

**STATE OF VERMONT**

**SUPERIOR COURT**

**ENVIRONMENTAL DIVISION**

**Docket No.**

**SECRETARY, VERMONT  
AGENCY OF NATURAL RESOURCES,  
Plaintiff**

**v.**

**SOUTH VILLAGE COMMUNITIES, LLC,  
Respondent**

**ADMINISTRATIVE ORDER**

Having found that South Village Communities, LLC (Respondent) has committed a violation as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

**VIOLATIONS**

1. Construction General Permit (CGP) 3-9020 (NOI#4096-9020): Failure to implement and maintain sedimentation and erosion control measures
2. CGP 3-9020 (NOI#4096-9020): Failure to implement and maintain sedimentation and erosion control measures
3. Vermont Wetland Rules (VWR) §9: Fill placed in a Class II Wetland and/or 50-foot buffer zone without a permit
4. VWR §9: Mowing in a Class II Wetland and/or 50-foot buffer zone without a permit

**STATEMENT OF FACTS**

1. Respondent is a Vermont-registered limited liability company engaged in the development of a 334-unit residential development (the Project) on a property located on Spear Street in South Burlington, Vermont (the Property).
2. The Property contains wetlands which are identified on the Vermont Significant Wetland Inventory maps and, therefore, are designated as Class II wetlands under the VWR.
3. On May 1, 2006, the Respondent obtained Conditional Use Determination 2001-074, which authorized encroachments into the wetlands on the Property. The Conditional Use Determination was renewed in 2009 and expired June 15, 2012.
4. On June 25, 2009, the Respondent obtained coverage under CGP 3-9020 (NOI #4096-9020).

5. On March 15, 2013, Agency personnel inspected the Property and observed fill material in a portion of the Class II wetland's 50-foot buffer zone, in violation of VWR §9.
6. On June 11, 2013, Agency personnel inspected the Property and observed a silt fence near South Jefferson Road that was not properly installed or maintained. The silt fence sloped down to the edge of the Class II wetland's 50-foot buffer zone and was not stabilized, and inlet protection measures were not installed, in violation of CGP 3-9020.
7. On July 12, 2013, the Agency issued the Respondent a Notice of Alleged Violation (NOAV) advising of the violations and providing instructions to: immediately comply with CGP 3-9020; implement erosion prevention and sediment control measures; stabilize exposed soils in and adjacent to Class II wetland buffer zones; install any other required erosion control measures to prevent discharges to Class II wetlands or buffer zones; and submit an application for a Wetland Permit from the Agency.
8. On July 23, and August 6, 2013, Agency personnel inspected the Property and observed recent mowing in the Class II wetland and 50-foot buffer zone on the east side of the wetland, north of East Jefferson Drive, in violation of VWR §9.
9. On August 26, 2013, the Respondent submitted a Vermont Wetland Permit application. However, the Agency determined it was incomplete.
10. On September 10, 2013, Agency personnel inspected the Property and observed additional mowing in the Class II wetland and 50-foot buffer zone on the north end of the Project in violation of VWR §9.
11. On January 14, 2014, Agency personnel inspected the Property and observed violations of CGP 3-9020, including insufficient mulch stabilization on several lots at the southern end of the Project; multiple soil stockpiles not adequately mulched or surrounded by silt fence during a rain event; mud tracked onto Frost Street indicating an inadequate construction entrance; and no installed inlet protection measures.
12. On January 30, 2014, the Agency issued the Respondent a second NOAV with directives to immediately implement erosion prevention and sediment control measures and to submit a designer's statement of compliance.
13. On February 17, 2014, a Professional Engineer conducted a site visit on behalf of the Respondent and documented that measures were installed to comply with the NOAV.

