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August 24, 2012

Via Email and Regular Mail

New York State Fresh Water
Wetlands Appeals Board
625 Broadway, Room 145
Albany, NY 12233-1070
Attention: Docket Clerk

Re: Alpert v. DEC
FWAB #87-100

Dear Docket Clerk:

I am enclosing a signed Stipulation of Settlement between Charles and Joseph Alpert and the New York State Department of Environmental Conservation in the above matter. The Stipulation calls for the appeal to be discontinued and for the matter to be settled in accordance with its terms.

Please enter the appropriate order in this matter.

Thank you for your cooperation.

Very truly yours,



Charles S. Warren

CSW:ls

Enclosure

cc: Louis Oliva, Esq. (NYSDEC – Region 2)
Udo Drescher, Esq. (NYSDEC – Region 2)
Ilse Gilbert, Esq. (NYSDEC – Albany)
Hilary Meltzer, Esq. (NYC Law Dep't)
Peter A. Schwartz (Graubard Miller)

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000

990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

47 AVENUE HOICHE 75008 PARIS FRANCE PHONE (33-1) 44 09 46 00 FAX (33-1) 44 09 46 01

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WHEREAS, appellants acquired Lot 5 of the Property on November 12, 1984;

WHEREAS, the Property was not designated as a freshwater wetland on the tentative freshwater wetlands map, prepared pursuant to ECL § 24-0301(2), which was filed in Richmond County in 1981;

WHEREAS, on September 1, 1987, DEC promulgated the final freshwater wetlands map for Richmond County pursuant to ECL § 24-0301(5), designating portions of the Property as freshwater wetlands and, consequently, creating regulated freshwater wetlands adjacent areas, subjecting the Property to DEC jurisdiction;

WHEREAS, on December 9, 1987, appellants filed this appeal (the "Appeal") challenging the freshwater wetlands designation of their property and seeking relief under the hardship provisions of Environmental Conservation Law § 24-1104, which before it expired on June 30, 1992 provided a particular appeals process for certain private landowners on Staten Island who prior to January 1, 1987 had acquired parcels that were not on the 1981 tentative wetlands map but were included on the final wetlands map promulgated on September 1, 1987;

WHEREAS, DEC has contested the Appeal;

WHEREAS, a portion of lot 1 is mapped as formerly connected tidal wetland ("FC") on the official tidal wetlands map 570-496, thus rendering that portion of lot 1 and an area measuring 150 linear feet from the wetlands boundary subject to the DEC's jurisdiction under the Tidal Wetlands Act (ECL Article 25) and the regulations promulgated thereunder in 6 NYCRR Part 661 over tidal wetlands and areas adjacent thereto;

WHEREAS, appellants delineated the freshwater wetlands and tidal wetlands on the Property and DEC has reviewed and concurred with such delineations;

WHEREAS, in an effort to settle the Appeal, appellants have presented to DEC a proposed site plan, identified as "Site Plan," *Forest Avenue – Forest Avenue Wetland Delineation*, Sheet SP-1, prepared by Carpenter Environmental Associates, Inc., dated 02/05/08, last revised 8/16/12 for development of the Property (the "Site Plan"), which is annexed hereto as Exhibit A and is incorporated into this Stipulation. The Site Plan shows a tentative wetland enhancement area in the bed of Morrow Street. The Appellants do not own Morrow Street and will request that it be de-mapped in connection with development of the property. If the street bed is de-mapped, it will become part of the wetland enhancement area.

WHEREAS, DEC has determined that the Site Plan in combination with this Stipulation constitutes an acceptable proposal to address and resolve the issues raised in the Appeal;

NOW, THEREFORE, the parties agree as follows:

1. DEC has determined, and Appellants agree, in accordance with ECL § 24-0301(7) and ECL § 25-0201(6), that the freshwater wetlands and tidal wetlands on the Property are delineated as set forth on the Site Plan.
2. Appellants agree that the Property will be developed in substantial accordance with the Site Plan, subject to the requisite permits by the DEC and in accordance with otherwise applicable laws and regulations and approvals by other agencies with jurisdiction.
3. DEC has determined that the only individual permit required by the Site Plan is a freshwater wetlands permit, except that an individual SPDES permit may also be required if discharges occur other than those covered by the SPDES General Permit for Discharges from Construction Activity Permit No. GP-0-10-001 (or any successor permit) or if DEC in a reasonable exercise of its discretion pursuant to Part VII.K or Part VII. O of said

general permit and supporting statutes and regulations determines that an individual permit is required for discharges from the project site.

