

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Jordan E. Carlson
 Jordan E. Carlson d/b/a Buttonwoods MX
 Jordan E. Carlson d/b/a RIMX LLC
 Jordan E. Carlson d/b/a Buttonwoods Motocross**

FILE NO.: OCI-FW-22-34

NOTICE OF VIOLATION

A. INTRODUCTION

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM’s jurisdiction.

B. ADMINISTRATIVE HISTORY

On 7 March 2017, Four Oaks, LLC applied to RIDEM to alter freshwater wetlands on one of the properties that is the subject of this Notice of Violation (“NOV”). On 25 July 2017, RIDEM issued an Insignificant Alteration Permit (Permit 17-0050) (“Permit”) to alter wetlands to construct a 4-bedroom single family residence, with associated site improvements. The plan approved with the Permit included a Limit of Disturbance (“LOD”). On 7 August 2017 the Permit was recorded in the land evidence records. The Permit required the restoration of certain wetlands and the placement of buffer zone markers. On 2 October 2017 RIDEM confirmed that the restoration and the placement of buffer zone markers was completed in accordance with the Permit. On 8 December 2017 Jordan E. Carlson (“Carlson”) purchased the property. The Permit automatically transferred to Carlson upon the sale of the property. The Permit expired on 25 July 2021. RIDEM issued a verbal Cease and Desist to Carlson to stop working in wetlands on 21 March 2022 and 22 June 2022. On 7 October 2022 RIDEM issued a written Cease and Desist to Carlson to stop working in wetlands, which was served on Carlson. As of the date of the NOV, Respondents have continued to alter wetlands without a permit.

C. FACTS

- (1) The properties are located approximately 670 feet southeast of Buttonwoods Road, and approximately 1,300 feet east of the intersection with Stilson Road, Assessor’s Plat 4C, Lot 28 (“Lot 28”) and Lot 29-1 (“Lot 29-1”); Assessor’s Plat 4B, Lot 61 (“Lot 61”); and Assessor’s Plat 4C, Lot 29 (“Lot 29”) in Richmond, Rhode Island (collectively, “Properties”).
- (2) Carlson owns Lot 28 and Lot 29-1 (collectively, “Carlson Property”). Carlson acquired the lots on 8 December 2017.

- (3) Richmond 208 Realty LLC owns Lot 61 (“Richmond 208 Property”).
- (4) The Town of Richmond owns Lot 29 (“Town Property”).
- (5) Upon information and belief, Carlson, Carlson d/b/a Buttonwoods MX, and Carlson d/b/a RIMX LLC are involved in the management and/or operation of a motocross/racetrack on the Properties.
- (6) Upon information and belief Carlson and Carlson d/b/a Buttonwoods Motocross, manages and/or operates the motocross/racetrack on the Properties. On or about 28 October 2024 Buttonwoods Motocross obtained a Certificate of Business Registration from the Town of Richmond.
- (7) Portions of the motocross/racetrack and associated improvements extend onto both the Richmond 208 Property and the Town Property.
- (8) Approximately 2 months prior to the transfer of the Carlson Property to Carlson, on 2 October 2017, RIDEM’s Office of Water Resources inspected the Carlson Property for compliance with the Permit. The inspection revealed Four Oaks complied with all the restoration requirements and buffer zone marker requirements in the Permit.
- (9) On 16 March 2022 RIDEM received a complaint regarding site work and tracks around a pond and through swamps and streams at the Carlson Property.
- (10) On 21 March 2022, RIDEM attempted to inspect the Properties. The inspectors met with Carlson who denied RIDEM access to inspect the Carlson Property. Despite being denied access, the following were in plain view on the Carlson Property:
 - (a) Recent activity including disturbed soil and piles of fill (including large dirt ramps/jumps) around the edge of the dirt parking area, including within at least **Riverbank Wetland** and **Perimeter Wetland**, up to the **Pond** edge, and beyond the previously approved LOD.
 - (b) A dirt road visibly extending south around the eastern edge of the **Pond**, also beyond the LOD.
 - (c) Flooded forested **Swamp** immediately adjacent to the driveway and dirt parking area, as well as a **Stream** channel (less than 10 feet wide, unnamed) along the eastern edge of the driveway/parking area.
 - (d) No erosion controls.
 - (e) The previous installed permanent buffer markers/signs were removed.
 - (f) The previously restored wetland area was altered.

