

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

OFFICE OF COMPLIANCE AND INSPECTION

**In Re: WIND ENERGY DEVELOPMENT
HOLDINGS, LLC
dba Wind Energy Development, LLC**

**File No.: OCI-FW-15-12
AAD No.: 17-005/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 WIND ENERGY DEVELOPMENT HOLDINGS, LLC doing business as Wind Energy Development, LLC ("WED"), Kevin A. Breene ("Breene") and Dianne Morton and Steven H. Morton ("Morton"). 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 30 October 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located on West Log Bridge Road, approximately 2,130 feet southwest of the intersection of Kirvanta Road and Victory Highway (State Route 102), Assessor's Plat 303, Lot 4 ("Lot 4") and Plat 304, Lot 2 ("Lot 2") and Lot 3 ("Lot 3") in the Town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, the Town of Coventry ("Coventry") owns West Log Bridge Road.
- (3) WHEREAS, Breene owns Lot 2 and Lot 4.
- (4) WHEREAS, Morton owns Lot 3.
- (5) WHEREAS, on 2 August 2016, RIDEM issued to WED, Coventry, Breene and Morton Insignificant Alteration Permit Number 15-0172 consisting of an approved plan and letter of Terms and Conditions (the "Permit").
- (6) WHEREAS, on 30 October 2017, RIDEM issued a NOV to WED alleging certain violations of the Permit 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").
- (7) WHEREAS, WED denies the violations.

- (8) WHEREAS, WED requested an administrative hearing to contest the NOV.
- (9) WHEREAS, WED filed a Motion to Dismiss (“Motion”) with RIDEM’s Administrative Adjudication Division (“AAD”), wherein WED argued that the proper party that should be named in the NOV is Green Development, LLC doing business as Wind Energy Development, LLC.
- (10) WHEREAS, RIDEM objected to the Motion.
- (11) WHEREAS, the AAD has not ruled on the Motion.
- (12) WHEREAS, on 2 August 2018, RIDEM inspected the Property and determined that WED complied with the Order section of the NOV. Specifically, WED restored West Log Bridge Road and the freshwater wetlands adjacent to the road identified as Swamp, Perimeter Wetland and Riverbank Wetland (the “Wetlands”) in compliance with paragraph 15 of the Permit and installed plants within the Wetlands (the “2018 Plantings”) in compliance with paragraph 16 of the Permit.
- (13) WHEREAS, on 2 August 2019, RIDEM inspected the Property and determined that most of the Plantings were dead or dying (the “Inspection Findings”). The report of the Inspection Findings are attached hereto and incorporated herein as Attachment A.
- (14) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and WED, Breene and Morton 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.
- (15) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Wetland Rules.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over WED, Breene and Morton.
- (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, WED, Breene and Morton and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for WED, Breene and Morton 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 RIDEM**, WED shall record this Agreement with the Town of Coventry, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. By signing this Agreement, Breene authorizes WED to record the Agreement on Lot 2 and Lot 4 and Morton authorizes WED to record the Agreement on Lot 3. The recordings shall be at the sole expense of WED.

(5) CONDITIONS –

- (a) **By 15 October 2019**, WED shall replace all the plantings that are dead or dying as described in the Inspection Findings (the “2019 Plantings”) and reseed with a wetland seed mix within the area described in the Inspection Findings as “There was very little herbaceous growth in the Swamp restoration area, especially compared to the adjacent undisturbed (not previously altered) wetland areas”. If any of the 2018 Plantings or 2019 Plantings fail to survive 1 year from 15 October 2019, WED shall install the same plant species and maintain the plants until such time that survival occurs for 1 year.
- (b) WED, Breene and Morton shall allow all restored freshwater wetland areas, including replanted areas, to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in the restoration area without first obtaining a valid permit from RIDEM.
- (c) With the exception of any work required by this Agreement or as allowed as an exempt activity under the Wetland Rules, Part 1.6, WED, Breene and Morton 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.
- (d) Penalty – WED shall pay to RIDEM \$15,000 in administrative penalties assessed as follows:
 - (i) **Upon execution of this Agreement by WED, Breene and Morton**, WED shall pay to RIDEM \$15,000.
 - (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

- (6) RIGHT OF ACCESS – Breene and Morton provide to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. Breene and Morton 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 if they control the Property. Breene and Morton 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. Upon WED’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to WED for recording. The recordings shall be at the sole expense of WED. Should Breene or Morton refuse WED access to perform any ongoing obligations contained herein, WED shall so notify RIDEM and such obligations shall be suspended, without penalty, until such access is granted.
- (2) FAILURE TO COMPLY – In the event that WED fails to comply with subsection C(5)(a) 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. In the event that WED, Breene or Morton fails to comply with subsections C(5)(b), C(5)(c) or C(6) of the Agreement, WED, Breene or Morton 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).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve WED, Breene or Morton 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, Breene or Morton 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, Breene or Morton 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

- (a) At any time prior to full compliance with the terms of this Agreement, Breene or Morton 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.
 - (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 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
dba 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: _____

Kevin A. Breene

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2019, before me personally appeared Kevin A. Breene 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: _____

Dianne Morton

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2019, before me personally appeared Dianne Morton 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: _____

Steven H. Morton

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2019, before me personally appeared Steven H. Morton 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: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____