

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

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: John Mahoney**

**File Nos.: OCI-WP-20-119, STW 18-033  
and RIR101715**

**AAD No.: 21-005/WRE**

CONSENT AGREEMENT

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”), John Mahoney (“Mahoney”) and McIntosh Hill Estates (“McIntosh”). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I. Gen. Laws”) for the purpose of resolving the alleged violations set forth in a Notice of Violation (“NOV”) issued to Mahoney by RIDEM on 16 November 2021.

**B. STIPULATED FACTS**

- (1) WHEREAS the property is located at Chopmist Hill Road, Plat 45, Lots 107 and 108 in Scituate, Rhode Island (“Property”).
- (2) WHEREAS the Property was previously identified as Plat 45, Lots 17A and 17B.
- (3) WHEREAS McIntosh is the titled owner of the Property.
- (4) WHEREAS McIntosh advised RIDEM that Mahoney was engaged as McIntosh’s project manager for the development of the Property, including at the time of issuance of the NOV. Mahoney Excavating & Site Work, LLC (“Excavating”), an entity wholly owned by Mahoney, was the contractor that performed the work on the Property in February 2022. Mahoney ceased performing work and/or services on the Property in February 2022.
- (5) WHEREAS on 24 September 2013, RIDEM issued *General Permit for Stormwater Discharge Associated with Construction Activity* (“2013 Construction General Permit” or “2013 CGP”).
- (6) WHEREAS on 27 June 2018, RIDEM issued a permit (No. RIR101715) to Mahoney, in his capacity as the applicant, for coverage under the 2013 CGP to construct 6 condominium buildings and associated infrastructure at the Property (“Permit”).

- (7) WHEREAS on 16 November 2021, RIDEM issued a NOV to Mahoney, as permittee, alleging certain violations of the Permit and Rhode Island's *Water Pollution Act* (“WP Act”), *Freshwater Wetlands Act* (“FW Act”), *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (“FW Rules”), *Water Quality Regulations* (“WQ Rules”), and *Regulations for the Rhode Island Pollutant Discharge Elimination System* (“RIPDES Rules”).
- (8) WHEREAS on November 29, 2021, the NOV was recorded on the Property in the Land Evidence Records of Scituate, Rhode Island at Book 825, Page 135 (“Recorded NOV”).
- (9) WHEREAS McIntosh for the purposes of addressing the concerns raised in the NOV only (and not with regard to any other claim or claims involving Mahoney, Excavating or any other third party) accepted responsibility for the NOV issued to Mahoney, and requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (10) WHEREAS AAD is a division of RIDEM.
- (11) WHEREAS on 17 February 2022 RIDEM received from Attorney Michael Kelly, in defense of the recorded NOV a proposal dated 31 January 2022 prepared by McCue Environmental, LLC to restore the freshwater wetlands on the Property (“Wetland Restoration Proposal”). The Wetland Restoration Proposal is attached hereto and incorporated herein as Attachment A.
- (12) WHEREAS on 25 February 2022, RIDEM approved the Wetland Restoration Proposal.
- (13) WHEREAS McIntosh advised RIDEM that the funds required to complete the Wetland Restoration Proposal and pay the administrative penalty agreed upon by RIDEM and McIntosh will be available after McIntosh closes on a loan (“Closing”).
- (14) WHEREAS McIntosh retained Attorney John Shekarchi (the Escrow Agent”) to hold funds from the Closing in an attorney escrow account (the “Escrow Account”) to complete the work required for the Wetland Restoration Proposal and to pay the administrative penalty agreed upon by RIDEM and McIntosh. The Escrow Agreement is attached hereto and incorporated herein as Attachment B.
- (15) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, all signatories to this Consent Agreement 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.
- (16) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the WP Act, FW Act, FW Rules, WQ Rules and RIPDES Rules.
- (17) WHEREAS McIntosh and Mahoney find that this Agreement is reasonable and fair and enter into this Agreement with full knowledge and understanding of its terms.