14. On February 21, 2014, Respondent submitted a revised Vermont Wetland Permit application. However, the Agency determined it was incomplete.
15. On May 29, 2014, the Agency received a complete application for a Vermont Wetland Permit, which was issued on September 10, 2014 authorizing the fill observed in the wetland.
16. On June 25, 2014, Respondent's coverage under CGP 3-9020 (NOI #4096-9020) expired.
17. On October 1, 2014, the Agency received an application to renew the CGP 3-9020. The Agency issued CGP 4096-9020.1 on November 20, 2014.
18. On April 8, 2015, following discussions with the Agency, Respondents applied for an individual construction stormwater permit to replace the existing CGP 4096-9020.1 because the earth disturbance occurring in both Phase I and Phase II did not fit under the terms of the existing CGP. The Agency issued individual permit 4096-INDC.1 on August 13, 2016; it is the current active construction permit.
19. By failing to implement and maintain sedimentation and erosion control measures in 2013, South Village Communities, LLC violated Construction General Permit (CGP) 3-9020 (NOI#4096-9020).
20. By failing to implement and maintain sedimentation and erosion control measures in 2014, South Village Communities, LLC violated Construction General Permit (CGP) 3-9020 (NOI#4096-9020).
21. By placing fill in a Class II Wetland and/or its 50-foot buffer zone without a permit, South Village Communities, LLC violated VWR §9.
22. By mowing in a Class II Wetland and/or its 50-foot buffer zone without a permit, South Village Communities, LLC violated VWR §9.

### **ORDER**

Upon receipt of this Administrative Order, the Respondent shall:

- A. Pay a penalty of \$45,000.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant  
Environmental Compliance Division  
Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3803

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondents from the violations(s), and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. Respondent shall comply with its Wetland Permit and Individual Construction Permit 4096-INDC.1, any amendments to those permits, and any other applicable permit and environmental law, in the construction, operation, and maintenance on Respondent's Property.

**RESPONDENT'S RIGHT TO A HEARING**  
**BEFORE THE ENVIRONMENTAL COURT**

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources  
c/o: Enforcement & Litigation Section  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901
2. Clerk, Superior Court, Environmental Division  
32 Cherry St. 2<sup>nd</sup> Floor, Suite 303  
Burlington, VT 05401

**EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER**

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as

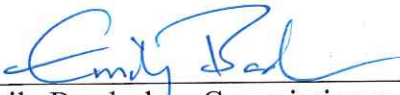
provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Environmental Court.

**COMPLIANCE WITH THIS ADMINISTRATIVE ORDER**

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Montpelier, Vermont this 30 day of October, 2018.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By:   
Emily Boedecker, Commissioner  
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No.

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OF NATURAL RESOURCES,  
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v.

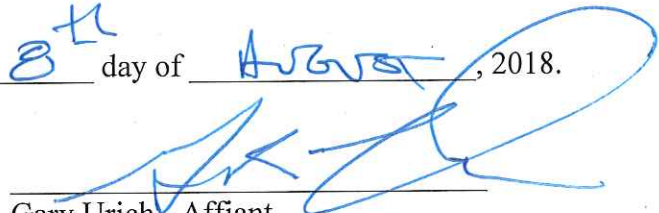
SOUTH VILLAGE COMMUNITIES, LLC,  
Respondent

Affidavit of Gary Urich

I, Gary Urich, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as an Environmental Enforcement Officer in the Environmental Compliance Division of the Agency of Natural Resources.
3. Based upon personal observations and conversations with witnesses, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at MONTPELIER, Vermont this 8<sup>th</sup> day of AUGUST, 2018.

  
Gary Urich - Affiant

Subscribed and sworn before me on the 8<sup>th</sup> of August, 2018.