- (g) A white wetland permit sign with “DEM 17-0050” posted on a tree at the entrance to a dirt driveway that led into the Carlson Property.
- (11) On 22 June 2022, RIDEM executed an Administrative Warrant on Carlson and inspected the Properties. The inspection and investigation revealed the following:
- (a) Clearing, stumping, grubbing, excavating, filling (with at least soil, rocks, slash, debris, sediment, and storage of various vehicles, materials, and equipment), grading and soil disturbances within **Swamp** (portions of which are also **Riverbank Wetland**, 100-Year **Floodplain**, (hereinafter “Floodplain”), and an **Area Subject to Storm Flowage**) associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvements. These activities altered approximately 3.4 acres (148,800 square feet) of freshwater wetland on the Carlson Property and the Richmond 208 Property.
 - (b) Clearing, stumping, grubbing, excavating, filling (with at least soil, rocks, slash, debris, and sediment), grading, and soil disturbances within **Swamp and Pond** (portions of which are also **Riverbank Wetland**, and **Floodplain**) associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvements. These activities altered approximately 37,300 square feet of freshwater wetland on the Carlson Property.
 - (c) Clearing, filling (with at least soil, rocks, and sediment) within **Swamp** (portions of which are also **Riverbank Wetland** and **Floodplain**) associated with improvements to and along an existing cart path. These activities altered approximately 1,500 square feet of freshwater wetland on the Carlson Property and the Town Property.
 - (d) Filling (with at least soil, rocks, slash, sediment, and debris), diverting, grading, and related soil disturbances associated with the construction of dirt roads, ramps/jumps, and other site improvements along and in a **River/Perennial Stream** channel (less than 10 feet wide), including installation of 2 culverts for 2 road crossings, and a third ramp/jump crossing. These activities altered approximately 540 linear feet (3,100 square feet) of freshwater wetland on the Carlson Property.
 - (e) At least filling (with at least soil), grading, and soil disturbances resulting in the elimination of a **Stream** channel (less than 10 feet wide). These activities altered approximately 125 linear feet (250 square feet) of freshwater wetland on the Carlson Property.

- (f) Filling (with at least soil, rocks, and sediment), grading, and related soil disturbances within a **Stream** channel (less than 10 feet wide) associated with the construction of dirt roads, ramps/jumps, and other site improvements, including 2 road crossings and installation of 2 culverts. These activities altered approximately 150 linear feet (1,050 square feet) of freshwater wetland on the Carlson Property.
- (g) Clearing, stumping, grubbing, filling (with at least soil, rocks, slash, debris, sediment, and storage of various vehicles, materials, and equipment), grading, and soil disturbances within **Perimeter Wetland** and **Riverbank Wetland** (portions overlapping, portions of which are also **Floodplain**) associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvements. These activities altered approximately 2.8 acres (122,000 square feet) of freshwater wetland on the Carlson Property, Richmond 208 Property, and the Town Property.
- (h) Clearing, stumping, grubbing, filling (with at least soil, rocks, slash, debris, sediment, and storage of various vehicles, materials, and equipment), grading, and soil disturbances within **Perimeter Wetland** and **Riverbank Wetland** (portions overlapping, and portions of which are also **Floodplain**) associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvements. These activities have resulted altered approximately 38,300 square feet of freshwater wetland on the Carlson Property and the Town Property.
- (i) Excavating, ditching, diverting, filling, (with at least soil), installation of a culvert, and soil disturbances associated with relocating and crossing an **Area Subject to Storm Flowage (ASSF)**. These activities altered approximately 30 linear feet (80 square feet) of freshwater wetland on the Carlson Property.

A site sketch depicting the location of the alleged violations on the Properties is attached hereto and incorporated by reference herein as Exhibit A.

- (12) The 22 June 2022 inspection also documented 2 hoses (green and yellow) in the **Pond**, which were connected to separate pumps, which allows for the withdrawal of water from the Pond and constitutes an unauthorized water withdrawal from a **Pond** on the Carlson Property.
- (13) On 1 September 2022, and 24 March, 31 March and 4 April of 2023, RIDEM received complaints regarding ongoing work and activities in wetlands at the Properties.
- (14) Review of aerial photographs taken in 2023 and 2024 revealed that the wetland violations remain, are ongoing and more extensive than observed on the 22 June 2022 inspection.

- (15) The activities described in sections C (10), C (11), and C (12) above are not exempt in accordance with Part 3.6 (formerly Part 1.6) of Rhode Island's *Rules and Regulations Governing the Administration and Enforcement of Freshwater Wetland Act* (250-RICR-150-15-3) (formerly 250-RICR-150-15-1) ("FWW Rules").
- (16) Respondents did not receive approval from RIDEM to alter the freshwater wetlands on the Properties as described in sections C (10), C (11), and C (12) above.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that Respondents have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21(a)(1)(i)** – prohibiting any person, firm, industry, company, corporation, club, or other individual or group from altering the character of any freshwater wetland, buffer, or floodplain without first obtaining the approval of RIDEM.
- (2) **FWW Rules, Part 3.5.5(A) (formerly Part 1.5(A)(1))** – prohibiting any person from performing activities that alter the character of any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage in any way without first obtaining approval from RIDEM.

