

**STATE OF VERMONT  
SUPERIOR COURT - ENVIRONMENTAL DIVISION**

VERMONT NATURAL	)	
RESOURCES BOARD,	)	
Petitioner	)	
	)	
v.	)	Docket No.
	)	
GARDNER CONSTRUCTION, INC.	)	
and BRADLEY C. GARDNER,	)	ASSURANCE OF DISCONTINUANCE
Respondents	)	
	)	

**VIOLATIONS**

- I. Disturbing more than 5 acres of land at any one time, in violation of Land Use Permit No. 4C1170-2 and the Erosion Control Details Plan, Erosion Control Phasing Plan, and Erosion Prevention and Sediment Control Plan incorporated therein.
- II. Failure to pay off-site mitigation fee to the Vermont Housing Conservation Board prior to commencement of construction, in violation of Land Use Permit No. 4C1170-2.
- III. Construction beyond construction completion deadline without an extension, in violation of Condition 38 of Land Use Permit No. 4C1170-2.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and Gardner Construction, Inc. and Bradley C. Gardner (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondent Gardner Construction, Inc. owns approximately 32 acres of land off of Packard Road, on Black Walnut Lane in Jericho, Vermont that is subject to Land Use Permit 4C1170, as amended.
2. Respondent Bradley C. Gardner is the president, director and registered agent of Gardner Construction, Inc.
3. Land Use Permit Amendment 4C1170-2 (the Permit) was issued on November

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25, 2009, authorizing subdivision of approximately 32 acres into 23 lots, the construction of 7 duplexes, and requiring a permit amendment for the construction of 6 single-family residences (the Project).

4. The Permit incorporated a mitigation agreement requiring payment of \$82,923.44 to the Vermont Housing & Conservation Board upon commencement of construction, with an annual increase for inflation.

5. The mitigation agreement provides, in relevant part:

3. Inflation Factor. If the Mitigation Payment is not made within one year from the date that a final Land Use Permit, as described in paragraph 2, is issued, the amount set forth in paragraph 1 shall be subject to a simple interest annual inflation factor increase of 3%. This Mitigation Payment shall increase on the anniversary, each year, of the issuance of the final Land Use Permit as described in paragraph 2, to an amount equal to 103% of the previous year's amount, rounded to the nearest dollar.

6. Respondents commenced construction on or before June 27, 2014, but did not pay the mitigation fee until on or about December 16, 2014.

7. Condition 38 of the Permit provides that the "permit shall expire three years from the date of issuance if the Permittees have not commenced construction and made substantial progress toward completion within the three year period in accordance with 10 V.S.A. § 6091(b)"

8. Condition 39 of the Permit provides:

39. All site work and construction of roadways and utilities shall be completed in accordance with the approved plans by October 30, 2012, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.

9. Respondents have since obtained a permit amendment establishing a new construction completion deadline of October 31, 2017.

10. On November 26, 2014, the District 4 Environmental Commission issued Land Use Permit amendment 4C1170-3, authorizing the construction of five duplexes and six single-family lots, with associated infrastructure, and continuing the requirement of compliance with the June 24, 2009 mitigation agreement.

11. Condition 3 of the Permit requires, in relevant part, that the Project be completed, operated and maintained in accordance with the plans and exhibits on file with the District Commission.

12. Condition 17 of the Permit requires compliance with the exhibits for erosion control, Exhibits 52 through 56 (Sheets 10 – 14) of the Permit.
13. The Erosion Control Phasing Plan (Exhibit 54/Sheet 12 to the Permit) and the Erosion Prevention and Sediment Control Plan (Rev. 7/21/08) (Exhibit 18 to the Permit), each state that: "No more than 5 acres of land may be disturbed at any one time."
14. The Erosion Control Details Plan (Exhibit 56/Sheet 14 to the Permit) states that: "A maximum of 5 acres of land may be disturbed at any one time."
15. The Erosion Control Phasing Plan provides for five phases of the Project, specifies timeframes for clearing vegetation for roadways, driveways, units and house sites for each phase, and requires that "Construction of subsequent phase may not begin until prior phase has been temporarily stabilized."
16. On or around June 27, 2014, Respondents commenced and completed vegetation clearing for all five phases of the Project, in violation of Conditions 3 and 17 of the Permit.

