

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 GARDEN HOMES, GARDEN HOMES REALTY)
 CORPORATION, GARDEN HOMES)
 COMMERCIAL PROPERTIES, CLARK)
 DEVELOPERS LLC, SUNSET RIDGE)
 DEVELOPERS LLC, NORDAN REALTY)
 CORPORATION, BLOOMFIELD BELLEVILLE)
 ASSOCIATES, SCENIC RIDGE LOPATCONG)
 LLC, ALLENDALE WHITNEY LLC,)
 RIVER VALE DEVELOPERS LLC,)
 RIVERFRONT DEVELOPERS LLC, 351)
 MOLNAR ASSOCIATES LLC, DUNHAMS)
 FARM DEVELOPERS, LLC, RARITAN)
 JUNCTION LLC, NORTH BRUNSWICK TOD)
 ASSOCIATES LLC, FAIR LAWN PROMENADE)
 LLC, EDISON ROUTE 27 ASSOCIATES LLC,)
 AND MONROE 33 DEVELOPERS, LLC)
)
 Defendants.)
 _____)

CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION - 2 -

II. JURISDICTION AND VENUE - 2 -

III. APPLICABILITY - 3 -

IV. DEFINITIONS - 4 -

V. CIVIL PENALTY - 7 -

VI. COMPLIANCE REQUIREMENTS - 7 -

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT - 21 -

VIII. REPORTING REQUIREMENTS - 24 -

IX. STIPULATED PENALTIES - 27 -

X. FORCE MAJEURE - 29 -

XI. DISPUTE RESOLUTION - 31 -

XII. INFORMATION COLLECTION AND RETENTION - 32 -

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS - 34 -

XIV. COSTS - 35 -

XV. NOTICES - 35 -

XVI. EFFECTIVE DATE - 36 -

XVII. RETENTION OF JURISDICTION - 37 -

XVIII. MODIFICATION - 37 -

XIX. TERMINATION - 37 -

XX. PUBLIC PARTICIPATION - 38 -

XXI. SIGNATORIES/SERVICE - 38 -

XXII. INTEGRATION - 38 -

XXIII. FINAL JUDGMENT - 39 -

XXIV. APPENDICES - 39 -

I. INTRODUCTION

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree alleging that Garden Homes, Garden Homes Realty Corporation, Garden Homes Commercial Properties and their affiliates, including Clark Developers, LLC, Scenic Ridge Lopatcong, LLC, Allendale Whitney, LLC, Dunhams Farm Developers, LLC, Riverfront Developers, LLC, 351 Molnar Associates, LLC, Nordan Realty Corporation, River Vale Developers, LLC, Sunset Ridge Developers, LLC, and Bloomfield Belleville Associates, LLC (“Defendants”), violated the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1251-1387.

B. The Complaint alleges that Defendants violated the Act, 33 U.S.C. §§ 1251-1387, and the regulations promulgated pursuant to the Act, by their failure to comply with the requirements of New Jersey Department of Environmental Protection (“NJDEP”) Construction General Permits (“Construction Permit”), which are permits authorized by the EPA pursuant to the CWA, 33 U.S.C. § 1342(p).

C. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b). Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 (b), (c) and 1395(a) because Defendants conduct business in this District, the violations alleged in the Complaint occurred in this District, and because business offices of Garden Homes are located in this District. For purposes of this Decree, or any such action to enforce this Decree, Defendants consent to the Court’s jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

III. APPLICABILITY

3. Parties Bound. The obligations of this Consent Decree apply to and are binding upon the United States and upon all Garden Homes Affiliates. This Consent Decree shall not be binding on any purchaser of real property who is not an entity otherwise covered by this Consent Decree.

4. Responsibility for Acts of Others.

a. Garden Homes Affiliates shall be responsible for compliance with Stormwater Requirements at Garden Homes Sites, except as set forth in Subparagraph 4.b.

b. If a Garden Homes Site is transferred to an entity that is not a Garden Homes Affiliate, such site shall no longer be considered a Garden Homes Site. In such case, Garden Homes Affiliates shall no longer be responsible for compliance with Stormwater Requirements at the transferred site.

c. In any action to enforce this Consent Decree, Garden Homes Affiliates shall not assert as a defense the failure by any officer, director trustee, employee, agent, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, unless Garden Homes Affiliates establish that the failure resulted from a Force Majeure event defined in Section X.

5. Transfer of Garden Homes Sites. No transfer of ownership or operation of the facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Garden Homes Affiliates of their obligations to ensure that the terms of the Decree are implemented, except as set forth in Subparagraph 4.b.

a. At least thirty (30) Days prior to any transfer, whether pursuant to Paragraph 4.b. or otherwise, Garden Homes Affiliates shall:

- i. provide a copy of Appendix D to the proposed transferee;
- ii. provide to EPA Region 2, the United States Attorney for District of New Jersey, and the United States Department of Justice, in accordance with Section XV (Notices):
 - (a) written notice of the prospective transfer;
 - (b) a copy of the proposed written transfer agreement; and
 - (c) a written statement, certified in accordance with Paragraph 50, that the Garden Homes Site to be transferred is in compliance with this Consent Decree.

b. Any attempt to transfer ownership or operation of a Site without complying with this Paragraph constitutes a violation of this Decree.

6. Garden Homes Affiliates shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any

provision of this Decree. Garden Homes Affiliates shall provide a copy of Appendix D to any Contractor retained to perform work required under this Consent Decree. Garden Homes Affiliates shall condition any such contract upon performance of the work in conformity with the compliance requirements listed in Appendix D.

7. Garden Homes Affiliates shall not alter its general corporate structure or enter into agreements with third parties for the primary purpose of directly or indirectly circumventing the requirements of this Consent Decree.

IV. DEFINITIONS

8. Terms used in this Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Action Item” or “Deficiency” shall mean a condition that requires action to be taken to achieve or maintain compliance with National Pollutant Discharge Elimination System (“NPDES”) Stormwater Requirements, the CWA, applicable Construction Permit(s), or this Consent Decree;
- b. “Best Management Practices” (“BMPs”) shall be the same as the definition in 40 C.F.R. § 122.2, in its current form or as amended in the future. In its current form, that definition is “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage”;
- c. “Company Stormwater Manager” shall mean the person designated by Garden Homes pursuant to Paragraph 16 of this Decree to be responsible for corporate-wide compliance with Stormwater Requirements at all Garden Homes Sites;
- d. “Complaint” shall mean the complaint filed by the United States in this action;
- e. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIV);
- f. “Construction Activity(ies)” shall include: (1) clearing, grading and excavation that results in land disturbance of equal to or greater than one acre; (2) the

disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; or (3) any other construction activity which is otherwise subject to the NPDES stormwater construction regulations set forth in 40 C.F.R. § 122.26(b)(15)(ii). Construction Activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the Site;

- g. “Construction Permit” shall mean a Construction General Permit issued by the New Jersey Department of Environmental Protection under the State’s authority to implement CWA NPDES Stormwater Requirements. This term applies to such permit in its current form or as it may be amended in the future;
- h. “Contractor(s)” shall mean any person(s) hired by Garden Homes engaged in construction related activities at a Site, including trade contractor(s) or sub-contractor(s);
- i. “Corrective Action” shall mean an action taken or that is necessary to be taken to achieve or maintain compliance with Stormwater Requirements;
- j. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- k. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- l. “Effective Date” shall have the definition provided in Section XVI;
- m. “Garden Homes Affiliate” shall mean any Defendant or any current or future entity over which any Defendant or its successors or assigns has either (a) ownership and operational control or (b) day to day operational control over Construction Activities, including, but not limited to, Fairlawn Promenade LLC, Edison Route 27 Associates, LLC, Raritan Junction, LLC, North Brunswick TOD Associates, and Monroe 33 Developers, LLC;
- n. “Garden Homes Site” or “Sites” shall mean current or future projects involving Construction Activities for which one or more Garden Homes Affiliate either (1) has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (2) has day-to-day operational control of those activities at a project which are necessary to

ensure compliance with a Stormwater Management Program for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the Stormwater Management Program or to comply with other Permit conditions) and at which there is or will be construction resulting in ground disturbing activities greater than or equal to one acre or which is otherwise subject to the NPDES stormwater construction regulations set forth at 40 C.F.R. 122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15);

- o. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;
- p. "Parties" shall mean the United States, Defendants, and Garden Homes Affiliates;
- q. "Project Foreman" shall mean an individual that must be appointed by each Contractor or Subcontractor engaged in Construction Activities at a Garden Homes Site who is responsible for compliance with the on-site stormwater training and education requirements provided in Paragraph 18.b of the Consent Decree;
- r. "Record" shall mean any record, report, information, document, or photograph required to be created or maintained pursuant to a Stormwater Requirement;
- s. "Section" shall mean a portion of this Decree identified by a roman numeral;
- t. "Site Inspection Report" shall mean a written report of Weekly Site Inspections and/or Quarterly Site Inspections concerning a Site's compliance with Stormwater Requirements, as provided in Paragraph 21 of this Decree;
- u. "Site Stormwater Manager(s)" shall mean the person(s) designated by a Garden Homes Affiliate pursuant to Paragraph 17 of this Decree to have primary management responsibility for compliance with Stormwater Requirements at a Site during day to day operations;
- v. "State" shall mean the State New Jersey;
- w. "Stormwater" shall mean any stormwater runoff, surface runoff, and drainage pursuant to the Act and its implementing regulations;
- x. "Stormwater Management Program" or "SMP" shall mean the policies, practices and procedures developed pursuant to Section VI (Compliance Requirements) of this Decree to ensure compliance with the CWA and Construction Permit; and

- y. “Stormwater Requirement” shall mean the requirements of this Consent Decree, the applicable provisions of the CWA, applicable implementing regulations, and the Construction Permit.

V. CIVIL PENALTY

9. Within 30 Days after the Effective Date, Defendants shall pay the sum of \$225,000 as a civil penalty, together with interest accruing beginning on the 31st day after the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Defendants shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey within 30 Days after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Scott Loventhal
Garden Commercial Properties
820 Morris Turnpike
Short Hills, New Jersey 07078
Phone: (973) 467-5000
Email: scottl@gardenhomes.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices). At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States and EPA via email or regular mail in accordance with Section XV. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10904.

11. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal or State or local income tax.

VI. COMPLIANCE REQUIREMENTS

12. Garden Homes Affiliates shall comply with all applicable requirements of the Act, regulations issued pursuant to the Act, and all practices, standards, and limits contained in all applicable permits issued to Garden Homes Affiliates.

13. Garden Homes Affiliates shall comply with all applicable Stormwater Requirements. Garden Homes Affiliates shall at all times properly operate and maintain all Sites and systems of treatment and control (and related appurtenances) which are installed or used by Garden Homes Affiliates to achieve compliance with the conditions of their Construction Permits. Garden Homes Affiliates shall not commence or continue, and shall not allow its Contractors to commence or continue, Construction Activity until Garden Homes Affiliates have obtained coverage under the Construction Permit. Garden Homes Affiliates shall obtain, transfer, and maintain coverage at each Site as required by the Construction Permit.

14. Stormwater Management Program. Garden Homes Affiliates shall develop and implement a corporate-wide Stormwater Management Program, which shall include the requirements set forth in this Section, Section VI, of this Consent Decree.

15. Garden Homes Affiliates shall comply with the Stormwater Management Program and requirements established pursuant to this Section for the 5-year period commencing with the Effective Date with respect to each Garden Homes Site. The Stormwater Management Program, and other requirements set forth in this Decree, shall apply to all Garden Homes Sites.

16. Company Stormwater Manager.

a. Designation. Within 14 days of the Effective Date, Garden Homes Affiliates shall designate a Company Stormwater Manager and submit written notice to EPA, for review and approval, identifying the Company Stormwater Manager, with contact information, along with a certification that he or she satisfies the criteria set forth below in Subparagraph 16.c.

b. Change in Designation. Garden Homes Affiliates may change the Company Stormwater Manager, with written notice to EPA for review and approval, fourteen business days in advance of any such change. In the event that the Company Stormwater Manager resigns or is terminated without notice, Garden Homes Affiliates shall use all reasonable efforts to employ or retain a new Company Stormwater Manager as soon as is practicable. During this interim period, Garden Homes may temporarily designate another employee or a Contractor to assume the role of the Company Stormwater Manager. Such temporary designation may last no longer than 60 days, unless EPA consents in writing to a longer period or approves the temporary designee as a Company Stormwater Manager, pursuant to this subparagraph. A person acting as Company Stormwater Manager during a temporary designation is not required to have the Qualifications required by Paragraph 16.c; however, that person must be sufficiently qualified to fully execute the duties of the Company Stormwater Manager, as described in Subparagraph 16.d.

c. Qualifications. The Company Stormwater Manager shall be an individual with responsibility for overseeing Garden Homes Affiliates' compliance with Stormwater Requirements. The Company Stormwater Manager shall be an employee of a Garden Homes Affiliate or a Contractor and shall be trained as required by Paragraph 18 of this Decree. In

addition, the Company Stormwater Manager shall have at least five years of construction-related experience and shall either be (i) certified by the Certified Professional in Erosion & Sediment Control (“CPESC”) program; or (ii) certified by an alternative to CPESC certification by submitting a full description of an equivalent certification program to EPA and obtaining EPA’s written approval of such alternative certification.

d. Company Stormwater Manager Duties. The Company Stormwater Manager shall have responsibility for overseeing Garden Homes Affiliates’ efforts and actions to achieve and maintain compliance with Stormwater Requirements.

- i. The Company Stormwater Manager shall prepare and sign all Pre-Construction Review Reports, as described in Subparagraph 19.b.i).
- ii. The Company Stormwater Manager shall prepare or oversee preparation of all Stormwater Pollution Prevention Plans (“SPPPs”) and any amendments to SPPPs for each Garden Homes Site where SPPPs are required.
 - (A) Prior to commencing Construction Activities at a Garden Homes Site, the Company Stormwater Manager shall prepare or oversee preparation of a Site-specific SPPP consistent with the requirements of the Construction Permit and Paragraph 20.
 - (B) The Company Stormwater Manager shall certify the SPPP pursuant to the Construction Permit, as set forth in Paragraph 20.
 - (C) The Company Stormwater Manager shall ensure that the Site Stormwater Manager reviews, and is familiar with, the SPPP, as set forth in Paragraph 20.
- iii. The Company Stormwater Manager shall develop and oversee all Stormwater Compliance Training and shall maintain all related Records, as described in Paragraph 18.
- iv. The Company Stormwater Manager shall conduct unannounced Site inspections of each Site at least on a quarterly basis, as described in Paragraph 21.
- v. The Company Stormwater Manager shall transmit a copy of the Quarterly Site Inspection Report and communicate any Deficiencies identified and/or Corrective Actions needed at a Site to that Site’s Stormwater Manager, as described in Paragraph 21.
- vi. The Company Stormwater Manager shall determine whether the Site is eligible to terminate coverage under the Construction Permit.

vii. If the Company Stormwater Manager determines that no Construction Permit coverage is required for a Site and if Garden Homes Affiliates do not plan to obtain Construction Permit authorization for a Site, in accordance with Subparagraph 19.a(v), the Company Stormwater Manager must document and sign this determination.

e. Delegation of Company Stormwater Manager Duties: Except as expressly provided in the Decree, the Company Stormwater Manager may delegate the performance of stormwater compliance duties required under this Decree to designees. Any such delegation does not relieve Garden Homes Affiliates or the Company Stormwater Manager of responsibility for the proper performance of any delegated task or for compliance with stormwater requirements.