### C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Mahoney and McIntosh.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. and R.I. Gen. Laws Section 42-17.7-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, and all signatories to this agreement and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Mahoney and McIntosh in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – **Within 10 days of execution of the Agreement**, McIntosh shall record this Agreement in the land evidence records for the Town of Scituate, Rhode Island and provide a copy of the recorded Agreement to RIDEM. Upon RIDEM’s receipt of the recorded Agreement, RIDEM shall issue a Release of the NOV to the attorney who will perform the Closing, to be recorded in the land evidence records for the Town of Scituate, Rhode Island. **Within 5 days of the Closing**, the attorney who performed the Closing shall provide a copy of the recorded Release to RIDEM. The recordings shall be at the sole expense of McIntosh.
- (5) CONDITIONS –
  - (a) **On the day of the Closing**, the Escrow Agent shall place **\$38,417.56** in the Escrow Account, pursuant to the Escrow Agreement. The Escrow Agent is authorized to disperse funds from the Escrow Account only for work to complete the Wetland Restoration Proposal or for payment of the administrative penalty to RIDEM. **On or after 15 November 2023**, the Escrow Agent shall disperse any remaining funds in the Escrow Account to McIntosh.
  - (b) McIntosh shall complete the following actions to comply with the Order section of the NOV:
    - (i) **Upon execution of the Agreement**, inspect, maintain, and repair as necessary all soil erosion and sediment controls (“SESC”) at the Property in full compliance with the Permit and in a manner that prevents turbid sediment laden stormwater from discharging from the Property to the stream shown on the Wetland Restoration Proposal.
    - (ii) **Upon execution of the Agreement**, regularly inspect the SESC’s at the Property in full compliance with the Permit and maintain records of all

inspections, modifications, and repairs of the SESC's ("Inspection Records") for the duration specified in the Permit

- (iii) **Within 5 days of a written request from RIDEM for the Inspection Records**, provide the Inspection Records to RIDEM.
  - (iv) **By 30 September 2022**, McIntosh, its successors, assigns, nominees shall cause to be completed all work to restore the freshwater wetlands in accordance with the Wetland Restoration Proposal as evidenced by the submission of a report to RIDEM documenting that all the work is complete.
  - (v) If any of the required plantings fail to survive at least 1 full year from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full year.
  - (vi) All restored freshwater wetlands, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, filling, grading, or other alterations or improvements are authorized within any freshwater wetlands on the Property without first obtaining a permit from RIDEM.
- (c) Penalty – McIntosh shall pay to RIDEM **\$25,000** in administrative penalties assessed as follows:
- (i) **Within 5 days of the Closing**, the Escrow Agent shall forward to RIDEM \$25,000.
  - (ii) Penalties that McIntosh agrees 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.
  - (iii) Penalty payments shall be by one of two methods:
    1. By certified check, cashier's check, or money order made payable to the **General Treasury – *Water and Air Protection Program*** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767.
    2. By wire transfer in accordance with instructions to be provided by RIDEM.

- (6) RIGHT OF ACCESS – McIntosh provides to RIDEM, its authorized officers, employees, and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. RIDEM’s right of access under this agreement shall terminate upon the issuance of a Release and Discharge as described in subsection D (1) of the Agreement or on 15 November 2023, whichever is sooner. RIDEM shall retain any and all rights of access provided or required in accordance with the terms of any permits or applicable provisions of law or regulations. McIntosh shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation if they control the Property. McIntosh 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 and shall provide this Agreement to all subsequent occupants of the Property until RIDEM issues a Release and Discharge as described in subsection D (1) of the Agreement or 15 November 2023, whichever is sooner. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property entered into between the Effective Date of this Agreement and the issuance of a Release and Discharge as described in subsection D (1) of the Agreement or 15 November 2023 (whichever is sooner) 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 McIntosh’s successful completion of the requirements set forth in the Agreement, RIDEM shall issue a Release and Discharge of the Agreement to McIntosh for recording. The recordings shall be at the sole expense of McIntosh.
- (2) FAILURE TO COMPLY – If McIntosh fails to comply with items specified in subsection C (5)(b) of the Agreement, McIntosh shall pay a stipulated penalty of \$100 per day for each day during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve McIntosh 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 statute or regulation, including, but not limited to, the issuance of

“Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Respondents may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield McIntosh or its assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**Patrick Hogan, Engineer IV**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 2777400  
[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)

**Susan Forcier, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607  
[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)

**Michael Kelly, Esquire**  
Kelly, Souza & Parmenter, PC  
128 Dorrance Street, Suite 300  
Providence, RI 02903  
(401) 490-7334 ext. 118  
[mkelly@ksplaw.com](mailto:mkelly@ksplaw.com)

**John Shekarchi, Esquire**  
Law Office of John Shekarchi  
132 Old River Road, Suite 103  
Lincoln, RI 02865  
(401) 722-3600

[office@sheklawfirm.com](mailto:office@sheklawfirm.com)

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

SIGNATURES ON FOLLOWING PAGES

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

**McIntosh Hill Estates, LLC**

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

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

In my capacity, as \_\_\_\_\_ of McIntosh Hill Estates, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind McIntosh Hill Estates, LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of McIntosh Hill Estates, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of McIntosh Hill Estates, LLC, and he/she/they acknowledged said instrument by him/her/them executed, to be his/her/their free act and deed in said capacity and the free act and deed of McIntosh Hill Estates, LLC.

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



**John Mahoney**

\_\_\_\_\_

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

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

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

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

**State of Rhode Island, Department of Environmental  
Management**

By: \_\_\_\_\_  
Administrator, Office of Compliance and Inspection

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



January 31, 2022

John Pereira  
McIntosh Hill Estates, LLC  
1 Christopher Drive  
Lincoln, RI 02865

Subject: McIntosh Estates (Chopmist Hill Estates)  
RIDEM File Nos.: OCI-WP-20-119, RIR101715 & STW18-033  
Chopmist Hill Road, Assessor's Plat 45, Lots 17A & 17B  
Scituate, Rhode Island

Dear Mr. Mahoney:

As requested, I am providing this letter to outline the wetland restoration item remaining and to provide a timeline of my inspection activities onsite.

#### Wetlands

First, I should note that I was asked to review the property back in January 2016 for the presence or absence of Freshwater Wetlands. During that investigation, I did not observe any areas of wetland proper on the parcel. Although the Web Soil Survey mapped an area of hydric Ridgebury, Whitman and Leicester (Rf) soil in the central portion of the property, I did not find any evidence of hydric soils on the subject parcel. The Bw1 soil horizon ranged from a non-hydric color of 10YR 4/6 to 10YR 5/8. It was my opinion that the Rf soil designation was incorrectly mapped on this parcel.

During that inspection, I also noted that a channel originated from an 18" pipe in the north-central portion of the property, which originates from a catch basin on Chopmist Hill Road. It was clear that stormwater runoff from Chopmist Hill Road discharged onto the subject property. However, pursuant to the Definitions in the Rhode Island Department of Environmental Management (RIDEM) Rules and Regulations governing the Administration and Enforcement of the Freshwater Wetlands Act (July 2014), an Area Subject to Storm Flowage (ASSF) is defined as "Drainage swales and channels that lead into, out of, pass through or connect other freshwater wetlands or coastal wetlands, and that carry flows resulting from storm events, but may remain relatively dry at other times." This channel did not meet this definition as it dissipates into the upland forest approximately 360' southwest of the 18" pipe.

To be sure of my interpretation and observations, an application to Determine the Presence of Wetlands was submitted to RIDEM and the determination of no wetlands occurring on the property was issued, dated July 25, 2016 (attached). The RIDEM biologist confirmed that the street drainage did not flow in to or out of a freshwater wetland. The one wetland feature noted in the determination was an off-site intermittent stream (south of the property) and the potential for the associated 100-foot Riverbank Wetland to encroach onto the property.

