

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Albert Pafume

File No.: OC&I/FW C01-0142

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 Albert Pafume (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") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Green Hill Builders, Inc. ("Green Hill") by RIDEM on September 26, 2002 and unauthorized alterations of freshwater wetlands caused by the Respondent.

B. STIPULATED FACTS

- (1) WHEREAS, the subject site is located at 96 Timber Ridge, Assessor's Plat 25, Lot 41, in the town of Charlestown, Rhode Island (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on September 26, 2002, RIDEM issued a NOV to Green Hill alleging certain violations of Rhode Island's Freshwater Wetlands Act and RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the "Freshwater Wetland Regulations").
- (4) WHEREAS, RIDEM and Green Hill executed a Consent Agreement on February 25, 2004 to resolve the NOV. The Agreement required the Respondent to grant access to Green Hill to restore the altered wetlands on the Property (the "Original Wetland Violations").
- (5) WHEREAS, the Respondent refused to grant access to Green Hill to resolve the Original Wetland Violations.
- (6) WHEREAS, RIDEM review of aerial photographs revealed that the Respondent altered additional freshwater wetlands on the Property (the "New Wetland Alterations").

- (7) WHEREAS, in lieu of RIDEM issuing a Notice of Violation to the Respondent for the New Wetland Alterations and to effect a timely and amicable resolution of the NOV, RIDEM and the 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 and the New Wetland Alterations.
- (8) WHEREAS, 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 RIDEM's Freshwater Wetland Regulations.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the 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. 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 RIDEM, the Respondent and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – Upon receipt of the fully executed Agreement from RIDEM, the Respondent shall record the Agreement with the town of Charlestown, Rhode Island. Upon receipt of a copy of the recorded Agreement, the RIDEM shall issue a Release and Discharge of the NOV to the Respondent for recording. The Respondent shall provide a copy of the recorded Release and Discharge to the RIDEM. The recordings shall be at the sole expense of the Respondent.
- (5) CONDITIONS – The Respondent shall complete the following actions to comply with the Order section of the NOV and resolve the New Wetland Alterations:
 - (a) Prior to the commencement of restoration, the Respondent 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 RIDEM, additional soil erosion and

sediment controls must be installed, as deemed necessary, to protect any and all freshwater wetlands.

- (b) Remove all unauthorized fill material, including the lawn, from the Perimeter Wetland on the Property. This includes both the Perimeter Wetland that is shown on the plan approved by RIDEM under application number 99-0345 (the “Approved Plan”), and the Perimeter Wetland that extends to the north that is not shown on the Approved Plan. A copy of the Approved Plan is attached hereto and incorporated herein as Attachment A. All lawn areas must be rototilled, planted with a wildlife conservation grass seed mixture, and mulched with a mat of loose hay (the “Restoration Area”). All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) Plant trees and shrubs in the Restoration Area as indicated below. Balled and burlapped or transplanted tree species shall be planted fifteen (15) feet on center, four (4) feet tall after planting throughout the Restoration Area. Tree species must include an equal distribution of at least two (2) of the following selections:

White pine, *Pinus strobus*
Oaks, *Quercus spp.*
Maples, *Acer spp.*
Spruce, *Picea spp.*
White Ash, *Fraxinus americana*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species shall be planted in an interspersed fashion, seven (7) feet on center, two (2) feet tall after planting, throughout the Restoration Area. Shrub species must include an equal distribution of at least four (4) of the following selections:

Gray (stiff, red-panicle) dogwood, *Cornus foemina*
Arrowwood, *Viburnum dentatum*
Holly, *Ilex opaca*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Giant rhododendron, *Rhododendron maximum*
Bayberry, *Myrica pensylvanica*
Swamp azalea, *Rhododendron viscosum*
Witchhazel, *Hamamelis virginiana*
Mountain laurel, *Kalmia latifolia*

- (d) If any or all of the required plantings fail to survive at least one (1) year from the time that planting has been verified by RIDEM, the Respondent agrees to plant and maintain the same plant species until such time that survival is maintained over one (1) full year.

- (e) Upon final stabilization of all restored areas, the Respondent shall remove all erosion and sedimentation controls from the freshwater wetlands. Prior to the removal of the controls all accumulated sediment shall be removed to a suitable upland area outside of any and all freshwater wetlands.
 - (f) The Respondent agrees that all restored freshwater wetland areas, including replanted areas, shall be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations will be allowed in the restored wetland areas without first obtaining a permit from the RIDEM.
 - (g) The Respondent shall complete all restoration prior to **May 15, 2013**.
- (6) **RIGHT OF ACCESS** – The Respondent provides to 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 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 as long as they control the Property. The 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 and the New Wetland Alterations. Upon the Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the Agreement to the Respondent for recording. The recording shall be at the sole expense of the Respondent.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with the items specified in Section C(5) of the Agreement, the Respondent shall pay a stipulated penalty of Two Hundred Dollars (\$200.00) 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 the 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 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 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 the 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 only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Harold K. Ellis

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

Albert Pafume

96 Timber Ridge Road
Charlestown, RI 02813

(401) 429-3901

- (a) At any time prior to full compliance with the terms of this Agreement, the 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 fifteen 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 Albert Pafume:

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared Albert Pafume 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: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____