17. Site Stormwater Manager.

a. Designation.

- i. For those Sites where Construction Activities are ongoing as of the Effective Date, Garden Homes Affiliates shall, as soon as practicable but no later than 60 days from the date of EPA's written approval of the Stormwater Training Program as described in Paragraph 18, designate a Site Stormwater Manager for every such Site and submit written notice to EPA for review, identifying the person(s) with contact information, along with a certification that he/she satisfies the criteria set forth below in Subparagraph 17.d.
- ii. For those Sites where Garden Homes Affiliates commence Construction Activities after the Effective Date or where Garden Homes Affiliates acquire a Site for which another party has already commenced Construction Activities, Garden Homes Affiliates shall designate a Site Stormwater Manager prior to the commencement of Construction Activities.
- iii. EPA shall receive written notification of each Site Stormwater Manager designation within 21 Days of all designations. The notice shall contain a certification that the designee has completed the Stormwater Training Program described below in Paragraph 18;
- iv. EPA reserves the right to disapprove of a Site Stormwater Manager designee. If EPA disapproves any such designee, the Company Stormwater Manager shall fulfill the responsibilities of the Site Stormwater Manager until a new designee is submitted. Garden Homes shall resubmit a new designee within 30 days of receipt of EPA's disapproval.

b. Change in Designation. Garden Homes Affiliates may change a Site Stormwater Manager, with written notice to EPA fourteen days in advance of any such change. In the event that a Site Stormwater Manager resigns or is terminated without notice, Garden Homes Affiliates shall provide notice to EPA within fourteen days of such resignation or termination. Garden

Homes Affiliates shall include the name of the new Site Stormwater Manager for the Site in such notice. In such case, the Company Stormwater Manager shall fulfill the responsibilities of the Site Stormwater Manager until a new designee is submitted.

c. Delegation of Site Stormwater Manager Duties. The Site Stormwater Manager may delegate the performance of stormwater compliance duties required in accordance with the provisions of this Decree to designees. Any such delegation does not relieve Garden Homes Affiliates or the Site Stormwater Manager of responsibility for the proper performance of any delegated task or for compliance with stormwater requirements so long as the delegee meets the qualifications set forth below in Subparagraph 17.d. Where delegation is utilized by the Site Stormwater Manager:

- i. the delegation of any one Site Stormwater Manager's duties to a temporary designee shall not exceed a total of 60 Days during any calendar year;
- ii. the temporary designee shall meet the qualifications required for Site Stormwater Managers, set forth in Subparagraph 17.d.; or have 30 Days to obtain such qualifications; and
- iii. the temporary designee shall have sufficient authority to perform the delegated tasks, set forth in Subparagraph 17.e.

d. Qualifications. The Site Stormwater Manager shall be an individual with primary management responsibility for compliance with Stormwater Requirements at that Site during day to day operations. The Site Stormwater manager shall have at least two years of construction-related experience. The Site Stormwater Manager shall be an employee of the Garden Homes Affiliates or a Contractor and shall be trained in accordance with the Stormwater Compliance Training required by Paragraph 18 of this Decree.

e. Site Stormwater Manager Duties. The Site Stormwater manager is the individual who has primary management responsibility for compliance with Stormwater Requirements at that Site during day to day operations.

- i. The Site Stormwater Manager shall conduct Weekly Site Inspections and prepare all Weekly Site Inspection Reports, as described in Paragraph 21.
- ii. The Site Stormwater Manager shall:
 - (A) identify, implement and maintain BMPs;
 - (B) instruct Garden Homes employees and Contractors on the implementation and maintenance of BMPs;
 - (C) direct employees and Contractors to take appropriate actions to address Deficiencies and Action Items; and

(D) order employees and Contractors to stop work as a result of a failure to comply with Stormwater Requirements and order immediate Corrective Actions to achieve and maintain compliance with Stormwater Requirements. A Site Stormwater Manager's decision to stop work does not constitute an admission of violation of Stormwater Requirements.

- iii. The Site Stormwater Manager shall ensure the implementation of Corrective Actions necessary to address all Deficiencies at a Site identified by a Site Inspection or Audit as soon as practicable but not to exceed 7 days.
- iv. The Site Stormwater Manager shall ensure that person(s) conducting work at the Site have been trained as required by Paragraph 18 of this Decree.
- v. The Site Stormwater Manager shall ensure that all required records are maintained on site as required by Subparagraph 23.a of this Decree.

18. Stormwater Compliance Training.

- a. Stormwater Compliance Training For Employees. The Company Stormwater Manager shall develop and oversee site-specific stormwater training ("Stormwater Compliance Training") for all of Garden Homes Affiliates' employees engaged in Construction Activities at a Site.

- i. Timing of Stormwater Compliance Training.

- (A) Each of Garden Homes Affiliates' employees engaged in Construction Activities at a Site must take the Stormwater Compliance Training, in accordance with the Stormwater Compliance Training Program approved by EPA pursuant to Paragraph 24, within 45 days of approval of such program.

- (B) Where commencement of Construction Activities occurred prior to the approval of the Stormwater Compliance Training Program, Stormwater Compliance Training shall be provided within 45 days of approval of such program.

- ii. Stormwater Compliance Training Program Requirements. Within 90 days of the Effective Date, Garden Homes Affiliates shall submit to EPA for review and approval, pursuant to Paragraph 25, a Stormwater Compliance Training Program, which shall include:

- (A) A list of individuals required to take the training;
 - (B) A training schedule;
 - (C) Who will be conducting the training; and

- (D) Procedures for documenting training, including sign-in sheets, training certifications, and retention of training records.
- (E) A Stormwater Compliance Training Program Syllabus, which shall include:
 - 1) A regulatory overview, including an introduction to the CWA, EPA Stormwater regulations, state stormwater programs, and the requirements of this Consent Decree.
 - 2) Stormwater basics, including pollutants and discharges, controls and BMPs, and non-stormwater discharges.
 - 3) An introduction to stormwater permitting, including types of permits, regulatory authorities, Request for Authorization, and relevant Consent Decree provisions.
 - 4) Stormwater plans and the preparation of stormwater plans, including requirements to update stormwater plans.
 - 5) Inspection requirements, including site inspections, quarterly inspections, recordkeeping, forms, and certification.
 - 6) Contractor oversight.
 - 7) Construction site waste control practices including designated concrete washout, chemical and fuel storage, spill response and waste handling.
 - 8) Finishing a jobsite, including performance of the final inspection and termination of Construction Permit coverage as required.
 - 9) Available technical resources and stormwater related guidance.
 - 10) Twice a year refresher training.

iii. Certification of Completion.

- (A) Immediately upon completion of the Stormwater Compliance Training Program, and before starting or continuing Construction Activities at a Site, each trainee must certify completion of the program by submitting the following signed training certification to the Company Stormwater Manager:

“I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Garden Homes Stormwater Management Program and agree to implement any Corrective Actions identified by the Garden Homes

Company Stormwater Manager or a Site Stormwater Manager. I also understand and agree to comply with the terms and conditions of Appendix D to *United States v. Garden Homes, et al.*, [insert caption].”

- (B) All certifications required under this subparagraph shall be maintained on Site by the Site Stormwater Manager, in accordance with Subparagraph 23.b.
- b. Stormwater Compliance Training and Orientation Program for Contractors and Subcontractors.
 - i. Contractor and Subcontractor Agreements. Garden Homes Affiliates shall add a provision to Contractor and Subcontractor agreements for Contractors and Subcontractors engaged in Construction Activities, whereby such Contractors and Subcontractors will affirmatively acknowledge their receipt, review, understanding and compliance with the Stormwater Compliance requirements set forth in Appendix D, as well as the Garden Homes Compliance Guide for Employees and Contractors set forth in Appendix E.
 - ii. On-Site Training Program for Project Foreman Engaged in Construction Activities:
 - (A) Garden Homes shall provide an on-site training program for each Project Foreman of Contractors engaged in Construction Activities at the onset of each project. This orientation will cover:
 - 1) Stormwater basics, including pollutants and discharges, controls and BMPs, and non-stormwater discharges;
 - 2) Construction site waste control practices including designated concrete washout, chemical and fuel storage, spill response, waste handling and site-specific requirements; and
 - 3) Consequences of non-compliance.
 - (B) Each Project Foreman of Contractors engaged in Construction Activities shall be required to attend the initial onsite training program and shall sign an attendance sheet attesting to his or her attendance at the on-site training program and his or her receipt of Appendix D and Appendix E.
 - (C) A twice-a-year training refresher course will be provided for the Project Foreman of all on-site Contractors engaged in Construction Activities at each project.
 - (D) For Project Foreman that begin work at a Site after the initial training is offered, the Project Foreman will take the first training refresher course available after commencing Construction Activities at the Site.

- c. At all times when Construction Activities are ongoing, at least one employee or Project Foreman who has completed the Stormwater Training required pursuant to Paragraph 18(a) or 18(b) shall be present at a Site.

19. Pre-Construction Review and Report.

a. Within 30 days of the Effective Date, Garden Homes Affiliates shall develop and submit to EPA for review and approval a Pre-Construction Review Report template to be used to complete all Pre-Construction Review Reports, and which shall include:

- i. name and description of the Site;
- ii. the total acreage, total disturbed acreage and location of the Site;
- iii. the number of expected (permanent and temporary) discharge points from the Site;
- iv. a brief description of the hydrology of the Site including any connections to waters of the United States;
- v. the Company Stormwater Manager's determination as to whether Construction Permit coverage is required for the Site;
- vi. If Construction Permit coverage is required for the Site, the Pre-Construction Review Report shall include the following:
 - (A) Confirmation that Construction Permit coverage has been obtained;
 - (B) A verification that a SPPP consistent with the Construction Permit had been prepared;
 - (C) Confirmation that the Site Stormwater Manager for that Site is properly qualified, as required by Subparagraph 17.d;
 - (D) A verification that all required training for employees and Contractors to be engaged in construction-related activities at a Site has occurred as required by this Decree; and,
 - (E) That all initial stormwater requirements are in place and being implemented prior to the commencement of Construction Activities.

b. For those Sites where Garden Homes Affiliates commence Construction Activities after the Effective Date or where Garden Homes Affiliates acquire a Site for which another party has already commenced Construction Activities, the Company Stormwater Manager shall perform a pre-construction review and prepare and certify a Pre-Construction Review Report, prior to the commencement of Construction Activities by Garden Homes Affiliates at that Site.

- i. For each such Site, the Company Stormwater Manager shall sign the Pre-Construction Review Report.

ii. All Pre-Construction Review Reports shall be kept on Site, with the SPPP, in accordance with Subparagraph 23.b.

c. The Pre-Construction Review Construction Permit coverage determination, made pursuant to Subparagraph 19.a(v), shall be noted in the list of Sites provided to EPA pursuant to Section VIII (Reporting Requirements) of this Decree.

20. Site-specific SPPPs. Garden Homes Affiliates shall develop and implement a Site-specific SPPP for each Site in accordance with the requirements and schedules in this Paragraph.

a. All SPPPs and SPPP amendments shall comply with the terms and conditions of the Construction Permit and this Decree.

b. Each SPPP shall:

i. Be developed specifically for the Site at issue;

ii. Identify the Corporate-wide established BMPs that will be used for each anticipated major phase of construction;

iii. Include erosion and sediment control and construction site waste control components as required by the Construction Permit;

iv. Incorporate the inspection frequency and routine maintenance deadlines;

v. Include clear, concise descriptions of Site-specific BMPs to implement the requirements of the Construction Permit and to guide those responsible for overseeing implementation of the SPPP at each stage of construction; and

vi. Contain documentation and records for all erosion and sedimentation control activities at the Site. These records include, but are not limited to: inspection reports; construction logs that describe intended sequence, timing and dates associated with activities that disturb and stabilize soils; and the installation and construction of major stormwater controls such as storm drain systems, head walls, detention basins, outfall structures, slope and embankment activities, stream crossings, site stabilization, and foundation and trench de-watering activities.

c. Each SPPP shall be implemented throughout the duration of Construction Activity at each Site.

d. SPPP Amendments.

i. For those Sites where Construction Activities have occurred or are projected to continue for at least six months after the Effective Date, the Company Stormwater Manager shall review the SPPPs for such Sites and amend them as necessary to comply with the Construction Permit and this Decree within 30 days of the Effective Date or prior to continuation of any Construction

Activities, whichever is later. All SPPPs (including the Site maps) shall be revised or amended within fourteen days whenever:

- (A) there is a change in design, construction, operation, or maintenance at the Site that has or could have a significant effect on the discharge of pollutants to the waters of the United States that has not been previously addressed in the SPPP; or
- (B) an inspection, whether performed by Garden Homes Affiliates pursuant to Paragraph 21 or by the government (federal, state, or local) determines that the SPPP is ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the Site.

21. Routine Site Inspections and Site Inspection Reports.

a. Site Inspections.

- i. For each Site, the Site Stormwater Manager shall conduct, at least once every seven calendar days, a Site Inspection (“Weekly Site Inspection”). Weekly Site Inspections may be delegated, in accordance with Paragraph 17.c of this Consent Decree.
- ii. For each Site, the Company Stormwater Manager shall conduct an unannounced Site inspection on an at least a quarterly basis (“Quarterly Site Inspection”).
- iii. At a minimum, all Site Inspections, including those required under Subparagraphs 21.a(i) and 21.a(ii), shall include an examination of all BMPs described in the SPPP and a visual water quality examination of any discharge from outfalls at the Site.

b. Site Inspection Reports.

i. Timing of Completion.

