

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. \_\_\_\_\_

LAND USE PANEL of the )  
NATURAL RESOURCES BOARD )  
Petitioner )

v. )

HOMESTEAD DESIGN, INC. )  
Respondents )

ASSURANCE OF DISCONTINUANCE

**VIOLATIONS**

- I. Caused, permitted, or allowed the discharge of sediment-laden runoff into an Eastern Class Two Wetland on the project site, in violation of Condition No. 22 of Land Use Permit #4C1141, as amended, Vermont Wetland Rule § 6.3 and 10 V.S.A. § 1259.
- II. Failed to maintain a 50-foot undisturbed, naturally vegetated buffer strip between Building H and an Eastern Class Three Wetland, in violation of Condition No. 23 of Land Use Permit #4C1141, as amended.
- III. Caused, permitted, or allowed filling in an Eastern Class Three Wetland on the project site, in violation of Condition No. 22 of Land Use Permit #4C1141, as amended.
- IV. Caused, permitted, or allowed discharge from a staging area into an Eastern Class Three Wetland on the project site, in violation of Condition No. 22 of Land Use Permit #4C1141, as amended.
- V. Failed to comply with the Conditions of Individual Discharge Permits #3658-INDC and #3658-INDC.1, in violation of said permits, Section 402[p] of the federal Clean Water Act, 33 USC § 1342[p], and 10 V.S.A. §§ 1259 and 1263, and Condition #22 of Land Use Permit #4C1141, as amended.

## ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Homestead Design, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

### STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. On May 13, 2005, the District 4 Environmental Commission (Commission) issued Land Use Permit #4C1141 to Respondent. The permit applies to the lands identified in Book 440, Page 518, of the land records of the City of South Burlington, Vermont. The permit specifically authorized Respondent to construct an 89-unit residential project, along with approximately 5,375 linear feet of roadway, and municipal water and sewer. The project is called "Heatherfield" and is located between Dorset Street and Spear Street just south of the I-89 bridge.
2. On June 6, 2005, the Division of Water Quality within the Department of Environmental Conservation issued Respondent Homestead Design, Inc., Discharge Permit # 3658-INDC. This permit authorizes Homestead Design, Inc. to discharge stormwater runoff from the construction site of the Heatherfield Project.
3. On June 19, 2006, the Division of Water Quality within the Department of Environmental Conservation issued Respondent Homestead Design, Inc., Discharge Permit # 3658-INDC.1. This permit explicitly authorizes Homestead Design, Inc. to discharge stormwater runoff from the construction site of a residential housing development to Potash Brook.
4. On June 30, 2006, District Environmental Commission #4 issued Land Use Permit Administrative Amendment #4C1141-1. The permit amendment expressly incorporates Stormwater Discharge Permit #3658-INDC.1.

### Counts I, III and IV: Discharges to Wetlands

5. Condition No. 22 of Land Use Permit #4C1141, as amended, requires that Respondent shall not cause, permit, or allow the discharge of waste material into any surface waters.

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6. On or about September 1, 2007, Respondent informed the Agency of Natural Resources by letter that filling had occurred in a Class Three Wetland adjacent to Buildings P, Q, and R. Respondent requested that the Agency of Natural Resources postpone action until the U.S. Army Corps of Engineers (ACOE) made a decision regarding restoration. On September 24, 2007, Respondent informed the Agency of Natural Resources that the ACOE would permit the fill and not require restoration.
7. On or about January 11, 2008, Matt DeWolfe (Environmental Engineer, Water Quality Division) Bill Nedde (Krebs & Lansing Consulting Engineers, Inc.) and Julie Foley (District Wetlands Ecologist, Vermont Wetlands Section, Water Quality Division, Agency of Natural Resources) conducted a site visit of the project site. During that site visit, they observed that sediment-laden runoff resulting from poor erosion control near the east storm pond has impacted an Eastern Class Two Wetland. They also observed that a Class Three Wetland near Building S had received discharge from the staging area.
8. Respondent violated Vermont Wetland Rule § 6.3, 10 VSA § 1259 and Condition No. 22 of Land Use Permit #4C1141, as amended, by causing, permitting, or allowing discharge of waste material into surface waters/wetlands on the project site.

**Count II: Buffer Encroachments**

9. Condition No. 23 of Land Use Permit #4C1141, as amended, requires that Respondent maintain a 50-foot undisturbed, naturally vegetated buffer strip between all watercourses of the project site and any disturbed areas.
10. On or about April 4, 2007, Bill Nedde (Krebs & Lansing Consulting Engineers, Inc.), Peter Keibel (Coordinator, District 4 Commission), Chris Brunelle (Agency of Natural Resources, Rivers & Streams, NW and West Central Vermont), and Julie Foley (District Wetlands Ecologist, Vermont Wetlands Section, Water Quality Division, Agency of Natural Resources) conducted a site visit of the project site. During that site visit, they observed fill on the south side of Building H, 25 feet from a stream and a Class Three Wetland. The Agency of Natural Resources asked that the fill be removed and stabilized and this was done.
11. Respondent violated Condition No. 23 of Land Use Permit #4C1141, as amended, by failing to maintain a 50-foot undisturbed, naturally vegetated buffer strip between all watercourses of the project site and any disturbed areas.

