

STATE OF VERMONT

SUPERIOR COURT  
Windham Unit

CIVIL DIVISION  
Docket No.

STATE OF VERMONT, AGENCY  
OF NATURAL RESOURCES  
Plaintiff,

v.

DOUGLAS J. DIX, d/b/a DEERFIELD VALLEY  
PROPERTY MAINTENANCE, ERIC B.  
JOHNSON, and TAWYNA J. JOHNSON,  
Defendants.

**PLEADINGS BY AGREEMENT**

The State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., and Defendants Douglas Dix, d/b/a Deerfield Valley Property Maintenance, Eric B. Johnson, and Tawyna J. Johnson, for violations of the Shoreland Protection Act, by and through its undersigned counsel, submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

**I. THE STATE'S ALLEGATIONS**

***Parties***

1. Plaintiff Vermont Agency of Natural Resources (ANR or the Agency) is a state agency established pursuant to 3 V.S.A. § 2802 with offices in Montpelier, Washington County, Vermont.

2. Defendant Douglas Dix owns and operates a business called Deerfield Valley Property Maintenance, based in Whitingham, Windham County, Vermont.

3. Defendants Eric B. Johnson and Tawnya J. Johnson own a residential property on the shoreline of Lake Sadawga in Whitingham, Windham County, Vermont.

### ***Legal Framework***

#### Shoreland Protection Act – 10 V.S.A. Ch. 49A

4. ANR regulates shoreland development for all lakes greater than ten acres in area pursuant to the Shoreland Protection Act, 10 V.S.A. Chapter 49A.

5. The Shoreland Protection Act requires a permit for the creation of cleared area or impervious surface within the Protected Shoreland Area, 10 V.S.A. § 1443(a), unless the project is registered pursuant to 10 V.S.A. § 1446(a) or exempt pursuant to 10 V.S.A. § 1446(b).

6. The Shoreland Protection Act defines “Protected Shoreland Area” as “all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.” 10 V.S.A. § 1442(17).

7. The Shoreland Protection Act, in relevant part, exempts the cutting of trees and management of vegetation in the Protected Shoreland Area if it is conducted in compliance with the vegetation protection standards in 10 V.S.A. § 1447 (Vegetation Protection Standards). 10 V.S.A. §§ 1446(b)(1) and 1447(a). ANR issued further guidance on the Vegetation Protection Standards as Appendix D to its Vermont Shoreland Protection Act Handbook.

8. The Vegetation Protection Standards, in relevant part, require the maintenance of a well-distributed stand of trees and other natural vegetation within 100 feet of the mean water level. 10 V.S.A. § 1447(a).

9. The Shoreland Protection Act defines a “well-distributed stand of trees” as maintaining a minimum score of twelve in each 25-foot by 25-foot area within 100 feet of the mean water level, based on a rating system assigning points based on factors including tree density and diameter, and meeting other requirements. 10 V.S.A. § 1447(b).

10. Pursuant to 10 V.S.A. § 1447(c), the Shoreland Protection Act defines “other natural vegetation” as:

retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 25-foot area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been planted or rooted in the plot.

11. If a property does not have a well-distributed stand of trees within 100 feet of the mean water level, the Shoreland Protection Act prohibits the removal of vegetative cover without a permit or registration, 10 V.S.A. § 1447(C), and prohibits the cutting, covering, or removal of existing vegetative cover under three feet in height and other ground cover . . .” without a permit or registration. 10 V.S.A. § 1447(E).

#### Civil Actions

12. Pursuant to Vermont’s civil enforcement statute and environmental enforcement statute, 10 V.S.A. §§ 8221 and 8003(a), the State is authorized to bring

an action in superior court, civil division, to enforce violations of Vermont's environmental laws, including Chapter 49A (Shoreland Protection Act).

13. Section 8221 authorizes the court to, among other things: order injunctive relief; order remedial actions; order reimbursement from any person who caused governmental expenditures for the investigation, abatement, mitigation, or removal of a hazard to human health or the environment; and to assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

***Facts***

14. On or about September 2, 2019, Defendants Eric B. Johnson and Tawnya J. Johnson purchased a home on the shoreline of Lake Sadawga, at 143 Tyanoga Road in Whitingham, Vermont (the Property).

15. Defendant Douglas Dix, doing business as Deerfield Valley Property Maintenance, managed the grounds on the Property prior to its purchase by Defendants Johnson, and managed the grounds for Defendants Johnson. He also maintains other properties and was familiar with the Shoreland Protection Act at the time of the violations set forth herein.

16. Lake Sadawga is over ten acres in area.

17. On or about September 20, 2019, Defendant Deerfield Valley Property Maintenance staff cut vegetation on the Property, and created cleared area within the Protected Shoreland Area of Lake Sadawga. The area cleared by Defendants is within 25 feet of the mean water level of Lake Sadawga.

18. Upon information and belief, Defendants Johnson requested that Defendant Dix have the area cleared.

19. At the time the clearing and cutting commenced, upon information and belief, the Property did not have a well-distributed stand of trees within 100 feet of the mean water level.

20. The cleared area created by Defendants did not comply with Vermont Vegetation Protection Standards required by the Shoreland Protection Act.

21. Defendants created cleared area and cut vegetation on the property in the Protected Shoreland Area of Lake Sadawga, without a permit or registration.

22. The cleared area is approximately 4,813 square feet in total, and is in two parts, on either side of a previously maintained lawn with steps leading to a dock, within the first twenty-five feet of the mean water level of Lake Sadawga.

**II. VIOLATION - COUNT ONE – Failure to obtain a permit – Violation of Vermont Shoreland Protection Act, 10 V.S.A. § 1443(a).**

23. Each of the preceding paragraphs is incorporated by reference and realleged for Count One.

24. By failing to obtain a Shoreland Permit for the creation of cleared area within the Protected Shoreland Area, Defendants violated Vermont's Shoreland Protection Act, 10 V.S.A. § 1443(a).

**III. DEFENDANTS' RESPONSE TO THE ALLEGED VIOLATION**

Defendants answer the preceding allegations as follows:

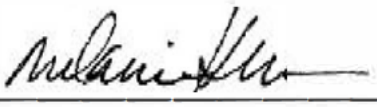
25. Defendants admit the factual allegations set forth in paragraphs 14 through 24 solely for purposes of resolving this case.

26. Without formally admitting or denying liability, Defendants agree to this settlement of the above violations alleged in paragraphs 25 and 26 to resolve this case.

27. Each Defendant agrees that the violation alleged in paragraphs 25 and 26 above is deemed proven and established as a "prior violation" in any future State proceeding considering each Defendant's compliance record, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

DATED November 12, 2020 at Montpelier, Vermont.

STATE OF VERMONT  
THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

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DATED November 17, 2020 at Dover, Vermont.

DOUGLAS J. DIX, d/b/a DEERFIELD  
VALLEY PROPERTY MAINTENANCE,  
ERIC B. JOHNSON, and TAWYNA J.  
JOHNSON

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Eric B. Johnson, and Tawnya J. Johnson