

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

*In Re: Thayden Waltonen
Linda Waltonen*

FILE NO.: C07-0058

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 Thayden Waltonen and Linda Waltonen (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 February 26, 2010.

B. STIPULATED FACTS:

- (1) WHEREAS, the subject property is located approximately 400 feet northeast of Mishnock Road at Utility Pole No. 38.5/7, approximately 1,000 feet southeast of the intersection of Mishnock Road and Nooseneck Hill Road, Assessor's Plat 6, Lot 13-1, in the Town of West Greenwich, Rhode Island (the “Property”).
- (2) WHEREAS, on February 26, 2010, 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 C07-0058 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 West Greenwich, 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 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 and in those areas depicted on a plan entitled “Proposed Plan Waltonen Property”, 1 sheet revise dated 04/22/10 and approved by RIDEM on April 26, 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.
 - (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) Remove all remaining unauthorized fill material (in the form of at least soil material, wood chips, gravel, asphalt, vehicles, and the culvert) from the 100-foot Riverbank wetland and the 50-foot Perimeter Wetlands on the Property. The existing buildings, and the abutting five (5) feet from their foundation, shall be considered authorized and need not be removed under this Agreement. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetland.
 - (4) Re-grade all slopes resulting from fill removal and/or backfilling operations to create 3:1 or shallower 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.

- (a) Plant all unauthorized cleared and altered areas within the 100-foot Riverbank Wetland and 50-foot Perimeter Wetlands with trees and shrubs.

Balled and burlapped or transplanted tree species must be planted in a straight line, eight (8) feet on center, six (6) feet tall after planting, along the outer edge of the 100-foot Riverbank Wetland and 50-foot Perimeter Wetlands. Tree species must include an equal distribution of at least two (2) of the following selections:

White pine, *Pinus strobus*;
Red cedar, *Juniperus virginiana*;
Colorado Blue Spruce, *Picea pungens*
Norway Spruce, *Picea abies*

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*;
Red Spruce, *Picea rubens*;
Red cedar, *Juniperus virginiana*;
Red maple, *Acer rubrum*;
Northern red oak, *Quercus rubra*;
White oak, *Quercus alba*;
Pin oak, *Quercus palustris*;
Gray Birch, *Betula populifolia*;

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, fifteen (15) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least three (3) of the following selections:

Mountain laurel, *Kalmia latifolia*;
Giant rhododendron, *Rhododendron maximum*;
Arrowwood, *Viburnum dentatum*;
Wild raisin, *Viburnum cassinoides*;
Winterberry, *Ilex verticillata*;
Highbush blueberry, *Vaccinium corymbosum*;
Witchhazel, *Hamamelis virginiana*;

- (5) 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 Respondents agree to plant and maintain the same plant species until such time that survival is maintained over one (1) full year.
- (6) All disturbed upland surfaces outside of wetland areas must be stabilized in some fashion to stop the discharge of sediments from occurring into the adjacent wetlands.

- (7) 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.
- (8) 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 RIDEM.
- (9) 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.
- (10) All restoration work must be completed before **October 15, 2010**.

(b) Penalties

- (1) Respondents agree to pay to RIDEM the sum of One-Thousand Six-Hundred Dollars and no cents (\$1,600.00) 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, DEM 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 February 26, 2010. 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 West Greenwich.
- (2) FAILURE TO COMPLY – In the event that Respondents fail to comply with any provision of paragraph C5(a) above, the Respondents shall pay an administrative penalty of Five Hundred Dollars 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, return receipt requested.

- (b) Communications forwarded to the above-referenced address by certified mail, return receipt requested, 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: Waltonen
C07-0058

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

For the Respondents

Thayden Waltonen Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared Thayden Waltonen 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: _____

Linda Waltonen Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared Linda Waltonen 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*

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