ATTACHMENT A



The development of the property received approvals from RIDEM under the ripdes program for the site work. A Notice of Intent to Enforce (NOI) was issued on February 17, 2021 for non-compliance with the approved Soil Erosion and Sediment Control Plan. During the spring of 2021, I was asked by the project engineer to review the items relating to the wetland encroachment which consisted of clearing within 100-foot Riverbank Wetland associated with the offsite stream. This stream was investigated and it was determined that in fact a small portion of the Riverbank Wetland encroaches onto the subject property. This area was initially restored by removing all unauthorized fill, erosion controls were installed and mulch was spread. This area is currently avoided and being allowed to revegetate naturally. A restoration of this area with native plants is proposed (See attached Figures 1, 1A & 1B).

### Soil Erosion & Sediment Control Plan Inspections

I was formally engaged by McIntosh Hill Estates, LLC to perform the required weekly inspections, or after a 0.25" or greater rain events. My first inspection was May 17, 2021. The required reporting has occurred since and is currently ongoing until such time when the site is deemed fully stabilized. All reports are forwarded to RIDEM.

Inspections from May 17 through July 21 noted offsite discharges, however, corrective actions were performed by Mr. Mahoney and there has been no off-site discharge of stormwater runoff since the July 21, 2021 inspection, and currently the site is in conformance; this is also noted in the RIDEM November 16, 2021 Notice to Owner letter and Notice of Violation (NOV) (attached) under C. Facts (45) "As of the date of the NOV, based upon the reports submitted to DEM as described in subsections C (33) through C (35), DEM believes that the Property is currently in compliance with the Permit."

As each instance of an off-site discharge was observed, I informed Mr. Mahoney of what corrective actions needed to be installed. Mr. Mahoney has accommodated my requests in a timely manner in order to reduce the risks of offsite discharge. For instance, I asked Mr. Mahoney to install mulch at the south bank of the south detention pond after my May 27, 2021 inspection. The May 30 inspection revealed that this was completed; this inspection was done after a 2.37" multi-day rain event. The vast majority of runoff onto the property was result of the pipe from Chopmist Hill Road. During the June 2021 inspections, Mr. Mahoney installed mulch and straw wattles where I directed him to, and stone boulders were installed in portions of the conveyance swale that receives the Chopmist Hill Road runoff from the pipe. The water velocity was effectively dissipated and the runoff from the pipe was controlled prior to discharging offsite. The June 30 inspections revealed that Mr. Mahoney continued to install corrective actions, including more boulders south and south east of the south detention pond. Runoff from the Chopmist Hill Road pipe was controlled after a 1.02" rain event on July 1 to July 2, with no off-site discharge. Again, on the July 6 inspection after a 0.97 rain event, no off-site discharges were observed. Hurricane Elsa came through here on July 8 to 9, with 2.20" of rain falling in a very short time. This is a very high rain event where the Chopmist Hill Road pipe discharged a very high volume of water onto the property.

A new pipe was installed by RIDOT between 8/7 and 8/13, and more stone boulders were added in the swale directly east of the pipe end. Two notable rain events occurred (8/20, 0.44" & 8/24, 0.91) since the pipe was installed. The installation of boulders from Mr. Mahoney allowed for

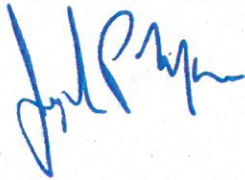
J. Pereira  
January 2022

even more velocities of runoff to be dissipated, and these events did not result in any offsite discharge.

As noted, there has been no offsite discharge of stormwater since the July 21, 2021 inspection. The corrective actions put in place by Mr. Mahoney have greatly reduced the risks of offsite discharge resulting from the installed pipe from Chopmist Hill Road as evidenced by my field inspections, in my opinion. Lastly, stormwater runoff resulting from the site itself has been contained within the property.

I hope this letter provided you with the requested information. Please do not hesitate to contact me at (401) 595-4276 if you have any questions or require additional information.