Megan M. Cousins  
Notary Public

My Commission Expires: 02/10/2019

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

Agency of Natural Resources, )  
Petitioner, )  
 )  
v. )  
 )  
South Village Communities, LLC, )  
Respondent. )

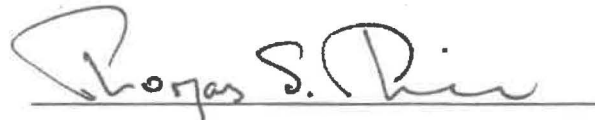
Docket # 10-1-19 Vtec

**CORRECTED ORDER**

Based on the agreement of the parties in Paragraph F of the Assurance of Discontinuance filed on May 2, 2019, the Administrative Order in the above captioned matter issued by the Secretary of the Agency of Natural Resources on October 30, 2018, is hereby vacated.

The Assurance of Discontinuance signed by the Respondent on March 19, 2019, and filed with the Superior Court, Environmental Division, on May 2, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c), concluding this case.

Dated this 8th day of May 2019.



Thomas S. Durkin, Judge  
Vermont Superior Court  
Environmental Division

**STATE OF VERMONT**

**SUPERIOR COURT**

**ENVIRONMENTAL DIVISION**

**Docket No. 10-1-19 Vtec**

**SECRETARY, VERMONT  
AGENCY OF NATURAL RESOURCES,  
Plaintiff**

**v.**

**SOUTH VILLAGE COMMUNITIES, LLC,  
Respondent**

**VIOLATIONS**

1. Construction General Permit (CGP) 3-9020 (NOI #4096-9020): Failure to implement and maintain sedimentation and erosion control measures
2. CGP 3-9020 (NOI #4096-9020): Failure to implement and maintain sedimentation and erosion control measures
3. Vermont Wetland Rules (VWR) §9: Fill placed in a Class II Wetland and/or 50-foot buffer zone without a permit
4. VWR §9: Mowing in a Class II Wetland and/or 50-foot buffer zone without a permit

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. Section 8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and South Village Communities, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondent is a Vermont-registered limited liability company engaged in the development of a 334-unit residential development, a multi-phase project (project) on a property located on Spear Street in South Burlington, Vermont (property).
2. The Property contains wetlands which are identified on the Vermont Significant Wetland Inventory maps and therefore are designated as Class II wetlands under the VWR.
3. On May 1, 2006, the Respondent obtained Conditional Use Determination 2001-074, which authorized encroachments into the wetlands on the property. The Conditional Use Determination was renewed in 2009 and expired June 15, 2012.



4. On June 25, 2009, the Respondent obtained coverage under CGP 3-9020 (NOI #4096-9020) for Phase IA of the project.
5. On March 15, 2013, Agency personnel inspected the property and observed fill material in the area of Lots 59 – 62, in a portion of the Class II wetland's 50-foot buffer zone, in violation of VWR §9.
6. On June 11, 2013, Agency personnel inspected the property and observed a silt fence near South Jefferson Road, in the area of Lots 59 – 62, that was not properly installed or maintained. The silt fence sloped down to the edge of the Class II wetland's 50-foot buffer zone and was not stabilized, and inlet protection measures were not installed in violation of CGP 3-9020.
7. On July 12, 2013, the Agency issued the Respondent a Notice of Alleged Violation (NOAV) advising of the violations and providing instructions to immediately comply with CGP 3-9020, implement erosion prevention and sediment control measures, stabilize exposed soils in and adjacent to Class II wetland buffer zones, install any other required erosion control measures to prevent discharges to Class II wetlands or buffer zones, and submit an application to the Agency for a Wetland Permit.
8. On July 23, 2013, in response to the July 12, 2013 NOAV, the Respondent sent a letter to the Agency containing a thorough explanation of the procedures undertaken by Respondent to stabilize soils, including new adjacent buffer zones, and photographic evidence.
9. On July 23, and August 6, 2013, Agency personnel inspected the property and observed recent mowing in the Class II wetland and 50-foot buffer zone on the east side of the wetland, north of East Jefferson Drive, in violation of VWR §9.
10. On August 26, 2013, the Respondent submitted a Vermont Wetland Permit application, however it was determined to be incomplete.
11. On January 14, 2014, Agency personnel inspected the property and observed in the area of Lots 46 – 47 insufficient mulch stabilization on several lots at the southern end of the project, multiple soil stockpiles not adequately mulched or surrounded by silt fence during a rain event, mud tracked onto Frost Street indicating an inadequate construction entrance, and inlet protection measures not installed, in violation of CGP 3-9020.
12. On January 30, 2014, the Respondent received a second NOAV issued by the Agency with directives to immediately implement erosion prevention and sediment control measures and to submit a designer's statement of compliance.
13. On February 17, 2014, a Professional Engineer conducted a site visit on behalf of the Respondent and documented that measures were installed to comply with the NOAV.
14. In early 2014, the Respondent hired a new employee with EPSC experience in furtherance of its commitment to bring the project into compliance with its permits.
15. On February 21, 2014, the Respondent submitted a revised Vermont Wetland Permit application, however it was determined to be incomplete.

