

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

**In Re: 102 Properties, Ltd.
Willis Properties, LLC
Norman P. Marsocci**

**File No.: FW C03-0292
x-ref C89-0117, C07-0069
AAD No.: 07-002/FWE**

CONSENT AGREEMENT

A. INTENT & PURPOSE:

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection ("RIDEM") and 102 Properties, Ltd. and Norman P. Marsocci (the "Respondents"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the *Rhode Island General Laws* ("R.I.G.L.") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents by RIDEM on April 5, 2007.

B. STIPULATED FACTS:

- (1) WHEREAS, the subject site is located northeast of Victory Highway, Route 102 (in the vicinity of Utility Pole Number 25), generally north/northeast of the intersection of Victory Highway (Route 102) and Barnett Lane, west of Route 95, and south-southwest of Robin Hollow Road (in the vicinity of Utility Pole Number 37), Assessor's Plat 14, Lots 5 & 7, in the Town of West Greenwich, Rhode Island (the "Property").
- (2) WHEREAS, the Property is situated generally south of a parcel of land owned by Gary F. Malikowski, the location of which is described as "approximately 1,000 feet south of Robin Hollow Road, in the vicinity of Utility Pole No, 1965, on property associated with and generally southeast of House Number 200, approximately 1,400 feet southeast of the intersection of Robin Hollow Road and Benjamin Reynolds Road, Assessor's Plat 14, Lot 1-3, in the Town of West Greenwich, Rhode Island (the "Malikowski Property").
- (3) WHEREAS, on April 5, 2007, RIDEM issued a NOV to the Respondents alleging certain violations of R.I.G.L. §2-1-21 *et seq.* and the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (4) WHEREAS, the Respondents requested an administrative adjudicatory hearing on the NOV.
- (5) WHEREAS, after further review of the Property RIDEM determined that no unauthorized wetland violations are present on AP13, Lots 15-10, 15-11, and 15-13; therefore, Willis Properties, LLC has been dismissed as a named Respondent.

- (6) WHEREAS, in lieu of proceeding to an Administrative Adjudicatory Hearing on the NOV and in order to effect a timely and amicable resolution of the NOV, 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.
- (7) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Freshwater Wetlands Act, R.I.G.L. §2-1-18 et seq. and the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.*

C. AGREEMENT:

- (1) JURISDICTION – RIDEM has jurisdiction over the freshwater wetlands at issue in its NOV File C03-0292 and has personal jurisdiction over the Respondents.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. §42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon 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 - The Respondents agree to have the fully executed Consent Agreement recorded in the land evidence records of the Town of West Greenwich, Rhode Island within ten (10) days of the receipt of the fully executed Consent Agreement from RIDEM. The Respondents shall ensure that the original Consent Agreement is recorded and returned to RIDEM at the sole expense of the Respondents.
- (5) CONDITIONS:
 - (a) The Respondents shall complete all wetland restoration work as described below and as depicted on plans entitled "Wetland Restoration 102 Properties, LTD.", sheets 1-19 latest issue dated April 21, 2009, received by RIDEM on April 22, 2009, and approved by RIDEM on April 28, 2009 (hereby incorporated and attached hereto as Exhibit A). Wetland edges depicted on Exhibit A are approximate and representational only and the Property may include other wetland types. It is acknowledged that any discrepancy between Exhibit A and the requirements of this Agreement shall be governed by the Agreement. All restoration shall be completed before **December 15, 2012.**