**Count V: Stormwater**

12. Land Use Permit #4C1141-1 explicitly incorporates the conditions of Stormwater Discharge Permit #3658-INDC.1.
13. Individual Discharge Permits 3658-INDC and 3658-INDC.1 require, *inter alia*, that that Respondent implement required Best Management Practices (BMPs) as detailed in the authorized Winter Erosion Prevention and Sediment Control (EPSC Plan).
14. Respondent's authorized Winter EPSC Plan requires, *inter alia*, that:
  - "All disturbed areas shall be stabilized at the end of each work day to prevent exposure from rain events and accumulating snowfall. Stabilization measures shall include covering exposed earth with erosion control matting, mulching with netting at twice the normal application rate (3"), or weighted impermeable barriers."
  - "The On-Site Coordinator shall be responsible for weekly written inspections during periods when the site is stabilized. During on-going construction, the On-Site Coordinator shall be required to document daily stabilization to indicate compliance with the approved permit. If unforeseen situations prevent daily stabilization, the On-Site Coordinator will be responsible for complete written inspection in accordance with Figure 6-1."
  - "A daily report using form 6-4W shall be completed during the winter construction period by the on-site coordinator. Inspection shall also be required after any storm event, which generates a discharge of storm water runoff from the construction site. A continuous log of the construction activities, the erosion control measures in place, and their condition shall be maintained. This log shall include the date on which the erosion control measures are installed, maintained, or removed."
15. On or about January 8, 2008, Matt DeWolfe (Environmental Engineer, Water Quality Division) visited the project site to determine the extent of compliance with the associated authorization to discharge stormwater runoff under Individual Discharge Permits 3658-INDC and 3658-INDC.1.

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16. During the January 8 inspection, DeWolfe identified several significant areas of non-compliance with this federal permit, including, but not limited to: 1) failure to implement required Best Management Practices (BMPs) as detailed in the authorized Winter Erosion Prevention and Sediment Control (EPSC Plan), including stabilizing exposed soils by the end of each working day during the winter period (October 15- May 1) when precipitation is forecasted; 2) failure to document inspections as required by the permit and the authorized Winter EPSC Plan; 3) failure to install and maintain BMPS as required by the Individual Discharge Permits and as detailed in the authorized Winter EPSC Plan; and 4) failure to post notice of coverage under the Individual Discharge Permit in a location visible to the public.
17. On or about January 14, 2008, Peter LaFlamme (Director, Water Quality Division, Agency of Natural Resources) issued a Notice of Alleged Violation (NOAV) to the Respondent, indicating that the above-mentioned areas of non-compliance were all violations of federal Individual Discharge Permits 3658-INDC and 3658-INDC.1.
18. Respondent violated Permits #3658-INDC and #3658-INDC.1, in violation of Section 402[p] of the federal Clean Water Act, 33 USC § 1342[p], and 10 V.S.A. §§ 1259 and 1263, and Condition #22 of Land Use Permit #4C1141, as amended.

**AGREEMENT**

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

- A. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Seven Thousand Three Hundred and Twelve Dollars (\$7,312.00)**, for the violations noted herein. Respondent shall make said payment by check or money order payable to the "Treasurer, State of Vermont" and shall send it to:

Denise Wheeler, Business Manager  
Natural Resources Board, Land Use Panel  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

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Any payment by the Respondents pursuant to this paragraph is made to resolve the violation set forth in this Assurance of Discontinuance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.

- B. Respondents shall comply with all terms and conditions of Land Use Permit #4C1141, as amended.
- C. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violation set forth herein above.
- D. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives.
- E. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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.
- F. 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 described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully complies with the agreements set forth above.
- G. This Assurance sets forth the complete agreement of the parties, and it 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 Environmental Court. 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.
- H. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- I. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

**SIGNATURES**

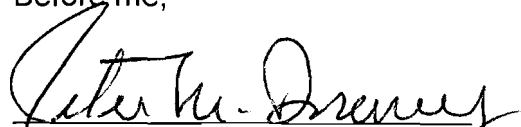
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

  
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Homestead Design, Inc.

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss.

BE IT REMEMBERED that on the 9<sup>th</sup> day of JANUARY, 2009, personally appeared ROBERT MARCELLINO, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

Before me,

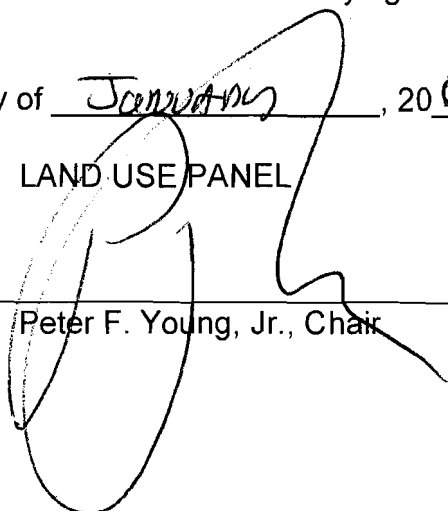
  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 2/10/11

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

Dated in Montpelier, Vermont, this 19<sup>th</sup> day of JANUARY, 2009.

LAND USE PANEL

By:   
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Peter F. Young, Jr., Chair