Sincerely yours,  
MCCUE ENVIRONMENTAL, LLC



Joseph P. McCue, PWS  
President  
Principal Environmental Scientist

Attachments: Figure 1 - Proposed Restoration of 100 ft. Riverbank Wetland – Locus  
Figure 1A - Proposed Restoration of 100 ft. Riverbank Wetland  
Figure 1B - Proposed Restoration of 100 ft. Riverbank Wetland (detailed notes)

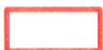








Area of 100-ft. Riverbank Wetland needed to be restored:  1, 650 s.f.  
See Figures 1A & 1B for detailed planting notes

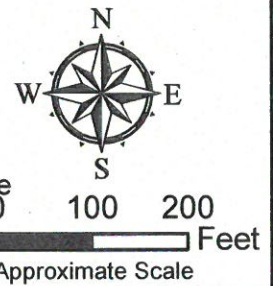


Sources: 2021 RIDEM Digital Color Orthophotography

Approximate Location of:

-  Property Boundaries
-  Offsite start of Intermittent Stream
-  100 ft. Riverbank Wetland
-  Existing Limit of Work Outside of 100 ft. RW

-  Edge of cleared area/original placed SESC
-  Proposed Screening Tree
-  Proposed Buffer Zone Markers



McIntosh Hill Estates  
Scituate, RI

**PROPOSED RESTORATION  
OF 100 ft. RIVERBANK WETLAND -  
LOCUS**




**MCCUE ENVIRONMENTAL, LLC**  
CONSULTING & WETLAND PERMITTING SERVICES  
(401) 595-4276

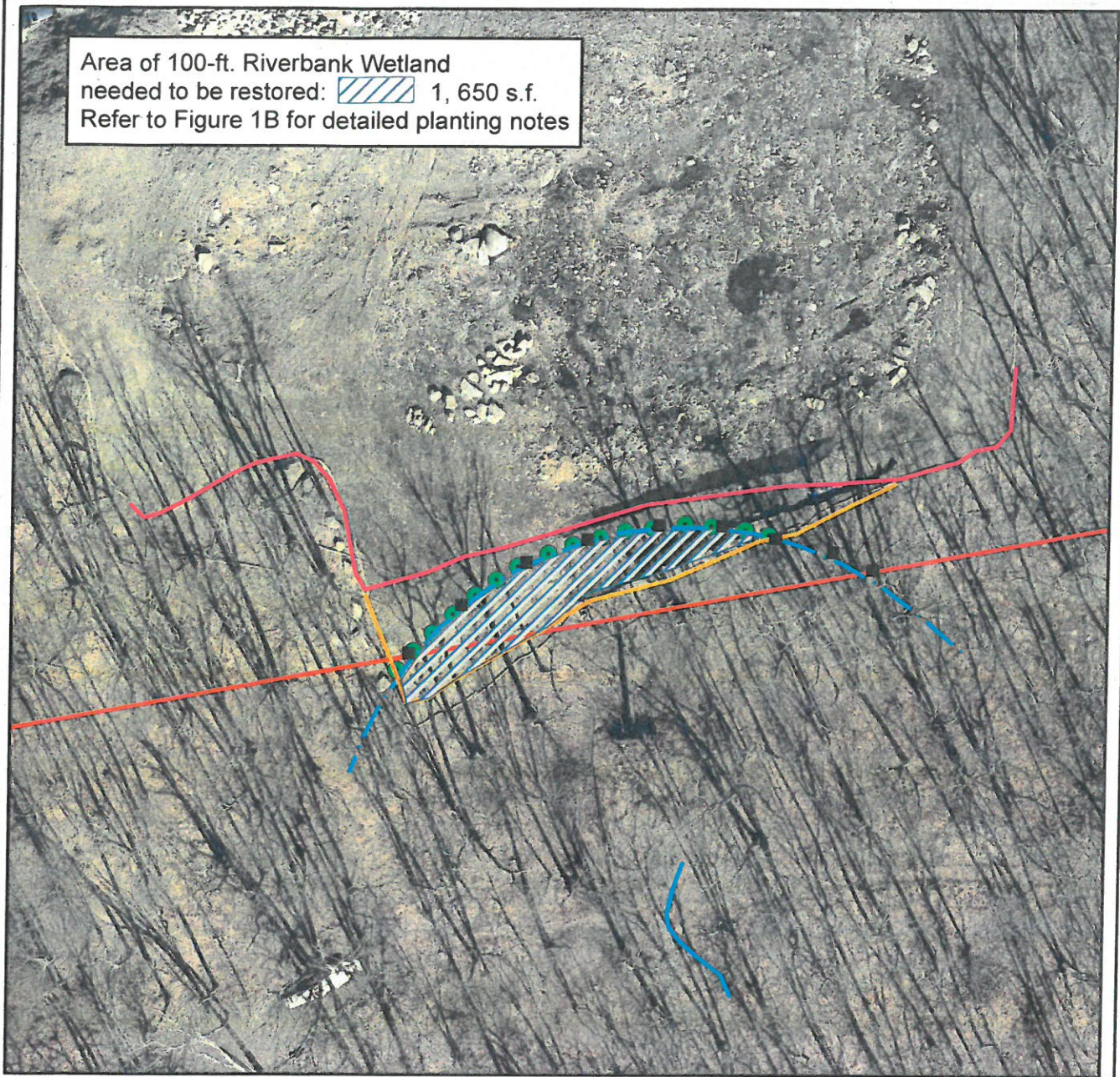
Date: 1/31/2022

Project No. 211008

Figure 1










Area of 100-ft. Riverbank Wetland  
 needed to be restored:  1, 650 s.f.  
 Refer to Figure 1B for detailed planting notes

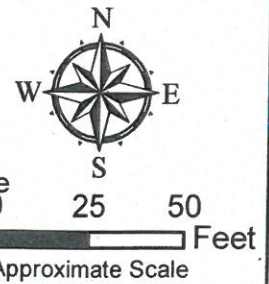


Sources: 2021 RIDEM Digital Color Orthophotography

Approximate Location of:

-  Property Boundaries
-  Offsite start of Intermittent Stream
-  100 ft. Riverbank Wetland
-  Existing Limit of Work Outside of 100 ft. RW

-  Edge of cleared area/original placed SESC
-  Proposed Screening Tree
-  Proposed Buffer Zone Markers