- (1) Prior to the commencement of restoration Respondents agree to install a continuous uninterrupted line of staked haybales or silt fence between all existing disturbed surfaces/areas to be restored and the adjacent undisturbed freshwater wetlands. Appropriate log-and-hay checkdams shall be installed as necessary within any Stream, Intermittent Stream, or stormwater channel located immediately downslope of all wetland restoration areas. Prior to the restoration of these wetlands, appropriate log-and-hay checkdams shall be installed as necessary in the channels immediately downstream of the restoration work area. Haybale checkdams shall be installed at appropriate intervals to ensure the prevention of any adverse impacts to the wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. This work shall be completed as illustrated and required on Exhibit A At the discretion and direction of representatives of RIDEM, additional soil erosion and sediment controls shall be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (2) All unauthorized fill material shall be removed from the Special Aquatic Site (open water wetland), Swamp, Stream channels, 50-foot Perimeter Wetlands, 100-foot Riverbank Wetlands, and 200-foot Riverbank Wetlands on the Property. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands. This work shall be completed as illustrated and required on Exhibit A (e.g., grading, soil erosion/sediment controls, site stabilization best management practices, construction sequencing, restoration plant installations, and pertinent notes and details).
- (3) The Special Aquatic Site (“SAS”), which is the subject of RIDEM File No. FWC89-0117 and is located in the historic (older) gravel mining areas that are situated in the western portion of the Property, shall be re-established in its original location. The SAS is shown on Sheets 9 and 16 (Panel 6) of Exhibit A. As part of this requirement, an existing gravel access road shall be abandoned (and re-located) and a culvert shall be removed, providing an open channel surface connection from the re-established SAS to an existing Pond located downstream. The existing gravel access road and culvert are shown on Sheets 7 and 14 (Panel 4) and Sheets 9 and 16 (Panel 6) of Exhibit A. This work shall be completed as illustrated and required on Exhibit A.
- (4) A replacement Special Aquatic Site/Forested Wetland (wetland complex) shall be created/established on the Property. The replacement Special Aquatic Site/Forested Wetland is shown on Sheets 6 and 13 (Panel 3) of Exhibit A. This work shall be completed as illustrated and required on Exhibit A.

- (5) The altered Swamp and Stream channel at the unauthorized gravel haul road (located along the northern Property line, connecting the Property to the Malikowski Property) shall be restored to their original condition. The altered Swamp and Stream channel are shown on Sheets 6 and 13 (Panel 3) of Exhibit A. This work shall be completed as illustrated and required on Exhibit A.
- (6) The former Stream channel shall be re-established to reconnect flows from the historic gravel mining areas situated in the west/northwest portions of the Property to the Swamp and Raccoon Brook situated in the central and eastern portions of the Property. The bottom and side slopes of the re-established Stream channel shall be properly stabilized with stone rip-rap and/or vegetative cover prior to the diversion of any surface flows back into the channel. The location of the former Stream channel to be re-established is shown on Sheets 6 and 13 (Panel 3) and Sheets 7 and 14 (Panel 4) of Exhibit A. This work shall be completed as illustrated and required on Exhibit A.
- (7) The gravel road re-location, stream restoration (mitigation), and culvert installation shall be completed within the historic (older) gravel mining areas situated in the western portion of the Property. The gravel road relocation, stream restoration (mitigation), and culvert installation are shown on Sheets 7 and 14 (Panel 4) of Exhibit A. This work shall be completed as illustrated and required on Exhibit A.
- (8) The “existing diversion stream channel” as shown on Sheets 5 and 12 (Panel 2), Sheets 6 and 13 (Panel 3), and Sheets 7 and 14 (Panel 4) of Exhibit A, shall be eliminated by backfilling to match the surrounding undisturbed grade. All soils used as backfill shall be the same or similar to the material that was originally excavated from the area. This work shall be completed as illustrated and required on Exhibit A.
- (9) Wetland enhancement mitigation shall be completed within the existing sediment ponds that are situated inside the 200-foot Riverbank Wetlands in the eastern portion of the Property, converting the sediment ponds into “wetland resource areas”. The existing sediment ponds are shown on Sheets 5 and 12 (Panel 2) and Sheets 8 and 15 (Panel 5) of Exhibit A. This work shall be completed as illustrated and required on Exhibit A.
- (10) The Respondents shall establish an adequate soil substrate, apply seed mixtures, install restoration plantings, and stabilize all disturbed surfaces (using acceptable best management practices) on the Property and on the Malikowski Property, within all affected (altered/restored) wetland areas. This work shall be completed as illustrated and required on Sheets 2 (Legend and General Notes), 4-9 and 11-16 (Panels 1 through 6), 18 (Planting Notes), and 19 (Details) of Exhibit A.

