

3. Respondent GSD Development, LLC (Respondent GSD) acquired the Project tract in 2005, and has constructed approximately 26 of the 92 permitted housing units.
4. Respondent Gerbode is a principal and the registered agent of Respondent GSD.
5. Condition 1 of the Permit states:
 1. The Project shall be completed, operated and maintained as set forth in accordance with the plans and exhibits on file with the District Environmental Commission, and in accordance with the conditions of this permit. No material or substantial changes shall be made in the Project without the written approval of the District Environmental Commission.
6. Sheet LT-1 of the lighting plans on file with the District Commission show a KIM Archtype 175 watt metal halide luminaire as the street light model to be used for the Project tract. Respondent GSD installed a different model of street light.
7. In the construction plan on file with the District Commission, the inlet to the forebay was proposed to be constructed using a metal end section. Respondent GSD built the inlet using PVC end section instead of a metal end section.
8. The construction plans on file with the District Commission for the catch basin call for the use of neoprene boots of a certain size at each penetration. Several of the catch basin penetrations on the Project tract are the wrong size and were sealed with bricks and mortar around the penetrations instead of neoprene boots.
9. In the construction plan on file with the District Commission, the stormwater recharge swale running along the western portion of the property is supposed to be grass-lined. Respondent GSD have lined approximately 500 linear feet of the swale on the Project tract with stone and fitted with a drainage pipe instead of as indicated in the construction plan on file with the District Commission.
10. By not completing the Project in accordance with the plans on file with the District Commission, Respondent GSD has violated Condition 1 of the Permit.
11. Condition 12 of the Permit states:
 12. The Permittees shall develop a construction and demolition waste management plan, prior to construction to be approved by the Agency of Natural Resources, and the Solid Waste Management Program. Through contract language, the contractor shall be

obligated to implement the plan and shall submit a copy to the District Environmental Commission.

12. In violation of Condition 12, GSD did not submit a copy of the construction and demolition waste management plan, approved by the Agency of Natural Resources, prior to construction.

13. Condition 20 of the Permit states:

20. The Permittee shall construct the recreational pavilion no later than November 1, 2006.

14. To date, the recreational pavilion has not been equipped with plumbing and fixtures and made ready for hookups to electric service and water and sewer as contemplated by the Permit and Findings. This violates Condition 20 of the Permit.

15. Condition 22 of the Permit states:

22. Upon completion of the construction, the Permittees and successors in interest or assigns shall ensure that a certification label available from the Department of Public Service or one substantially like it is issued. The certification label shall be signed by the builder of the home, a licensed architect or engineer or a Vermont-accredited home energy rating system, certifying that the residential building or addition has been constructed in compliance with the requirements of the Residential Building Energy Standards (RBES). This label shall be permanently affixed to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these areas. The Permittees and its successors and assigns shall ensure that the person certifying compliance provides a copy of each certificate to the Department of Public Service and that each certificate is recorded and indexed in the town records.

16. To date, Respondent GSD has not ensured that a copy of an RBES certificate has been provided to the Public Service Department and recorded in the land records for, and have not affixed all certification labels, for each unit constructed to date, as required by Condition 22.

17. Condition 24 of the Permit states:

24. The Permittees shall comply with all exhibits for erosion control. The Permittees shall prevent transport of sediment beyond that area necessary for construction approved herein. All soils shall be stabilized

within fourteen days of initial disturbance. From September 15 to April 15 of any calendar year, all disturbed areas of the construction site shall be mulched until final grading and vegetative cover is established. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. The Commission reserves the right to schedule hearings and site inspections to review erosion control and to evaluate and impose additional conditions with respect to erosion control, as they deem necessary.

18. Due to inadequate erosion control measures during and after construction, many of the stormwater controls on the Project tract are inundated with sediment, including the forebay of the detention pond. This violates Condition 24.
19. The inlet to the forebay has cracked and is in a state of disrepair, in violation of Condition 24.
20. Based on two expired Construction General Permits, 3604-9020 and 3604-9020.R, Respondent GSD has been moving and using a soil stockpile without implementing erosion control practices and have failed to reach final stabilization in some areas of the development.
21. Respondent GSD has coverage under an Operational Stormwater Permit (3604-9015) but is not in compliance with said permit based on the catch basin issues (settling sinkholes around many of them), some of the grass swales being converted to stone and/or lines with drainage pipe, and general maintenance issues (sediment in catch basins, ponds, forebays, and improperly maintained grass swales (bottom widths and side slopes)).
22. Respondent GSD violated Conditions 1, 12, 20, 22, and 24 of the Permit, failed to comply with their Operational Stormwater Permit (3604-9015), and commenced construction with expired Construction General Permit coverage (3604-9020 and 3604-9020.R).
23. Respondent GSD has recently applied for Stormwater Construction General Permit Coverage.
24. The Project is in the process of being foreclosed upon by the Peoples Trust Co. Peoples Trust Company is not in possession of, and does not operate or control the Project.
25. Respondent John Philip Gerbode is insolvent.
26. Respondent GSD Development, LLC is insolvent.

