



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

CERTIFIED MAIL

June 26, 2014

Town of Cumberland
Daniel J. McKee, Mayor
45 Broad Street
Cumberland, RI 02864

PERMIT TO ALTER FRESHWATER WETLANDS

Re: Wetlands Application No. 13-0108 & RIPDES File RIR101078 in reference to the location below:

Approximately 700 feet east of Diamond Hill Road (Rte 114), near Utility Pole No. 365, and approximately 1250 feet southeast of its intersection with Wrentham Road (Rte 121), Assessor's Plat 59, Lots 15 & 45, Cumberland, RI

Dear Mayor McKee:

The Department of Environmental Management's ("DEM") Freshwater Wetlands Program ("Program") has completed its review of your **Application to Alter a Freshwater Wetland** regarding the proposed improvements to the audience viewing area in front of the Cumberland Music Pavilion, including filling of a man-made pond to create additional audience area and associated walkway access, along with creation of a wetland replication area to mitigate for the filled pond area, as well as construction of a boardwalk and associated landscaping as described and detailed in the material and information submitted in support of your application and on site plans received by the DEM on March 20, 2014. These site plans describing the project were made available for public comment as part of the forty-five (45) day public notice period required in accordance with the Freshwater Wetlands Act (R.I. General Laws (R.I.G.L.) Section 2-1-18 et seq.) and the procedures set forth in Rule 10.00 of the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (Rules).

This Program received five (5) letters of comment relating to your application which were submitted during the public notice period. These letters expressed concern regarding your project's impacts to freshwater wetland values. This Program reviewed these letters together with any supporting documents and evaluated the potential impacts from the project upon the values mentioned in the letters. The Program has determined that the comments contained within these letters do not constitute an objection of a substantive nature as defined in Rule 10.04 (C)(3). Therefore, a public hearing pursuant to R.I.G.L. Section 2-1-22 is not required.

Pursuant to the Program's review and evaluation of your application including all supporting information and material, as well as the record to date, the Program has determined that this project does not represent a random, unnecessary or undesirable alteration of freshwater wetlands. Therefore, this Program hereby issues this permit to alter freshwater wetlands **subject to all controlling Rules and the Terms and Conditions set forth herein.**



Permit Terms and Conditions for Application No. 13-0108, RIPDES No. RIR101078:

1. This letter is the DEM's permit for this project under the R.I. Fresh Water Wetlands Act, Rhode Island General Laws (RIGL) Section 2-1-18 et seq.
2. This permit is specifically limited to the project, site alterations and limits of disturbance as detailed on the site plans submitted with your application and received by the DEM on March 20, 2014. A copy of the site plans stamped approved by the DEM is enclosed. Changes or revisions to the project which would alter freshwater wetlands are not authorized without a permit from the DEM.
3. Where the terms and conditions of the permit conflict with the approved site plans, these terms and conditions shall be deemed to supersede the site plans.
4. A copy of the stamped approved site plans and a copy of this permit must be kept at the site at all times during site preparation, construction, and final stabilization. Copies of this permit and the stamped approved plans must be made available for review by any DEM representative upon request.
5. You must notify this Program in writing immediately prior to the commencement of site alterations and again upon completion of the project.
6. Within ten (10) days of the receipt of this permit, you must record this permit in the land evidence records of the Town of Cumberland and supply this Program with written documentation obtained from the Town showing this permit was recorded.
7. The effective date of this permit is the date this letter was issued. Pursuant to R.I. Gen. Laws § 42-17.1- 2.5 this permit is subject to tolling and shall be valid until July 1, 2016 unless renewed pursuant to the Rules.
8. Any material utilized in this project must be clean and free of matter that could pollute any freshwater wetland.
9. Prior to commencement of site alterations, you shall erect or post a sign resistant to the weather and at least twelve (12) inches wide and eighteen (18) inches long, which boldly identifies the initials "DEM" and the application number of this permit. This sign must be maintained at the site in a conspicuous location until such time that the project is complete and the DEM issues a Notice of Completion of Work for the project.
10. Temporary erosion and sediment controls detailed or described on the approved site plans shall be properly installed at the site prior to or commensurate with site alterations. Such controls shall be properly maintained, replaced, supplemented, or modified as necessary throughout the life of this project to minimize soil erosion and to prevent sediment from being deposited in any wetlands not subject to disturbance under this permit.
11. Upon permanent stabilization of all disturbed soils, temporary erosion and/or sediment controls must be removed.