McIntosh Hill Estates  
 Scituate, RI

**PROPOSED RESTORATION  
 OF 100 ft. RIVERBANK WETLAND**



**MCCUE ENVIRONMENTAL, LLC**  
 CONSULTING & WETLAND PERMITTING SERVICES  
 (401) 595-4276

Date: 1/31/2022

Project No. 211008

Figure 1A



Restoration Area (1,650 s.f.) NOV Requirements E. (ORDER), E.4. & E.5.:

4a.) Erosion controls are installed properly and inspected weekly.

4b.) All fill has been removed and mulch is present.

4c.) The restoration area will be planted with approximately:

16 trees (red oak (*Quercus rubra*), red maple (*Acer rubrum*) & black cherry (*Prunus serotina*)), spaced 10' o.c., 5' tall after planting.

66 shrubs ((witch hazel (*Hamamelis virginiana*), highbush blueberry (*Vaccinium corymbosum*), arrowwood (*Viburnum dentatum*) and inkberry (*Ilex glabra*)), spaced 5' o.c., 3' tall after planting.

16 northern white cedar (*Thuja occidentalis*) and white pine (*Pinus strobus*) in a straight line along the landward limit of the 100 ft. Riverbank Wetland, 8' o.c., 6' tall after planting.

4d.) If any of the plantings fail to survive at least 1 full year from the time they have been planted, the specific specimen/species will be replaced.

4e.) Permanent buffer zone markers will be installed, as shown, at property boundaries, angle points and at 20 ft. intervals along the 100 ft. Riverbank Wetland. Markers will be 4" x 4" PT timber posts, galvanized fence posts or granite/concrete bounds, placed 24" above grade, with tags labeled "RIDEM Buiffer Zone"

4f.) If applicable, All disturbed syrfaces will be stablized with plantable soil, proper seed misture and a mat of loose straw mulch.

4g.) Work will be completed by May 30, 2022.

