

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

**In Re: Russell J. Metivier
Larry Metivier
Fernande L. Metivier**

**FILE NO.: FW C08-0180
x-ref. C92-0069i
AAD NO.: 09-005/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 Russell J. Metivier. 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, with regard only to RIDEM and Russell J. Metivier, the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Russell Metivier, Larry Metivier, and Fernande Metivier (collectively, the "Respondents") by RIDEM on September 15, 2009.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located approximately 200 feet northeast of the intersection of Gary Street and Louise Ann Drive, immediately north of Gary Street, otherwise identified as Assessor's Plat 32 Lot 13C in the Town of Smithfield, Rhode Island (the "Property").
- (2) WHEREAS, on September 15, 2009, 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, Russell Metivier 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 Russell Metivier 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 C08-0180 and has personal jurisdiction over Russell Metivier.
- (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, Russell Metivier and his agents, servants, employees, successors assigns and all persons, firms and corporations acting under, through and for him in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – Russell Metivier agrees to have the fully executed Consent Agreement recorded in the land evidence records of the Town of Smithfield, Rhode Island within ten (10) days of the receipt of the fully executed Consent Agreement from RIDEM. Russell Metivier shall ensure that the original Consent Agreement is recorded and returned to RIDEM at his sole expense.
- (5) CONDITIONS
 - (a) Restoration
 - (i) Russell Metivier shall complete all wetland restoration work as described below in those areas depicted on a plan entitled “Riverbank Wetland Restoration Plan”, 1 sheet approved by RIDEM on March 1, 2010 (incorporated and attached hereto as Exhibit A). Wetland edges depicted on Exhibit A are approximate and representational only. It is acknowledged that any discrepancy between Exhibit A and the requirements of this Agreement shall be governed by the Agreement.
 - (ii) If necessary, prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between those wetlands that have been altered without authorization and the remaining undisturbed wetlands. All 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.
 - (iii) Remove all unauthorized fill material (in the form of at least

woodchips) from the 100-foot Riverbank Wetland and 50-foot Perimeter Wetland as depicted within the orange area on Exhibit A. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.

- (iv) Re-grade all slopes resulting from fill removal to create 3:1 or shallower slopes if necessary to stabilize the existing slopes. Finished slopes must be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay if necessary to stabilize the finished slopes.
- (v) Plant all unauthorized cleared and altered areas within the 100-foot Riverbank Wetland and 50-foot Perimeter Wetland with trees and shrubs.

Balled and burlapped or transplanted tree species must be planted in a straight line, ten (10) feet on center, four (4) feet tall after planting, along the outer edge of the disturbed area (i.e., the Edge of Lawn as depicted on Exhibit A). Tree species will include three (3) White Pine, *Pinus strobus* and four (4) Northern White cedar, *Thuja occidentalis*.

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion five (5) feet on center, two (2) feet to three (3) feet tall after planting, throughout the interior portions of the Riverbank and Perimeter wetlands. Shrub species must include an equal distribution of at least three (3) of the following selections:

Mountain laurel, *Kalmia latifolia*;
Giant rhododendron, *Rhododendron maximum*;
Silky dogwood, *Cornus amomum*;
Flowering dogwood, *Cornus florida*;
Winterberry, *Ilex verticillata*;
Inkberry, *Ilex glabra*;
Highbush blueberry, *Vaccinium corymbosum*;
Lowbush blueberry, *Vaccinium angustifolium*
Black chokeberry, *Aronia melanocarpa*;

- (vi) If any or all of the required plantings fail to survive at least one (1) full year from the time that planting has been verified by RIDEM, the same plant species shall be replanted and maintained until such time that survival is maintained over one (1) full year.
- (vii) All disturbed surfaces within the 100-foot Riverbank Wetland and 50-foot Perimeter Wetland must be seeded with a wildlife conservation grass seed mixture and stabilized with a mat of loose hay mulch if necessary to stabilize the disturbed surfaces until natural vegetative growth takes hold.

- (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 Property without first obtaining a permit from RIDEM.
 - (x) The above restoration work must be completed prior to **October 1, 2010**.
 - (xi) 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, Russell Metivier 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) Russell Metivier agrees to pay to RIDEM the sum of **Two-Thousand Dollars and no cents (\$2,000.00)** in administrative penalties. The penalty shall be paid as follows:
 - (i) Upon execution of the Agreement by Russell Metivier, he shall pay to RIDEM the sum of Five-Hundred Dollars and no cents (\$500.00).
 - (ii) The remainder of the penalty, Fifteen-Hundred Dollars and no cents (\$1,500.00), shall be paid to RIDEM in three (3) equal and consecutive monthly installments of Five-Hundred Dollars and no cents (\$500.00). The remaining payments shall be made on the first of each month.
 - (2) Penalties that Russell Metivier agrees 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.
 - (3) In the event Russell Metivier fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and he will be in default. If the payment is not received within thirty (30) days of its due date, interest shall begin to accrue on the unpaid balance at the rate of 12 percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due

installment payments(s) and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \\ \times (\text{entire amount of unpaid balance})$$

- (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 to:

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

- (6) RIGHT OF ACCESS – Russell Metivier agrees 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. Russell Metivier 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. Russell Metivier 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, with regard to RIDEM and Russell Metivier, raised in the NOV dated September 15, 2009. Upon Russell Metivier's 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 Russell Metivier for recording in the Land Evidence Records of the Town of Smithfield.
- (2) FAILURE TO COMPLY – In the event that Russell Metivier fails to comply with any provision of paragraph C5(a) above, he shall pay an administrative penalty of Five Hundred Dollars per month for each and every month that he remains 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 Russell Metivier 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 Russell Metivier 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 Russell Metivier 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, Russell Metivier 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) 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: Metivier
C08-0180

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

For the Respondent

Russell J. Metivier

Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared Russell J. Metivier 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: _____

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

David Chopy, Chief
Office of Compliance and Inspection

Date: _____