

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Kenneth R. Stillson

File No.: OCI-FW-16-46

AAD No.: 17-003/FWE

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 Kenneth R. Stillson (“Respondent”) and Nancy M. Pace and Justin Pace (“Abutters”). 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 alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondent by the RIDEM on 25 May 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located approximately 250 feet northeast of the southern terminus of Wilbur Avenue, to the rear (east and northeast) of house number 172, approximately 400 feet south/southeast of its intersection with Wells Avenue, Assessor’s Plat 327, Lot 280 (“Lot 280”) and Assessor’s Plat 327, Lot 282 (“Lot 282”) in the City of Warwick, Rhode Island.
- (2) WHEREAS, Abutters own Lot 280.
- (3) WHEREAS, Respondent owns Lot 282.
- (4) WHEREAS, on 25 May 2017, the RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island’s *Freshwater Wetlands Act* and the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the “Wetland Rules”).
- (5) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM, Respondent and Abutters 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.

- (7) WHEREAS, the 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 the Wetland Rules.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent and Abutters.
- (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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, Respondent and Abutters and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent and Abutters 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**, Respondent shall record this Agreement with the City of Warwick, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondent.
- (5) CONDITIONS –
- (a) **Within 1 year of execution of this Agreement**, Respondent shall either obtain a permit from the RIDEM for the alterations that are the subject of the NOV and fully comply with all the terms and conditions of the permit **OR** fully restore the altered wetlands in accordance with the Order section of the NOV.
- (b) Abutters agree to allow access to Respondent to restore the wetlands on Lot 280 in accordance with any permit issued by the RIDEM to Respondent or in accordance with the Order section of the NOV.
- (c) Penalty – Respondent shall pay to the RIDEM the sum of **\$5,750** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondent, Respondent shall pay to the RIDEM the sum of **\$5,750**.
- (ii) Penalties that Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (iii) All penalty payments shall be in the form of a certified check, cashier's check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

- (6) **RIGHT OF ACCESS** – Respondent and Abutters provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to Lot 280 and/or Lot 282 at all reasonable times to monitor compliance with this Agreement. Respondent and Abutters shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of Lot 280 and/or Lot 282 shall provide the same access and cooperation if they control Lot 280 and/or Lot 282. Respondent and Abutters shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of Lot 280 and/or Lot 282 as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of Lot 280 and/or Lot 282 or an interest in Lot 280 and/or Lot 282 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. Upon Respondent's successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and this Agreement to Respondent for recording. The recordings shall be at the sole expense of Respondent.
- (2) **FAILURE TO COMPLY** – If Respondent fails to comply with subsection C (5)(a) of this Agreement, Respondent shall pay a stipulated penalty of \$1,000 per month for each 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 section shall not preclude the 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 Respondent or Abutters 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 statute 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 Respondent or Abutters 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 Respondent or Abutters from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of this Agreement is limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Christina Hoefsmitt, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-4700 ext. 2023

Charles D. Redihan, Esquire
Plunkett & Redihan, LLP
91 Friendship Street
Providence, RI 02903
(401) 831-2100

Nancy M. Pace
Justin Pace
168 Wilbur Avenue
Warwick, RI 02889

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent and Abutters agree to notify the RIDEM in writing of any change in ownership of Lot 280 and/or Lot 282, 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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – This Agreement may be amended by agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

[SIGNATURES ON FOLLOWING PAGES]

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

Kenneth R. Stillson

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2019, before me personally appeared Kenneth R. Stillson 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: _____

Nancy M. Pace

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2019, before me personally appeared Nancy M. Pace to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

Notary Public
My Commission Expires: _____

Justin Pace

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In Providence, in said County and State, on this _____ day of _____, 2019, before me personally appeared Justin Pace, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

By: _____

David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____