

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

<b>THE NATURAL RESOURCES BOARD,</b>	)	Docket No.
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>ASSURANCE OF</b>
<b>Henderson's Garden Service,</b>	)	<b><u>DISCONTINUANCE</u></b>
<b>Henderson's Tree Service,</b>	)	
<b>Jim M. Henderson,</b>	)	
<b>and Sylvia R. Provost,</b>	)	
<b>Respondents.</b>	)	

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**VIOLATIONS**

- *Failure to comply with Conditions 1, 2, 16, 17, 18, 19, 20, 26, and 29 of Land Use Permit 3W0637-7.*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Henderson's Garden Service, Henderson's Tree Service, Jim M. Henderson, and Sylvia R. Provost (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

- 1) Respondents own approximately 5.1 acres in Hartford, Vermont (the "Subject Property") that are subject to Land Use Permit series 3W0637.
- 2) Land Use Permit Amendment 3W0637-7 (the "Permit") authorized the permittees to construct a 5,120 square foot storage/office building to be used in the operation of their business. The project also included constructing an approximate 10-foot by 40-foot storage shed, a material storage area with bunkers, landscaping and a driveway.

**Violation of Conditions 1, 2, and 26:**

- 3) Condition 1 of the Permit states,

"The project shall be completed, operated and maintained in accordance with the plans and exhibits on file with the District Environmental Commission and the conditions of this permit.

The approved plans, prepared by Bruno Associates Inc., P.C., are:

Sheet C-1 - "Site Plan," dated 7/7/09, last revised 2/9/10 (Exhibit 14);

Sheet C-2 - "Landscape Plan," dated 7/10/09, last revised 2/9/10 (Exhibit 15);

Sheet DET-1 - "Site Details," dated 7/7/09, last revised 2/9/10 (Exhibit 16); and  
Sheet DET-2 - "WS/WWD Details," dated 7/7/09 (Exhibit 17)."

- 4) Condition 2 of the Permit states,  
"No changes shall be made in the design or use of this project without prior written approval from the District Coordinator or the District Environmental Commission, whichever is appropriate under the Act 250 Rules."
- 5) Condition 26 of the Permit states,  
"No further alteration and/or development shall be permitted without prior written approval from the District Environmental Commission."
- 6) Starting around 2012, Respondents began operating a commercial retail garden center on the Subject Property. During the development of the garden center, Respondents added several new structures, relocated some of the previously permitted structures, and more than doubled the size of the permitted storage structure. No permit or permit amendment authorizes these changes.
- 7) Respondents failed to comply with Conditions 1, 2, and 26 of Land Use Permit 3W0637-7.

Buffer Violation, Condition 16:

- 8) Condition 16 of the Permit states,  
"The permittees shall maintain a 100-foot undisturbed, naturally vegetated, unmowed riparian buffer strip from the White River and any disturbed areas as depicted on the Site Plan, Sheet C-1 and the Landscape Plan, Sheet C-2. Snowplowing or storage of any materials within the riparian buffer shall not be permitted."
- 9) Respondents cleared woody growth, disturbed vegetation and the soil surface, stored materials, and disposed of unwanted garden materials within the permit-designated riparian buffer strip, in violation of Condition 16.

Site Landscaping Violation, Condition 17:

- 10) Condition 17 of the Permit states,  
"The permittees and all assigns and successors in interest shall continually maintain the planting as approved in Exhibit #15 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner."

- 11) Respondents have not planted a number of the plantings approved in Exhibit 15 (Landscape Plan), and in some cases, have substituted alternative species, in violation of Condition 17.

Reporting Violation, Condition 18:

12) Condition 18 of the Permit states,

“At the completion of the implementing the landscaping plan, the permittees shall submit a report to the District Environmental Commission certifying that the site improvements have been carried out as described in this permit.”

13) By 2013, the Respondents had substantially completed site improvements and landscaping. As of December 4, 2015, the District Commission had not received the report certifying that site improvements had been carried out as described in the Permit, in violation of Condition 18.

Lighting Violation, Condition 19:

14) Condition 19 of the Permit states,

“The installation of exterior light fixtures is limited to those approved in Exhibits 2, 14, and 15. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.”

15) Respondents have installed an unshielded spotlight to illuminate the roadside entrance sign, in violation of Condition 19.

Signage Violations, Condition 20:

16) Condition 20 of the Permit states,

“The permittees shall not erect additional exterior signage without first obtaining approval from the District Environmental Commission. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs. Prior to installing lighting over the sign the permittees shall obtain written approval from the District Environmental Commission.”

17) Respondents have enlarged the sign originally approved by the Commission, installed a flag, and placed 3 large advertising sandwich boards within the right-of-way on Route 14, without first obtaining written approval from the Commission, in violation of Condition 20.