16. On May 29, 2014, the Agency received a complete application for a Vermont Wetland Permit, which was issued on September 10, 2014 and authorized the fill observed in the wetland.
17. On June 25, 2014, Respondent's coverage under CGP 3-9020 (NOI #4096-9020) expired.
18. On October 1, 2014, the Agency received an application to renew the CGP 3-9020. CGP 4096-9020.1 was issued November 20, 2014.
19. On April 8, 2015, an individual construction stormwater permit was applied for by the Respondent to replace the existing CGP 4096-9020.1. Individual permit 4096-INDC.1 was issued on August 13, 2016 and is the currently active permit.
20. Respondent admits the factual findings described above, solely for purposes of resolving this case.
21. The Agency alleges that the above conduct constitutes violations of CGP 3-9020 and VWR §9.

### AGREEMENT

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

- A. For the violations described above, Respondent shall pay a total penalty of \$15,000.00. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant  
Agency of Natural Resources  
Environmental Compliance Division  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3803

Payment shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order by signature of the Superior Court, Environmental Division (effective date).

- B. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.
- C. Respondent agrees that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. §8010.
- D. Respondent shall comply with its Wetland Permit and Individual Construction Permit 4096-INDC.1, any amendments to those permits, and any other applicable permit and environmental law, in the construction, operation, and maintenance on Respondent's property.

- E. The State of Vermont and the Agency reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth hereinabove.
- F. The parties intend that this agreement, upon being accepted by the Court, shall fully resolve and result in the dismissal of the pending Administrative Order filed in the Superior Court, Environmental Division, in Docket Number 10-1-19 Vtec, for this matter.
- G. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondent's on-going obligation to comply with all other federal, state, or local statutes, regulations, or directives applicable to the Respondent in the operation of their business.
- 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. In the event that such order is vacated, the Assurance shall be null and void.
- I. The Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein occurring before the effective date of the Assurance, provided that the Respondent fully complies with the agreements set forth above.
- J. 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 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 be of no legal force or effect.
- K. 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.
- L. This Assurance is subject to the provisions of 10 V.S.A. Sections 8007 and 8020.

SIGNATURES

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

Further, I Andrew Marks, the undersigned, hereby state under oath that I am the Manager of South Village Communities, LLC and an authorized representative of South Village Communities, LLC, and that I have the power to contract on behalf of that entity, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Williston, Vermont, this 19<sup>th</sup> day of March 2019.

South Village Communities, LLC

By: [Signature]

Andrew Marks, Manager

STATE OF VERMONT

COUNTY OF CHITTENDEN, ss.

At Williston, Vermont, this 19 day of MARCH 2019,  
the above-signatory personally appeared and swore to the truth of the foregoing. Before me,

[Signature]

Notary Public

Term expires: 1.31.21

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

Dated at Montpelier, Vermont, this 28 day of March, 2019.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: [Signature]

Emily Boedecker, Commissioner  
Department of Environmental Conservation