

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

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: TERRAPIN DEVELOPMENT, LLC**

**File Nos.: OCI-WP-21-20,  
STW16-124, FWW 16-0192,  
and RIR101445  
AAD No.: 23-003/WRE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Consent Agreement (“Agreement”) is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and TERRAPIN DEVELOPMENT, LLC (“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 July 10, 2023.

**B. STIPULATED FACTS**

- (1) WHEREAS the subject property is located at Hidden Meadows Drive, Assessor’s Plat 56, Lots 22, 23 and 49, and Plat 57, Lots 28 and 36 in Cumberland, Rhode Island (“Property”).
- (2) WHEREAS Respondent is constructing a 20-lot residential subdivision at the Property.
- (3) WHEREAS on October 18, 2018, RIDEM issued a *Permit to Alter Freshwater Wetlands* No. FWW 16-0192 and a *General Permit for Stormwater Discharge Associated with Construction Activity* No. RIR101445 to construct the subdivision (“Wetlands Permit”).
- (4) WHEREAS on October 17, 2019, the Wetlands Permit expired.
- (5) WHEREAS on July 10 2023, RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island’s *Water Pollution Act* (“WP Act”), *Water Quality Regulations* (250-RICR-150-05-1) (“WQ Rules”), and *Regulations for the Rhode Island Pollutant Discharge Elimination System* (250-RICR-150-10-1) (“RIPDES Rules”).

- (6) WHEREAS Respondent requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (7) WHEREAS AAD is a division of RIDEM.
- (8) WHEREAS on or about October 23, 2023, Respondent submitted a letter to RIDEM prepared by D’Amico Engineering Technology, Inc. (“Letter”) certifying that:
  - (a) the construction work on the remaining lots is consistent with engineered plans titled *RIDEM Submission Hidden Meadow Located on Hidden Meadow Drive Cumberland, Rhode Island Assessor’s Plat 56 Lots 22, 23 & 49, Assessor’s Plat 56 Lots 28 & 36* approved by RIDEM with the Wetlands Permit (“Approved Plans”).
  - (b) the project’s site work, along with the current construction on the remaining lots, has been conducted in accordance with the Approved Plans and that the construction complies with the Wetlands Permit.

The Letter is attached hereto and incorporated herein as Attachment A.

- (9) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect 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.
- (10) WHEREAS RIDEM finds that the Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the WP Act, the WQ Rules, and the RIPDES Rules.
- (11) WHEREAS Respondent 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 with the Town of Cumberland and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondent.
- (5) Respondent shall complete the following actions:
- (a) at all times, and for the full duration of the construction project, comply with all the requirements set forth in Rhode Island's *General Permit For Stormwater Discharge Associated With Construction Activity*, effective September 26, 2018 ("CGP"). A copy of the CGP is attached hereto and incorporated herein as Attachment B.
  - (b) by 31 December 2024 complete the construction project in strict conformance with the Approved Plans.
  - (c) notify RIDEM in writing upon completion of the construction project.
- (6) Penalty – Respondent shall pay to RIDEM **\$7,000** in administrative penalties assessed as follows:
- (a) **Upon execution of the Agreement by Respondent,** Respondent shall pay to RIDEM **\$7,000**.
  - (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) Penalty payments shall be by one of two methods:
    - 1. 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
    - 2. By wire transfer in accordance with instructions provided by RIDEM.
- (7) 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. 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.

**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 the 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 section C (5) of the Agreement, Respondent shall pay a stipulated penalty of \$1,000 per month for each and every 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 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:

**Patrick J. Hogan, Environmental Engineer IV**

RIDEM Office of Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-1360 extension 2777119

[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)

**Tricia Quest, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, RI 02908-5767

(401) 222-6607 extension 2772408  
[tricia.quest@dem.ri.gov](mailto:tricia.quest@dem.ri.gov)

**C. Beau Akers, Esquire**  
Brainsky Levinson, LLC  
1543 Fall River Avenue, Suite 1  
Seekonk, MA 02771

(508) 557-1910  
[cbeauakers@brainskylevinson.com](mailto:cbeauakers@brainskylevinson.com)

**TERRAPIN DEVELOPMENT, LLC**

**C/o James McKee**  
8 Davis Street  
Cumberland, RI 02864

(401) 465-8971  
[jimhillside@aol.com](mailto:jimhillside@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.**

TERRAPIN DEVELOPMENT, LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

In my capacity, as \_\_\_\_\_ of TERRAPIN DEVELOPMENT, LLC, I hereby aver that I am authorized to enter into the Agreement and thereby bind TERRAPIN 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 \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of TERRAPIN DEVELOPMENT, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of TERRAPIN DEVELOPMENT, LLC, and he/she/they acknowledged said instrument by him/her/they executed, to be his/her/their free act and deed in said capacity and the free act and deed of TERRAPIN DEVELOPMENT, LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

State of Rhode Island, Department of Environmental  
Management

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

Dated: \_\_\_\_\_