E. ORDER

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Respondents are hereby ORDERED to:

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above-described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration properly install a continuous uninterrupted line of biodegradable staked haybales, silt fence, straw wattles, coir logs, coconut-fiber logs, or other acceptable soil erosion/sediment control devices between all existing altered/disturbed freshwater wetlands to be restored and any adjacent 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 freshwater wetland restoration, and until such time that all the surrounding areas are properly stabilized. Prior to any restoration work within the watercourses, appropriate log-and-hay check dams shall be installed within any affected channels located immediately downslope of all wetland restoration areas. Haybale checkdams shall be installed at appropriate intervals to ensure the prevention of any adverse impacts to the **Stream** channel. **At the discretion and direction of RIDEM, additional soil erosion and sediment controls must be installed, as deemed necessary, to protect all freshwater wetlands.**

- (b) Remove all unauthorized fill material including soil material, gravel, stones, rocks, boulders, stumps, logs, debris, sediment, slash, all stored materials, equipment, vehicles, storage containers, dumpsters, porta potty, pumps, hoses, and all components of pipes/culverts from the **Swamp, Pond, River/Stream, Streams, ASSF, Perimeter Wetlands, Riverbank Wetlands, and Floodplain** on the Properties (Instances 1-9 on Exhibit A). All fill material that is removed must be deposited in an appropriate upland location (offsite as needed), **outside all Freshwater Wetlands, Buffers/Buffer zones, and any other Jurisdictional Areas.** Fill must be removed down to original grade to a point where original native (organic) soils are encountered, and the area restored to the conditions that existed prior to the initiation of the unauthorized alteration.
- (c) Following fill removal operations, the affected **Swamp, Pond, River/Stream, Streams, ASSF (channels) and Floodplain** must be re-established and restored to the conditions that existed prior to the initiation of the unauthorized alterations, as follows:
 - (i) **Swamp** areas affected by filling and excavating operations (Instances 1-3 on Exhibit A) must be restored to their original unaltered condition throughout the site. All unauthorized fill material must be removed down to the original surface grade of the **Swamp**, matching the grade of the surrounding undisturbed wetlands to the appropriate depth to provide for adequate surface hydrology, and including the creation of irregular topography (at the direction of RIDEM) throughout the altered **Swamp**. Prior to proceeding to the next restoration step, RIDEM must perform an inspection to assess the site conditions and direct Respondents (or their agents) on how to proceed. Following fill removal down to the original **Swamp** grade, if an adequate organic soil substrate is not present (i.e., if it had been removed), then an additional 8 inches of soil material must be removed from the altered portions of the **Swamp**. The restoration areas must then be backfilled with a minimum of 8 inches of high-organic plantable soil to re-establish the correct **Swamp** elevations and hydrologic regime in the areas of concern. While performing the final grading work within the **Swamp**, small, slightly elevated mounded areas may be created (at

appropriate spacing), as needed, using high-organic plantable soil, on or within which tree and shrub plantings may be installed. All disturbed surface areas within the affected/restored **Swamp** in the areas of concern must be seeded with a wetland seed mix. A thick mat of straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all disturbed surfaces to provide stabilization. The restored **Swamp** surface areas must then be planted with appropriate trees and shrubs as specified in subsection (e)(i) below. All restoration work within the **Swamp** must be undertaken during an accepted “low flow” period (generally July 1 - October 31).

- (ii) The **Pond** edge (Instance 2 on Exhibit A) must be re-established at its original location. The bottom and side slopes must be covered with a minimum of 8 inches of high-organic plantable soil. The side slopes must then be seeded with a wetland seed mix applied to the bottom and lower side slopes and a wildlife conservation seed mix applied to the upper portions of the side slopes, then covered with an appropriate biodegradable erosion control matting material (e.g., jute mesh). All restoration work within the **Pond** must be undertaken during an accepted “low flow” period (generally July 1 - October 31).
- (iii) The affected portions of the **River/Stream** channel (Instance 4 on Exhibit A) must be re-established in the original location and condition to allow for continuous uninterrupted flow in a north/northwest direction. The channel bottom and side slopes must match the conditions present within the adjacent/proximate undisturbed **River/Stream** channel. Channel side slopes (both sides) must be graded to a maximum 2:1 slope to allow for the creation of stable streambank areas. Preliminary grading must allow for the application of plantable soil (as outlined below). Prior to proceeding to the next restoration step, RIDEM must perform an inspection to confirm that the preliminary grading (side slopes and bottom) is correct and proper flows will be established. The completed bottom and side slopes of the **River/Stream** channel must then be properly stabilized by applying a minimum of 4 inches of high-organic plantable soil, as needed. The bottom and side slopes of the restored **River/Stream** channel must then be seeded with a wetland seed mix applied to the bottom and lower side slopes and a wildlife conservation seed mix applied to the upper portions of the side slopes, then immediately covered with an appropriate biodegradable erosion control matting material (e.g., jute mesh). All restoration work within the **River/Stream** must be undertaken during an accepted “low flow” period (generally July 1 - October 31).