4. The parties are aware and agree that the Freshwater Wetlands permit process is subject to the requirements of the State Environmental Quality Review Act ("SEQRA").

5. Appellants have submitted an application, under the name Josif A LLC, for a freshwater wetlands permit that comports with the Site Plan and Stipulation, which application is attached hereto as Exhibit B, and DEC has found such application meets all completeness requirements set forth at 6 NYCRR Part 621.3(a) except for the requirements set forth at 6 NYCRR Part 621.3(a)(7)-(9).

6. DEC will expeditiously process that application and, by executing this Stipulation, attests that it has tentatively concluded that such a permit application would meet the applicable standards for permit issuance pursuant to ECL article 24 as well as 6 NYCRR Part 663.

7. Unless the SEQRA process or public review raise substantive and significant issues concerning the permissibility of the project, DEC agrees to issue a freshwater wetlands permit based on the Application and Site Plan (or a site plan in substantial accordance with such Plan) within sixty (60) days of the completion of the SEQRA process. Before the completion of the SEQRA process, a site plan which depicts sanitary and stormwater piping, utility lines and similar details shall be submitted to DEC.

8. Appellants agree that the development and construction of the Property requires coverage under SPDES general permit GP-0-10-001 (or any successor permit) for discharges associated with construction activities and will obtain such coverage by filing of a

Notice of Intent and preparing a Stormwater Pollution Prevention Plan in compliance with the requirements of the general permit and applicable regulations and standards.

9. Within thirty (30) days of issuance of the freshwater wetlands permit for the Site Plan, Appellants shall cause a deed restriction, based on a template that has been provided by DEC , to be recorded in the property records for the Property to ensure that the Wetland Enhancement Area and the Buffer Planting Area, as designated on the Site Plan, will be kept as Natural Areas and not become subject to development. In addition, if Appellants obtain an ownership interest in the area designated on the Site Plan as the Tentative Wetland Enhancement Area, or any portion thereof, the deed restriction must be amended to include that area or portion as a Natural Area not subject to development.

10. The Appeal is hereby discontinued with prejudice and without costs, except that the Freshwater Wetlands Appeal Board shall retain jurisdiction of the Appeal for the purpose of enforcing this Stipulation. However, in the event that the Freshwater Wetlands Appeal Board ceases to exist, and a successor board or agency has not been appointed, DEC and appellants shall each have the right to enforce this Stipulation.

11. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York.

12. This Stipulation may not be changed, modified or terminated except by a writing executed by both of the parties hereto or their respective attorneys.

13. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. The parties hereto agree and confirm that in the negotiation and drafting of this Stipulation each of them was represented by counsel of its own choosing, that the two sides are equally responsible for the drafting of this Stipulation, and that in the event of a dispute between them each of them shall be regarded as having played an equal role in the drafting of the relevant provisions and no portion of this Stipulation shall be interpreted on the basis of a theory that it was drafted by one side or the other.

15. This Stipulation may be executed in counterparts, each of which shall constitute an original.

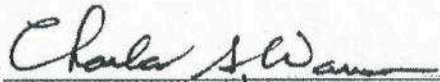
IN WITNESS WHEREOF, appellants and DEC have caused their respective attorneys to execute this Stipulation as of the date hereinabove written.

Dated: New York, New York

8/23/2012

KRAMER LEVIN NAFTALIS &
FRANKEL LLP

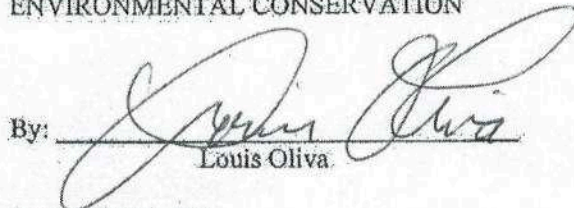
By:


Charles S. Warren

Attorneys for Appellants
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Louis Oliva

Regional Attorney
NYSDEC Region 2
One Hunters Point Plaza
47-40 21st Street
Long Island City, New York 11101-5407

Exhibit A

Exhibit B



JOINT APPLICATION FORM

For Permits/Determinations to undertake activities affecting streams, waterways, waterbodies, wetlands, coastal areas and sources of water supply.



New York State

You must separately apply for and obtain separate Permits/Determinations from each involved agency prior to proceeding with work. Please read all instructions.

