

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: Albert Faella
 Debra Parente
 A.C.D. Development, LLC**

**FILE NO.: FW C10-0078
AAD NO.: 11-007/FWE**

CONSENT AGREEMENT

A. *INTENT & PURPOSE*

This Agreement is entered by and between the Rhode Island Department of Environmental Management’s Office of Compliance & Inspection (“RIDEM”) and Albert Faella, Debra Parente, and A.C.D. Development, LLC (the “Respondents”). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I. Gen. Laws”) for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to the Respondents by the RIDEM on 13 September 2011.

B. *STIPULATED FACTS*

- (1) WHEREAS, the property is located at 114 Danielson Pike, Assessor's Plat 14, Lot 105F, Parcels 1 and 2 in the town of Foster, RI (the “Property”).
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on 13 September 2011 the RIDEM issued a NOV to the Respondents alleging certain violations of Rhode Island’s *Freshwater Wetlands Act* and the RIDEM’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (4) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the Respondents hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (6) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island’s *Freshwater Wetlands Act* and the RIDEM’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.

C. *AGREEMENT*

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – Within 10 days of the receipt of the fully executed Agreement from the RIDEM, the Respondents shall record this Agreement in the land evidence records of the town of Foster, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) CONDITIONS –
 - (a) **By 31 October 2014** the Respondents shall complete all wetland restoration work described below and as depicted and described on plans entitled “Proposed Wetland Restoration & Replication Plan, DEM Notice of Violation File No. FW C10-0078, Albert Faella & Debra Parente/ACD Development, LLC,” sheet 1 of 2, revised dated 4/24/13 and “Detail Sheet,” sheet 2 of 2, revised dated 3/29/13, both sheets received by the RIDEM on 25 April 2013 (the “Restoration Plan”). The Restoration Plan is attached hereto and incorporated herein as Attachment A. It is acknowledged that any discrepancy between Attachment A and the requirements of this Agreement shall be governed by the Agreement.
 - (i) Prior to the commencement of the wetland replication depicted and described on Attachment A, install a continuous uninterrupted line of erosion and sedimentation controls between those portions of the proposed work and the adjacent undisturbed wetlands. The controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of the RIDEM, additional soil erosion and sediment controls must be installed, as deemed necessary, to protect any and all freshwater wetlands.

- (ii) All soils excavated from the wetland replication area shall be removed to a suitable upland area, outside of any and all freshwater wetlands. Special care must be taken to stay out of the undisturbed forested Perimeter Wetland immediately north of the proposed replication area.
 - (iii) Plantings shall be installed in all areas as depicted and described on Attachment A. Those areas marked in pink shall be planted with trees and shrubs as defined in the General Notes on Attachment A.
 - (iv) Erosion and sedimentation controls must be removed from the wetlands mitigation area upon stabilization of all unstable soils and completion of all planting depicted and described on Attachment A.
 - (v) If any or all of the required plantings fail to survive at least 1 year from the time planting has been verified by the RIDEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least 1 year.
 - (vi) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a valid permit from the RIDEM.
- (b) With the exception of any work required by this Agreement or as allowed as an exempt activity under the RIDEM's *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*, Rule 6.00, the Respondents shall not alter the character of any freshwater wetland by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of the RIDEM.
- (c) The Respondents agree to retain the services of a qualified environmental consultant to provide continual inspection and monitoring of the required wetland restoration and replication work throughout the completion of the project. Monitoring reports shall be provided by the consultant to the RIDEM as outlined in Attachment A.
- (d) If the RIDEM determines that adequate hydrology has not been established within the wetland replication area during the monitoring period required in paragraph C(5)(c) above, the Respondents agree to lower the grade within the wetland replication area sufficient to attain the proper hydrology.

- (e) Penalty – Respondents shall pay to the RIDEM the sum of **\$6,000.00** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to the RIDEM the sum of **\$500.00**.
 - (ii) The remainder of the penalty, \$5,500.00, shall be paid to the RIDEM in 11 equal and consecutive monthly installments of **\$500.00**.
 - (iii) Penalties that the Respondents agree to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 - (iv) In the event that the Respondents fail to remit to the RIDEM a payment on or before its due date, that payment will be considered late and the Respondents will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12% per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

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

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

- (v) All penalty payments shall be in the form of a certified check, cashier's check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

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

- (6) RIGHT OF ACCESS – The Respondents shall provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondents shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. The Respondents shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of

access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV. Upon the Respondents’ successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Respondents for recording. The recording of the Releases shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with paragraphs C(5)(a), C(5)(b), C(5)(c) or C(5)(d) of the Agreement, the Respondents shall pay a stipulated penalty of \$500.00 per month for each and every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude the RIDEM from seeking any other appropriate remedy (i.e., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, the RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondents may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.

- (7) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

Harold K. Ellis, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7401

Marisa Desautel, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2408

Mary B. Shekarchi, Esquire
33 College Hill Rd., Suite #15E
Warwick, RI 02886
(401)828-5030

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree to notify the RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) DEFERRAL – The RIDEM may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

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

For Albert Faella

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2014, before me personally appeared Albert Faella to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

Notary Public
My Commission Expires: _____

For Debra Parente

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2014, before me personally appeared Debra Parente to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

Notary Public
My Commission Expires: _____

For A.C.D. Development, LLC

By: _____ (Print Name)

Dated: _____

In my capacity as _____ of A.C.D. Development, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind A.C.D. Development, LLC, to satisfy any obligation imposed upon it pursuant to said Agreement.

In _____, in said County and State, on this _____ day of _____, 2014, before me personally appeared _____, the _____ of A.C. D. Development, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of A.C. D. Development, LLC, and s/he acknowledged said instrument by him/her executed, to be his/her free act and deed in said capacity and the free act and deed of A.C.D. Development, LLC.

Notary Public
My Commission Expires: _____

For the State of Rhode Island Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____