

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

In Re: Stephen R. Archambault

FILE NO.: FW C10-0224
AAD No.: 11-005/FWE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Stephen R. Archambault (the “Respondent”). This 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 administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to the Respondent by the RIDEM on 13 July 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located south-southeast of Whipple Road, Assessor's Plat 44, Lot 10 in the town of Lincoln, Rhode Island and Assessor's Plat 42, Lot 14A in the town of Smithfield, Rhode Island (the “Property”).
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on 13 July 2011 the RIDEM issued a NOV to the Respondent alleging certain violations of the Rhode Island Freshwater Wetlands Act and the RIDEM’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the 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.
- (6) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island Freshwater Wetlands Act and the RIDEM’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 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)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent 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, the Respondent shall record this Agreement with the towns of Smithfield and Lincoln, Rhode Island and shall provide a copy of the recorded Agreements to the RIDEM. The recordings shall be at the sole expense of the Respondent.
- (5) CONDITIONS –
 - (a) The Respondent shall complete the following wetland restoration work within those areas identified on a plan entitled “Proposed Perimeter & Riverbank Wetland Restoration Plan,” 1 sheet revise dated 7/17/13, attached hereto and incorporated herein as Attachment A. It is acknowledged that any discrepancy between Attachment A and the requirements of this Agreement shall be governed by the Agreement.
 - (i) By **1 June 2015** the Respondent shall remove all fill, install plantings, and stabilize all soil in the 3 areas identified on Attachment A as follows:

If necessary, prior to the commencement of restoration, a continuous uninterrupted line of staked haybales or silt fence shall be installed between those portions of the wetlands that have been altered without authorization and the undisturbed freshwater 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 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 any and all freshwater wetlands.

Area 1

- With the exception of the previously existing boulders in the Pond all other boulders shall be removed from the Pond, Swamp, and Perimeter Wetland. Any embankment that remains shall be regraded to at least a 2:1 slope.
- Add 6 to 8 inches of suitable topsoil.
- Seed with a conservation grass mixture.
- With the exception of that area on top of the dam, the side slopes, and 15 feet below the toe of the downstream slope, plant Gray Birch (*Betula populifolia*) and Quaking Aspen (*Populus tremuloides*), 5 feet tall after planting, 15 feet on center and Lowbush blueberry (*Vaccinium angustifolia*), Highbush blueberry (*Vaccinium corymbosum*), and Arrowwood (*Viburnum dentatum*) 18 to 24 inches tall after planting, 6 feet on center throughout Area 1.

Area 2

- All boulders lining both sides of the streamcourse shall be removed from the wetlands.
- All fill shall be removed down to the original grade 25 feet from the streamcourse or wetland vegetation associated with the streamcourse (whichever is the greatest distance upslope).
- With the exception of hydric wetland areas adjacent to the stream course, add 6 to 8 inches of suitable topsoil to the restored Riverbank Wetland. The restored Riverbank Wetlands (both sides) shall be seeded with a conservation grass mixture.
- Plant White Pine (*Pinus strobus*), 5 feet tall after planting and 15 feet on center and Sweet Pepperbush (*Clethra alnifolia*) and Arrowwood (*Viburnum dentatum*) 2 to 3 feet tall, 6 feet on center throughout Area 2.

Area 3

- All boulders and fill shall be removed within 25 feet of the Pond edge.
- Add 6 to 8 inches of suitable topsoil and seed with a conservation grass mixture.
- Plant a line of White Pine (*Pinus strobus*) 15 feet on center, 5 feet tall after planting, along the outer edge of the restoration area.

- (ii) If any or all of the required plantings fail to survive at least 2 years from the time planting has been verified by the RIDEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least 2 years.
 - (iii) 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.
 - (iv) With the exception of any work allowed as an exempt activity, all restored freshwater wetland areas, including replanted areas, shall be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in the restoration areas without first obtaining a permit from the RIDEM.
 - (v) With the exception of any work required by this Agreement or as allowed as an exempt activity under the RIDEM's *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*, Rule 6.00, the Respondent 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 the RIDEM.
- (b) The Respondent shall pay **Twelve Thousand Dollars (\$12,000)** in the form of a Supplemental Environmental Project ("SEP") as follows:
- (i) The SEP involves funding one-time visits to a minimum of 38 schools and one Rhode Island State House Recycling Awards event, both organized by the Rhode Island Schools Recycling Club (described under the headings of *The RI School Environmental Advocate* and *The RI School Environmental Supporter* in Attachment A, attached hereto and incorporated herein).
 - (ii) The funding shall be made in 3 payments (the "SEP Payments"). The first payment of **Six Thousand Dollars (\$6,000)** shall be paid upon execution of the Agreement by the Respondent. The second payment of **Three Thousand Dollars (\$3,000)** shall be paid within 3 months of execution of the Agreement. The third and final payment of **Three Thousand Dollars (\$3,000)** shall be paid within 6 months of execution of the Agreement.
 - (iii) The SEP Payments shall be made to the Environment Council of Rhode Island Education Fund, Inc., a 501(c)(3) nonprofit organization. The SEP Payments shall be in the form of a certified check, cashier's check, or money order, payable to the Environment Council of Rhode Island Education Fund, Inc. The SEP Payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

- (iv) In the event that the Respondent fails to remit to the RIDEM a SEP Payment on or before its due date, that SEP Payment will be considered late and the Respondent will be in default. If the SEP Payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12% per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due SEP Payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude the RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (6) RIGHT OF ACCESS – The Respondent shall provide to the RIDEM, its authorized officers, employees and representatives the right to access the property at all reasonable times for the purpose of monitoring compliance with this Agreement until such time as the RIDEM determines that the Respondent has completed the required wetland restoration and is in full compliance with the terms of this Agreement. The 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 as long as they control the Property. The Respondent 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 the Respondent’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Respondent for recording. The recordings shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Sections C(5)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500) per month for each and every month 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 paragraph shall not preclude the 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 Respondent 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 law 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 the Respondent 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 the Respondent 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 only 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

Joseph LoBianco, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2302

Stephen R. Archambault
303 Jefferson Boulevard
Warwick, RI 02888
(401) 921-4800

Greg Benik, Esquire
Benik & Associates P.C.
128 Dorrance Street, Suite 450
Providence, RI 02903
(401) 454-0054

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees 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 mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

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

For Stephen R. Archambault

_____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2014, before me personally appeared Stephen R. Archambault 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: _____

*For the State of Rhode Island Department of
Environmental Management*

Dated: _____