12. You are responsible for the proper installation, operation, maintenance and stability of any mitigative features, stormwater facilities, and systems of treatment and control that are installed or used in compliance with this permit to prevent harm to adjacent wetlands.
13. You are obligated to install, utilize and follow all best management practices detailed or described on the approved site plans in the construction of the project to minimize or prevent adverse impacts to any adjacent freshwater wetlands and the functions and values provided by such wetlands.
14. To the extent possible, construction sequencing should be managed to strive for keeping flood storage volumes balanced and allowing for construction of the mitigation site concurrently with the draining and filling of the existing pond to minimize impacts to the riparian wetland system. In general, the sequence of construction is expected to proceed as follows:
 - a) Installation of cofferdams and erosion controls;
 - b) Excavation and grading of the wetland mitigation area concurrent with draining of the existing pond, and stockpiling soil from the excavated mitigation area;
 - c) Removal of existing soils and rootstock from the existing pond and relocation to the mitigation area, augmented as necessary with appropriate soils and materials to provide a suitable substrate in the mitigation area.
 - d) Filling in of the existing pond, concurrent with seeding and planting of the mitigation area;
 - e) Removal of cofferdams once the mitigation area has been appropriately stabilized.
15. All construction activities involving soil disturbances within watercourses must be limited to the low flow period (*i.e.*, the period from July 1 to October 31 of any calendar year). Soil disturbance in these watercourses must temporarily cease in the event of any abnormally high stormwater runoff event during the low flow period. This specifically relates to installation and removal of temporary sandbag/membrane cofferdams.
16. All plantings of shrubs, trees or other forms of vegetation as shown or detailed on the approved plans, or detailed in this permit, must be installed as soon as possible after completion of final grading; weather and season permitting. You must notify this Program in writing upon completion of the required plantings for a compliance inspection by a Program representative.
17. An environmental consultant, experienced in site assessments and measures necessary to protect sensitive aquatic environments or sensitive ecosystems, must be employed prior to the commencement of site alterations to monitor this project and to ensure compliance with the terms and conditions of this permit. As part of this requirement, you are required to hire qualified wildlife relocation professionals to be on site during dewatering of the existing pond in order to efficiently relocate stranded wildlife species to adjacent appropriate wetland habitat in order to minimize mortality. This Program must be notified in writing of the consultant chosen to comply with this condition and must receive monthly written progress reports during active construction from the consultant regarding compliance with this permit until such time that the project is complete.

18. The proposed wetland mitigation area must be seeded using a "New England Wetmix" seed mixture rather than the proposed "New England Moist Mix".
19. You must provide written certification from a registered land surveyor or registered professional engineer that the wetland mitigation area has been constructed/installed in accordance with the site plans approved by this permit. This written certification must be submitted to this Program within twenty (20) days of its request or upon completion of the project.
20. The long term operation and maintenance plan (O & M Plan) entitled "Stormwater Operation and Maintenance Plan, Diamond Hill Park, Renovations to the Music Venue" dated July 2013 prepared and submitted by Millstone Engineering, P.C. shall be strictly followed.
21. The O & M Plan shall be amended to include an 8.5" x 11" map of the site showing the location of the proposed stormwater treatment and pretreatment practices.
22. Prior to the start of land disturbing activities, you must submit a signed and certified Soil Erosion and Sediment Control Plan (formerly called a Stormwater Pollution Prevention Control Plan (SWPPPP)). Signatures and certification of both owner and operator must be included.
23. The bioretention soil mix shall be modified so as to adhere to the requirements of Section 5.5.4 bullet 4 of the *Rhode Island Stormwater Design and Installation Standards Manual (RISDISM)*. Specifically, soils shall consist of USDA loamy sand to sandy loam classification and meet the following gradation: sand 85-88 %, silt 8-12%, clay 0-2%, and organic matter (in the form of leaf compost) 3-5%. An additional compost component may be added, but if so it shall be added on a volume basis, with the mineral proportions of the mix remaining unchanged from those indicated herein.
24. Temporary construction barriers are to be erected to protect the area of the proposed infiltration basins from compaction by construction machinery during the construction phase. Also, the proposed bioretention system areas are not to be used as sediment basins during the construction phase.

Pursuant to the provisions in Rule 7.09 and Rule 11.04, as applicable, any properly recorded and valid permit is automatically transferred to the new owner upon sale of the property.

Additionally, the Program has reviewed this project in accordance with the standards of the RIPDES General Permit for Storm Water Discharge Associated with Construction Activity ("CGP"). Construction Activities which disturb one (1) or more acres of land and where storm water runoff is directed, via a point source, into a separate storm sewer system or into the waters of the State, are required to seek coverage under the Rhode Island Pollutant Discharge Elimination System (RIPDES) storm water permit. Our review has determined that the project has been designed to meet the requirements of the 2013 GP. This determination therefore includes your final authorization to discharge storm water associated with construction activity under the CGP. For future references and inquiry, your permit authorization number is RIPDES No. **RIR101078**.

Both the owner and the contractor retained to undertake the construction activity are required to comply with all terms and conditions of the CGP. This includes maintaining the Soil Erosion and Sediment Control (SESC) Plan, performing the required inspections and maintenance of the selected Best Management Practices (BMPs), and retaining inspection records. Further information on the requirements of the CGP is available at: <http://www.dem.ri.gov/pubs/regs/regs/water/ripdesca.pdf>.

