

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: 394 Carr's Trail Realty, LLC
Mark DePasquale
June DePasquale

File No.: OCI-FW-17-20

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 394 Carr's Trail Realty, LLC, Mark DePasquale and June DePasquale (collectively, the "Respondents"). 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 Respondents by the RIDEM on 1 September 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located approximately 2,000 feet north of Flat River Road, and approximately 1,500 feet southeast of Carr's Trail, Assessor's Plat 315, Lot 37.1 ("Lot 37.1") and Lot 58 ("Lot 58") in Coventry (the "Property").
- (2) WHEREAS, 394 Carr's Trail Realty, LLC owns Lot 37.1.
- (3) WHEREAS, Mark DePasquale and June DePasquale own Lot 58.
- (4) WHEREAS, on 1 September 2017, the RIDEM issued a NOV to Respondents alleging certain violations of Rhode Island's Freshwater Wetlands Act, R.I. Gen. Laws Section 2-1-21 and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the "Freshwater Wetland Regulations").
- (5) WHEREAS, Respondents did not request an administrative hearing to contest the NOV.
- (6) WHEREAS, to effect a timely and amicable resolution of the NOV, the RIDEM and 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.

- (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 RIDEM's Freshwater Wetland Regulations.
- (8) WHEREAS nothing in this Agreement shall be deemed an admission by Respondents of the violations alleged in the NOV.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (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, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondents 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, Respondents shall record this Agreement with Coventry for each parcel and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondents.
- (5) CONDITIONS –
 - (a) Respondents shall restore all freshwater wetlands in accordance with the restoration requirements set forth below:
 - (i) Prior to the commencement of restoration, install a continuous uninterrupted line of biodegradable fiber logs along the edge of the unauthorized fill and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of the RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.

- (ii) Remove all unauthorized fill material (in the form of woodchips) from the Perimeter Wetland located in the northeast portion of Lot 37.1. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands.
- (iii) Plant trees and shrubs in all unauthorized cleared and altered areas within the Swamp located in the northeast portion of Lot 37.1 and the Swamp located in the southwest portion of Lot 37.1 as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 15 feet on center, 4 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 3 of the following selections:

- Red maple, *Acer rubrum*
- Black gum (Tupelo), *Nyssa sylvatica*
- Green Ash, *Fraxinus pennsylvanica*
- American elm, *Ulmus americana*
- Silver maple, *Acer saccharinum*
- Swamp white oak, *Quercus bicolor*
- Pin oak, *Quercus palustris*
- Red ash, *Fraxinus pennsylvanica*
- Yellow Birch, *Betula allegheniensis*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 10 feet on center, 3 feet tall after planting, throughout the areas defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

- Silky dogwood, *Cornus amomum*
- Red osier dogwood, *Cornus stolonifera*
- Arrowwood, *Viburnum dentatum*
- Elderberry, *Sambucus canadensis*
- Winterberry, *Ilex verticillata*
- Highbush blueberry, *Vaccinium corymbosum*
- Spice bush, *Lindera benzoin*
- Swamp azalea, *Rhododendron viscosum*
- Speckled alder, *Alnus rugosa*

- (iv) Plant trees and shrubs in all unauthorized cleared and altered areas within the Perimeter Wetland located on Lot 37.1 and within the Perimeter Wetland located on Lot 58, as follows:

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

Pin Oak, *Quercus palustris*
Northern Red Oak, *Quercus rubra*
White Pine, *Pinus strobus*
Red maple, *Acer rubrum*
American holly, *Ilex opaca*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 7 feet on center, 3 feet tall after planting, throughout the areas defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Silky dogwood, *Cornus amomum*
Highbush Blueberry, *Vaccinium corymbosum*
Red osier dogwood, *Cornus stolonifera*
Arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Elderberry, *Sambucus canadensis*
Inkberry, *Ilex glabra*
Speckled alder, *Alnus rugosa*
Witchhazel, *Hamamelis virginiana*

- (v) If any of the required plantings fail to survive at least 1 full year from the time the plantings have been verified by the RIDEM, the same plant species shall be replanted and maintained until such time that survival occurs over 1 full year.
- (vi) All disturbed surfaces within the restored Swamps must be seeded with a wetland wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. All disturbed surfaces within the Perimeter Wetlands must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch.
- (vii) All restored wetland areas, including replanted areas, shall be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from the RIDEM unless the activity is exempt under Rule 6.00 of the RIDEM's Freshwater Wetlands Regulations.

- (viii) 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 all freshwater wetlands.
 - (ix) The above restoration work shall be completed prior to 15 December 2017. It is understood by the parties that the restoration work requires the timely availability of many trees and shrubs that must be planted prior to the ground freezing. Should the lack of availability of some of the required plants, trees or shrubs or the early freezing of the ground impact Respondents ability to meet this deadline for some of the required plantings, Respondents may request an extension to complete such plantings until 15 May 2018. Approval of this extension may be granted by the RIDEM, which shall not unreasonably be withheld.
- (b) Penalty – Respondents shall pay to the RIDEM the sum of **\$40,000** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondents, Respondents shall pay to the RIDEM the sum of **\$40,000**.
 - (ii) Penalties that Respondents agree 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 – Respondents provide to the 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. Respondents 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. Respondents 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 Respondents successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and Agreement to Respondents for recording. The recordings shall be at the sole expense of Respondents.
- (2) FAILURE TO COMPLY – If Respondents fail to comply with items specified in Section C (5)(a) of the Agreement, Respondents shall pay a stipulated penalty of \$1,000 per day for each day 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 Respondents 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 Respondents 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 Respondents 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:

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

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

Michael P. Donegan, Esquire
and
Steven M. Brusini, Esquire
Orson and Brusini Ltd.
144 Wayland Avenue
Providence, RI 02906
(401) 223-2100

- (a) At any time prior to full compliance with the terms of this Agreement, Respondents agree to notify the 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 the 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.

For 394 Carr's Trail Realty, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of 394 Carr's Trail Realty, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind 394 Carr's Trail Realty, 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 _____, 2017, before me personally appeared _____, the _____ of 394 Carr's Trail Realty, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of 394 Carr's Trail Realty, 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 394 Carr's Trail Realty, LLC.

Notary Public
My Commission Expires: _____

Mark DePasquale

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared Mark DePasquale 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: _____

June DePasquale

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared June DePasquale 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: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____