27. Peoples Trust Company anticipates selling the property at auction this summer. Peoples' Trust Company does not expect to take title. It expects that it will take at least 60 to 90 days after the date of this stipulation for the auction to occur.
28. Significant repairs to the stormwater infrastructure are required at the Project site for stormwater and Act 250 compliance.
29. There may be more than one way to bring the stormwater infrastructure into compliance.
30. The engineer for the Village at Franklin Park West Association has inspected the stormwater system at the Project site and opined that the following repairs should be made:
 - a) The top inlet grate of the stormwater basin outlet should be grouted or otherwise secured to the top of the structure in accordance with the original design drawings.
 - b) The 4" outlet elbow should be rotated downward.
 - c) The three outlet orifices should be grouted on the inside of the outlet structure in accordance with the original design drawings.
 - d) The 24" discharge pipe should be adequately covered.
 - e) Type III stone fill should be added to the detention pond at the new end section.
 - f) The covers or inlets of DMH 1 and DMH 2 should be grouted or otherwise secured to the top of the structure.
 - g) Several of the structures and piping contain significant sediment that should be removed.
 - h) Most, if not all, of the stormwater structures require replacement or significant improvements to address improper pipe connections, differential settlement, migration of fines and other issues.
 - i) Most, if not all, of the stormwater system piping requires replacement to address deflection outside the stated tolerances of the manufacturer as well as vertical alignment and other construction issues.

- j) The western swale requires regrading so the side slopes and bottom area match the approved plans and The Vermont Stormwater Management Manual. Side slopes are currently 2H: 1V and the bottom width is 1 foot. Side slopes of 3H: 1V and a bottom width of at least 2 feet are required. Additionally, the stone and pipe drain should be removed. Prior to reshaping, the swale should be analyzed to demonstrate its ability to accommodate the 100-year storm event with adequate freeboard to prevent flooding of the residences.

AGREEMENT

- A. Respondent GSD shall comply with all conditions of Land Use Permit #6F0569 and Operational Stormwater Permit (3604-9015) and any subsequent permit amendments.
- B. Respondent GSD shall diligently pursue the application for Stormwater Construction Permit coverage filed with the Agency of Natural Resources Department of Environmental Conservation.
- C. No later than 180 days after the date this Assurance is entered as a Judicial Order, Respondent GSD, or any subsequent owner of the Project, shall file a complete application with the Agency of Natural Resources Department of Environmental Conservation to amend the existing Operational Stormwater Permit.
- D. No later than 180 days after the date of this Assurance is entered as a Judicial Order, the Respondent GSD, or any subsequent owner of the Project, shall comply with Condition 12 of the Land Use Permit #6F0569.
- E. For purposes of this Assurance, "diligently pursue" means that Respondent GSD shall respond to any and all requests for information from the Department of Environmental Conservation promptly and by any date set by the Department for such response.
- F. The obligations in this Assurance to bring the Project into compliance with Act 250 and stormwater requirements run with the land. Any subsequent owner of the Project tract shall be required to meet these obligations, and shall be responsible for compliance with permitting requirements. Notwithstanding the foregoing, the liability, if any, of the Village at Franklin Park West Association, shall be as provided in the Revised and Restated Declarations of Covenants, Conditions and Restrictions for the Village at Franklin Park, dated July 6, 2009. As of this date, the stormwater system has not been conveyed to or accepted by the Association.