- (iv) The **Stream** channel (Instance 5 on Exhibit A) must be re-established in the original pre-alteration location, establishing a stable channel bottom and side slopes to allow for continuous uninterrupted flow in a northern direction and connect to the **River/Stream** channel (Instance 4). The channel bottom and side slopes must match the conditions present within the adjacent/proximate undisturbed **Stream** channel. **Stream** channel side slopes (both sides) must be graded to a maximum 2:1 slope to allow for the creation of stable streambank areas. Preliminary grading must allow for the application of plantable soil (as outlined below). Prior to proceeding to the next restoration step, RIDEM must perform an inspect to confirm that the preliminary grading (side slopes and bottom) is correct and proper flows will be established. The completed bottom and side slopes of the **Stream** channel must be properly stabilized by applying a minimum of 4 inches of high-organic plantable soil, as needed. The bottom and side slopes of the restored **Stream** channel must then be seeded with a wetland seed mix applied to the bottom and lower side slopes and a wildlife conservation seed mix applied to the upper portions of the side slopes, then covered with an appropriate biodegradable erosion control matting material (e.g., jute mesh). All restoration work within the **Stream** must be undertaken during an accepted “low flow” period (generally July 1 - October 31).
- (v) The affected portions of the **Stream** channel (Instance 6 on Exhibit A) must be re-established in the original pre-alteration location and condition. The affected portions of the **Stream** must be excavated and graded to allow for continuous uninterrupted flow in a northern direction. The channel bottom and side slopes must match the conditions present within the adjacent/proximate undisturbed **Stream** channels. **Stream** channel side slopes (both sides) must be graded to a maximum 2:1 slope to allow for the creation of stable streambank areas. Preliminary grading must allow for the application of plantable soil (as outlined below). Prior to proceeding to the next restoration step, RIDEM must perform an inspection to confirm that the preliminary grading (side slopes and bottom) is correct and proper flows will be established. The completed bottom and side slopes of the **Stream** channel must be properly stabilized by applying a minimum of 4 inches of high-organic plantable soil, as needed. The bottom and side slopes of the restored **Stream** channel must then be seeded with a wetland seed mix applied to the bottom and lower side slopes and a wildlife conservation seed mix applied to the upper portions of the side slopes, then covered with an appropriate biodegradable erosion control matting material (e.g., jute mesh). All restoration work within the **Stream** must be undertaken during an accepted “low flow” period (generally July 1 - October 31).

- (vi) The **ASSF** channel (Instance 9 on Exhibit A) must be re-established in the original pre-alteration location and condition, establishing a stable channel bottom and side slopes to allow for continuous uninterrupted flow in a northeast direction, connecting the **Pond** to the **Swamp**. The **ASSF** channel side slopes (both sides) must be graded to a maximum 2:1 slope to allow for the creation of stable embankment. Preliminary grading must allow for the application of plantable soil (as outlined below). Prior to proceeding to the next restoration step, RIDEM must perform an inspection to confirm that the preliminary grading (side slopes and bottom) is correct and proper flows will be established. The completed bottom and side slopes of the **ASSF** channel must be properly stabilized by applying a minimum of 4 inches of high-organic plantable soil, as needed. The bottom and side slopes of the restored **ASSF** channel must then be seeded with a wildlife conservation seed mix and covered with an appropriate biodegradable erosion control matting material (e.g., jute mesh). All restoration work within the **ASSF** must be undertaken during an accepted “low flow” period (generally July 1 - October 31).
- (vii) A flood study must be completed by a Professional Engineer (“PE”), in conformance with Parts 1.7(A)(6)(a) and (c) (2&3) and Part 1.18 (Appendix 2) (E)(1-3) of the FWW Rules to determine the 100-year base flood elevation throughout the Properties (“Flood Study”). All fill material must be removed from the **Floodplain** to an elevation at or below the 100-Year Flood Elevation identified in the Flood Study. All restored (final) grades within **Floodplain** must be verified by a qualified PE or Professional Land Surveyor, with documentation of properly restored surface grades submitted to RIDEM for review and approval.
- (d) Related to Requirements 2(b) and 2(c) above, once the fill removal is complete, RIDEM must perform an inspection to approve the final grades prior to continuing with restoration work.
- (e) After the final grades have been inspection and approved by RIDEM, plant all disturbed areas beyond the original LOD, including **Swamp**, **Perimeter Wetlands**, and **Riverbank Wetlands** (Instances 1, 2, portions of 3, 7, and 8 on Exhibit A) with trees and shrubs within the altered/restored as follows:
 - (i) Balled and burlapped or transplanted tree species must be planted in interspersed fashion 10 feet on center, 6 feet tall after planting, throughout the **Swamp**, on **slightly elevated mounds**. Tree species must be obtained from nursery stock raised in hydric conditions and include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Black birch, *Betula lenta*
Yellow birch, *Betula allegheniensis*
Black tupelo *Nyssa sylvatica*
Eastern hemlock, *Tsuga canadensis*