- (11) All slopes resulting from fill removal and/or backfilling operations, as well as all areas encompassing the required wetland restoration work, shall be regraded to match existing undisturbed surrounding grades. This work shall be completed as illustrated and required on Exhibit A.
- (12) Following fill removal and backfilling operations all disturbed surfaces within 50-foot Perimeter Wetland, 100-foot Riverbank Wetland and 200-foot Riverbank Wetland areas shall be covered with a minimum of twelve inches (12") of loam/plantable soil material, stabilized by seeding with a wildlife conservation seed mixture, and by covering all disturbed areas with a thick mat of loose hay mulch.
- (13) Trees, shrubs, and ground cover shall be planted in accordance with the requirements in Exhibit A. If less than 90% of the total number of trees or shrubs, or the total surface area of ground cover (wildlife seed mixture) fail to survive at least two (2) full growing seasons from the time they have been planted, the same plant species shall be replanted and maintained until such time that 90% survival occurs over two (2) full growing seasons. It should be noted that 90% plant survival must be attained over the **entire breadth and scope** of the restoration project area (i.e.; if, say, all mortality occurs in one particular location, replanting is required to bring the total number of restoration plants to 90% of the original number in said location).
- (14) All restored wetland areas, including replanted areas, shall be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from the RIDEM Office of Water Resources, Freshwater Wetland Permitting Program.
- (15) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall be removed from the freshwater wetlands. Staked haybales, spread hay mulch, and other organically-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the Property, all accumulated sediment shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.
- (16) The Respondents agree to retain the services of a qualified environmental consultant to provide continual inspection and monitoring of the required wetland restoration work throughout the completion of the project. Documentation shall be provided to RIDEM, in the form of a signed contract or other acceptable proof, that a qualified environmental consultant has been retained. Bi-monthly (once every two months or six per year) monitoring reports

shall be provided by the consultant to RIDEM during the entire course of the required restoration work.

- (17) Following satisfactory completion of the wetland restoration required above (as deemed acceptable by RIDEM), the environmental consultant shall perform quarterly inspections of all wetland restoration areas and any implemented/installed stormwater control measures. The consultant shall provide status reports to RIDEM every six (6) months for a period of two (2) years from the date of restoration completion. Additional wetland restoration work and/or the implementation of additional stormwater/water quality control measures may be necessary during this timeframe, as RIDEM deems appropriate, to maintain the quality of any potentially affected freshwater wetlands, both on and off the Property.
- (18) With the exception of any work required by this Consent Agreement or as allowed as an exempt activity under the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* Rule 6.00, the Respondents shall not alter the character of any freshwater wetland on site 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 Office of Water Resources, Freshwater Wetlands Permitting Program.

(b) Penalties

1. The Respondents agree to pay to RIDEM the sum of **Five-Thousand Seven-Hundred Sixty-Two Dollars and no cents (\$5,762 .00)** in administrative penalties.
2. All penalties must be received by RIDEM upon execution of the Consent Agreement by the Respondents.
3. Penalties that the Respondents agree to pay in this Consent Agreement are payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
4. All penalty payments shall be in the form of a certified check, payable to the *R.I. General Treasurer – (Water and Air Protection)*. All payments shall be delivered, along with a copy of this Agreement to:

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

- (6) RIGHT OF ACCESS – The Respondents agree to provide to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purposes of monitoring the remediation activities and compliance with this Agreement. The

Respondents shall ensure that assignees, successors in interest, lessees, and sublessees 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 or sublessee on 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 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 Respondents’ successful completion of the requirements set forth in this Agreement and payment of any noncompliance penalties resulting from the failure to comply, RIDEM shall issue a Release and Discharge of the NOV and the Consent Agreement to the Respondents for recording in the Land Evidence Records of the Town of West Greenwich.
- (2) FAILURE TO COMPLY – In the event that Respondents fail to comply with any provision of paragraphs C(5)(a) above, the Respondents shall pay an administrative penalty of Five Hundred Dollars per month for each and every month that the Respondents remain in non-compliance with this Agreement, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude 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 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, 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 § 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 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) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

Harold K. Ellis, Supervising Environmental Scientist
Office of Compliance and Inspection

Department of Environmental Management
235 Promenade Street
Providence, RI 02908
(401) 222-4700, ext. 7401

- (a) At any time prior to full compliance with the terms of this Agreement, Respondents agree to notify RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of any party shall be sent to all other parties by certified mail, return receipt requested.
- (b) Communications forwarded to the above-referenced address by certified mail, return receipt requested, shall be deemed received.
- (7) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen (15) days prior to the prescribed deadline. The fact that a review and/or decision is pending on a permit application shall not be considered “good cause” to extend the compliance dates herein.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) 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 the Respondents

Norman P. Marsocci
for 102 Properties Ltd. Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared Norman P. Marsocci to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of 102 Properties, Ltd., he acknowledged said instrument, executed by him, to be his free act and deed and the free act and deed of 102 Properties, Ltd.

Notary Public
My Commission expires: _____

Norman P. Marsocci Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared Norman P. Marsocci to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of himself, he acknowledged said instrument, executed by him, to be his free act and deed.

Notary Public
My Commission expires: _____

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

David E. Chopy, Chief
Department of Environmental Management
Office of Compliance and Inspection Date: _____