Certificate of Actual Construction Costs, Condition 29:

18) Condition 29 of the Permit states,

“The permittees shall file a certificate of actual construction costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Environmental Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction

costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the permittees shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, National Life Records Center Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification."

- 19) Despite the Respondents' considerable construction beyond the scope of the permitted project, the Board has no record of receiving a Certificate of Actual Construction Costs or a supplemental fee from the Respondents. This failure to file the required certificate and supplemental fee constitutes a violation of Condition 29.

Other Factors:

20) Contradictory Riparian Buffer Language

In the course of investigating this matter, the Board discovered a discrepancy between the plain language in Condition 16 of the Permit, the Site Plan, Sheet C-1, and the Landscape Plan, Sheet C-2. Specifically, Condition 16 states that the buffer shall be measured "from the White River," and the plans illustrate a buffer measured from the "100 Year Flood Limit." This discrepancy introduces some uncertainty as to precisely where the inland edge of the riparian buffer lies.

- 21) Given the ambiguity with regard to the precise boundaries of the riparian buffer strip described in Permit Amendment 3W0637-7, the Board will rely instead on the buffer strip described in the original 3W0637 permit, approved by the Commission in 1990. That original land use permit contains Condition 11, which establishes the upper edge of the riparian buffer strip at ten feet inland from the 380-foot contour line.

- 22) Notwithstanding the conditions in this Permit series and this Assurance, the Town of Hartford might have regulations independent from state regulations that might be relevant to the development referenced herein. Please contact the Town Hartford Office of Planning and Development for information on Town regulations.

**AGREEMENT**

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

- 1) No later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall file a complete application for an Act 250 Land Use Permit Amendment with the District 3 Environmental Commission for the retail garden center operation, associated infrastructure, and any additional changes to the permitted project that the Respondents might propose, including, but not limited to, any

changes in landscaping. Respondents shall diligently pursue said application.

2) For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 3 Environmental Commission, the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR. Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.

3) The Land Use Permit Amendment application shall propose to redefine the river buffer as follows:

"The Permittees shall not clear, cut, mow, or otherwise disturb the land along the White River within a riparian buffer zone, which shall extend from the water's edge to the top of bank, and shall further extend 10 feet inland from and perpendicular to the top of bank, which, for the purposes of this Permit, shall be defined as the 380-foot contour elevation (the "Riparian Buffer Zone") as further depicted in Exhibits B and C. The Permittees shall keep this land as undisturbed and naturally vegetated. Snowplowing or storage of any materials within this buffer is prohibited."

4) By no later than October 31, 2016, Respondents shall restore any disturbed portions of the redefined Riparian Buffer Zone as follows:

- i. Remove all cut logs, firewood, wood chips, lumber, pallets, and other building and landscaping materials, business equipment and personal property from the redefined Riparian Buffer Zone.
- ii. Stabilize any unvegetated portions of the Riparian Buffer Zone by seeding and mulching in accordance with Exhibit A.
- iii. Permanently mark the inland edge of the Riparian Buffer Zone with a series of ten spruce trees (*Picea spp.*). Trees shall be at least 5 to 7 feet in height, with equidistant spacing from each other.
- iv. Plantings shall be watered as needed during first year of establishment. Other than maintenance to ensure the health or survival of the plants (e.g., watering and staking), no maintenance, including mowing, cutting, brush hogging or pruning, shall be permitted once the Riparian Buffer Zone is re-established.
- v. Twelve to eighteen months following initial installation, dead plants shall be replaced in accordance with the specifications outlined in Paragraphs ii - iii.

5) No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:

- a) pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Three Thousand Dollars (\$3,000.00) (U.S.)**, for the violations noted herein, by good check made payable to the "State of Vermont."

- b) pursuant to 10 V.S.A. §8010(e)(2), the amount of **Four Hundred Twenty Seven Dollars (\$427.00) (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont."
- c) pursuant to Condition 29 of the Permit, a Certificate of Actual Construction Costs and a supplemental fee (if applicable), by good check made payable to the "State of Vermont."
- d) the amount of **Ten Dollars (\$10.00) (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Hartford land records, by good check made payable to the "Town of Hartford, Vermont."
- 6) All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board  
Dewey Building  
1 National Life Drive  
Montpelier, Vermont 05620-3201
- 7) Respondents are jointly and severally liable for all obligations under this Assurance.
- 8) Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- 9) The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- 10) Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- 11) 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.
- 12) Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.

- 13) The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond the Respondents' control.
- 14) This Assurance sets forth the complete agreement of the parties, and except as provided herein, may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division.
- 15) 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.
- 16) When this Assurance is entered as a judicial order, 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.
- 17) This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

[SIGNATURES ON FOLLOWING PAGES]

**SIGNATURES**

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

Dated at WRset, Vermont, this 28<sup>th</sup> day of July, 2016.