Please be aware that the RIDEM's Rules and Regulations Governing the Establishment of Various Fees require that RIPDES CGP permit holders to pay an Annual Fee of \$100.00. An invoice will be sent to the owner on record in May/June of each year if the construction was still active as of December 31st of the previous year. The owner will be responsible for the Annual Fee until the construction activity has been completed, the site has been properly stabilized, and a completed Notice of Termination (NOT) has been received by the RIPDES Program. A copy of the NOT can be found attached to the CGP on the web page referenced above.

This Permit also constitutes your authorization from the U.S. Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act for the work proposed. Your project qualifies as a Category 2 activity under the Rhode Island General Permit (General Permit No. NAE-2011-2402), ("RI GP"). You can view this permit at http://www.nae.usace.army.mil/Regulatory/SGP/RI_PGP.pdf. You are, therefore, not required to file a separate application with the Corps.

Please note that the General Conditions within the RI GP apply to all activities authorized under the RI GP. Please review them carefully to thoroughly familiarize yourself with their contents.

Please note that in addition to the standard General Conditions of the RI GP, the U.S. Army Corps of Engineers, New England District also requires, pursuant to a communication dated June 25, 2014 related to Corps file no. NAE-2013-856 and addressed to this Program, that prior to commencement of construction, you must provide to the Corps a narrative addressing both the "Overall Mitigation Plan Checklist" and "Nontidal Wetland Module Checklist" as presented in the 2010 "New England District Compensatory Mitigation Guidance" document.

You may wish to discuss all permit conditions with your contractor to ensure that the work can be accomplished in a manner which conforms to all requirements.

You are required to comply with the terms and conditions of this permit and to carry out this project in compliance with the Rules at all times. Failure to do so may result in an enforcement action by this Department and/or subject you to the enforcement provisions of the Corps' regulations.

In permitting the proposed alterations, the Program assumes no responsibility for damages resulting from faulty design or construction. This permit does not remove your obligation to obtain any local, state, or federal approvals or permits required by ordinance or law and does not relieve you from any duties owed to adjacent landowners with specific reference to any changes in drainage.

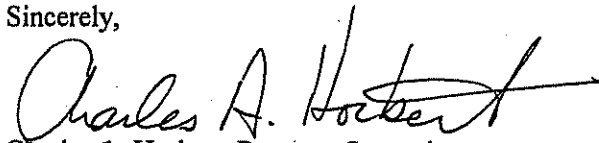
If you are aggrieved by this decision, you may, within thirty (30) days of the receipt of this letter, request an adjudicatory hearing in writing. This request must be sent directly to the DEM Administrative Adjudication Division ("AAD"), One Capitol Hill, Second Floor, Providence, RI 02903. Copies of the request should also be forwarded to this Program and to the Office of Legal Services, at the same address. Your written request for an adjudicatory hearing must be timely filed and should conform to the requirements of Rule 7.00(b) of the "Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters", (AAD Rules). AAD Rule 7.00(b) provides:

"The request for hearing shall state clearly and concisely the specific issues which are in dispute and the facts in support thereof, the relief sought if any, the license or permit sought or involved and any additional information required by applicable statutes and regulations."

The written request must be accompanied by an adjudicatory hearing fee of two thousand dollars (\$2,000.00); in the form of a certified bank check or money order made payable to the Rhode Island General Treasurer; however, in the event that the cost of the hearing exceeds the fee paid, the Program through the AAD will require an additional fee which the applicant must submit prior to the DEM's issuance of any final decision regarding this application. The adjudicatory hearing will be held before a Hearing Officer from the AAD. Such hearing will be held in compliance with the AAD Rules, Chapter 42-35-1 et seq. of the R.I.G.L., and other governing laws, rules, and regulations adopted by the DEM. Please note that you have the right to be represented by legal counsel in any proceeding which may be held in this matter.

If you have any questions regarding this matter, you may contact me or Kate McPherson of my staff at this office (telephone: 401-222-4700 x7732).

Sincerely,



Charles A. Horbert, Program Supervisor
Office of Water Resources
Freshwater Wetlands Program
CAH/KHM/khm

Enclosure: Approved Site Plans

cc: Brian Moore, Chief of Groundwater & Wetlands Protection
 Traci Pena, RIDEM RIPDES Program
 Bonnie Stewart, Administrative Adjudication Division
 Mary Kay, Esq., DEM Office of Legal Services
 Michael J. Narcisi, U.S. Army Corps of Engineers, New England Division
 Michael Crawley, Cumberland Parks & Recreation Department
 George H. Gifford III, The Gifford Design Group, Inc.
 Jeffrey C. Hanson, P.E., Millstone Engineering, PC

xc: Deborah Vine-Smith
 George B. Gettinger, Cumberland Conservation Commission
 Chris and Melinda Ratcliffe
 J. Richard Ratcliffe