

_____)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
 v.)
RODNEY BARRUP, and)
BARRUP FARMS, INC.)
 Respondents)
 _____)

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Construction of improvements for a commercial purpose on more than one acre of land without obtaining an Act 250 Land Use Permit pursuant to 10 V.S.A. §6081(a).

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. Respondent Rodney Barrup owns an approximately 42.5-acre parcel of land on the Lower Quarry Road in Derby, Vermont, described in Book 158, Page 371 of the Town of Derby land records (the project tract).
- 2. Respondent Barrup Farms, Inc. operates a commercial bark mulch processing facility on the project tract.
- 3. Respondents converted existing structures on the project tract, previously used as a granite quarrying operation, for their current use as a commercial bark mulch processing facility, and in doing so Respondents constructed improvements for a commercial purpose.
- 4. On June 1, 2001, District 7 Coordinator Chuck Gallagher issued a jurisdictional opinion, in the form of a Project Review Sheet, finding Act 250 jurisdiction attached to the project tract. That jurisdictional opinion was not appealed and has since become a final opinion.

5. Respondents filed an "after-the-fact" Land Use Permit application with the District 7 Environmental Commission (Commission) on November 22, 2002. The application was submitted as a "minor" application pursuant to Environmental Board Rule 51. The Commission did not process the application at that time as there were outstanding issues involving several of the Respondents' Department of Environmental Conservation permits.
6. Respondents' Land Use Permit application is still pending before the Commission to date. Respondents are in the process of updating said application.
7. Respondents failed to obtain an Act 250 Land Use Permit prior to the construction of improvements on the project tract.
8. Respondents violated 10 V.S.A. § 6081(a) by commencing the construction of improvements for a commercial purpose on more than one acre of land without obtaining the necessary Act 250 Land Use Permit.

AGREEMENT

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

- A. Respondents shall finish updating their pending Land Use Permit application to the District 7 Environmental Commission no later than May 31, 2009, and diligently pursue the required Act 250 Land Use Permit.
- B. If Respondents fail to update their pending application by May 31, 2009, or said application is denied by the Commission and said permit denial becomes final, then Respondents shall remove any unpermitted commercial improvements within one hundred and eighty (180) days from the date the permit denial becomes final and cease all unpermitted activity.
- C. For the violations noted herein, the Respondents shall contribute Two Thousand Five Hundred Dollars (\$2,500.00) and contribute and deliver Fourteen (14) cubic yards of bark mulch to a Supplemental Environmental Project (SEP), pursuant to 10 V.S.A. §8007(b)(2), for the Barton River Stream Bank Planting Project. A description of the Barton River Stream Bank Planting Project is attached to this Assurance as Attachment A. SEP funds from this Assurance shall be used specifically for the purchase of trees to be planted in association with this project, as well as for the hiring of a work crew who will perform the planting and riparian buffer restoration work associated with this project as described in Attachment A. The bark mulch noted herein shall also be used specifically in association with this project.
- D. Fourteen (14) cubic yards of bark mulch at the fair market price of twenty dollars per cubic yard (\$20.00/cu.yd.) delivered has an agreed upon fair market value of two

hundred and eighty dollars (\$280.00)

- E. The Barton River Stream Bank Planting Project shall be funded by the Respondents no later than 30 calendar days following the date this Assurance is entered as an Order by the Environmental Court. Respondents shall submit payments to the Land Use Panel at the address noted in Paragraph F herein. Respondents shall submit one check made payable to the "Northwoods Stewardship Center" in the amount of Two Thousand Dollars (\$2,000.00), and one check made payable to "Drinkwaters Nursery" in the amount of Five Hundred Dollars (\$500.00). The bark mulch shall be delivered to a location in Coventry and/or Irasburg, Vermont as directed by the Vermont Department of Forest, Parks and Recreation no later than Saturday, April 25, 2009.
- F. If, at the close of the thirty (30) day period following the entry of this Assurance as an Order by the Environmental Court, any of the SEP monies have not been submitted by the Respondents, the unpaid amount shall be converted to a civil penalty and shall be immediately due and payable by check or money order made payable to the "Treasurer, State of Vermont" and shall be forwarded to:

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

- G. If Respondents fail to deliver any portion of the 14 cubic yards of bark mulch allocated for this SEP by Saturday, April 25, 2009, any and all of the agreed value of the undelivered bark mulch shall be converted to a civil penalty and immediately due and payable by check or money order made payable to the "Treasurer, State of Vermont" and shall be forwarded to:

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

- H. Any payment or contribution made by the Respondents pursuant to this Assurance is made to resolve the violation set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.
- I. In the event Respondents publish by any means, directly or indirectly, the identity or result of the SEP that Respondents have funded, the Respondents shall also include in

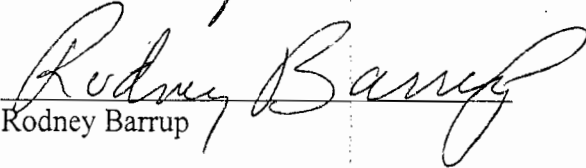
that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Land Use Panel of the Natural Resources Board.

- J. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with this Assurance and all statutes, rules, and regulations applicable to the facts and violation set forth herein above.
- K. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.
- L. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- M. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.
- N. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Environmental Court. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- O. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- P. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES


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

Dated at Wesley, Vermont, this 28 day of April, 2009.


Rodney Barrup

and

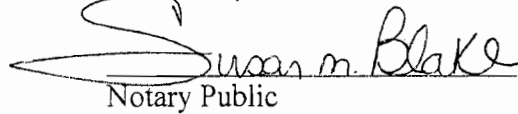
Barrup Farms, Inc.

By: 
Rodney Barrup, Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 28th day of April, 2009, personally appeared RODNEY BARRUP, signer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed, and the free act and deed of BARRUP FARMS, INC., and further that the provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted and that he has the authority to contract on behalf of BARRUP FARMS, INC., and that he has been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Before me,


Susan M. Blake
Notary Public

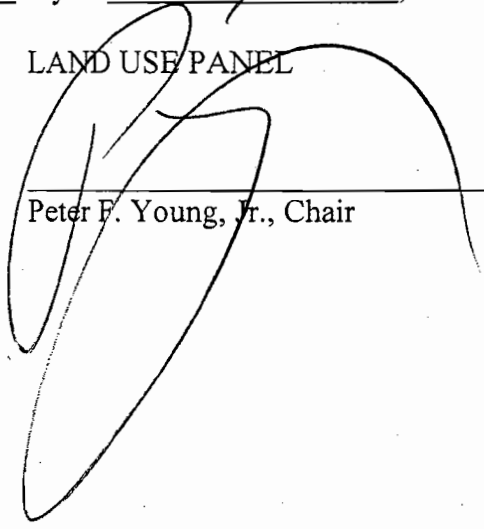
My Commission Expires: 2-10-11

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

Dated in Montpelier, Vermont, this 4th day of May, 2009.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair

ATTACHMENT A

Barton River Stream Bank Planting Project

Roughly 4,000 feet of frontage (Willoughby Falls WMA, South Bay WMA)

10' spacing for trees

Materials needed:

400 trees (150 red maple, 200 white cedar, 50 larch)

300 willow stakes collected locally

3 gallons latex paint (grey) with sand added (Beaver proofing)

	Budget Cost/each	Number needed	Total	Revenue Sources
Red maple (6-8')	12.25	226	2768.5	F&W \$2,450
White cedar (3-4')	5.25	225	1181.25	DEC Grant \$1,000
				SEP \$500

Tree Cost \$3,950

Bark Mulch (Supplied by Mr. Barrup)

14 cubic yards delivered

SEP agreement

Stewardship Center Crew (3 people for 1 week)

\$2,000

SEP

\$2,000

Volunteer labor will be the primary means of planting along with FPR staff time.

Total Project Cost \$5,950

