

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

OFFICE OF COMPLIANCE AND INSPECTION

**In Re: Christopher R. Lavigne
Courtney L. Lavigne**

**File No.: OCI-FW-20-110
AAD No.: 21-002/FWE**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Christopher R. Lavigne (“Lavigne”) and Courtney L. Lavigne (collectively, “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”) for the purpose of resolving the alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondents by RIDEM on 18 April 2021.

B. STIPULATED FACTS

- (1) WHEREAS the property is located approximately 330 feet west of Carriage Cove Road, at House No. 4 Carriage Cove Court, approximately 550 feet south of the intersection with Shady Valley Road, between Utility Pole Nos. 4 and 6, Assessor’s Plat 41, Lot 1.001 in Coventry, Rhode Island (“Property”).
- (2) WHEREAS Respondents own the Property.
- (3) WHEREAS on 18 April 2021, RIDEM issued a NOV to Respondents 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* (250-RICR-150-15-1) [effective 16 July 2014 to Current] (“FWW Rules”).
- (4) WHEREAS Respondents requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (5) WHEREAS AAD is a division of RIDEM.
- (6) 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 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 this Agreement allows Respondents to apply to RIDEM for a freshwater wetland permit to maintain some of the alterations described in subsection C (3) of the

NOV. Respondents acknowledge and agree to waive all rights of appeal of RIDEM's decision on the application at AAD or Superior Court.

- (8) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the FWW Act and FWW Rules.
- (9) WHEREAS Respondents acknowledge that they had an opportunity to consult with and be represented by counsel of their choosing and that they find that this Agreement is reasonable and fair and enter into this Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (2) 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) The provisions of this Agreement shall apply to and be binding upon 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) **Within 10 days of the receipt of the fully executed Agreement from RIDEM,** Respondents shall record this Agreement in the land evidence records for the Town of Coventry and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondents.
- (5) Respondents shall complete the following actions to comply with the Order section of the NOV:
 - (a) **By 30 September 2022,** restore the freshwater wetlands as follows:
 - (i) Prior to the commencement of restoration install a continuous uninterrupted line of staked biodegradable filter logs (e.g., straw wattles, fiber logs, filter socks), or silt fence between the inner edge (waterside) areas of the Property shaded in red and green on the sketch dated 14 July 2020 that is attached hereto and incorporated herein as Attachment A ("Sketch") and the pond shown on the Sketch. 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 activities, and until such time that all surrounding areas are

properly stabilized. At the discretion and direction of representatives of RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.

- (ii) Remove all fill material (at the direction of RIDEM) and improvements from the areas of Property shaded in red and green on the Sketch, including soil material, electrical conduit and lighting facilities, and all components of maintained landscaped areas and lawn. This does not include any previously installed plantings. All fill must be removed down to original elevations, to match the grade of the adjacent undisturbed natural areas. All areas of disturbed surface soils shall be covered with plantable organic soil (4 inches minimum, if necessary) (as needed at the direction of RIDEM), seeded with a wildlife conservation grass seed mix and covered with a mat of loose hay mulch, which is free of any contaminants that could promote the spread of invasive plant species. The restored surface areas must then be planted with appropriate trees and shrubs as specified below. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands.
- (iii) 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 three 3 of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Black Cherry, *Prunus serotina*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Highbush blueberry, *Vaccinium corymbosum*

Inkberry (Gallberry holly), *Ilex glabra*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (iv) In addition, balled and burlapped or transplanted evergreen tree species must be planted in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire outer (landward) edge of red and green shaded areas shown on the Plan. The tree species to be utilized for this screening line must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Pitch Pine, *Pinus rigida*
Eastern hemlock, *Tsuga canadensis*
Red cedar, *Juniperus virginiana*

- (v) If any of the required plantings fail to survive at least 2 full growing seasons from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 2 full growing seasons.
- (vi) All areas of disturbed surface soils shall be seeded with a wildlife conservation grass seed mixture and covered with a mat of loose hay mulch (as previously described above).
- (vii) Upon final stabilization of disturbed areas, all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, fiber logs, spread hay mulch, and other naturally based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (viii) All restored wetland areas, including replanted areas, must 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 valid permit from RIDEM, unless the activity is exempt under the FWW Rules.

- (b) **By 31 May 2024**, restore the remaining freshwater wetlands on the Property that RIDEM alleges in the NOV were altered in accordance with the Order section of the NOV unless Respondents obtain a permit from RIDEM allowing some or all the alterations to remain.

- (c) If RIDEM issues a permit to Respondents, Respondents shall fully comply with all conditions of the permit within 1 year of RIDEM's issuance of the permit.
- (6) Penalty – Respondents shall pay to RIDEM **\$10,000** in administrative penalties assessed as follows:
 - (a) **Upon execution of this Agreement by Respondents**, Respondents shall pay to RIDEM **\$10,000**.
 - (b) 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.
 - (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.
- (7) Respondents 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. 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.
- (8) Waiver – pursuant to subsection C(5)(b) of this Agreement, Respondents may submit a freshwater wetland permit application to RIDEM. Respondents waive any right to appeal a final decision by RIDEM on the application submitted pursuant to this Agreement.