- (ii) Balled and burlapped, potted, or transplanted shrub species must be planted in interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the **Swamp**, on slightly elevated mounds. Shrub species must be obtained from nursery stock raised in hydric conditions and include an equal distribution of at least 5 of the following selections:

Giant rhododendron, *Rhododendron maximum*
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*
Sweet pepperbush, *Clethra alnifolia*
Red osier dogwood, *Cornus stolonifera*
Elderberry, *Sambucus canadensis*
Northern arrowwood, *Viburnum recognitum*
Winterberry, *Ilex verticillata*
Spicebush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Maleberry, *Lyonia lingustrina*
Witchhazel, *Hamamelis virginiana*

- (iii) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 6 feet tall after planting, throughout the affected (altered) **Perimeter Wetland and Riverbank Wetland areas**. Tree species must include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*
Pitch pine *Pinus rigida*
Northern white cedar, *Thuja occidentalis*

Red maple, *Acer rubrum*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Black birch, *Betula lenta*
Gray birch, *Betula populifolia*

- (iv) Balled and burlapped, potted, or transplanted shrub species must be planted in interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the affected (altered) **Perimeter Wetland** and **Riverbank Wetland** areas. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum*
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*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Witchhazel, *Hamamelis virginiana*

- (f) In addition, identify/locate the original LOD, which is illustrated on the site plans approved with the Permit and properly install “permanent buffer zone markers” in the appropriate locations along the LOD, as described in the Permit and on the plans, and install balled and burlapped or transplanted evergreen tree species in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire original LOD. 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*
White spruce, *Picea glauca*
Eastern hemlock, *Tsuga canadensis*
Red cedar, *Juniperus virginiana*

- (g) If any of the required plantings fail to survive at least 2 full years from the time they have been planted, you shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over 2 full years.

- (h) All areas of disturbed surface soils shall be covered with an appropriate plantable soil (if necessary), seeded with a wetland seed mix (within restored **Swamp** surface areas) or a wildlife conservation grass seed mixture (within **Perimeter Wetland** and **Riverbank Wetland** and/or immediately adjacent disturbed upland zones), and covered with a mat of loose straw mulch (as previously described above).
 - (i) All restored wetland areas beyond the LOD, 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 or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands, buffers/buffer zones or other jurisdictional areas on the Properties, without first obtaining a valid permit from RIDEM.
 - (j) All required restoration work to be performed within **Swamp, Pond, River/Stream, Streams, ASSF, and Floodplain** must be completed during an appropriate low flow period (July 1 through October 31).
 - (k) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sediment controls must be removed from the freshwater wetlands. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
 - (l) Retain the services of a qualified environmental consultant approved by RIDEM, and have the consultant provide continual inspection and monitoring of the required wetland restoration work through the completion of the project. Documentation must be provided to RIDEM, in the form of a signed contract or other acceptable proof, that a qualified environmental consultant has been retained. Bi-weekly monitoring reports must be provided by the retained consultant to RIDEM for review and consideration. Additional restoration work may be required at the direction of RIDEM.
 - (m) All the restoration work outlined above must be completed prior to **October 31, 2025.**
- (3) Contact Shawna Smith of RIDEM's Office of Compliance and Inspection at (401) 537-4478 or at shawna.smith@dem.ri.gov prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with RIDEM.

E. PENALTY

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$68,500

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV.
- (3) Penalty payments shall be by one of two methods:
- (a) 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
- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (4) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).
- (b) Be **RECEIVED** by RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:
- Tricia Quest, Esq.
RIDEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
 - (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) An original signed copy of the NOV is being forwarded to the Town of Richmond, Rhode Island wherein the Properties are located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 2-1-24(a), as amended.
 - (7) The NOV does not preclude RIDEM from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of RIDEM's Office of Legal Services at (401) 537-4413 or tricia.quest@dem.ri.gov. All other inquiries should be directed to Shawna Smith of RIDEM's Office of Compliance and Inspection at (401) 537-4478 or shawna.smith@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Jordan E. Carlson
18B Lady Slipper Trail
Charlestown, RI 02813

Jordan E. Carlson d/b/a Buttonwoods MX
18B Lady Slipper Trail
Charlestown, RI 02813

Jordan E. Carlson d/b/a Buttonwoods Motocross
29 Buttonwoods Rd.
Richmond, RI 02899

Jordan E. Carlson d/b/a RIMX, LLC
18B Lady Slipper Trail
Charlestown, RI 02813

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands

File No.: OCI-FW-22-34

Respondents: Jordan E. Carlson, Jordan E. Carlson d/b/a Buttonwoods MX,
Jordan E. Carlson d/b/a RIMX LLC, and Jordan E. Carlson d/b/a
Buttonwoods Motocross

GRAVITY OF VIOLATION

SEE ATTACHED "PENALTY MATRIX WORKSHEETS."

VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and D (2) – Wetland alterations to Swamp – Fact C(11)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland alterations to Swamp and Pond – Fact C(11)(b), and C(11)(c)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland alterations to River/Perennial Stream – Fact C(11)(d)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland alterations to Stream – Fact C(11)(e)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland alterations to Stream – Fact C(11)(f)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland alterations to Perimeter/ Riverbank Wetland – Fact C(11)(g)	Type I <i>(\$5,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000

GRAVITY OF VIOLATION

SEE ATTACHED "PENALTY MATRIX WORKSHEETS."

VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and D (2) – Wetland alterations to Perimeter/ Riverbank Wetland – Fact C(11)(h)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 Violation	\$10,000
D (1) and D (2) – Wetland alterations to ASSF – Fact C(11)(i)	Type I <i>(\$10,000 Max. Penalty) *</i>	Minor	\$1,000	1 violation	\$1,000
D (1) and D (2) – Wetland alteration to Pond – Fact C (12)	Type I <i>(\$10,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$68,500

*Maximum Penalties represent the maximum penalty amounts per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$68,500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Swamp – Fact C(11)(a)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing, stumping, grubbing, excavating, filling (with at least soil, rocks, slash, debris, sediment, and storage of various vehicles, materials, and equipment), grading and soil disturbances within Swamp associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvements. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. Prior to the initiation of the unauthorized alterations/improvements, the Swamp was forested and undisturbed (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.		

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- (5) **Duration of the violation:** Full duration unknown – approximately 7 years. RIDEM’s review of aerial photographs showed that **Swamp** alterations began in Spring 2018.
- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 148,800 square feet (3.4 ± acres) of **Swamp**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **Swamp** extending to other portions of the Carlson Property not associated with the Permit. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. The Permit sign was posted at the entrance to the Carlson Property. Carlson purchased the property on 8 December 2017. Additionally, portions of the **Swamp** had standing/flooded water. Thus, Respondents knew or should have known that the **Swamp** is a wetland. Carlson was issued several Cease and Desists by RIDEM to stop working in the wetlands. Respondents failed to comply with the Cease and Desists and have continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **Swamp** was present and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows for RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Alterations to **Swamp** resulted in at least 6 separate and distinct violations. RIDEM could have assessed a maximum penalty of \$10,000 for each violation; however, RIDEM decided to assess a single penalty for all the violations.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Swamp and Pond – Fact C(11)(b), and C(11)(c)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing, stumping, grubbing, excavating, filling (with at least soil, rocks, slash, debris, sediment, and storage of various vehicles, materials and equipment), grading and soil disturbances within Swamp and Pond associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvements, including but not limited to, improvement to an existing cart path. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. A small existing disturbed open dirt area was present in the northern portion of the Carlson Property, portions of which were replanted and restored under the Permit. Prior to the initiation of the unauthorized alterations/improvements, the remainder of the Swamp was forested and undisturbed (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.		

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- (5) **Duration of the violation:** Full duration unknown – approximately 7 years. RIDEM’s review of aerial photographs showed that **Swamp** alterations began in Spring 2018.
- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 38,800 square feet of **Swamp** (Facts C(11)(b) and C(11)(c) above).
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **Swamp** and **Pond** on the Carlson Property. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. The Permit sign was posted at the entrance to the Carlson Property. Carlson purchased the property on 8 December 2017. Additionally, portions of the northern part of the Carlson Property had permanent buffer zone markers installed prior to Carlson’s purchase of the property. Thus, Respondents knew or should have known of the presence of the **Swamp** and **Pond**. Carlson was issued several Cease and Desists by RIDEM to stop working in the wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **Swamp** and **Pond** were present and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond. The Permit sign was posted at the entrance to the Carlson Property. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows for RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Alterations to **Swamp** resulted in at least 4 separate and distinct violations. RIDEM could have assessed a maximum penalty of \$10,000 for each violation; however, RIDEM decided to assess a single penalty for all the violations.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to River/Perennial Stream – Fact C(11)(d)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by filling (with at least soil, rocks, slash, sediment, and debris), diverting, grading, and related soil disturbances associated with construction of dirt roads, ramps/jumps, and other site improvements along and in a River/Perennial Stream channel (less than 10 feet wide), including installation of 2 culverts for 2 road crossings, and a third ramp/jump crossing. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. Prior to the alterations the River/Perennial Stream was completely undisturbed, located within a vegetated forested Swamp. The channel was fully open and unobstructed, with no culverts/crossings. There was a full canopy of overstory vegetation, thick understory of shrubs along both sides of the River/Perennial Stream and emergent and submergent vegetation in the River/Perennial Stream. The adjacent jurisdictional upland was also undisturbed and densely vegetated forest. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.		