- (A) Within 48 hours after the Site Stormwater Manager conducts the Weekly Site Inspection required under Subparagraph 21.a(i), the Site Stormwater Manager shall complete a Weekly Site Inspection Report. The completion of the Weekly Site Inspection Report may be delegated, pursuant to Subparagraph 17.c.
- (B) Within 72 hours after the Company Stormwater Manager conducts the Quarterly Site Inspection required under Subparagraph 21.a(ii), the Company Stormwater Manager shall prepare and certify a Quarterly Site Inspection Report. Within seven (7) days of the Quarterly Site Inspection, the Company Stormwater Manager shall
 - (1) Discuss with the Site Stormwater Manager the Quarterly Site Inspection and the Quarterly Site Inspection Report, including Deficiencies identified and Corrective Actions required;

- (2) Submit the Quarterly Site Inspection Report to the Site Stormwater Manager, to be maintained on Site; and
 - (3) Submit the Quarterly Site Inspection Report to EPA.
 - ii. All Site Inspection Reports, including those required under Subparagraphs 21.a(i) and 21.a(ii), shall be documented using the Stormwater Inspection Report Form (attached as Appendix A), and shall be kept on Site, with the SPPP, in accordance with Subparagraph 23.b23.a. Garden Homes Affiliates may change the Stormwater Inspection Report at any time, with written notice to EPA for review and approval, in accordance with Paragraph 25, in advance of any such change.
 - iii. At a minimum, each Site Inspection Report shall document the following:
 - (A) the inspection date and time;
 - (B) the name and title of the person conducting the inspection;
 - (C) a description of the weather since the last inspection;
 - (D) a description of any observed soil erosion;
 - (E) a description of any discharges occurring at the time of the inspection or evidence of discharges observed during the inspection (such as color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and any other obvious indicators of stormwater pollution);
 - (F) Deficiencies in implementation of the SPPP;
 - (G) Deficiencies in BMPs or stormwater controls;
 - (H) Deficiencies in spill prevention and response;
 - (I) Inconsistencies with or violations of the Construction Permit;
 - (J) Deficiencies in Records retained on-site;
 - (K) Inconsistencies with or violations of this Decree; and
 - (L) Corrective Actions that may need to be taken to remedy Deficiencies.
- c. Corrective Actions.
 - i. Garden Homes Affiliates shall complete Corrective Actions for each Deficiency identified in a Site Inspection Report within seven 7 Days after the date on which such deficiency was identified. Subsequent Site Inspection reports must document Corrective Actions taken and any additional follow-up for any Deficiencies.
 - ii. A record of completed Corrective Actions shall be maintained in a Corrective Action Log (attached as Appendix A), which shall be readily available at the relevant Site, in accordance with Subparagraph 23.b.
 - iii. The Corrective Action Log shall describe each Deficiency identified on a Site Inspection Report, the date each Deficiency was identified, the date each Deficiency was addressed and the associated Corrective Action taken.

22. Corporate-wide evaluation of existing stormwater practices. Garden Homes Affiliates shall complete the following audit in accordance with the requirements and schedules in this Paragraph:

- a. Stormwater Audit. Garden Homes Affiliates shall conduct and submit to EPA an initial Stormwater Audit by no later than 180 Days after the Effective Date, and a supplemental Stormwater Audit once every two years thereafter. Each Stormwater Audit shall review:
 - i. planning, development, implementation, inspection and maintenance of stormwater management practices;
 - ii. employee and Contractor stormwater compliance training; and
 - iii. internal and external communication and reporting, as it relates to stormwater compliance.
- b. Stormwater Action Item Plan. By no later than 45 Days after each Stormwater Audit is submitted, Garden Homes Affiliates shall develop and submit to EPA for review and approval, an Action Item Plan (“AIP”).
 - i. The AIP shall: (1) describe any deficiencies discovered through the audit; (2) describe the actions that Garden Homes Affiliates have taken or will take to address any such deficiencies; and (3) include a schedule by which actions that have not yet been completed shall be completed.
 - ii. The AIP and associated schedule shall be implemented within 30 days of EPA’s written approval.
 - iii. EPA may submit comments on each AIP requesting additional action. By no later than 30 days after receipt of any comments, Garden Homes Affiliates shall take the action requested by EPA or submit a reply to such comments. Disputes arising with respect to any aspect of a AIP shall be resolved in accordance with the dispute resolution provisions of this Decree (Section XI).

23. Additional Compliance Requirements.

a. At each Site, Garden Homes Affiliates shall conspicuously post, outside of the construction office on Site, the name and telephone number of the Company Stormwater Manager and Site Stormwater Manager. If there is no such office on Site, Garden Homes Affiliates shall post the contact information in a conspicuous location at the Site.

b. While there is Construction Activity at any Site, Garden Homes Affiliates shall ensure that the Construction Permit, the entire SPPP (including Site maps), and copies of the Weekly and Quarterly Site Inspection Reports, Pre-Construction Review Reports, Training Certifications, and Corrective Action Logs are readily available at each Site, as required by the

Construction Permit, for review by any employee or Contractor as well as any local, state, or federal inspector.

24. Responsibility for Acts of Others. See *supra* Paragraph 4.

25. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted to EPA pursuant to this Consent Decree, EPA shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

26. If the submission is approved pursuant to Paragraph 25, Garden Homes Affiliates shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Subparagraphs 25.a or 25.b, Garden Homes Affiliates shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions, subject to Garden Homes Affiliates' right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

27. If the submission is disapproved in whole or in part pursuant to Subparagraphs 25.c or 25.d Garden Homes Affiliates shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Garden Homes Affiliates shall proceed in accordance with the preceding Paragraph.

28. Any stipulated penalties applicable to the original submission, as provided in Section IX, shall accrue during the 45 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Garden Homes Affiliates' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

29. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Garden Homes Affiliates to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies subject to Garden Homes Affiliates' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

30. Permits. Where any compliance obligation under this Section requires a Garden Homes Affiliate to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Garden Homes Affiliates may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Garden Homes Affiliates have submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

31. The purpose of this Supplemental Environmental Project (“SEP”) is to preserve several parcels of property totaling approximately 108-acres (Township of Jefferson, Block 256 Lots 1 and 2, and Block 257, Lots 1 and 8, as generally depicted in Appendix B) (hereinafter referred to as “SEP Property”) in its natural state, providing environmental and public health protection, and enable a Conservation Entity to manage in perpetuity the ecological resources of the SEP Property.

32. Garden Homes Affiliates shall implement this SEP in accordance with all provisions of this Section VII and Section IX. The SEP shall be completed within 14 months after EPA’s approval of the SEP Deed, as described herein.

33. Garden Homes Affiliate shall not disturb the land on the SEP Property until transfer occurs pursuant to Paragraph 34, below.

34. Garden Homes Affiliate shall transfer the SEP Property to a public entity or qualified not-for-profit conservation organization (“Conservation Entity”), in accordance with the requirements of this Decree.

- a. Within 120 days after the Effective Date, Garden Homes Affiliates shall submit to EPA for approval a proposed deed between Garden Homes and a Conservation Entity (“SEP Deed”). The SEP Deed shall include the following:
 - i. detailed description of the SEP Property;
 - ii. a provision to ensure that the SEP Property is perpetually maintained as a protected area through deed restrictions, covenants, and/or conservation easements, consistent with the purpose of the SEP as set forth above, and is free from uses or conditions that are inconsistent with ecosystem protection;
 - iii. certification by Garden Homes that it has not used, generated, stored, disposed, or released any “hazardous pollutants” or “hazardous substance” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. or in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq., at the SEP Property.

- iv. a provision to ensure that neither the SEP Property nor any portion of the SEP Property is or will be encumbered in any way, with the exception of the covenants or easements given to the Conservation Entity, or any currently existing covenants or easements, and provide a title report reflecting same.
 - v. an agreement between Conservation Entity and Garden Homes Affiliates, requiring that the Conservation Entity grant reasonable access to the U.S. Fish and Wildlife Service to allow for the study of the presence of endangered species at the SEP Property (particularly the Indiana Bat, a listed species under the Endangered Species Act of 1973, as amended, that has known maternity colonies as close as 1.6 miles from the SEP Property).
- b. EPA shall in writing: (a) approve the SEP Deed; (b) approve the SEP Deed upon specified conditions; or (c) disapprove the SEP Deed, in whole or in part, and provide the grounds for any disapproval.
- i. If the SEP Deed is conditionally approved, Garden Homes Affiliates shall promptly, but in any event no later than 60 Days after receiving EPA's conditional approval, address the grounds for any such conditional approval.
 - ii. In the event that EPA disapproves the SEP Deed in whole or in part, Garden Homes Affiliates shall, within 60 Days thereafter, correct all deficiencies and resubmit the SEP Deed to EPA for approval in accordance with the preceding Paragraphs.

35. No later than 12 months after EPA approves the SEP Deed, Garden Homes Affiliates and the Conservation Entity shall execute the SEP Deed and all other appropriate documents necessary for the recordation of the conservation easement on the title of the SEP Property. The transfer documents shall include:

- a. a covenant by Garden Homes Affiliates that they have not committed, nor caused to be committed, any acts by which the SEP Property or any portion thereof is encumbered in any way, and that Garden Homes Affiliates have not impaired the title of the SEP Property by conveying it in whole or in part to another entity; and
- b. deed restrictions, covenants, and/or conservation easements to ensure that the SEP Property is perpetually maintained consistent with the purpose of the SEP set forth above.

36. Garden Homes Affiliates shall arrange for the recordation of all documents necessary to establish the conservation easement with the appropriate governmental records office, and shall arrange to present such documents to the appropriate Property Records Office within 30 days of execution of the deed.

37. If, within the time period set forth in Paragraphs 35 and 36, the SEP Property has not been transferred to the Conservation Entity for conservation purposes, Garden Homes Affiliates shall retain a Contractor to manage the SEP property and stipulated penalties shall accrue in accordance with the Stipulated Penalties Section of this Decree (Section IX), until the date on which Garden Homes Affiliates satisfy the requirements of Paragraphs 34 through 36.

38. Garden Homes Affiliates are responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. "Satisfactory completion" means in accordance with the requirements of this Decree, including Appendix B. Garden Homes Affiliates may use Contractors in planning and implementing the SEP.

39. SEP Completion Report. Within 14 months after EPA's approval of the SEP Deed, Garden Homes Affiliates shall submit a SEP Completion Report to the United States and EPA, in accordance with Section XV (Notices). The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

40. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Garden Homes Affiliates' SEP Completion Report.

41. After receiving the SEP Completion Report, the United States shall notify Garden Homes Affiliates whether Garden Homes Affiliates have satisfactorily completed the SEP, in accordance with Paragraph 38, this Section VII and this Consent Decree. If Garden Homes Affiliates have not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section IX.

42. With regard to the SEP, Garden Homes Affiliates certify the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Garden Homes Affiliates in good faith estimate that the tax value of the SEP Property is approximately \$780,000;
- b. that, as of the date of executing this Decree, Garden Homes Affiliates are not required to perform or develop the SEP Property by any federal, state, or local law or regulation and are not required to perform or develop the SEP Property by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. that the SEP is not a project that Garden Homes Affiliates were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. that Garden Homes Affiliates have not received and will not receive credit for the SEP in any other enforcement action;
- e. that Garden Homes Affiliates will not receive any reimbursement for any portion of the SEP from any other person;
- f. that Garden Homes Affiliates are not parties to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP as described in paragraphs 31 through 36; and
- g. that Garden Homes Affiliates have inquired of the conservation entity whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the implementer conservation entity that it is not a party to such transaction.

43. Disputes concerning the satisfactory performance of the SEP may be resolved under Section XI (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

44. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 50.

45. Any public statement, oral or written, in print, film, or other media, made by Garden Homes Affiliates making reference to the SEP under this Decree shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action, United States v. Garden Homes, et. al, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act.”

46. For federal and state income tax purposes, Garden Homes Affiliates agree that they will neither capitalize into inventory or basis nor deduct any costs, expenditures, foregone development rights, and/or other property value, associated with the implementation of the SEP.

VIII. REPORTING REQUIREMENTS

47. Within 30 days after the end of each quarter after the Date of Entry, Garden Homes Affiliates shall submit a quarterly report (“Quarterly Report”) for the preceding quarter that shall include:

- a. The Quarterly Report shall include:
 - i. Name and address of Company Stormwater Manager;

- ii. A list of all Garden Homes Sites;
- iii. the location of all Garden Homes Sites, including the physical address and the latitude and longitude;
- iv. whether coverage under the Construction Permit is required for each Garden Homes Site, as determined by the Company Stormwater Manager;

For those Sites determined to require coverage, the list shall also identify;

- v. the date coverage under the Construction Permit was obtained;
- vi. the Construction Permit number;
- vii. the date Construction Permit coverage was terminated (where applicable);
- viii. the name and contact information (including telephone number and e-mail address) for the Construction Stormwater Manager(s);
- ix. reports to state agencies; and
- x. an updated Site Information Form that reflects all information requested by EPA in Enclosure 2 of its October 12, 2012 Request for Information (attached hereto as Appendix C).

b. The Quarterly Report shall also include:

- i. A discussion of Garden Homes Affiliates' progress in satisfying its obligations under this Consent Decree, including, at a minimum, the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated in addressing any specific action required under this Consent Decree, together with implemented or proposed solutions; status of permit applications, if any;
- ii. A discussion of Garden Homes Affiliates' progress in satisfying its obligations in connection with the SEP under Section VII, including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in Section VII until such time as the SEP is completed in accordance with Section VII, and a summary of costs incurred since the previous report.

c. The Quarterly Report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Garden Homes Affiliates violate, or have reason to believe that they may violate,

any requirement of this Consent Decree, Garden Homes Affiliates shall notify the United States of such violation and its likely duration, in writing, within ten working Days of the Day Garden Homes Affiliates first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Garden Homes Affiliates shall so state in the report. Garden Homes Affiliates shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Garden Homes Affiliates become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Garden Homes Affiliates of their obligations to provide the notice required by Section X (Force Majeure).

48. Additional Reports. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Garden Homes Affiliates' performance under this Decree, or the operations at a Site, may pose an immediate threat to the public health or welfare or the environment, Garden Homes Affiliates shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Garden Homes Affiliates first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

49. All reports shall be submitted to the persons designated in Section XV (Notices).

50. Each report submitted by Garden Homes Affiliates under this Section shall be signed by the Company Stormwater Manager and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

51. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

52. The reporting requirements of this Consent Decree do not relieve Garden Homes Affiliates of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

53. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. STIPULATED PENALTIES

54. Garden Homes Affiliates shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

55. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$2,000 per Day for each Day that the payment is late.