D. COMPLIANCE

- (1) 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 the Agreement, 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) If Respondents fail to comply with items specified in subsection C (5) of the Agreement, Respondents 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 section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) 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 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). 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 RIDEM after the execution of this Agreement.
- (5) This Agreement shall not operate to shield Respondents or their 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 this Agreement.
- (6) The scope of the Agreement is limited to violations alleged in the NOV.
- (7) Communications regarding this 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, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

christina.hoefsmit@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 this Agreement, Respondents 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) 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) 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.

Christopher R. Lavigne

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2022, before me personally appeared Christopher R. Lavigne to me known and known by me to be the party executing the foregoing instrument and he/she/they acknowledged said instrument and the execution thereof, to be his/her/their free act and deed.

Notary Public
My Commission Expires: _____

Courtney L. Lavigne

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

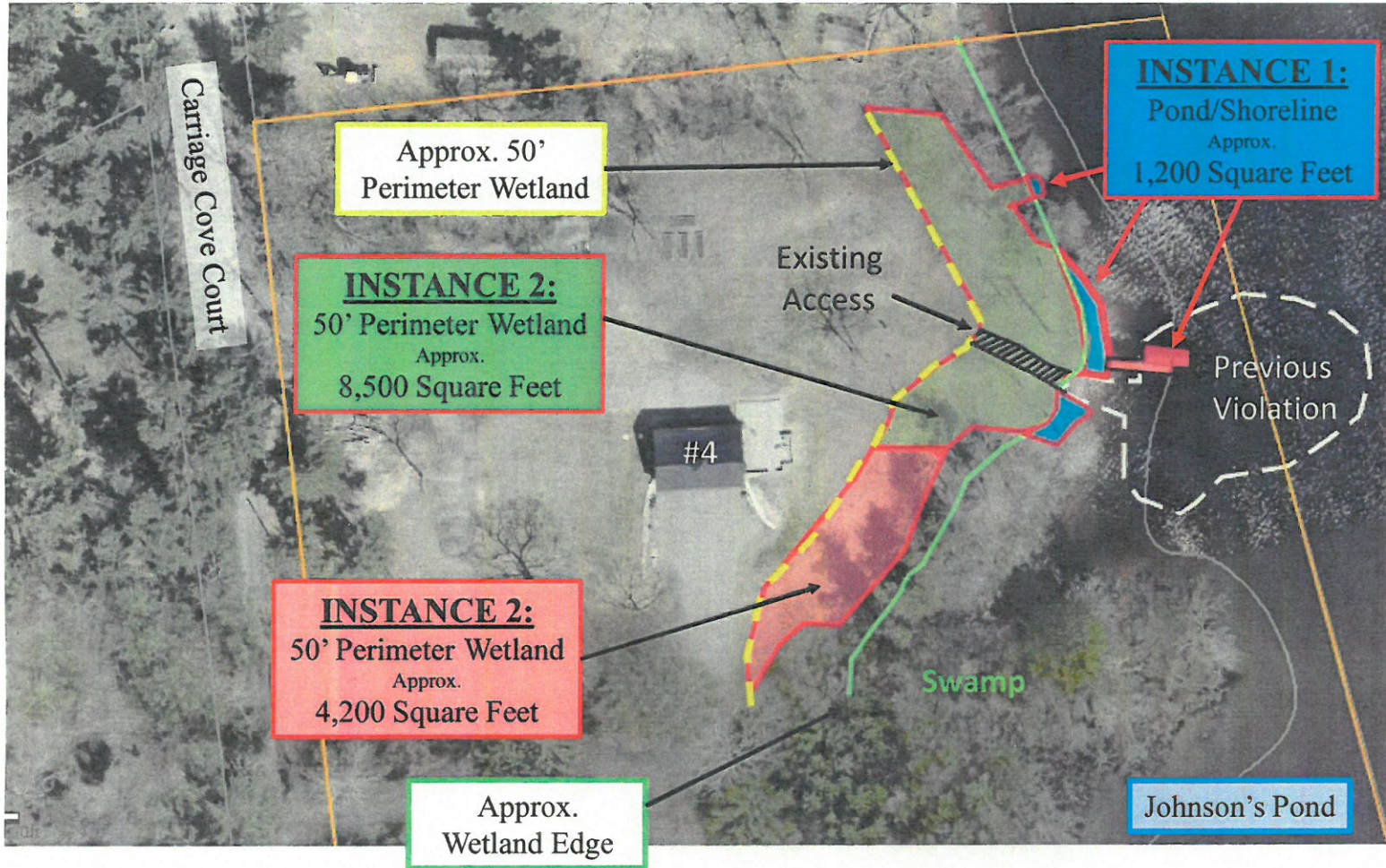
In _____, in said County and State, on this _____ day of _____, 2022, before me personally appeared Courtney L. Lavigne to me known and known by me to be the party executing the foregoing instrument and he/she/they acknowledged said instrument and the execution thereof, to be his/her/their free act and 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: _____



SITE SKETCH

File Number:
OCI-FW-20-110

Christopher and
Courtney Lavigne
4 Carriage Cove Ct.,
Coventry, RI

AP 41
Lot 1.1

****NOT TO SCALE****

Inspection Date: 7/14/2020
Inspector: **Shawna B. Smith**

RI DEM
Office of Compliance and Inspection