(continued)

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- (5) **Duration of the violation:** Full duration unknown – at least 4 years. RIDEM’s review of aerial photographs showed that the **River/Perennial Stream** was first altered between Spring 2020 and Spring 2021.
- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 540 linear feet (3,100 square feet) of **River/Perennial Stream**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **River/Perennial Stream** extending to other portions of the Carlson Property not associated with the Permit. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson purchased the property on 8 December 2017. Additionally, the **River/Perennial Stream** was designated a perennial stream by the United States Department of Interior Geologic Survey on topographic maps. Thus, Respondents knew or should have known the **River/Perennial Stream** is a wetland. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **River/Perennial Stream** was present and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows for RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Alterations to the **River/Perennial Stream** resulted in at least 4 separate and distinct violations. RIDEM could have assessed a maximum penalty of \$10,000 for each violation; however, RIDEM decided to assess a single penalty for all the violations.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Stream – Fact C(11)(e)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by at least filling (with at least soil), grading, and soil disturbances resulting in the elimination of a Stream channel (less than 10 feet wide). The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. Prior to the alterations, the Stream is visible on several years of aerial photographs, flowing north out of a small, flooded area of Swamp and merging with the larger River/Stream channel. The area around the channel was fully forested. Amount of the pollutant: Considered, but not utilized for this calculation. Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. Duration of the violation Full duration unknown – at least 4 years. The unauthorized alterations were first documented by RIDEM on 22 June 2022. RIDEM’s review of aerial photographs showed that the Stream was altered between Spring 2020 and Spring 2021.		

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- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 125 linear feet (250 square feet) of **Stream**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **Stream** extending to other portions of the Carlson Property not associated with the Permit. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson purchased the property on 8 December 2017. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **Stream** was present and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Stream – Fact C(11)(f)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by at least filling (with at least soil, rocks, and sediment), grading, and soil disturbances within a Stream channel (less than 10 feet wide) associated with the construction of dirt roads, ramps/jumps, and other site improvement including 2 road crossings and installation of 2 culverts. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. Prior to the alterations, the Stream channel was completely undisturbed, located within a vegetated forested Swamp. The channel was fully open and unobstructed with no culverts/road crossings. There was a full canopy of overstory vegetation, with thick understory of shrubs along both sides of the Stream. The adjacent jurisdictional upland was also undisturbed and densely vegetated forest. The area around the channel was fully forested. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.		

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- (5) **Duration of the violation** Full duration unknown – at least 5 years. The unauthorized alterations were first documented by RIDEM on 22 June 2022. RIDEM’s review of aerial photographs showed that the **Stream** was first altered between Spring 2019 and Spring 2020. The Spring 2021 photographs showed additional alteration to the **Stream**.
- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 150 linear feet (1050 square feet) of **Stream**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **Stream** extending to other portions of the Carlson Property not associated with the Permit. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson purchased the property on 8 December 2017. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **Stream** was present and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows for RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Alterations to the **Stream** resulted in at least 3 separate and distinct violations. RIDEM could have assessed a maximum penalty of \$10,000 for each violation; however, RIDEM decided to assess a single penalty for all the violations.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Perimeter/Riverbank Wetlands – Fact C(11)(g)

VIOLATION NOs.: D (1) and D (2)

TYPE		
___X___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	___TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	___TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<u>FACTORS CONSIDERED:</u> Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing, stumping, grubbing, filling (with at least soil, rocks, slash, debris, and storage of various vehicles, materials, and equipment), grading, and soil disturbances within Perimeter Wetlands and Riverbank Wetlands associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvement. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. Prior to the alterations the Perimeter Wetland and Riverbank Wetland were largely undisturbed, fully stable, and vegetated. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least 5 years. The unauthorized alterations were first documented by RIDEM on 22 June 2022. RIDEM’s review of aerial photographs showed that the Perimeter/Riverbank Wetlands alterations first began in Spring 2018.		

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- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 122,000 square feet (2.8± acres) of **Perimeter/Riverbank Wetlands**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows for RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$5,000 per violation. Alterations to **Perimeter Wetland** and **Riverbank Wetland** on the Properties resulted in at least 8 separate and distinct violations. RIDEM could have assessed a maximum penalty of \$5,000 for each violation; however, RIDEM decided to assess a single penalty for all the violations.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Perimeter/Riverbank Wetlands – Fact C(11)(h)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing, stumping, grubbing, filling (with at least soil, rocks, slash, debris, and storage of various vehicles, materials, and equipment), grading, and soil disturbances within Perimeter Wetlands and Riverbank Wetlands associated with the construction of dirt roads, ramps/jumps, parking areas, and other site improvement. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. A small existing disturbed area was present in the northern portion of the Carlson Property, portions of which were replanted and restored under the Permit. Prior to the alterations the Perimeter Wetland and Riverbank Wetland were largely undisturbed, fully stable, and vegetated. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least 7 years. The unauthorized alterations were first documented by RIDEM on 22 June 2022. RIDEM’s review of aerial photographs showed that the Perimeter/Riverbank Wetlands alterations first began in Spring 2018.		