56. Compliance Milestones. For each day that Garden Homes Affiliates fail to complete the work specified in accordance with the applicable schedules, including all deadlines, reports or plans, required or developed pursuant to Section VI (Compliance Requirements), and for each Day that Garden Homes Affiliates fail to submit a report or plan as required by this Consent Decree and the Appendices hereto, with the exception of reporting requirements of Section VIII, unless excused under Section X (Force Majeure), or by EPA as part of discussions under Section XI (Dispute Resolution), Garden Homes Affiliates shall be liable for stipulated penalties as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1st through 14th Day
\$1,875	15th through 30th Day
\$2,000	31st Day and beyond

57. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1125	15th through 30th Day
\$2000	31st Day and beyond

58. SEP Compliance.

a. If, within the time period set forth in Paragraphs 35 and 36, the SEP Property has not been transferred to the conservation entity for conservation purposes, the following stipulated penalties shall accrue for each Day, until the date on which Garden Homes

Affiliates satisfy the requirements of Paragraphs 34 through 36, or the date on which the total amount of stipulated penalties under this Paragraph exceeds \$1,000,000.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,125	1st through 14th Day
\$1,500	15th through 30th Day
\$2,250	31st Day and beyond

b. If Garden Homes Affiliates fail to satisfactorily complete the SEP Completion Report by the deadline set forth in the Decree or fail to cure deficiencies noted in the SEP Completion Report under Paragraph 39, Garden Homes Affiliates shall pay a stipulated penalty of \$1,000 per Day that the SEP Completion Report is submitted late, or that they fail to cure the deficiencies within 21 Days of having received notice of such deficiencies.

c. If Garden Homes Affiliates fail to comply with any other milestones in Section VII for implementing the SEP, Garden Homes Affiliates shall pay stipulated penalties for each failure to meet an applicable deadline, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

59. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

60. Garden Homes Affiliates shall pay stipulated penalties to the United States within 30 Days of receiving the United States' written demand.

61. Stipulated penalties shall continue to accrue as provided in Paragraph 59, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Garden Homes Affiliates shall pay accrued penalties determined to be owed, together with interest, to the United States within 30 days of the Effective Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Garden Homes Affiliates shall pay all accrued penalties, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph (c), below.

c. If any Party appeals the Court's decision, Garden Homes Affiliates shall pay all accrued penalties determined to be owing, together with interest, within 30 days of receiving the final appellate court decision.

62. Garden Homes Affiliates shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10 except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

63. If Garden Homes Affiliates fail to pay stipulated penalties according to the terms of this Consent Decree, Garden Homes Affiliates shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Garden Homes Affiliates' failure to pay any stipulated penalties.

64. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Garden Homes Affiliates' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of federal or state law, Garden Homes Affiliates shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

65. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, reduce or waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

X. FORCE MAJEURE

66. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Garden Homes Affiliates, of any entity controlled by Garden Homes Affiliates, or of Garden Homes Affiliates' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Garden Homes Affiliates' best efforts to fulfill the obligation. The requirement that Garden Homes Affiliates exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Garden Homes Affiliates' financial inability to perform any obligation under this Consent Decree.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Garden Homes Affiliates shall provide notice orally or by electronic or facsimile transmission to EPA within 72 hours of when Garden Homes Affiliates first knew that the event might cause a delay, in accordance with Section XV (Notices). Within seven days thereafter, Garden Homes Affiliates shall provide in writing to EPA and the United States an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Garden Homes Affiliates' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Garden Homes Affiliates, such event may cause or contribute to an endangerment to public health, welfare or the environment. Garden Homes Affiliates shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Garden Homes Affiliates from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Garden Homes Affiliates shall be deemed to know of any circumstance of which Garden Homes Affiliates, any entity controlled by Garden Homes Affiliates, or Garden Homes Affiliates' contractors knew or should have known.

68. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Garden Homes Affiliates in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

69. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Garden Homes Affiliates in writing of its decision.

70. If Garden Homes Affiliates elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), they shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Garden Homes Affiliates shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Garden Homes Affiliates complied with the requirements of Paragraphs 66 and 67. If Garden Homes Affiliates carry this burden, the delay at

issue shall be deemed not to be a violation by Garden Homes Affiliates of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

71. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Garden Homes Affiliates' failure to seek resolution of a dispute under this Section shall preclude Garden Homes Affiliates from raising any such issue as a defense to an action by the United States to enforce any obligation of Garden Homes Affiliates arising under this Decree.

72. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Garden Homes Affiliates send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Garden Homes Affiliates invoke formal dispute resolution procedures as set forth below.

73. Formal Dispute Resolution. Garden Homes Affiliates shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Garden Homes Affiliates' position and any supporting documentation relied upon by Garden Homes Affiliates.

74. The United States shall serve its Statement of Position within 45 Days of receipt of Garden Homes Affiliates' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Garden Homes Affiliates, unless Garden Homes Affiliates file a motion for judicial review of the dispute in accordance with the following Paragraph.

75. Garden Homes Affiliates may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 21 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Garden Homes Affiliates' position on the matter in dispute,

including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

76. The United States shall respond to Garden Homes Affiliates' motion within the time period allowed by the Local Rules of this Court. Garden Homes Affiliates may file a reply memorandum, to the extent permitted by the Local Rules.

77. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 73 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Garden Homes Affiliates shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 73, Garden Homes Affiliates shall bear the burden of demonstrating that its position complies with this Consent Decree.

78. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Garden Homes Affiliates under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 61. If Garden Homes Affiliates do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

79. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any Garden Homes Site covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States [or the State] in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Garden Homes Affiliates or their representatives, contractors, or consultants;

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Garden Homes Affiliates' compliance with this Consent Decree.

80. Upon request, Garden Homes Affiliates shall provide EPA or its authorized representatives splits of any samples taken by Garden Homes Affiliates. Upon request, EPA shall provide Garden Homes Affiliates splits of any samples taken by EPA.

81. Until five years after the termination of this Consent Decree, Garden Homes Affiliates shall retain, and shall instruct its Contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their Contractors' or agents' possession or control, or that come into their or their Contractors' or agents' possession or control, and that relate in any manner to Garden Homes Affiliates' performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States or the State, Garden Homes Affiliates shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

82. At the conclusion of the information retention period provided in the preceding Paragraph, Garden Homes Affiliates shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Garden Homes Affiliates shall deliver any such documents, records, or other information to EPA. Garden Homes Affiliates may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Garden Homes Affiliates asserts such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Garden Homes Affiliates. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

83. Garden Homes Affiliates may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Garden Homes Affiliates seek to protect as CBI, Garden Homes Affiliates shall follow the procedures set forth in 40 C.F.R. Part 2.

84. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Garden

Homes Affiliates to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

85. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

86. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 85. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 85. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Garden Homes Affiliates' Sites, whether related to the violations addressed in this Consent Decree or otherwise.

87. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to a Garden Homes Site or Garden Homes Affiliates' violations, Garden Homes Affiliates shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 85.

88. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Garden Homes Affiliates are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Garden Homes Affiliates' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Garden Homes Affiliates' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

89. This Consent Decree does not limit or affect the rights of Garden Homes Affiliates or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Garden Homes Affiliates, except as otherwise provided by law.

90. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

91. This Consent Decree supersedes the reporting obligations set forth in EPA's August 19, 2013 Section 308 Request for Information, which is hereby terminated.

XIV. COSTS

92. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Garden Homes Affiliates.

XV. NOTICES

93. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescasemanagement.enrd@usdoj.gov
Re: DJ # 90-5-1-1-10904

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-10904

As to the Department of Justice: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
D.J. # 90-5-1-1-10904

As to EPA: Chief, Water Compliance Branch
Division of Enforcement & Compliance Assistance
U.S. EPA Region 2
290 Broadway, 20th Floor
New York, New York 10007
Phone: (212) 637-4244
Fax: (212) 637-3953

and

Chief, Water and General Law Branch
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007
Phone: (212) 637-3232
Fax: (212) 637-3202

As to Garden Homes Affiliates:

Scott Loventhal
Garden Commercial Properties
820 Morris Turnpike
Short Hills, New Jersey 07078
Phone: (973) 467-5000
Fax: (973) 467-3480

and

Robert H. Crespi, Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, New Jersey 07052
Phone: (973) 530-2060
Fax: (973) 530-2260

94. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

95. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

96. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVII. RETENTION OF JURISDICTION

97. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

98. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

99. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 70, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

100. After Garden Homes Affiliates have completed the requirements of Section VI (Compliance Requirements), have thereafter maintained continuous satisfactory compliance with this Consent Decree and Garden Homes Affiliates' permits for a period of no less than 5 years, have complied with all other requirements of this Consent Decree, including those relating to the SEP required by Section VII, has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, has no unresolved matters subject to dispute resolution pursuant to Section XI (Dispute Resolution), and no enforcement action under this Decree is pending, Garden Homes Affiliates may serve upon the United States and the State a Request for Termination, stating that Garden Homes Affiliates have satisfied those requirements, together with all necessary supporting documentation.

101. Following receipt by the United States of Garden Homes Affiliates' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Garden Homes Affiliates have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

102. If the United States does not agree that the Decree may be terminated, Garden Homes Affiliates may invoke Dispute Resolution under Section XI. However, Garden Homes Affiliates shall not seek Dispute Resolution of any dispute regarding termination until 45 days after service of its Request for Termination. In any dispute concerning termination of this Decree, Garden Homes shall bear the burden of proving that all conditions required for termination of this Decree are satisfied.

XX. PUBLIC PARTICIPATION

103. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28. C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Garden Homes Affiliates consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Garden Homes Affiliates in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

104. Each undersigned representative of Garden Homes Affiliates and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

105. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Garden Homes Affiliates agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION

106. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIII. FINAL JUDGMENT

107. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Garden Homes Affiliates. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIV. APPENDICES

108. The following appendices are attached to and part of into Consent Decree:

a. “Appendix A” is the Stormwater Construction Inspection Report Form and the Corrective Action Log;

b. “Appendix B” is a figure depicting the SEP Properties as described in Section VII of this Decree.

c. “Appendix C” contains the Site Information Form and Enclosure 2 of EPA’s October 2, 2012 Request for Information.

d. “Appendix D” contains a list of requirements required under the Compliance Requirements Section (Section VI) of this Consent Decree.

e. “Appendix E” contains a copy of the Garden Homes Compliance Guide for Employees and Contractors referenced in Paragraph 18.b of this Consent Decree.


IT IS HEREBY SO ORDERED this ____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE
DISTRICT OF NEW JERSEY

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Defendants Garden Homes, et. al.*, Civil No. _____.

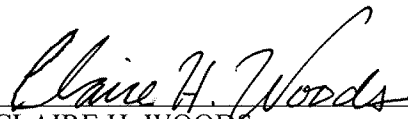
FOR THE UNITED STATES OF AMERICA:

Dated: 5/28/15



JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: 5/28/15



CLAIRE H. WOODS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O Box 7611, N.W.
Washington, DC 20044-7611
(202) 305-0402
claire.woods@usdoj.gov


PAUL J. FISHMAN
United States Attorney
District of New Jersey

ALLAN URGENT
Assistant United States Attorney
District of New Jersey

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Defendants Garden Homes, et. al.*, Civil No. _____.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 5/28/15



on MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Dated: 5/22/15



ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region II
Office of Regional Counsel

LAUREN FISCHER
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
Office of Regional Counsel

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Defendants Garden Homes, et. al.*, Civil No. _____.

FOR DEFENDANTS:

Dated: 5-21-15



SCOTT LOVENTHAL

On behalf of:

- Garden Homes
- Garden Homes Realty Corporation
- Garden Homes Commercial Properties
- Clark Developers LLC
- Nordan Realty Corporation
- Bloomfield Belleville Associates
- Scenic Ridge Lopatcong LLC
- Allendale Whitney LLC
- River Vale Developers LLC
- Riverfront Developers LLC
- 351 Molnar Associates LLC
- Dunhams Farm Developers LLC
- Raritan Junction LLC
- North Brunswick TOD Associates LLC
- Fair Lawn Promenade LLC
- Edison Route 27 Associates LLC
- Monroe 33 Developers LLC

United States v. Garden Homes, et al.

**Appendix A – Stormwater Inspection Form and
Corrective Action Log**

Stormwater Construction Site Inspection Report

General Information			
Project Name			
NPDES Tracking No.		Location	
Date of Inspection		Start/End Time	
Inspector's Name(s)			
Inspector's Title(s)			
Inspector's Contact Information			
Inspector's Qualifications			
Describe present phase of construction			
Type of Inspection: <input type="checkbox"/> Regular <input type="checkbox"/> Pre-storm event <input type="checkbox"/> During storm event <input type="checkbox"/> Post-storm event			
Weather Information			
Has there been a storm event since the last inspection? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide: Storm Start Date & Time: Storm Duration (hrs): Approximate Amount of Precipitation (in):			
Weather at time of this inspection? <input type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Sleet <input type="checkbox"/> Fog <input type="checkbox"/> Snowing <input type="checkbox"/> High Winds <input type="checkbox"/> Other: Temperature:			
Have any discharges occurred since the last inspection? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe:			
Are there any discharges at the time of inspection? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe:			

Site-specific BMPs

- Number the structural and non-structural BMPs identified in your SWPPP on your site map and list them below (add as many BMPs as necessary). Carry a copy of the numbered site map with you during your inspections. This list will ensure that you are inspecting all required BMPs at your site.
- Describe corrective actions initiated, date completed, and note the person that completed the work in the Corrective Action Log.

	BMP	BMP Installed?	BMP Maintenance Required?	Corrective Action Log and Notes
1		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
8		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
9		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
10		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
11		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
12		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

	BMP	BMP Installed?	BMP Maintenance Required?	Corrective Action Log and Notes
13		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
14		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
15		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
16		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
17		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
18		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
19		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
20		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Overall Site Issues

Below are some general site issues that should be assessed during inspections. Customize this list as needed for conditions at your site.