HENDERSON'S GARDEN SERVICE

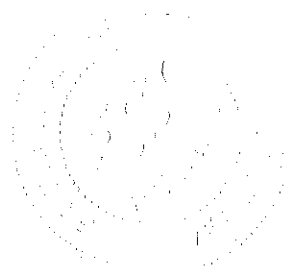
By: [Signature]  
Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 29<sup>th</sup> day of July, 2016, personally appeared JAMES M. HENDERSON + SYLVIA FROST the duly authorized agent of Henderson's Garden Service, 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 Henderson's Garden Service and that he has the authority to contract on behalf of Henderson's Garden Service, and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]  
Notary Public  
My Commission Expires: 2/10/19





HENDERSON'S TREE SERVICE

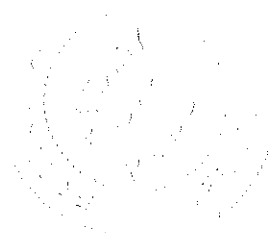
By: *James M. Henderson*  
Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF Windsor, ss.

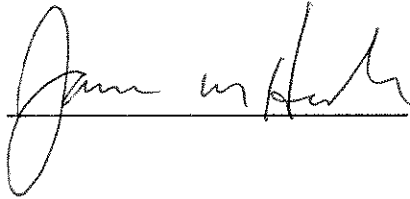
BE IT REMEMBERED that on the 29<sup>th</sup> day of July, 2016, personally appeared James M. Henderson + Sylvia Powell the duly authorized agent of Henderson's Tree Service, signer and sealer of the foregoing instrument, who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of Henderson's Tree Service and that he has the authority to contract on behalf of Henderson's Tree Service, and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

*Brittany Smedley*  
Notary Public  
My Commission Expires: 2/10/19



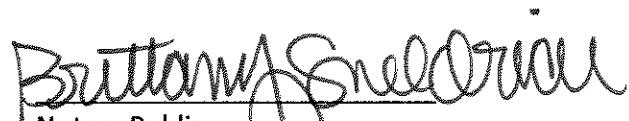
JAMES M. HENDERSON



STATE OF VERMONT  
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 29<sup>th</sup> day of July, 2016, personally appeared James M. Henderson, 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.

Before me,

  
Notary Public  
My Commission Expires: 2/10/2019


SYLVIA R. PROVOST



STATE OF VERMONT  
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 29<sup>th</sup> day of July, 2016, personally appeared Sylvia R. Provost, signer and sealer of the foregoing instrument, who is known to me or who satisfactorily established her identity to me and acknowledged the same to be her free act and deed.

Before me,

  
Notary Public  
My Commission Expires: 2/10/2019

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

Dated in Montpelier, Vermont, this 12 day of September, 2016.

Natural Resources Board

  
\_\_\_\_\_  
Diane B. Snelling Chair

# Exhibit A

Prepare bare soil for seeding by grading the top 3 to 6 inches of soil and removing any large rocks or debris.

## Seeding Rates for Temporary Stabilization

April 15 - Sept. 15 — Ryegrass (annual or perennial: 20 lbs/acre)

Sept. 15 - April 15 — Winter rye: 120 lbs/acre

## Seeding Rates for Final Stabilization:

Choose from:	Variety	lbs./acre	lbs./1000 sq.ft.
Birdsfoot trefoil	Empire/Pardee	5 <sup>1</sup>	0.10
or			
Common white clover	Common	8	0.20
plus			
Tall Fescue	KY-31/Rebel	10	0.25
plus			
Redtop	Common	2	0.05
or			
Ryegrass (perennial)	Pennfine/Linn	5	0.10

<sup>1</sup> - Mix 2.5 each of Empire and Pardee OR 2.5 lbs. of Birdsfoot and 2.5 lbs. white clover per acre.

## Mulching Rates

April 15 - Sept.15 – Hay or Straw: 1 inch deep (1-2 bales/1000 s.f.)

Sept.15 - April 15 – Hay or Straw: 2 in. deep (2-4 bales/1000 s.f.)

## Erosion Control Matting

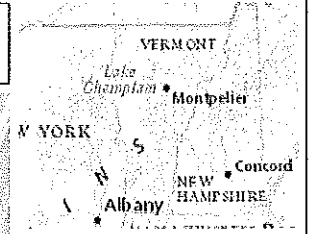
As per manufacturer's instructions

## Hydroseed

As per manufacturer's instructions




Exhibit C



**LEGEND**

Town Boundary

Green line depicts inland edge of Riparian Buffer Zone, which is located at 10 feet inland from the 380-foot elevation contour.

1: 1,641  
 June 17, 2016 

83.0 0 42.00 83.0 Meters

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere 1" = 137 Ft. 1cm = 16 Meters  
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**DISCLAIMER:** This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

**NOTES**

Map created using ANR's Natural Resources Atlas