

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: The Gerald P Zarrella Trust

File No.: OCI-FW-17-110

AAD No.: 19-001/FWE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Consent Agreement (“Agreement”) is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and The Gerald P Zarrella Trust (“Trust” or “Respondent”). The 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 the alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondent by RIDEM on 20 February 2019.

B. STIPULATED FACTS

- (1) WHEREAS the property is located along the terminus of Gerald’s Farm Drive, approximately 1,500 feet west of Narrow Lane and approximately 1,430 feet from the intersection of Narrow Lane and South Road, Assessor’s Plat 13, Block 3, Lot 30 in Exeter, Rhode Island (“Property”).
- (2) WHEREAS the Trust owns the Property.
- (3) WHEREAS Gerald P Zarrella (“Zarrella”) is the Trustee.
- (4) WHEREAS on 20 February 2019, RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island’s *Freshwater Wetlands Act* (“FWW Act”) and *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (“FWW Rules”).
- (5) WHEREAS Respondent requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (6) WHEREAS AAD is a division of RIDEM.
- (7) WHEREAS Zarrella provided documents to RIDEM’s Division of Agriculture (“DAG”) to show that he is a farmer.
- (8) WHEREAS DAG reviewed the documents provided by Zarrella and has determined that Zarrella meets the definition of a farmer as that term is defined in the FWW Act.

- (9) WHEREAS RIDEM received a plan dated 19 October 2022, 3 sheets, to restore the freshwater wetlands on the Property to comply with the Order section of the NOV (“Restoration Plan”), which was prepared by Natural Resource Services, Inc. on behalf of Respondent. The plan is attached hereto and incorporated herein as Attachment A.
- (10) WHEREAS RIDEM hereby approves the Restoration Plan.
- (11) 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 Respondent 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.
- (12) WHEREAS the Agreement allows Respondent to apply to DAG for a permit to maintain some of the freshwater wetland alterations described in subsection C (5) of the NOV. Respondent acknowledges and agrees to waive any and all rights of appeal, regarding RIDEM’s decision on the freshwater wetland alterations application, at AAD or Superior Court.
- (13) WHEREAS RIDEM finds that the Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the FWW Act and FWW Rules.
- (14) WHEREAS Respondent acknowledges that it had an opportunity to consult with and be represented by counsel of its choosing and that it finds that the Agreement is reasonable and fair and enters into the Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) RIDEM has jurisdiction over the subject matter of the Agreement and has personal jurisdiction over Respondent.
- (2) The 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) The provisions of the Agreement shall apply to and be binding upon RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of the Agreement.

- (4) **Within 10 days of the receipt of the fully executed Agreement from RIDEM**, Respondent shall record the Agreement in the land evidence records for the Town of Exeter, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondent.
- (5) Restoration – Respondent shall restore the freshwater wetlands on the Property in accordance with the Restoration Plan and the dates specified therein (except as noted below).
 - (a) **Within 60 days of execution of the Agreement**, Respondent may apply to DAG for a permit to maintain some of the freshwater wetland alterations described in subsection C (5) of the NOV. DAG shall review said application in accordance with applicable laws and regulations. Among the issues DAG will consider is whether the alterations are necessary for agricultural purposes. DAG’s decision shall be final, and Respondent waives any and all rights of appeal.
 - (b) If Respondent fails to apply to DAG in accordance with subsection C(5)(a) of the Agreement, the freshwater wetlands located on the Property must be restored in full compliance with the Restoration Plan and the dates specified therein.
 - (c) If Respondent applies within 60 days of execution of the Agreement and no permit is issued by RIDEM, the freshwater wetland alterations that are the subject of the application must be restored in full compliance with the Restoration Plan **by 30 November 2024**.
 - (d) If Respondent applies within 60 days of execution of the Agreement, the freshwater wetland alterations that are not the subject of the application must be restored in full compliance with the Restoration Plan and the dates specified therein.
 - (e) If RIDEM issues a permit to Respondent, Respondent shall fully comply with all conditions of the permit within 1 year of RIDEM’s issuance of the permit.
- (6) All restored wetland areas, including replanted areas, must be allowed to re-vegetate 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 valid permit from RIDEM, unless the activity is exempt under the FWW Rules.
- (7) Respondent shall not encourage or make available to the public or its neighbors access to the freshwater wetlands on the Property.

(8) Penalty – Respondent shall pay to RIDEM **\$12,500** in administrative penalties assessed as follows:

(a) **Upon execution of the Agreement by Respondent**, Respondents shall pay to RIDEM **\$12,500**.

(b) Penalties that Respondent agrees to pay in the Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

(c) Payments shall be by one of two methods:

(i) By certified check, cashier's check, or money order made payable to the General Treasury – Water and Air Protection Program and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

(ii) By wire transfer in accordance with instructions to be provided by RIDEM.

(9) Respondent provides to RIDEM, its authorized officers, employees, and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with the Agreement as long as RIDEM provides notice to the Respondent's consultant, Scott Rabideau. Respondent 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. Respondent shall provide a copy of the Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of the 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 the Agreement.

(10) Waiver – pursuant to subsection C (5) of the Agreement, Respondent may submit a permit application to DAG. Respondent waives any right to appeal a final decision by RIDEM on the application submitted pursuant to the Agreement.

D. COMPLIANCE

(1) Compliance with and fulfillment of the Agreement shall be deemed to resolve all issues raised in the NOV. Upon Respondent's successful completion of the requirements set forth in the Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to Respondent for recording. The recordings shall be at the sole expense of Respondent.

- (2) If Respondent fails to comply with items specified in subsections C (5) and C (6) of the Agreement, Respondent shall pay a stipulated penalty of \$1,000 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 section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) Compliance with the terms of the Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) 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). The Agreement shall not restrict any right to hearing or other right available by statute or regulation that Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of the Agreement.
- (5) The Agreement shall not operate to shield Respondent or its assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property from liability arising from future activities, as of the date of execution of the Agreement.
- (6) The scope of the Agreement is limited to violations alleged in the NOV.
- (7) Communications regarding the Agreement shall be directed to:

Bruce Ahern, Principal Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777703

bruce.ahern@dem.ri.gov

Christina Hoefsmit, Deputy Administrator
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2772023

christina.hoefsmit@dem.ri.gov

Tricia Quest, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2772408

tricia.quest@dem.ri.gov

Mary Shekarchi, Esquire
240 Chestnut Street
Warwick, RI 02888
(401) 828-5030

Marybali@aol.com

- (a) At any time prior to full compliance with the terms of the Agreement, Respondent agrees 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 the Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) 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) The Agreement may be amended by agreement of the parties in writing.
- (10) The Agreement shall be deemed entered as of the date of execution by all parties.

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

For Respondent

Gerald P Zarrella

Dated: _____

In my capacity, as Trustee of The Gerald P Zarrella Trust, I hereby aver that I am authorized to enter into the Agreement and thereby bind The Gerald P Zarrella Trust 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 _____, 2023, before me personally appeared Gerald P Zarrella, the Trustee of The Gerald P Zarrella Trust, to me known and known by me to be the party executing the foregoing instrument on behalf of The Gerald P Zarrella Trust, and he acknowledges said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of The Gerald P Zarrella Trust.

State of Rhode Island, Department of Environmental
Management

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

Dated: _____