	BMP/activity	Implemented?	Maintenance Required?	Corrective Action Log and Notes
1	Are all slopes and disturbed areas not actively being worked properly stabilized?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2	Are natural resource areas (e.g., streams, wetlands, mature trees, etc.) protected with barriers or similar BMPs?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3	Are perimeter controls and sediment barriers adequately installed (keyed into substrate) and maintained?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4	Are discharge points and receiving waters free of any sediment deposits?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5	Are storm drain inlets properly protected?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6	Is the construction exit preventing sediment from being tracked into the street?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7	Is trash/litter from work areas collected and placed in covered dumpsters?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
8	Are washout facilities (e.g., paint, stucco, concrete) available, clearly marked, and maintained?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

	BMP/activity	Implemented?	Maintenance Required?	Corrective Action Log and Notes
9	Are vehicle and equipment fueling, cleaning, and maintenance areas free of spills, leaks, or any other deleterious material?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
10	Are materials that are potential stormwater contaminants stored inside or under cover?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
11	Are non-stormwater discharges (e.g., wash water, dewatering) properly controlled?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
12	(Other)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Non-Compliance

Describe any incidents of non-compliance not described above:

CERTIFICATION STATEMENT

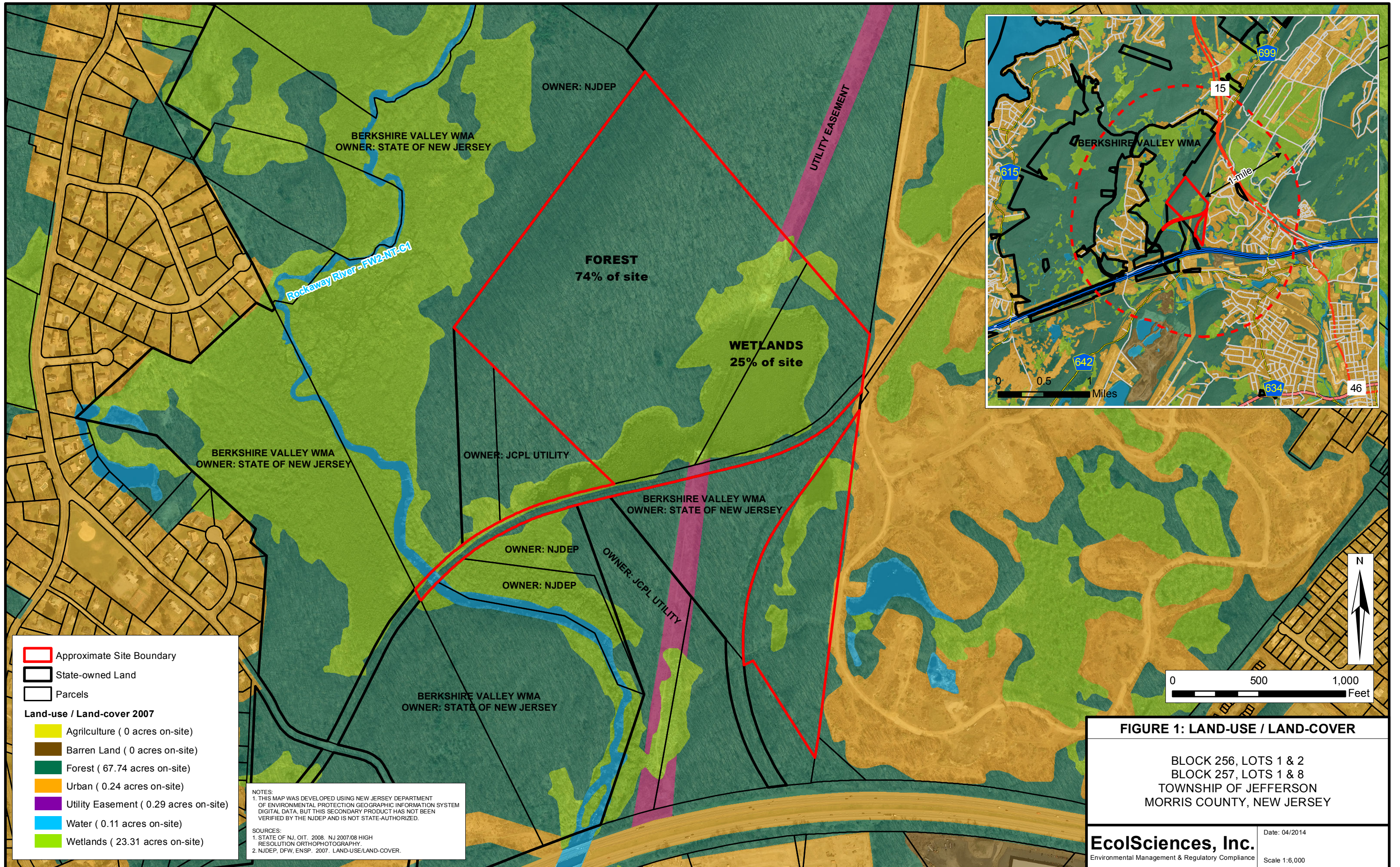
“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Print name and title: _____

Signature: _____ **Date:** _____

United States v. Garden Homes, et al.

Appendix B – Map of SEP Properties



- Approximate Site Boundary
 - State-owned Land
 - Parcels
- Land-use / Land-cover 2007**
- Agriculture (0 acres on-site)
 - Barren Land (0 acres on-site)
 - Forest (67.74 acres on-site)
 - Urban (0.24 acres on-site)
 - Utility Easement (0.29 acres on-site)
 - Water (0.11 acres on-site)
 - Wetlands (23.31 acres on-site)

NOTES:
 1. THIS MAP WAS DEVELOPED USING NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION GEOGRAPHIC INFORMATION SYSTEM DIGITAL DATA, BUT THIS SECONDARY PRODUCT HAS NOT BEEN VERIFIED BY THE NJDEP AND IS NOT STATE-AUTHORIZED.

SOURCES:
 1. STATE OF NJ, OIT. 2008. NJ 2007/08 HIGH RESOLUTION ORTHOPHOTOGRAPHY.
 2. NJDEP, DFW, ENSP. 2007. LAND-USE/LAND-COVER.

FIGURE 1: LAND-USE / LAND-COVER

BLOCK 256, LOTS 1 & 2
 BLOCK 257, LOTS 1 & 8
 TOWNSHIP OF JEFFERSON
 MORRIS COUNTY, NEW JERSEY

EcolSciences, Inc.
 Environmental Management & Regulatory Compliance

Date: 04/2014
 Scale 1:6,000

United States v. Garden Homes, et al.

Appendix C – Site Information



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 12 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5951 9035

Mr. Zygmund Wilf, President
Garden Homes, Inc.
820 Morris Turnpike Suite 301
Short Hills, New Jersey 07078

Re: Request for Information Pursuant to Section 308 of the Clean Water Act
Garden Homes, Inc.
Docket No. CWA-IR-13-001

Dear Mr. Wilf:

The United States Environmental Protection Agency (EPA) is charged with the protection of human health and the environment under the Clean Water Act (CWA or Act), 33 U.S.C. §§1251 et seq. Section 308(a) of the CWA, 33 U.S.C. §1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person/agency is in violation of Section 301 of the CWA, 33 U.S.C. §1311, the EPA shall require the submission of any information reasonably necessary to make such a determination. Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any facility and its related appurtenances.

Garden Homes, Inc. is hereby required, pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), to submit the documents and information requested in **Enclosure 2**.

In responding to each Requested Item, please adhere to the Instructions and Definitions in **Enclosure 1**.

You must provide the information requested no later than **thirty (30)** calendar days from the date of receipt of this letter. Requests for additional time must be justified, and must be requested for EPA approval within fifteen (15) calendar days of your receipt of this letter. The response to **Enclosure 2** must be signed by a responsible official or agent of your company.

Any documents to be submitted by Garden Homes, Inc. must be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 C.F.R. §122.22), and shall include the certification in **Enclosure 3**.

All information required to be submitted by this Request for Information shall be sent by certified mail or its equivalent to the following address:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

This information request is not subject to the requirements of the Paperwork Reduction Act, as amended, 44 U.S.C. §§3501 et seq.

Failure to respond to this letter truthfully and accurately within the time provided may subject you to sanctions authorized by federal law.

If you have any questions regarding this Request for Information, feel free to have your staff contact Ms. Kimberly McEathron, Physical Scientist at (212) 637-4228.

Sincerely,



for Doughlas McKenna, Chief
Water Compliance Branch

Enclosures

cc: Joseph DiMura, NYSDEC
Marcedius T. Jameson, NJDEP

ENCLOSURE 1

INSTRUCTIONS AND DEFINITIONS

In responding to this Request for Information, apply the following Instructions and Definitions:

1. The signatory should be an officer or agent who is authorized to respond on behalf of the company or facility. The signatory must sign the attached "Certification of Answers to Request for Information" for Enclosure 2 and return the response to the address specified for the Enclosures.
2. A complete response must be made to each individual Item in this Request for Information. Identify each response with the number of the Requested Item to which it is addressed.
3. In preparing your response to each Requested Item, consult with all present and former employees and agents of the company or facility whom you have reason to believe may be familiar with the matter to which the Requested Item pertains.
4. In responding to each Requested Item, identify all contributing sources of information. Every source of information to which you have access should be consulted, regardless of whether the source is in your immediate possession or control.
5. It is your responsibility to try to obtain any information pertinent to any Requested Item. If you are unable to respond to a Requested Item in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any Requested Item, state that person's name and last known address and phone number and the reasons for your belief.
6. If you cannot provide a precise response to any Requested Item, please approximate and state the reason for your inability to be specific.
7. For each document produced in response to this Request for Information, indicate on the document or in some other reasonable manner the number of the Requested Item to which it applies. For your information, "documents" shall include, but not be limited to, the following: papers, books, records, letters, photographs, correspondence, communications, telegrams, cables, memoranda, batch sheets, other work papers, ledger sheets, transcripts, minutes, reports, and recordings of telephone or other conversations, or of interviews or of conferences, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, drafts, analyses, bulletins, notices, announcements, instructions, charts, manuals, brochures, publications, schedules, journals, statistical records, diaries, lists, logs, well logs, field logs, tabulations, computer printouts, invoices, checks, notes, diagrams, maps, graphs, or materials with handwriting or other printing on them and other tangible material.

8. If anything is deleted from a document produced in response to the Request for Information, state the reason for and the subject matter of the deletion.
9. If a document is requested but is not available, state the reason for its unavailability. In addition, identify any such document by author, date, subject matter, number of pages, and all recipients and their addresses.
10. "Person," for the purposes of this Request for Information, means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
11. "Pollutant," for the purposes of this Request for Information, means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6)
12. "Discharge of a pollutant," for the purposes of this Request for Information, means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
13. The "person" or "Company", for the purposes of this Request for Information, is Garden Homes, Inc and its parent, subsidiary, partner and affiliate companies.
14. "Owner or Operator," for the purposes of this Request for Information, means the owner or operator of any facility or activity subject to regulation under the National Pollutant Discharge Elimination System (NPDES) program.
15. "Construction Site," for the purposes of this Request for Information, means any Site subject to regulations at 40 C.F.R. §122.26(b)(14)(x) and 40 C.F.R. §122.26(b)(15)(i).
16. Unless the Requested Item clearly provides otherwise, each Requested Item in Enclosure 2 must be answered for each Construction Site identified in Requested Item 1.

ENCLOSURE 2

**REQUEST FOR INFORMATION
PURSUANT TO SECTION 308 OF THE CLEAN WATER ACT**

Garden Homes, Inc., or its authorized representatives, shall submit the following information regarding **each** Construction Site described in Requested Item 1 below, within **thirty (30)** calendar days of receipt of this Request for Information (RFI):

1. A complete listing of all Construction Sites in New Jersey, New York, Puerto Rico and the Virgin Islands, that are one (1) acre or greater; that are either under construction, have not undergone final stabilization, or are under contract for construction; and are owned or operated by Garden Homes, Inc., any of its parent companies, any of its subsidiaries, any of its partners, any of its affiliates or any other entity under the control or management of Garden Homes, Inc. including but not limited to Garden Homes, Inc., Garden Home, Inc., Garden Communities Inc., Garden Homes Management, Garden Commercial Properties, Garden Properties Corporation, Turtle Creek Developers, Inc., Knoll Manor Associates, Dunbar Homes, Inc., Pineview Homes, Minac Corp, K&K Developers, Inc., and Scenic Hill.
2. The Construction Site list submitted in response to Requested Item 1 above must include the following for each Construction Site:
 - a. The Construction Site name, street and/or location, city, and zip code (including Latitude and Longitude coordinates);
 - b. The total area (in acres) of the Construction Site, the total disturbed area (in acres) of the Construction Site, the total area of the greater plan of development and the total number of separate and/or subdivided sites planned for the greater plan of development. Note that the total area of the Construction Site also includes any associated storage areas or other areas that are part of the common plan for the Construction Site or where auxiliary activities take place;
 - c. Whether an application for stormwater discharge permit coverage has been submitted for the Construction Site in accordance with NPDES regulations, and if so, include the following:
 - i) Date NPDES coverage began;
 - ii) A copy of the Request for Authorization (for sites in NJ) or Notice of Intent (for sites in NY/PR/VI);
 - iii) A copy of the Permit Authorization (for sites in NJ) or Letter of Acknowledgement (for sites in NY/PR/VI); and
 - iv) Permit authorization number.

- d. The date that the construction began or is scheduled to begin and the date that construction is expected to be completed at the Site;
- e. Dates that the Stormwater Pollution Prevention Plan (SPPP) (for sites in NY/PR/VI) or Soil Erosion and Sediment Control Plan and Waste Control Component (SESCP) (for sites in NJ) was developed and implemented;
- f. The name(s) of the subsidiary company, address, telephone number and contact person(s) full name(s) for each of the owners or operators of the Construction Site, including a list of subcontractors at each Construction Site who are responsible for SPPP or SESCO implementation and/or maintenance;
- g. A description, drawing and/or map that explains where stormwater is collected at the Construction Site and also all discharge location(s) for stormwater including but not limited to, runoff, culverts, ditches, separate storm sewer systems, combined sewer systems, streams, lakes and wetlands. Also include the name of the receiving body or bodies of water for stormwater discharges from the Construction Site.

ENCLOSURE 3

**CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION
FOR ENCLOSURE 2**

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Name (print or type)

SIGNATURE

DATE

TITLE

United States v. Garden Homes, et al.

Appendix D - Compliance Requirements

APPENDIX D

On _____ 2015, Garden Homes and certain related entities (collectively, “Garden Homes Affiliates”) entered into a Consent Decree with the United States of America, on behalf of the United States Environmental Protection Agency, with regard to certain violations of the Construction Stormwater General Permit requirements of the Clean Water Act (the “Act”) (33 U.S.C. §§ 1251-1387) and its accompanying regulations. Pursuant to the obligations of the Consent Decree, you are being provided a copy of the “Compliance Requirements” section of the Consent Decree for your review in order for you to understand the obligations imposed on Garden Homes Affiliates. The full Consent Decree can be accessed online at [_____]. Any questions related to the below requirements or the Consent Decree can be directed to the Company Stormwater Manager.

COMPLIANCE REQUIREMENTS

(Consent Decree – Section VI)

1. Garden Homes Affiliates¹ shall comply with all applicable requirements of the Act, regulations issued pursuant to the Act, and all practices, standards, and limits contained in all applicable permits issued to Garden Homes Affiliates.

