Area (identified by brown shading on Attachment A) must be removed or, alternatively, must be scarified through manual or mechanical means.
- (v) The Trusts shall plant trees and shrubs throughout the Restoration Area and Upland Restoration Area in all locations depicted on Attachment A. Plantings shall be installed as indicated below:

Balled and burlapped or transplanted White pine (*Pinus strobus*), Red Maple (*Acer rubrum*) and Red Oak (*Quercus rubra*) must be planted in an interspersed fashion, 12 feet on center, 4 feet tall after planting, throughout the areas identified above.

Balled and burlapped or transplanted Arrowwood (*Viburnum dentatum*), Highbush blueberry (*Vaccinium corymbosum*) and Sweet pepperbush (*Clethra alnifolia*) must be planted in an interspersed fashion, 6 feet on center, 2 feet tall after planting, throughout the areas identified above.

- (vi) If any or all of the required plantings fail to survive at least 1 year from the time that planting has been verified by the RIDEM, the Trusts agree to plant and maintain the same plant species until such time that survival is maintained over 1 full year.
- (vii) Following the planting of trees and shrubs in provision (v) above the Trusts shall stabilize and revegetate all disturbed soils within all restored wetland areas. All restored perimeter and riverbank wetland areas shall be loamed if necessary, seeded with a wildlife conservation grass mixture, and mulched with a mat of loose hay. All restored swamp areas shall be seeded with a wetland seed mix and mulched with a mat of loose hay.

- (viii) 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.
 - (ix) All restored freshwater wetland areas, including replanted 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 the RIDEM.
 - (x) With the exception of any work required by this Agreement or as allowed as an exempt activity under the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*, Rule 6.00, the Trusts 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 the RIDEM.
 - (xi) All restoration work must be completed by **15 December 2015**.
- (c) Penalty – The RIDEM and the Trusts hereby agree to proceed to hearing on the penalty portion of the NOV in accordance with the RIDEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters* and the RIDEM's *Rules and Regulations for the Assessment of Administrative Penalties*.
- (6) **RIGHT OF ACCESS** – The Trusts 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 Trusts 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 Trusts 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 except as described in Section C(5)(c), above. Upon the Trusts successful completion of the requirements set forth in this Agreement and the payment of any penalty assessed pursuant to the proceedings described in Section C(5)(c), the RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Trusts for recording. The recording of the Releases shall be at the sole expense of the Trusts.
- (2) FAILURE TO COMPLY – In the event that the Trusts fail to comply with the items specified in Section C(5)(a) or (b) of the Agreement, the Trusts 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 the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude the 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 Trusts 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 Trusts 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 Trusts 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:

David Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7401

Susan Forcier, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2305

Bob Craven, Esquire
Robert E. Craven & Associates
7405 Post Road
North Kingstown, RI 02852
(401)453-2700

- (a) At any time prior to full compliance with the terms of this Agreement, the Trusts agree to notify the RIDEM in writing of any change in ownership of Lot 2 or Lot 3, 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.

*For the Craig W. Hone, Mark F. Hone, Bradlee B. Hone
and Julie C. Hone Trust*

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2015, before me personally appeared _____, Trustee of the Craig W. Hone, Mark F. Hone, Bradlee B. Hone and Julie C. Hone Trust, to me known and known by me to be the party executing the foregoing instrument on behalf of the Trust, and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of the Trust.

Notary Public
My Commission Expires: _____

For the Craig W. Hone, Mark F. Hone, Bradlee B. Hone, Julie C. Hone and Roblee T. Hone Trust

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2015, before me personally appeared _____, Trustee of the Craig W. Hone, Mark F. Hone, Bradlee B. Hone, Julie C. Hone and Roblee T. Hone Trust, to me known and known by me to be the party executing the foregoing instrument on behalf of the Trust, and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of the Trust.

Notary Public
My Commission Expires: _____

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

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____