5.) The restored Riverbank Wetland will be allowed to revert to a natural condition

McIntosh Hill Estates  
Scituate, RI



MCCUE ENVIRONMENTAL, LLC  
CONSULTING & WETLAND PERMITTING SERVICES  
(401) 595-4276

**PROPOSED RESTORATION  
OF 100 ft. RIVERBANK WETLAND**

Date: 1/31/2022

Project No. 211008

Figure 1B



## ESCROW AGREEMENT

This Escrow Agreement is made and entered, by and between the Rhode Island Department of Environmental Management ("RIDEM"), McIntosh Hill Estates, LLC, a Rhode Island limited-liability company ("McIntosh"), and John Shekarchi, Esq.

### RECITALS

A. McIntosh owns Plat 45, Lots 107 and 108, commonly known as 1520 Chopmist Hill Road located in the Town of Scituate, Rhode Island (the "Property").

B. On November 16, 2021, RIDEM issued a Notice of Violation ("NOV"), a copy of which is attached hereto as Exhibit A, alleging John Mahoney ("Mahoney"), as permittee, discharged sediment-laden stormwater into a wetland abutting the Property and thereby allegedly violated Rhode Island's *Water Pollution Act* ("WP Act"), *Freshwater Wetlands Act* ("FW Act"), *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* ("FW Rules"), *Water Quality Regulations* ("WQ Rules"), and *Regulations for the Rhode Island Pollutant Discharge Elimination System* ("RIPDES Rules").

C. On February 17, 2022, McIntosh submitted a proposal dated January 31, 2022, prepared by McCue Environmental, LLC to restore the freshwater wetlands on the Property ("Wetland Restoration Proposal") in order to resolve the NOV. The Wetland Restoration Proposal is attached hereto and incorporated herein as Exhibit B.

D. On February 25, 2022, RIDEM approved the Wetland Restoration Proposal.

E. McIntosh agrees to remediate the Property in accordance with the Wetland Restoration Proposal.

F. The Escrow Agent has agreed to serve as the escrow agent hereunder for the purposes set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements in this Agreement, it is hereby agreed as follows:

1. Establishment of the Escrow Funds. McIntosh shall transfer the sum of \$38,417.56 (the "Escrow Funds") to the Escrow Agent, \$13,417.56 of which represents McIntosh's estimated cost to remediate the Property and abutting wetland plus a contingency amount equal to twenty percent (20%) of that estimate, with the remaining \$25,000.00 to be paid to RIDEM for administrative penalties.

2. Establishment of the Escrow Agent. The Escrow Funds shall be held by John Shekarchi, Esq. (the "Escrow Agent") whose offices are located at 132 Old River Road, Suite 103 in Lincoln, Rhode Island.

3. Reliance and Scope of Duties of Escrow Agent. RIDEM and McIntosh acknowledge and agree that with respect to the Escrow Funds, the Escrow Agent is acting solely as a stakeholder at their request and for their convenience; that the Escrow Agent shall not be

# ATTACHMENT B

deemed to be the agent of either RIDEM or McIntosh for the purposes of holding the Escrow Funds; and that the Escrow Agent shall not be liable to RIDEM or McIntosh for any act or omission on the Escrow Agent's part undertaken unless taken or suffered in bad faith, in willful disregard of this agreement, or involving gross negligence. RIDEM and McIntosh jointly and severally agree to indemnify and hold the Escrow Agent harmless from and against all liabilities, obligations, losses, damages, suits, costs, expenses or disbursements of any kind or nature arising out of the Escrow Agent's performance of his duties arising under this section, including reasonable attorneys' fees, except to the extent that any of the foregoing shall arise out of any act or omission taken or suffered by the Escrow Agent in bad faith, in willful disregard of this agreement or involving gross negligence on the part of the Escrow Agent.

4. Expenses of Escrow Agent. McIntosh shall pay all fees and expenses charged by the Escrow Agent in connection with the administration of the Escrow Funds.