2. Garden Homes Affiliates shall comply with all applicable Stormwater Requirements. Garden Homes Affiliates shall at all times properly operate and maintain all Sites and systems of treatment and control (and related appurtenances) which are installed or used by Garden Homes Affiliates to achieve compliance with the conditions of their Construction Permits. Garden Homes Affiliates shall not commence or continue, and shall not allow its Contractors to commence or continue, Construction Activity until Garden Homes Affiliates have obtained coverage under the Construction Permit. Garden Homes Affiliates shall obtain, transfer, and maintain coverage at each Site as required by the Construction Permit.

3. **Stormwater Management Program.** Garden Homes Affiliates shall develop and implement a corporate-wide Stormwater Management Program, which shall include the requirements set forth herein.

4. Garden Homes Affiliates shall comply with the Stormwater Management Program and requirements established pursuant to the Consent Decree for the 5-year period commencing with the Effective Date with respect to each Garden Homes Site. The Stormwater Management Program, and other requirements set forth in the Consent Decree, shall apply to all Garden Homes Sites.

¹ Definitions for all defined terms can be found in Exhibit A to this Appendix.

5. Company Stormwater Manager.

a. Designation. Within 14 days of the Effective Date, Garden Homes Affiliates shall designate a Company Stormwater Manager and submit written notice to EPA, for review and approval, identifying the Company Stormwater Manager, with contact information, along with a certification that he or she satisfies the criteria set forth in Subparagraph 5.c..

b. Change in Designation. Garden Homes Affiliates may change the Company Stormwater Manager, with written notice to EPA for review and approval, fourteen business days in advance of any such change. In the event that the Company Stormwater Manager resigns or is terminated without notice, Garden Homes Affiliates shall use all reasonable efforts to employ or retain a new Company Stormwater Manager as soon as is practicable. During this interim period, Garden Homes may temporarily designate another employee or a Contractor to assume the role of the Company Stormwater Manager. Such temporary designation may last no longer than 60 days, unless EPA consents in writing to a longer period or approves the temporary designee as a Company Stormwater Manager, pursuant to this subparagraph. A person acting as Company Stormwater Manager during a temporary designation is not required to have the Qualifications required by Paragraph 5.c; however, that person must be sufficiently qualified to fully execute the duties of the Company Stormwater Manager, as described in Subparagraph 5.d.

c. Qualifications. The Company Stormwater Manager shall be an individual with responsibility for overseeing Garden Homes Affiliates' compliance with Stormwater Requirements. The Company Stormwater Manager shall be an employee of a Garden Homes Affiliate or a Contractor and shall be trained as required by Paragraph 7. In addition, the Company Stormwater Manager shall have at least five years of construction-related experience and shall either be (i) certified by the Certified Professional in Erosion & Sediment Control ("CPESC") program; or (ii) certified by an alternative to CPESC certification by submitting a full description of an equivalent certification program to EPA and obtaining EPA's written approval of such alternative certification.

d. Company Stormwater Manager Duties. The Company Stormwater Manager shall have responsibility for overseeing Garden Homes Affiliates' efforts and actions to achieve and maintain compliance with Stormwater Requirements.

- i. The Company Stormwater Manager shall prepare and sign all Pre-Construction Review Reports, as described in Paragraph 8.
- ii. The Company Stormwater Manager shall prepare or oversee preparation of all Stormwater Pollution Prevention Plans ("SPPPs") and any amendments to SPPPs for each Garden Homes Site where SPPPs are required.

- (A) Prior to commencing Construction Activities at a Garden Homes Site, the Company Stormwater Manager shall prepare or oversee preparation of a Site-specific SPPP consistent with the requirements of the Construction Permit and Paragraph 9.
- (B) The Company Stormwater Manager shall certify the SPPP pursuant to the Construction Permit, as set forth in Paragraph 9.
- (C) The Company Stormwater Manager shall ensure that the Site Stormwater Manager reviews, and is familiar with, the SPPP, as set forth in Paragraph 9.

- iii. The Company Stormwater Manager shall develop and oversee all Stormwater Compliance Training and shall maintain all related Records, as described in Paragraph 7.
- iv. The Company Stormwater Manager shall conduct unannounced Site inspections of each Site at least on a quarterly basis, as described in Paragraph 10.
- v. The Company Stormwater Manager shall transmit a copy of the Quarterly Site Inspection Report and communicate any Deficiencies identified and/or Corrective Actions needed at a Site to that Site's Stormwater Manager, as described in Paragraph 10.
- vi. The Company Stormwater Manager shall determine whether the Site is eligible to terminate coverage under the Construction Permit.
- vii. If the Company Stormwater Manager determines that no Construction Permit coverage is required for a Site and if Garden Homes Affiliates do not plan to obtain Construction Permit authorization for a Site, in accordance with Subparagraph 8.a(v), the Company Stormwater Manager must document and sign this determination.

e. Delegation of Company Stormwater Manager Duties: Except as expressly provided in the Consent Decree, the Company Stormwater Manager may delegate the performance of stormwater compliance duties required under the Consent Decree to designees. Any such delegation does not relieve Garden Homes Affiliates or the Company Stormwater Manager of responsibility for the proper performance of any delegated task or for compliance with stormwater requirements.

6. Site Stormwater Manager.

a. Designation.

- i. For those Sites where Construction Activities are ongoing as of the Effective Date, Garden Homes Affiliates shall, as soon as practicable but no later than 60 days from the date of EPA's written approval of the Stormwater Training Program as described in Paragraph 7, designate a Site Stormwater Manager for every such Site and submit written notice to EPA for review, identifying the person(s) with contact information, along with a certification that he/she satisfies the criteria set forth in Subparagraph 6.d.
- ii. For those Sites where Garden Homes Affiliates commence Construction Activities after the Effective Date or where Garden Homes Affiliates acquire a Site for which another party has already commenced Construction Activities, Garden Homes Affiliates shall designate a Site Stormwater Manager prior to the commencement of Construction Activities.
- iii. EPA shall receive written notification of each Site Stormwater Manager designation within 21 Days of all designations. The notice shall contain a certification that the designee has completed the Stormwater Training Program described in Paragraph 7.
- iv. EPA reserves the right to disapprove of a Site Stormwater Manager designee. If EPA disapproves any such designee, the Company Stormwater Manager shall fulfill the responsibilities of the Site Stormwater Manager until a new designee is submitted. Garden Homes shall resubmit a new designee within 30 days of receipt of EPA's disapproval.

b. Change in Designation. Garden Homes Affiliates may change a Site Stormwater Manager, with written notice to EPA fourteen days in advance of any such change. In the event that a Site Stormwater Manager resigns or is terminated without notice, Garden Homes Affiliates shall provide notice to EPA within fourteen days of such resignation or termination. Garden Homes Affiliates shall include the name of the new Site Stormwater Manager for the Site in such notice. In such case, the Company Stormwater Manager shall fulfill the responsibilities of the Site Stormwater Manager until a new designee is submitted.

c. Delegation of Site Stormwater Manager Duties. The Site Stormwater Manager may delegate the performance of stormwater compliance duties required in accordance with the provisions of the Consent Decree to designees. Any such delegation does not relieve Garden Homes Affiliates or the Site Stormwater Manager of responsibility for the proper performance of any delegated task or for compliance with stormwater requirements so long as the delegee meets the qualifications set forth in Subparagraph 6.d. Where delegation is utilized by the Site Stormwater Manager:

- i. the delegation of any one Site Stormwater Manager's duties to a temporary designee shall not exceed a total of 60 Days during any calendar year;
- ii. the temporary designee shall meet the qualifications required for Site Stormwater Managers, set forth in Subparagraph 6.d.; or have 30 Days to obtain such qualifications; and
- iii. the temporary designee shall have sufficient authority to perform the delegated tasks, set forth in Subparagraph 6.e.

d. Qualifications. The Site Stormwater Manager shall be an individual with primary management responsibility for compliance with Stormwater Requirements at that Site during day to day operations. The Site Stormwater manager shall have at least two years of construction-related experience. The Site Stormwater Manager shall be an employee of a Garden Homes Affiliate or a Contractor and shall be trained in accordance with the Stormwater Compliance Training required by Paragraph 7.

e. Site Stormwater Manager Duties. The Site Stormwater manager is the individual who has primary management responsibility for compliance with Stormwater Requirements at that Site during day to day operations.

- i. The Site Stormwater Manager shall conduct Weekly Site Inspections and prepare all Weekly Site Inspection Reports, as described in Paragraph 10.
- ii. The Site Stormwater Manager shall:
 - (A) identify, implement and maintain BMPs;
 - (B) instruct Garden Homes employees and Contractors on the implementation and maintenance of BMPs;
 - (C) direct employees and Contractors to take appropriate actions to address Deficiencies and Action Items; and
 - (D) order employees and Contractors to stop work as a result of a failure to comply with Stormwater Requirements and order immediate Corrective Actions to achieve and maintain compliance with Stormwater Requirements. A Site Stormwater Manager's decision to stop work does not constitute an admission of violation of Stormwater Requirements.

- iii. The Site Stormwater Manager shall ensure the implementation of Corrective Actions necessary to address all Deficiencies at a Site identified by a Site Inspection or Audit as soon as practicable but not to exceed 7 days.
- iv. The Site Stormwater Manager shall ensure that person(s) conducting work at the Site have been trained as required by Paragraph 7.
- v. The Site Stormwater Manager shall ensure that all required records are maintained on site as required by Subparagraph 12.b.

7. Stormwater Compliance Training.

- a. Stormwater Compliance Training For Employees. The Company Stormwater Manager shall develop and oversee site-specific stormwater training (“Stormwater Compliance Training”) for all of Garden Homes Affiliates’ employees engaged in Construction Activities at a Site.

- i. Timing of Stormwater Compliance Training.

- (A) Each of Garden Homes Affiliates’ employees engaged in Construction Activities at a Site must take the Stormwater Compliance Training, in accordance with the Stormwater Compliance Training Program approved by EPA pursuant to Paragraph 14, within 45 days of approval of such program.
- (B) Where commencement of Construction Activities occurred prior to the approval of the Stormwater Compliance Training Program, Stormwater Compliance Training shall be provided within 45 days of approval of such program.

- ii. Stormwater Compliance Training Program Requirements. Within 90 days of the Effective Date, Garden Homes Affiliates shall submit to EPA for review and approval, pursuant to Paragraph 14, a Stormwater Compliance Training Program, which shall include:

- (A) A list of individuals required to take the training;
- (B) A training schedule;
- (C) Who will be conducting the training; and
- (D) Procedures for documenting training, including sign-in sheets, training certifications, and retention of training records.

(E) A Stormwater Compliance Training Program Syllabus, which shall include:

- 1) A regulatory overview, including an introduction to the CWA, EPA Stormwater regulations, state stormwater programs, and the requirements of this Consent Decree.
- 2) Stormwater basics, including pollutants and discharges, controls and BMPs, and non-stormwater discharges.
- 3) An introduction to stormwater permitting, including types of permits, regulatory authorities, Request for Authorization, and relevant Consent Decree provisions.
- 4) Stormwater plans and the preparation of stormwater plans, including requirements to update stormwater plans.
- 5) Inspection requirements, including site inspections, quarterly inspections, recordkeeping, forms, and certification.
- 6) Contractor oversight.
- 7) Construction site waste control practices including designated concrete washout, chemical and fuel storage, spill response and waste handling.
- 8) Finishing a jobsite, including performance of the final inspection and termination of Construction Permit coverage as required.
- 9) Available technical resources and stormwater related guidance.
- 10) Twice a year refresher training.

iii. Certification of Completion.

(A) Immediately upon completion of the Stormwater Compliance Training Program, and before starting or continuing Construction Activities at a Site, each trainee must certify completion of the program by submitting the following signed training certification to the Company Stormwater Manager:

“I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Garden Homes Stormwater Management Program and

agree to implement any Corrective Actions identified by the Garden Homes Company Stormwater Manager or a Site Stormwater Manager. I also understand and agree to comply with the terms and conditions of Appendix D to *United States v. Garden Homes, et al.*, [insert caption].”

(B) All certifications required under this subparagraph shall be maintained on Site by the Site Stormwater Manager, in accordance with Subparagraph 12.b12.b.

b. Stormwater Compliance Training and Orientation Program for Contractors and Subcontractors.

i. Contractor and Subcontractor Agreements. Garden Homes Affiliates shall add a provision to Contractor and Subcontractor agreements for Contractors and Subcontractors engaged in Construction Activities, whereby such Contractors and Subcontractors will affirmatively acknowledge their receipt, review, understanding and compliance with the Stormwater Compliance requirements set forth in this Appendix, as well as the Garden Homes Compliance Guide for Employees and Contractors set forth in Appendix E of the Consent Decree.

ii. On-Site Training Program for Project Foreman Engaged in Construction Activities:

(A) Garden Homes shall provide an on-site training program for each Project Foreman of Contractors engaged in Construction Activities at the onset of each project. This orientation will cover:

- 1) Stormwater basics, including pollutants and discharges, controls and BMPs, and non-stormwater discharges;
- 2) Construction site waste control practices including designated concrete washout, chemical and fuel storage, spill response, waste handling and site-specific requirements; and
- 3) Consequences of non-compliance.

(B) Each Project Foreman of Contractors engaged in Construction Activities shall be required to attend the initial onsite training program and shall sign an attendance sheet attesting to his or her attendance at the on-site training program and his or her receipt of this Appendix and Appendix E.

- (C) A twice-a-year training refresher course will be provided for the Project Foreman of all on-site Contractors engaged in Construction Activities at each project.
 - (D) For Project Foreman that begin work at a Site after the initial training is offered, the Project Foreman will take the first training refresher course available after commencing Construction Activities at the Site.
- c. At all times when Construction Activities are ongoing, at least one employee or Project Foreman who has completed the Stormwater Training required pursuant to Paragraph 7(a) or 7(b) shall be present at a Site.