US Army Corps of Engineers (USACE)

<p>1. NYS Department of Environmental Conservation</p> <p>Check all permits that apply:</p> <p><input type="checkbox"/> Stream Disturbance</p> <p><input type="checkbox"/> Excavation and Fill in Navigable Waters</p> <p><input type="checkbox"/> Docks, Moorings or Platforms</p> <p><input type="checkbox"/> Dams and Impoundment Structures</p> <p><input type="checkbox"/> 401 Water Quality Certification</p> <p><input checked="" type="checkbox"/> Freshwater Wetlands</p> <p><input type="checkbox"/> Tidal Wetlands</p> <p><input checked="" type="checkbox"/> I am sending this application to this agency.</p>	<p>2. US Army Corps of Engineers</p> <p>Check all permits that apply:</p> <p><input type="checkbox"/> Section 404 Clean Water Act</p> <p><input type="checkbox"/> Section 10 Rivers and Harbors Act</p> <p><input type="checkbox"/> Nationwide Permit(s) - Identify Number(s):</p> <p>Preconstruction Notification - <input type="checkbox"/> Y / <input type="checkbox"/> N</p> <p><input type="checkbox"/> I am sending this application to this agency.</p>	<p>3. NYS Office of General Services</p> <p>Check all permits that apply:</p> <p><input type="checkbox"/> State Owned Lands Under Water</p> <p><input type="checkbox"/> Utility</p> <p>Basement (pipelines, conduits, cables, etc.)</p> <p><input type="checkbox"/> Docks, Moorings or Platforms</p> <p><input type="checkbox"/> I am sending this application to this agency.</p>	<p>4. NYS Department of State</p> <p>Check if this applies:</p> <p><input type="checkbox"/> Coastal Consistency Concurrence</p> <p><input type="checkbox"/> I am sending this application to this agency.</p>
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<p>5. Name of Applicant (use full name) Joel A LLC d/o Charles Ajardi</p> <p>Mailing Address 271 Madison Avenue, 22nd Floor</p> <p>Post Office City - New York</p> <p>State NY Zip Code 10010</p> <p>Telephone (daytime) 212-592-4460</p> <p>Email dalper@jcdv/jht.com</p>	<p>Applicant must be:</p> <p><input checked="" type="checkbox"/> Owner</p> <p><input type="checkbox"/> Operator</p> <p><input type="checkbox"/> Lessee</p> <p>(check all that apply)</p> <p>Taxpayer ID (if applicant is NOT an individual): 32-0346002</p>	<p>6. Name of Facility or Property Owner (if different than Applicant)</p> <p>Mailing Address</p> <p>Post Office City</p> <p>State Zip Code</p> <p>Telephone (daytime) Email</p>
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<p>7. Contact / Agent Name Greg Flischer</p> <p>Company Name Casper Environmental Associates, Inc.</p> <p>Mailing Address 307 Museum Village Road</p> <p>Post Office City - Monroe</p> <p>State NY Zip Code 10050</p> <p>Telephone (daytime) 845-781-4644 ext 323</p> <p>Email g.flischer@cea-enyva.com</p>	<p>8. Project / Facility Name Apartment</p> <p>Property Tax Map Section / Block / Lot Number Staten Island / Block 1707 / Lots 1A-3</p> <p>Project Location - Provide directions and distances to roads, bridges and bodies of water / Bordered by Forest Avenue, South Avenue, Amador Street and Morrow Street.</p> <p>Street Address, if applicable Post Office City State Zip Code Staten Island NY 10303</p> <p>Town / Village / City Staten Island</p> <p>County Richmond</p> <p>Name of USGS Quadrangle Map Elizabeth and Arthur Kn</p> <p>Stream/Water Body Name NYSDEC FWWE-3</p> <p>Location Coordinates: Enter NYTM in kilometers, OR Latitude/Longitude</p> <table border="1"> <tr> <td>NYTM-S</td> <td>NYTM-N</td> <td>Latitude</td> <td>Longitude</td> </tr> <tr> <td></td> <td></td> <td>40.828485</td> <td>-74.160885</td> </tr> </table>	NYTM-S	NYTM-N	Latitude	Longitude			40.828485	-74.160885
NYTM-S	NYTM-N	Latitude	Longitude						
		40.828485	-74.160885						

<p>For Agency Use Only DEC Application Number</p>	<p>USACE Number</p>
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JOINT APPLICATION FORM - PAGE 2 OF 2
 Submit this completed page as part of your Application.