- G. No later than 30 days after the date this Assurance is entered as a Judicial Order by the Superior Court, Environmental Division, Respondent John Phillip Gerbode shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$1,500.00** (U.S. Dollars), for the violations noted herein, by check made payable to: **Treasurer, State of Vermont.**
 2. Pursuant to 10 V.S.A. § 8010(e)(2), the amount of **\$831.76** (U.S. Dollars) to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to: **Vermont Natural Resources Board.**
 3. The amount of **\$10.00** (U.S. Dollars), for the purpose of paying the fee for recording a notice of this Assurance in the Town of St. Albans land records, by check made payable to: **Town of St. Albans, Vermont.**
- H. No later than 30 days following the entry of this Assurance as a Judicial Order, Respondents shall deliver to the Board an executed Acceptance of Service, on a form approved by the Board, showing that each Respondent has actual notice of the Judicial Order and Assurance of Discontinuance.
- I. All payments required by this Assurance shall be sent to:
- Natural Resources Board
Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201
- J. 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.
- K. 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.
- L. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected each Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- M. 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

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NRB v. GSD Development, LLC and
John Philip Gerbode
Stipulation and Consent Order

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ENVIRONMENTAL DIVISION

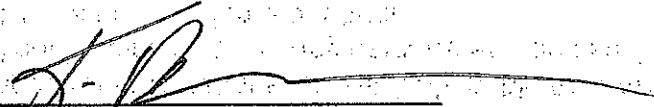
order is vacated, the Assurance shall be null and void.

- N. 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 Respondents, as to their respective agreements herein, fully comply with this Assurance.
- O. The Board may grant reasonable extensions of any deadline contained herein, upon prior request by either Respondent or any successor in title, for good cause beyond the Respondent's or the successor in title's control.
- P. Nothing in this Stipulation shall bar Respondent GSD or any successor in title from applying with the appropriate authority to amend any permit that is the subject hereof or referenced herein.
- Q. 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. 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.
- R. 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 court 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.
- S. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

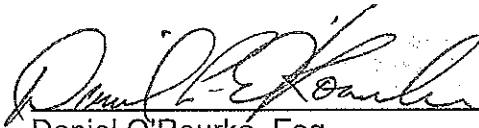
SIGNATURES

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

DATED at St. Albans, Vermont, this 1 day of July, 2014.


Karen Drennen, Intervenor

DATED at ^{Essex St} Burlington, Vermont, this 27th day of June, 2014.



Daniel O'Rourke, Esq.
Bergeron, Paradis & Fitzpatrick, LLP
Attorney for Intervenor Village at Franklin Park
Homeowners' Association

DATED at Burlington, Vermont, this _____ day of _____, 2014.

Claudine C. Safar, Esq.
Monaghan Safar Ducham, PLLC
Attorney for John Philip Gerbode
and GSD Development, LLC

DATED at Montpelier, Vermont, this _____ day of _____, 2014.

Melanie Kehne, General Counsel
Vermont Natural Resources Board

SO ORDERED, this _____ day of _____, 2014.

Presiding Judge
Superior Court, Environmental Division

DATED at Burlington, Vermont, this _____ day of _____, 2014.

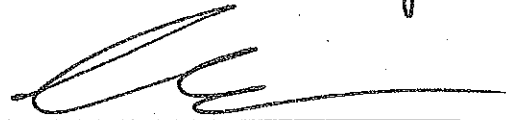
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VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Daniel O'Rourke, Esq.
Bergeron, Paradis & Fitzpatrick, LLP
Attorney for Intervenor Village at Franklin Park
Homeowners' Association

DATED at Burlington, Vermont, this 1st day of July, 2014.



Claudine C. Safar, Esq.
Monaghan Safar Ducham, PLLC
Attorney for John Philip Gerbode
and GSD Development, LLC

DATED at Montpelier, Vermont, this _____ day of _____, 2014.

Melanie Kehne, General Counsel
Vermont Natural Resources Board

SO ORDERED, this _____ day of _____, 2014.

Presiding Judge
Superior Court, Environmental Division


DATED at Burlington, Vermont, this _____ day of _____, 2014.

Daniel O'Rourke, Esq.
Bergeron, Paradis & Fitzpatrick, LLP
Attorney for Intervenor Village at Franklin Park
Homeowners' Association

DATED at Burlington, Vermont, this _____ day of _____, 2014.

Claudine C. Safar, Esq.
Monaghan Safar Ducham, PLLC
Attorney for John Philip Gerbode
and GSD Development, LLC

DATED at Montpelier, Vermont, this 16th day of June, 2014.



Melanie Kehne, General Counsel
Vermont Natural Resources Board

SO ORDERED, this 21st day of July, 2014.

This Order shall only be binding upon the signing parties.



Presiding Judge
Superior Court, Environmental Division