8. Pre-Construction Review and Report.

a. Within 30 days of the Effective Date, Garden Homes Affiliates shall develop and submit to EPA for review and approval a Pre-Construction Review Report template to be used to complete all Pre-Construction Review Reports, and which shall include:

- i. name and description of the Site;
- ii. the total acreage, total disturbed acreage and location of the Site;
- iii. the number of expected (permanent and temporary) discharge points from the Site;
- iv. a brief description of the hydrology of the Site including any connections to waters of the United States; and
- v. the Company Stormwater Manager's determination as to whether Construction Permit coverage is required for the Site.
- vi. If Construction Permit coverage is required for the Site, the Pre-Construction Review Report shall include the following:
 - (A) Confirmation that Construction Permit coverage has been obtained;
 - (B) A verification that a SPPP consistent with the Construction Permit had been prepared;
 - (C) Confirmation that the Site Stormwater Manager for that Site is properly qualified, as required by Subparagraph 6.d.;

- (D) A verification that all required training for employees and Contractors to be engaged in construction-related activities at a Site has occurred as required by the Consent Decree; and
- (E) That all initial stormwater requirements are in place and being implemented prior to the commencement of Construction Activities.

b. For those Sites where Garden Homes Affiliates commence Construction Activities after the Effective Date or where Garden Homes Affiliates acquire a Site for which another party has already commenced Construction Activities, the Company Stormwater Manager shall perform a pre-construction review and prepare and certify a Pre-Construction Review Report, prior to the commencement of Construction Activities by Garden Homes Affiliates at that Site.

- i. For each such Site, the Company Stormwater Manager shall sign the Pre-Construction Review Report.
- ii. All Pre-Construction Review Reports shall be kept on Site, with the SPPP, in accordance with Subparagraph 12.b.

c. The Pre-Construction Review Construction Permit coverage determination, made pursuant to Subparagraph 8.a(v), shall be noted in the list of Sites provided to EPA pursuant to the Consent Decree.

9. Site-specific SPPPs. Garden Homes Affiliates shall develop and implement a Site-specific SPPP for each Site in accordance with the requirements and schedules in this Paragraph.

a. All SPPPs and SPPP amendments shall comply with the terms and conditions of the Construction Permit and the Consent Decree.

b. Each SPPP shall:

- i. Be developed specifically for the Site at issue;
- ii. Identify the Corporate-wide established BMPs that will be used for each anticipated major phase of construction;
- iii. Include erosion and sediment control and construction site waste control components as required by the Construction Permit;
- iv. Incorporate the inspection frequency and routine maintenance deadlines;
- v. Include clear, concise descriptions of Site-specific BMPs to implement the requirements of the Construction Permit and to guide those responsible for overseeing implementation of the SPPP at each stage of construction; and

- vi. Contain documentation and records for all erosion and sedimentation control activities at the Site. These records include, but are not limited to: inspection reports; construction logs that describe intended sequence, timing and dates associated with activities that disturb and stabilize soils; and the installation and construction of major stormwater controls such as storm drain systems, head walls, detention basins, outfall structures, slope and embankment activities, stream crossings, site stabilization, and foundation and trench de-watering activities.
 - c. Each SPPP shall be implemented throughout the duration of Construction Activity at each Site.
 - d. SPPP Amendments.
 - i. For those Sites where Construction Activities have occurred or are projected to continue for at least six months after the Effective Date, the Company Stormwater Manager shall review the SPPPs for such Sites and amend them as necessary to comply with the Construction Permit and the Consent Decree within 30 days of the Effective Date or prior to continuation of any Construction Activities, whichever is later. All SPPPs (including the Site maps) shall be revised or amended within fourteen days whenever:
 - (A) there is a change in design, construction, operation, or maintenance at the Site that has or could have a significant effect on the discharge of pollutants to the waters of the United States that has not been previously addressed in the SPPP; or
 - (B) an inspection, whether performed by Garden Homes Affiliates pursuant to Paragraph 10 or by the government (federal, state, or local) determines that the SPPP is ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the Site.
10. Routine Site Inspections and Site Inspection Reports.
- a. Site Inspections.
 - i. For each Site, the Site Stormwater Manager shall conduct, at least once every seven calendar days, a Site Inspection (“Weekly Site Inspection”). Weekly Site Inspections may be delegated, in accordance with Paragraph 6.c.

- ii. For each Site, the Company Stormwater Manager shall conduct an unannounced Site inspection on an at least a quarterly basis (“Quarterly Site Inspection”).
 - iii. At a minimum, all Site Inspections, including those required under Subparagraphs 10.a.(i) and 10.a.(ii), shall include an examination of all BMPs described in the SPPP and a visual water quality examination of any discharge from outfalls at the Site.
- b. Site Inspection Reports.
- i. Timing of Completion.
 - (A) Within 48 hours after the Site Stormwater Manager conducts the Weekly Site Inspection required under Subparagraph 10.a.(i), the Site Stormwater Manager shall complete a Weekly Site Inspection Report. The completion of the Weekly Site Inspection Report may be delegated, pursuant to Subparagraph 6.c.
 - (B) Within 72 hours after the Company Stormwater Manager conducts the Quarterly Site Inspection required under Subparagraph 10.a.(ii), the Company Stormwater Manager shall prepare and certify a Quarterly Site Inspection Report. Within seven (7) days of the Quarterly Site Inspection, the Company Stormwater Manager shall
 - (1) Discuss with the Site Stormwater Manager the Quarterly Site Inspection and the Quarterly Site Inspection Report, including Deficiencies identified and Corrective Actions required;
 - (2) Submit the Quarterly Site Inspection Report to the Site Stormwater Manager, to be maintained on Site; and
 - (3) Submit the Quarterly Site Inspection Report to EPA.
 - ii. All Site Inspection Reports, including those required under Subparagraphs 10.a.(i) and 10.a.(ii), shall be documented using the Stormwater Inspection Report Form attached to the Consent Decree, and shall be kept on Site, with the SPPP, in accordance with Subparagraph 12.b. Garden Homes Affiliates may change the Stormwater Inspection Report at any time, with written notice to EPA for review and approval, in accordance with Paragraph 14 in advance of any such change.

iii. At a minimum, each Site Inspection Report shall document the following:

- (A) the inspection date and time;
- (B) the name and title of the person conducting the inspection;
- (C) a description of the weather since the last inspection;
- (D) a description of any observed soil erosion;
- (E) a description of any discharges occurring at the time of the inspection or evidence of discharges observed during the inspection (such as color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and any other obvious indicators of stormwater pollution);
- (F) Deficiencies in implementation of the SPPP;
- (G) Deficiencies in BMPs or stormwater controls;
- (H) Deficiencies in spill prevention and response;
- (I) Inconsistencies with or violations of the Construction Permit;
- (J) Deficiencies in Records retained on-site;
- (K) Inconsistencies with or violations of the Consent Decree; and
- (L) Corrective Actions that may need to be taken to remedy Deficiencies.

c. Corrective Actions.

- i. Garden Homes Affiliates shall complete Corrective Actions for each Deficiency identified in a Site Inspection Report within seven 7 Days after the date on which such Deficiency was identified. Subsequent Site Inspection reports must document Corrective Actions taken and any additional follow-up for any Deficiencies.
- ii. A record of completed Corrective Actions shall be maintained in a Corrective Action Log attached to the Consent Decree, which shall be readily available at the relevant Site, in accordance with Subparagraph 12.b.

- iii. The Corrective Action Log shall describe each Deficiency identified on a Site Inspection Report, the date each Deficiency was identified, the date each Deficiency was addressed and the associated Corrective Action taken.

11. Corporate-wide evaluation of existing stormwater practices. Garden Homes Affiliates shall complete the following audit in accordance with the requirements and schedules in this Paragraph:

a. Stormwater Audit. Garden Homes Affiliates shall conduct and submit to EPA an initial Stormwater Audit by no later than 180 Days after the Effective Date, and a supplemental Stormwater Audit once every two years thereafter. Each Stormwater Audit shall review:

- i. planning, development, implementation, inspection and maintenance of stormwater management practices;
- ii. employee and Contractor stormwater compliance training; and
- iii. internal and external communication and reporting, as it relates to stormwater compliance.

b. Stormwater Action Item Plan. By no later than 45 Days after each Stormwater Audit is submitted, Garden Homes Affiliates shall develop and submit to EPA for review and approval, an Action Item Plan (“AIP”).

- i. The AIP shall: (1) describe any deficiencies discovered through the audit; (2) describe the actions that Garden Homes Affiliates have taken or will take to address any such deficiencies; and (3) include a schedule by which actions that have not yet been completed shall be completed.
- ii. The AIP and associated schedule shall be implemented within 30 days of EPA’s written approval.
- iii. EPA may submit comments on each AIP requesting additional action. By no later than 30 days after receipt of any comments, Garden Homes Affiliates shall take the action requested by EPA or submit a reply to such comments. Disputes arising with respect to any aspect of a AIP shall be resolved in accordance with the dispute resolution provisions of the Consent Decree.

12. Additional Compliance Requirements.

a. At each Site, Garden Homes Affiliates shall conspicuously post, outside of the construction office on Site, the name and telephone number of the Company Stormwater Manager

and Site Stormwater Manager. If there is no such office on Site, Garden Homes Affiliates shall post the contact information in a conspicuous location at the Site.

b. While there is Construction Activity at any Site, Garden Homes Affiliates shall ensure that the Construction Permit, the entire SPPP (including Site maps), and copies of the Weekly and Quarterly Site Inspection Reports, Pre-Construction Review Reports, Training Certifications, and Corrective Action Logs are readily available at each Site, as required by the Construction Permit, for review by any employee or Contractor as well as any local, state, or federal inspector.

13. Responsibility for Acts of Others. See Consent Decree Paragraph 4.

14. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted to EPA pursuant to the Consent Decree, EPA shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

15. If the submission is approved pursuant to Paragraph 14, Garden Homes Affiliates shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Subparagraphs 14.a. or 14.b., Garden Homes Affiliates shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions, subject to Garden Homes Affiliates' right to dispute only the specified conditions or the disapproved portions, under the Dispute Resolution provisions of the Consent Decree.

16. If the submission is disapproved in whole or in part pursuant to Subparagraphs 14.c. or 14.d., Garden Homes Affiliates shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Garden Homes Affiliates shall proceed in accordance with the preceding Paragraph.

17. Any stipulated penalties applicable to the original submission, as provided in the Consent Decree, shall accrue during the 45 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that,

if the original submission was so deficient as to constitute a material breach of Garden Homes Affiliates' obligations under the Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Garden Homes Affiliates to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies subject to Garden Homes Affiliates' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

19. Permits. Where any compliance obligation under this Section requires a Garden Homes Affiliate to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Garden Homes Affiliates may seek relief under the Force Majeure provision of the Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Garden Homes Affiliates have submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

EXHIBIT A TO APPENDIX D

DEFINITIONS USED IN THE CONSENT DECREE

(Consent Decree – Section IV)

Terms used above have been defined in the Consent Decree as follows:

- a. “Action Item” or “Deficiency” shall mean a condition that requires action to be taken to achieve or maintain compliance with National Pollutant Discharge Elimination System (“NPDES”) Stormwater Requirements, the CWA, applicable Construction Permit(s), or the Consent Decree;
- b. “Best Management Practices” (“BMPs”) shall be the same as the definition in 40 C.F.R. § 122.2, in its current form or as amended in the future. In its current form, that definition is “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage”;
- c. “Company Stormwater Manager” shall mean the person designated by Garden Homes pursuant to Paragraph 5 of this Appendix to be responsible for corporate-wide compliance with Stormwater Requirements at all Garden Homes Sites;
- d. “Complaint” shall mean the complaint filed by the United States in this action;
- e. “Consent Decree” or “Decree” shall mean the Consent Decree and all appendices;
- f. “Construction Activity(ies)” shall include: (1) clearing, grading and excavation that results in land disturbance of equal to or greater than one acre; (2) the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; or (3) any other construction activity which is otherwise subject to the NPDES stormwater construction regulations set forth in 40 C.F.R. § 122.26(b)(15)(ii). Construction Activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the Site;
- g. “Construction Permit” shall mean a Construction General Permit issued by the New Jersey Department of Environmental Protection under the State’s authority to implement CWA NPDES Stormwater Requirements. This term applies to such permit in its current form or as it may be amended in the future;

- h. “Contractor(s)” shall mean any person(s) hired by Garden Homes engaged in construction related activities at a Site, including trade contractor(s) or sub-contractor(s);
- i. “Corrective Action” shall mean an action taken or that is necessary to be taken to achieve or maintain compliance with Stormwater Requirements;
- j. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under the Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- k. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- l. “Effective Date” shall have the definition provided in the Consent Decree;
- m. “Garden Homes Affiliate” shall mean any Defendant or any current or future entity over which any Defendant or its successors or assigns has either (a) ownership and operational control or (b) day to day operational control over Construction Activities, including, but not limited to, Fairlawn Promenade LLC, Edison Route 27 Associates, LLC, Raritan Junction, LLC, North Brunswick TOD Associates, and Monroe 33 Developers, LLC;
- n. “Garden Homes Site” or “Sites” shall mean current or future projects involving Construction Activities for which one or more Garden Homes Affiliate either (1) has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (2) has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a Stormwater Management Program for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the Stormwater Management Program or to comply with other Permit conditions) and at which there is or will be construction resulting in ground disturbing activities greater than or equal to one acre or which is otherwise subject to the NPDES stormwater construction regulations set forth at 40 C.F.R. 122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15);
- o. “Paragraph” shall mean a portion of the Consent Decree identified by an Arabic numeral;
- p. “Parties” shall mean the United States, Defendants, and Garden Homes Affiliates;

- q. “Project Foreman” shall mean an individual that must be appointed by each Contractor or Subcontractor engaged in Construction Activities at a Garden Homes Site who is responsible for compliance with the on-site stormwater training and education requirements provided in Paragraph 7.b. of this Appendix.
- r. “Record” shall mean any record, report, information, document, or photograph required to be created or maintained pursuant to a Stormwater Requirement;
- s. “Section” shall mean a portion of the Consent Decree identified by a roman numeral;
- t. “Site Inspection Report” shall mean a written report of Weekly Site Inspections and/or Quarterly Site Inspections concerning a Site’s compliance with Stormwater Requirements, as provided in Paragraph 10 of this Appendix;
- u. “Site Stormwater Manager(s)” shall mean the person(s) designated by a Garden Homes Affiliate pursuant to Paragraph 6 of this Appendix to have primary management responsibility for compliance with Stormwater Requirements at a Site during day to day operations;
- v. “State” shall mean the State New Jersey;
- w. “Stormwater” shall mean any stormwater runoff, surface runoff, and drainage pursuant to the Act and its implementing regulations;
- x. “Stormwater Management Program” or “SMP” shall mean the policies, practices and procedures developed pursuant to the Compliance Requirements set forth in the Consent Decree to ensure compliance with the CWA and Construction Permit; and
- y. “Stormwater Requirement” shall mean the requirements of the Consent Decree, the applicable provisions of the CWA, applicable implementing regulations, and the Construction Permit.

United States v. Garden Homes, et al.