9. **Project Description and Purposes:** Provide a complete narrative description of the proposed work and its purpose. Attach additional page(s) if necessary. Include: description of current site conditions and how the site will be modified by the proposed project; structures and fill materials to be installed; type and quantity of materials to be used (i.e., square ft. of coverage and cubic yds. of fill material and/or structures below ordinary/mean high water); areas of excavation or dredging; volumes of material to be removed; and location of dredged material disposal or use; work methods and type of equipment to be used; pollution control methods and mitigation activities proposed to compensate for resource impacts; and where applicable, the phasing of activities. **ATTACH PLANS ON SEPARATE PAGES.**

Applicant proposes to construct a commercial development with four retail buildings, accessory structures, roadways, parking areas, and a stormwater basin. Retail Buildings 'A' & 'B' will be 15,000 sq. ft. each, Retail Building 'C' will be 118,000 sq. ft., and Retail Building 'D' will be 70,000 sq. ft. Approximately 18 acres of the 27.80 acre vacant undeveloped parcel is proposed to be developed. As part of the proposed project, the applicant has provided for wetland enhancement and buffer planting areas totaling approximately 4.5 acres comprised of 1,889 trees and 7,553 native shrubs.

Proposed Use: Private Public Commercial Proposed Start Date: 0/20/2013 Estimated Completion Date: 0/29/2016

Has Work Begun on Project? Yes No. If Yes, explain.

Will Project Occupy Federal, State or Municipal Land? Yes No. If Yes, please specify.

10. List Previous Permits / Application Numbers (if any) and Dates:

11. Will this project require additional Federal, State, or Local Permits including zoning changes? Yes No. If yes, please list: NYCDOS, NYCDOP, NYODEP, NYSDEC and NYSDCI.

12. **Signatures.** If applicant is not the owner, both must sign the application. I hereby affirm that information provided on this form and all attachments submitted herewith is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. Further, the applicant accepts full responsibility for all damage, direct or indirect, of whatever nature, and by whomsoever suffered, arising out of the project described herein and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from said project. In addition, Federal Law, 18 U.S.C., Section 1001 provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both where an applicant knowingly and willingly falsifies, conceals, or covers up a material fact, or knowingly makes or uses a false, fictitious or fraudulent statement.

	Charlie Albert	Member LLC	6/29/2012
Signature of Applicant	Printed Name	Title	Date
	Greg Fleischer	Senior Scientist	6/29/2012
Signature of Owner	Printed Name	Title	Date

For Agency Use Only **DETERMINATION OF NO PERMIT REQUIRED**

Agency Project Number: _____

(Agency Name) _____ has determined that No Permit is required from this Agency for the project described in this application.

Agency Representative: Name (Printed) _____ Title _____

Signature _____ Date _____



PERMISSION TO INSPECT PROPERTY

By signing this permission form for submission with an application for a permit(s) to the Department of Environmental Conservation ("DEC"), the signer consents to inspection by DEC staff of the project site or facility for which a permit is sought and, to the extent necessary, areas adjacent to the project site or facility. This consent allows DEC staff to enter upon and pass through such property in order to inspect the project site or facility, without prior notice, between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. If DEC staff should wish to conduct an inspection at any other times, DEC staff will so notify the applicant and will obtain a separate consent for such an inspection.

Inspections may take place as part of the application review prior to a decision to grant or deny the permit(s) sought. By signing this consent form, the signer agrees that this consent remains in effect as long as the application is pending, and is effective regardless of whether the signer, applicant or an agent is present at the time of the inspection. In the event that the project site or facility is posted with any form of "posted" or "keep out" notices, or fenced in with an unlocked gate, this permission authorizes DEC staff to disregard such notices or unlocked gates at the time of inspection.

The signer further agrees that during an inspection, DEC staff may, among other things, take measurements, may analyze physical characteristics of the site including, but not limited to, soils and vegetation (taking samples for analysis), and may make drawings and take photographs.

Failure to grant consent for an inspection is grounds for, and may result in, denial of the permit(s) sought by the application.

Permission is granted for inspection of property located at the following address(es):

Bordered by Forest Avenue, South Avenue, Amador Street and

Morrow Street, Staten Island, NY 10303

*By signing this form, I affirm under penalty of perjury that I am authorized to give consent to entry by DEC staff as described above. I understand that false statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.**

Charles Alpert, Member

6/29/2012

Print Name and Title

Signature

Date

*The signer of this form must be an individual or authorized representative of a legal entity that:

- owns fee title and is in possession of the property identified above;
- maintains possessory interest in the property through a lease, rental agreement or other legally binding agreement; or
- is provided permission to act on behalf of an individual or legal entity possessing fee title or other possessory interest in the property for the purpose of consenting to inspection of such property.