5. Escrow Period. The Escrow Agent shall hold the Escrow Funds for the remediation the Property until 15 November 2023. During the Escrow Period, McIntosh is aware and understands that it is not entitled to the Escrow Funds.

6. Disbursements and Release of Escrow Funds.

(A) **On the day of Closing,** McIntosh shall deliver the Escrow Funds to the Escrow Agent. The Escrow Agent shall place the Escrow Funds in an interest-bearing, federally insured bank account in the name of the Escrow Agent, with the designation as "Escrow Agent" (hereinafter, "Escrow Account"). All interest earned on the Escrow Funds shall become a part of the Escrow Funds. McIntosh shall furnish the Escrow Agent with its federal tax identification number and such other information and/or certifications as may be required with the establishment of the Escrow Account (including, without limitation, IRS Form W-9) and McIntosh shall report on the Escrow Funds, if applicable, as income on McIntosh's tax returns in the tax year in which any such interest, if any, is received by McIntosh.

(B) **Within five (5) days of the Closing,** the Escrow Agent shall forward to RIDEM \$25,000.00 for administrative penalties in the form of a check made payable to the "General Treasury – Water and Air Protection Program" and sent to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767

(C) McIntosh acknowledges that if any of the plantings noted in the Wetland Restoration Proposal fail to survive one (1) full year from the time they have been planted, McIntosh will replant and maintain the same plant species until such time that survival is maintained over one (1) full year. McIntosh will obtain an estimate for the cost of replanting and submit the estimate to the Escrow Agent. Upon receipt of the estimate, the Escrow Agent will disperse the monies for the replanting from the Escrow Account.

- (D) The Escrow Agent shall remit all monies in the Escrow Account to McIntosh on 15 November 2023.

7. Disbursement into Court. If a dispute arises between RIDEM and McIntosh as to the disposition of the Escrow Funds, the Escrow Agent holding the Escrow Funds shall: (a) hold the Escrow Funds until the Escrow Agent has releases signed by RIDEM and McIntosh authorizing disposition of the Escrow Funds; or (b) hold the Escrow Funds until such time as one of the parties to the transaction files suit and the court in which the suit is filed orders the disbursement of the Escrow Funds; or (c) deliver such Escrow Funds into the Court by filing a Bill in Interpleader. In the event of any litigation between any of the parties to this Agreement concerning the disposition of the Escrow Funds, the Escrow Agent's sole responsibility may be met, at the Escrow Agent's option, by delivering the Escrow Funds into the court in which such litigation is pending, and the parties hereto agree that upon deliverance of the Escrow Funds into court, no party hereto shall have any further right, claim, demand, or action against the Escrow Agent.

8. Miscellaneous.

- (A) This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of RIDEM and McIntosh.
- (B) If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.
- (C) This Agreement shall be governed by the applicable laws of the State of Rhode Island.
- (D) This Agreement may not be amended or modified except in writing signed by RIDEM and McIntosh.
- (E) This Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the counterparts together shall constitute a single instrument.

9. Effective Date. This Agreement shall be deemed entered as of the date of execution by all parties.

**[SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names.

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

By: [Signature]  
Name: David E. O'Keefe  
Title: Administrator DEM Office of Compliance & Inspection  
Date: 5/19/2022

MCINTOSH HILL ESTATES, LLC

By: [Signature]  
Name: JOHN PEREIRA  
Title: Managing member  
Date: 5/9/22

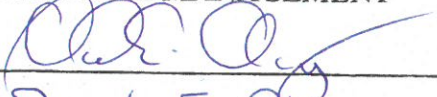
JOHN SHEKARCHI, ESQ.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names.

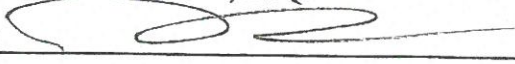
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MCINTOSH HILL ESTATES, LLC

By:   
Name: David E. Chopy  
Title: Administrator, DEM  
Office of Compliance &  
Inspection  
Date: 5/19/2022

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

JOHN SHEKARCHI, ESQ.

By:   
Name: John Shekarchi Esq  
Title: Attuy  
Date: 5.18.2022

