

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

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: WIND ENERGY DEVELOPMENT  
HOLDINGS, LLC  
doing business as Wind Energy Development, LLC**

**File No.: OCI-FW-17-52**

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 WIND ENERGY DEVELOPMENT HOLDINGS, LLC doing business as Wind Energy Development, LLC ("WED"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") to resolve the alleged violations set forth in a Notice of Violation ("NOV") issued to WED by RIDEM on 23 December 2019.

***B. STIPULATED FACTS***

- (1) WHEREAS, the property is located approximately 100 feet southwest of the cul-de-sac at the southern terminus of the paved portion of West Log Bridge Road and approximately 2,300 feet southwest of its intersection with Perry Hill Road, at the northern-most portion of the unimproved portion of West Log Bridge Road right of way in the Town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, the Town of Coventry ("Coventry") owns the Property.
- (3) WHEREAS, on 23 December 2019, RIDEM issued a NOV to WED 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 (250-RICR-150-15-1)* (the "Wetland Rules"). The violations involved the upgrade and installation of an underground electrical conduit within an unimproved town "road" (the "Road") on the Property, which resulted in unauthorized alterations to freshwater wetlands adjacent to the Road.
- (4) WHEREAS, WED denies these violations occurred.

- (5) WHEREAS, in lieu of WED filing an appeal of the NOV to AAD and to effect a timely and amicable resolution of the NOV, RIDEM and WED 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.
- (6) 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 the Wetland Rules.

### C. **AGREEMENT**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over WED.
- (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 RIDEM and WED and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for WED in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
  - (a) **By 30 September 2020**, either return the Road to its pre-altered condition at the direction and limits established by RIDEM OR obtain a permit from RIDEM for the alterations to freshwater wetlands that occurred and fully comply with the requirements of the permit.
  - (b) Except for any work required by this Agreement or as allowed as an exempt activity under the Wetland Rules, Part 1.6, WED shall not alter the character of any freshwater wetland by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of RIDEM.
  - (c) Penalty – WED shall pay to RIDEM \$5,000 in administrative penalties assessed as follows:
    - (i) **Upon execution of this Agreement by WED**, WED shall pay to RIDEM \$5,000.
    - (ii) Penalties that WED 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, cashiers 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

#### ***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 WED’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV.
- (2) FAILURE TO COMPLY – In the event that WED fails to comply with subsection C(4)(a) or (b) of the Agreement, WED shall pay a stipulated penalty of \$500 per month for each 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 paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., injunctive relief in Superior Court). The ability of WED to perform the work required of it in subsection C(4)(a) of the Agreement can only be performed if Coventry provides WED access to perform such work. WED will use reasonable efforts to obtain such access and advise RIDEM should any such access be denied. Upon receipt of notice from WED that access has been denied, RIDEM shall act to obtain such access. In such a circumstance, WED’s obligations under subsection C(4)(a) shall be suspended, without penalty, until such access is provided to WED.
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve WED 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 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 WED 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 WED 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 limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**Stephen Tyrrell, Supervising Environmental Scientist**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7406

**Tricia Quest, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2408

**Michael P. Donegan, Esquire**  
Orson and Brusini Ltd.  
144 Wayland Avenue  
Providence, RI 02906  
(401) 331-2126

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 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The 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.**

WIND ENERGY DEVELOPMENT HOLDINGS, LLC  
doing business as Wind Energy Development, LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

In my capacity, as \_\_\_\_\_ of \_\_\_\_\_, I hereby aver that I am authorized to enter into this Agreement and thereby bind WIND ENERGY DEVELOPMENT HOLDINGS, LLC doing business as Wind Energy Development, LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of WIND ENERGY DEVELOPMENT HOLDINGS, LLC doing business as Wind Energy Development, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of WIND ENERGY DEVELOPMENT HOLDINGS, LLC doing business as Wind Energy Development, LLC, and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of WIND ENERGY DEVELOPMENT HOLDINGS, LLC doing business as Wind Energy Development, LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

State of Rhode Island, Department of Environmental  
Management

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_