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- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 38,300 square feet of **Perimeter/Riverbank Wetlands**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **Perimeter Wetland** and **Riverbank Wetland** on the Carlson Property. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. The Permit sign was posted at the entrance to the Carlson Property. Additionally, portions of the northern part of the Carlson Property had permanent buffer zone markers installed prior to Carlson's purchase of the property. Carlson purchased the property on 8 December 2017. Thus, Respondents knew or should have known of the presence of **Perimeter Wetland** and **Riverbank Wetland**. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **Perimeter Wetland** and **Riverbank Wetland** were present on the Carlson Property and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows for RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Alterations to **Perimeter Wetland** and **Riverbank Wetland** on the Properties resulted in at least 2 separate and distinct violations. RIDEM could have assessed a maximum penalty of \$10,000 for each violation; however, RIDEM decided to assess a single penalty for all the violations.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to ASSF – Fact C(11)(i)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by excavating, diverting, filling, (with at least soil), installation of a culvert, and soil disturbances associated with crossing ASSF. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are high value. A small existing disturbed area was present in the northern portion of the Carlson Property, portions of which were restored under the Permit. Prior to the initiation of the unauthorized alterations/improvements, the ASSF was depicted in the site plans for the Permit as an open channel flowing out of the pond over the driveway and into the swamp and stream. It was part of the previously restored section of wetland, with the areas surrounding the channel being re-planted and vegetated in 2017, prior to the alterations. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.		

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- (5) **Duration of the violation:** Full duration unknown. At least 3 years. The unauthorized alterations were first documented by RIDEM on 22 June 2022.
- (6) **Areal extent of the violation:** These activities resulted in the unauthorized alteration of approximately 30 linear feet (80 square feet) of **ASSF**.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **ASSF** on the Carlson Property. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson purchased the property on 8 December 2017. The Permit sign was posted at the entrance to the Carlson Property. Thus, Respondents knew or should have known of the presence of the **ASSF**. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **ASSF** was present on the Carlson Property and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,000	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland alterations to Pond – Fact C (12)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Rules. (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by withdrawing water from the Pond. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program (2) Environmental conditions: The Properties are in the upper Wood River watershed, located completely within a mapped RI Natural Heritage Area. Species documented in this area include the State Endangered Ringed Boghaunter and several plants of State Concern. A large wetland system is present throughout the majority of the Carlson Property (extending onto the Richmond 208 Property and the Town Property), including forested Swamp, Pond, portions of a River, several Stream channels, and ASSFs. The subject wetlands are hydrologically connected to Arcadia State Management Area. Vegetation documented within the undisturbed portions of the Swamp is diverse and includes red maple, white pine, sweet pepperbush, winterberry, highbush blueberry, swamp azalea, narrow leaved cattail, hardhack, jewelweed, Jack in the pulpit, sphagnum moss, skunk cabbage, cinnamon fern, sensitive fern, royal fern, tussock sedge, lurid sedges, soft rush, arrowhead, sweet flag, meadow rue, and Phragmites. The Swamp includes a stand of evergreen Atlantic White Cedar which is considered a rare freshwater wetland type. Wildlife documented on site include green frog, little brown bat, bull frog, Eastern chipmunk, ebony jewelwings, Northern white-tailed deer, coyote, downy woodpecker, common yellowthroat warbler, Eastern phoebe, American robin, bluegray knatcatcher, hairy woodpecker, pine warbler, white breasted nuthatch, brown headed cowbird, eastern tufted titmouse, mallard, American crow, common raven, northern flicker, black capped chickadee, turkey vulture, and painted turtles. The Swamp and River/Stream corridors are of high value (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown. At least 4 years. The unauthorized alterations were first documented by RIDEM on 22 June 2022. However, based on social media post this activity has been occurring on a continuing basis since at least May 13, 2021. (6) Areal extent of the violation: Considered, but not utilized for this calculation.		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance. The plans approved with the Permit clearly showed the **Pond** on the Carlson Property. The Permit was recorded in the land evidence records for Richmond on 7 August 2017. Carlson purchased the property on 8 December 2017. The Permit sign was posted at the entrance to the Carlson Property. Thus, Respondents knew or should have known of the presence of the **Pond**. Carlson was issued several Cease and Desists by RIDEM to stop working in wetlands. Respondents failed to comply with the Cease and Desists and has continued to work in the wetlands.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the project, and the violation was foreseeable. Respondents either knew or should have known that the **Pond** was present on the Carlson Property and knew or should have known about the requirements within the FWW Rules as the Permit was recorded in the land evidence records for Richmond. Carlson was issued a verbal Cease and Desist on 21 March 2022, and on 22 June 2022. A written Cease and Desist was served to Carlson on 7 October 2022.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$2,500	\$500 to \$1,000	\$100 to \$500