#### AGREEMENT

- A. Respondents shall comply with Land Use Permit 4C1170, as amended.
- B. Within 30 days of the date upon which this Assurance is entered as an Order by the Superior Court, Environmental Division, Respondents shall:
  1. Pay a civil penalty in the amount of **\$6,000.00** (U.S. dollars), by check payable to: **State of Vermont**.
  2. Reimburse the Board **\$941.04** (U.S. dollars) for costs of enforcement pursuant to 10 V.S.A. § 8010(e)(2), by check payable to: **State of Vermont**.
  3. Pay a fee of **\$10.00** to record notice of this Assurance in the land records, by check payable to: **Town of Jericho**.
- C. Unless otherwise specified herein, Respondents shall send all payments and documents required by this Assurance to:

Vermont Natural Resources Board  
Dewey Building  
National Life Drive  
Montpelier, Vermont 05620-3201

- D. Respondents are jointly and severally liable for all obligations under this Assurance.

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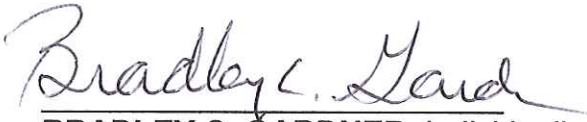
- E. Neither Respondent shall deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- F. The Natural Resources Board reserves continuing jurisdiction to ensure compliance with this Assurance and with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- I. Pursuant to 10 V.S.A. § 8007(d), Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that each Respondent fully complies with this Assurance.
- J. The Board may grant reasonable extensions from any deadline in this Assurance upon request, for good cause beyond the Respondents' control.
- K. This Assurance sets forth the complete agreement of the parties and, except as otherwise provided herein, it may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- L. When this Assurance is entered as a judicial order, a violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- M. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

\* \* \*

**SIGNATURES**

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Colchester, Vermont, this 19<sup>th</sup> day of May, 2015.

  
**BRADLEY C. GARDNER**, Individually

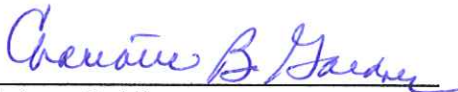
**GARDNER CONSTRUCTION, INC.**

By   
**BRADLEY C. GARDNER**, Duly  
Authorized Agent

STATE OF VERMONT  
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 19<sup>th</sup> day of May, 2015,  
personally appeared **BRADLEY C. GARDNER**, individually and as the duly authorized  
agent of **GARDNER CONSTRUCTION, INC.** signer and sealer of the foregoing  
instrument who is known to me or who satisfactorily established his identity to me and  
acknowledged the same to be his free act and deed and the free act and deed of  
**GARDNER CONSTRUCTION, INC.** and that he has the authority to contract on behalf  
of **GARDNER CONSTRUCTION, INC.** and that he has been duly authorized to enter  
into the foregoing Assurance on behalf of that entity.

Before me,

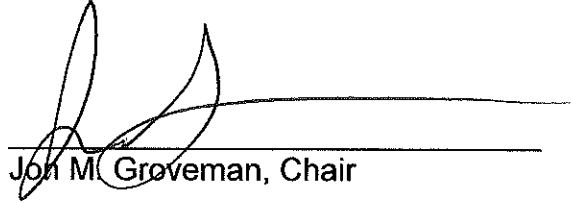
  
Notary Public  
My Commission Expires: February 10, 2019

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED in Montpelier, Vermont, this 15<sup>th</sup> day of July, 2015.

NATURAL RESOURCES BOARD

By:



Jon M. Groveman, Chair