**Appendix E – Stormwater Pollution Prevention
Compliance Guide For Employees and Contractors**



Stormwater Pollution Prevention

**A
Compliance
Guide for Project
Supervisors and
Contractors**

Garden Homes has a company-wide Stormwater Program and site specific Stormwater and Soil Erosion Plans that were created to ensure compliance with the EPA's and NJDEP's requirements. This guide was developed to provide you with an understanding of our role and your role regarding stormwater management on our jobsites.

Purpose of This Guide

This guide was developed to educate Garden Homes' Site Supervisors and Contractors:

- Regarding requirements for stormwater pollution prevention compliance. This includes:
 - Specific requirements assigned to Site Supervisors and Contractors
 - Specific actions all Site Supervisors and Contractors must take to comply
- To understand what to do if you observe a condition requiring attention.
- To educate Garden Homes' Site Supervisors and Contractors as to the consequences of site non-compliance.

How Site Supervisors and Contractors Should Use This Guide

- Review Guide and refer to the Site Project Manager who acts as or designates a Site Stormwater Compliance Representative if further clarification is needed.
- This Guide can be used to train required designees from your company who have the authority to oversee, instruct and direct employees and sub-contractors working at a Garden Homes site in regard to stormwater compliance.

Garden Homes Stormwater Program

Site Supervisor and Contractor Compliance Expectations

Who Should You Contact for Stormwater Inquiries?

1. Every Garden Homes construction site has a Site Stormwater Compliance Representative(s) that is responsible for continuous compliance with all permits and with the Garden Homes Stormwater Program.
2. All Garden Homes sites will have a visible sign posted on the site identifying the individual Site Stormwater Compliance Representative(s) for the site.
 - a. As Site Supervisors and Contractors, it is your responsibility to know who the Site Stormwater Compliance Rep(s) are for every Garden Homes site you work.
3. Each construction site is inspected for compliance with the permit on a regular basis. Any non-compliance is required to be repaired promptly.

What's a SWPPP, BMP & What Do I Need To Know About Them?

1. The permitting process requires a written Stormwater Pollution Prevention Plan (SWPPP) be developed for each site by trained Stormwater Consultants. The SWPPP defines how stormwater and other potential pollutants (e.g., trash, debris, etc.) will be controlled on the site to minimize entry into downstream waters.
2. The SWPPP identifies Best Management Practices, known as BMP's, for managing stormwater at the site. Silt fences, concrete washouts, stone tracking pad entrances and waste containment structures are all examples of BMPs.
 - a. Silt fencing is used to control sediment leaving the site.
 - b. A concrete washout is used to contain common pollutants in concrete from entering the ground.
 - c. Stone tracking pad entrances are used to minimize tracking of dirt and debris.
 - d. A waste containment structure is used to manage waste in a confined area and facilitate removal from the site.

3. If a BMP has been modified or moved by you as a Site Supervisor or Contractor, it must be replaced **immediately**.
4. If damage to a BMP is unavoidable for completing work (pouring a foundation, delivering lumber, etc.), the Site Stormwater Compliance Rep(s) must be notified **before** damaging BMP's so they can determine whether or not to proceed with the activity at that time, and or, schedule repairs to be completed by a BMP contractor.
5. All Garden Homes sites will have a copy of the SWPPP available at the jobsite construction trailer or other designated location.
6. As Site Supervisors and Contractors, it is your responsibility to review the SWPPP with the Site Stormwater Compliance Rep(s) and comply with all of the SWPPP's requirements.
7. Site Supervisors and Contractors shall report any pollution controls that are in need of repair or not functioning properly to the Site Stormwater Compliance Rep(s).

Are There Any Specific Compliance Requirements of Contractors?

1. As Contractors, you are required to designate a representative who has the authority to oversee, instruct and direct employees and sub-contractors working at the site when it comes to stormwater compliance.
2. As Contractors, it is your responsibility to provide your company's designated representative(s) with a copy of this Training Guide.
3. Consequences to Contractors of not complying with the SWPPP requirements and the items outlined in this Training Guide may include fines, stop work orders and/or being held in default of your contract.

Site Supervisor and Contractor Do's and Don'ts

Below are a few Site Supervisor and Contractor Do's and Don'ts that highlight important points.

DO:

1. **DO** go to the Site Stormwater Compliance Rep(s) with any questions regarding stormwater pollution prevention or the Do's and Don'ts list.
2. **DO** properly handle, store, cover and contain all materials.
3. **DO** place all trash and debris in the receptacles provided.
4. **DO** use designated washout areas for (and only for) cleaning equipment (i.e. concrete trucks must use the designated concrete washout area).
5. **DO** immediately report any spills of any quantity of petroleum or other chemicals to the Site Stormwater Compliance Rep(s). The Site Stormwater Compliance Rep(s) will determine the necessary actions based on the quantity of the spill and the type of chemical.
6. **DO** immediately comply with any instructions given by the Site Stormwater Compliance Rep(s) or other Garden Homes personnel.
7. **DO** replace / re-install any BMPs altered by you immediately. Do not leave the site until complete.

DO NOT:

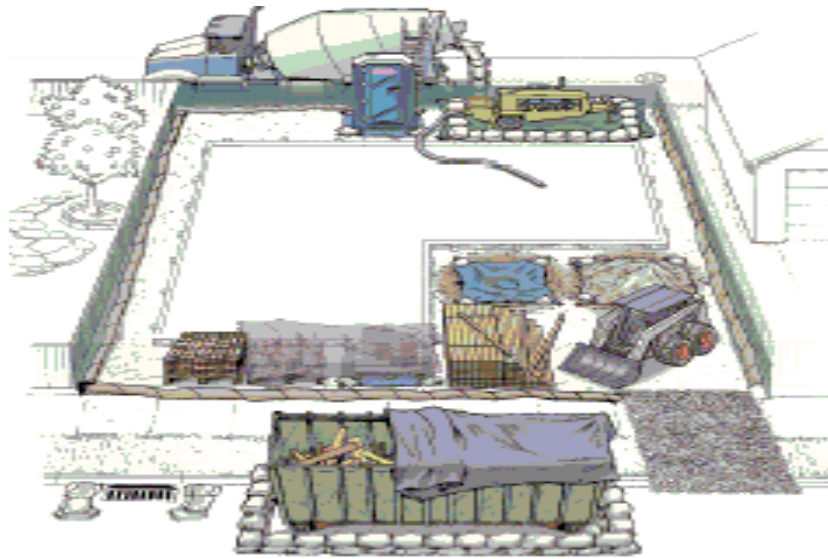
1. **DO NOT** track dirt onto streets. Use provided tracking controls and sweep or remove excess dirt from streets.
2. **DO NOT** allow any solvents, chemicals, paint, drywall finishing materials, any masonry materials, stucco materials or rinse liquids to drain into a street or storm drain, a creek, waterway, or other water body.
 - The above mentioned materials may not be washed out on site.
3. **DO NOT** disable, damage or interfere with any silt fence or similar erosion control.
 - For example, **DO NOT** run over a silt fence, tacked straw or forget to replace any silt fence or straw wattle you temporarily relocate, damage or dislodge.
4. **DO NOT** disable, damage or interfere with any inlet controls.
 - For example, **DO NOT** remove inlet controls (unless an action is needed to prevent flooding) or place dirt or debris in or adjacent to inlet controls.
5. **DO NOT** disable, damage, evade or interfere with any stormwater pollution prevention controls at construction entrances.
 - For example, **DO NOT** drive around stone construction entrances.
6. **DO NOT** disable, damage, drive over or interfere with any geotextile, matting or mulch.
7. **DO NOT** disable, damage or interfere with any other stormwater pollution prevention controls.

Remember: The failure to comply with stormwater requirements at any Garden Homes site is a breach of your contractual obligations and may result in economic sanctions or termination.

Notes

Page left blank intentionally for note taking.

Good Housekeeping Practices



Construction related waste can end up polluting stormwater runoff if not properly managed. There are eight key areas to good housekeeping practices:

1. Waste Management
2. Concrete Washout
3. Material Storage
4. Equipment and Vehicle Fueling
5. Spill Prevention and Response Plan
6. Tracking
7. Stabilization
8. Dewatering

1. Waste Management



GOOD:

- Container placed off road
- Trash is not overflowing
- Tracking pad in front of container

POOR:

- Area around container should be clean
- Tracking pad might need refreshing

What does this mean to me?

- Make sure to put trash in the container.
- If containers are full, please report to the Site Stormwater Compliance Rep(s).
- Remove left over materials from the site promptly.
- Portable toilets? These are common on job sites and are often noted as violations for not being staked down, too close to roads or overturned.

2. Concrete Washout Areas



- Look for signage at designated area.

Concrete wash materials and water are highly polluted and may not be discharged onto the ground or into uncontained areas.

What does this mean to me?

- Do not washout concrete trucks or equipment outside designated washout areas.
- Entrances to washout areas should be maintained to prevent tracking into streets or alleys. Any entrances to washout areas that are not functioning as intended should be reported to the Site Stormwater Compliance Rep(s) **immediately**.
- Grout and stucco shall also be disposed of in the designated washout area.
- When using washout area, inspect for leaks and tears and report to the Site Stormwater Compliance Rep(s) and **do not use** until repaired.
- Hardened concrete shall be removed from the site and never disposed of in the concrete washout area.

3. Material Storage

Good material management is essential to prevent stormwater pollution.

What does this mean to me?

- Consult with your Site Stormwater Compliance Rep(s) to determine proper storage area locations and storage techniques.
- Building materials should not be stored in the road.
- Verify with the Site Stormwater Compliance Rep(s) that the materials you want to store on site are allowed to be stored onsite by the SWPPP.
- Building materials such as paint, solvents, pesticides, fuel and oils, or those materials having the potential to contaminate stormwater runoff, should be stored indoors or under cover OR should be removed from the site if appropriate storage is not available.
- Secondary containment to prevent a spill from spreading should be provided.
- Designated staging areas for fueling, mixing paints, stucco, mortar, etc. should be predetermined with the Site Stormwater Compliance Rep(s).
- Train your employees and subcontractors on the importance of pollution prevention.

4. Equipment and Vehicle Fueling



- Outdoor vehicle fueling and maintenance can be a significant source of stormwater pollution.

- Consider performing these activities at an off-site facility.

Fuel for thought:

- Train your employees and subcontractors in proper fueling procedures:
 - Stay with vehicles during fueling
 - Properly use pumps and shutoff valves
- **Do not** allow vehicle fueling to take place in the middle of a field or where a lot of gas can go onto the ground.
- Keep fueling in designated areas.
- Inspect fueling equipment regularly for leaks, damage and other service issues.
- Report any fuel spills to the Site Stormwater Compliance Rep(s) **immediately**.
- Use drip containment



- This fuel storage should have a secondary pan as a backup in the event of leakage.

- Container and equipment should be inspected daily for leaks and damage.

5. Spill Prevention Plan

Most NJDEP and EPA construction general permits require the preparation of a spill prevention plan and response plan.

What does this mean to me?

- Review the spill prevention plan with your Site Stormwater Compliance Rep(s).
- Know how to dispose of contaminated spill material properly (this should be outlined in the plan).
- Train your employees and subcontractors on spill prevention and required response.
- In the event that a hazardous material or chemical is released, which is in excess of reportable quantity, you must report the release to the Garden Homes Site Stormwater Compliance Rep(s).

6. Tracking



Site Supervisors and Contractors are responsible for their own tracking.

One of the most common stormwater related complaints from the public is dirt in the street. We can reduce these complaints and avoid likely enforcement actions by taking measures to retain all sediment on site.

What does this mean to me?

- Remove mud and dirt from the tires of construction vehicles before entering a paved roadway.
- Use only designated construction exits that have tracking controls.
- Sweep or remove excess dirt from streets.
Do not wash dirt from streets.
- Notify Site Stormwater Compliance Rep(s) when entrance(s) need to be refreshed.
- Work out a plan with the Site Stormwater Compliance Rep(s) while working on a specific lot or area within a community, to prevent tracking at that location.

7. Stabilization

When construction activities have temporarily or permanently ceased, we are required to stabilize exposed soils to minimize erosion.

What does this mean to me?

- Keep off portions of sites that have been stabilized. This includes areas that have not begun construction yet.
- **Do not** park on undisturbed sites. This includes vacant lots that have not begun construction yet.
- **Do not** store materials on sites that have been stabilized.
- Report damaged BMPs around stabilized areas.
- Report vehicle activity on stabilized lots.



- Keep stockpiles and materials off stabilized lots.
- Site Supervisors and Contractors are responsible for repairing BMPs they have damaged.
- For example, in this case the silt fence should have been repaired by the Trade that dumped the piles of soil.

8. Dewatering

Dewatering practices typically result in muddy water being pumped out of excavations.

What does this mean to me?

- Pump muddy water from these areas to a temporary or permanent sedimentation basin or to an area completely enclosed by silt fence in a flat vegetated area where discharges can infiltrate into the ground.
- Never pump muddy discharge into storm drains, streams, lakes or wetlands.
- Some permits may have specific requirements for dewatering, you are required to follow those instructions.
- Dewatering may require a separate permit.
- Consult with your Site Stormwater Compliance Rep(s) **prior** to any dewatering activity.

Stormwater Compliance Review for Site Supervisors and Contractors

- Know the names and contact information for the Project Site Stormwater Compliance Rep(s).
- Site Supervisors and Contractors are required to designate a representative who has the authority to oversee, instruct and direct employees and sub-contractors working at a Garden Homes site in regard to stormwater compliance.
- If a BMP must be removed to complete a task (such as silt fence) it must be replaced upon completion of the task and no later than the end of the day.
- Report BMP abuse.
- Make every attempt to keep vehicles on the roadway and not on lots.
- Do not store materials in roadway or on paved surfaces.
- Know where spill kits are located and how to use them.
- Contact your Site Stormwater Compliance Rep(s) for more information or any questions.

Conclusion:

We are all responsible for stormwater pollution or polluted runoff, and it all boils down to one problem: As stormwater travels across a jobsite, it picks up sediment, trash (cigarette butts, wrappers, cups, construction waste, joint compound, concrete spillage, paint, etc.), and other pollutants such as gasoline, motor oil, hydraulic fluid, antifreeze, etc. This polluted runoff can flow directly into storm drains, rivers, lakes and streams.

It is up to all of us, Garden Homes Employees, Site Supervisors, Contractors, Suppliers and Consultants to follow the permit, SWPPP and guidelines in this handbook. Prevention and control of stormwater on the jobsite is not only required by law, it is the correct thing to do for the environment. Continual education in managing stormwater is a primary factor in the success of preventing stormwater pollution as well as using common sense while working on our home sites.

Only by working as a team can we truly prevent pollution from leaving our sites.

*Thank you for your participation in managing
stormwater at Garden Homes communities.*

Notes

Page left blank intentionally for note taking.