

STATE OF VERMONT
SUPERIOR COURT — ENVIRONMENTAL DIVISION

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

v.)

CALVIN AND CHERRYLL BUNNELL)
d/b/a C&C BUNNEL EXCAVATING,)
Respondents.)

Docket No. _____

**ASSURANCE OF
DISCONTINUANCE**

VIOLATIONS

- I. Failure to maintain a two hundred foot (200') riparian buffer as required by Condition 12 of Land Use Permit #7C0783 and in violation of 10 V.S.A. § 6081(a).
- II. Failing to develop and implement a forest management plan to preserve necessary wildlife habitat as required by Conditions 14 and 15 of Land Use Permit #7C0783 and in violation of 10 V.S.A. § 6081(a).
- III. Unpermitted construction of a cold storage building without prior written approval of the District Environmental Commission in violation of Condition 1 of Land Use Permit #7C0783 and in violation of 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 Calvin and Cheryll Bunnell (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own approximately thirty eight (38) acres on Joe's Brook Road in Barnet, Vermont (the Subject Property). The parcel is recorded as fee simple ownership, Calvin and Cheryll Bunnell, Volume 46, Page 628 in the Land Records of the Town of Barnet, Vermont.
2. On January 2, 1990, the District 7 Environmental Commission (Commission)

issued Land Use Permit (LUP) #7C0783 (the Permit) to Respondents' predecessors in title, which authorized the operation of a sand and gravel pit (the Project) on the Subject Parcel.

3. Condition 12 of the Permit requires the maintenance of a minimum two hundred foot (200') undisturbed riparian buffer strip from the bank of Joe's Brook on the Subject Property.
4. Respondents have failed to maintain a 200' undisturbed riparian buffer strip along approximately three hundred and twenty-five foot (325') section of the eighteen hundred and fifty foot (1850') bank of Joe's Brook on the Subject Property.
5. Condition 14 of the Permit requires the development of a forest management plan for the Project in consultation with the Vermont Agency of Natural Resources Department of Fish and Wildlife (VTF&W) in order to preserve necessary wildlife habitat on the Subject Property.
6. Neither Respondents nor their predecessors in title ever developed the forest management plan required by Condition 14 of the Permit.
7. Condition 15 of the Permit required Respondents to preserve twenty (20) acres of critical wildlife habitat (deer wintering area) on the Subject Property as per a stipulation between Respondents' predecessor in title and VTF&W (the Stipulated Habitat).
8. Respondents failed to preserve the Stipulated Habitat on the Subject Property as required by Condition 15 of the Permit. Respondents have constructed improvements within the stipulated habitat, including, without limitation, the creation of one recreational vehicle campsite and a water well with associated water line.
9. Condition 1 of the Permit required that no changes be made to the Project without the prior written approval of the Commission.
10. Respondents made changes to the Project by constructing a forty-by-eighty-foot (40' x 80') multi-use cold storage building (the Subject Structure), in addition to the improvements noted above, in violation of Condition 1 of the Permit.
11. Respondents have applied for and are diligently pursuing an after-the-fact amendment to the Permit to authorize the construction of the multi-use cold storage building and are also seeking to amend the Permit with respect to, *inter alia*, Conditions 14 and 15 pertaining to necessary wildlife habitat.

12. Respondents represent that the Stipulated Habitat was altered when the trees in that area were blown down by a severe weather event. Respondents have provided the Commission and the Panel with meteorological evidence in support of that contention.
13. Respondents further represent that any violation of Condition 15 of the Permit occurred after the aforesaid severe weather event which Respondents represent as having occurred as set forth in Paragraph 12 hereof.
14. Respondents have no record of prior adjudications for violations of the statutes specified in 10 V.S.A. Section 8003 or related rules, permits, orders, or assurances of discontinuance.

AGREEMENT

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

- A. Respondents shall diligently pursue their application for an Act 250 Land Use Permit amendment.
- B. Should the District 7 Environmental Commission deny Respondents' Act 250 permit amendment application, and should said denial become final, then Respondents shall remove the Subject Structure as well as all improvements constructed in the Stipulated Habitat within sixty (60) days of such final denial.
- C. In resolution of violations of Permit Conditions Nos. 14 and 15 regarding the twenty (20) acres of Stipulated Habitat, Respondents shall provide VTF&W with a perpetual conservation easement upon conditions acceptable to VTF&W, for one hundred and one (101) acres of high-quality deer wintering habitat on a southern slope with mature softwoods and greater than seventy percent (70%) crown closure on the lands owned by Respondents at 88 Garfield Lane in Barnet, Vermont, Parcel I.D. No. 0004-01-66, Tax No. 033-010-10159 (the Conservation Easement). Based upon current use values, the monetary value of the Conservation Easement is **SIXTY NINE THOUSAND THREE HUNDRED AND EIGHTY-SEVEN DOLLARS (\$69,387)** at a rate of six hundred and eighty-seven dollars (\$687.00) per acre for one hundred and one (101) acres.
- D. VTF&W concurs as to the suitability and ecological value of the Conservation Easement as necessary wildlife habitat and deer wintering area.

- E. The Conservation Easement required by Paragraph "C" above shall be proposed as a revision to the currently pending permit amendment application to the District 7 Environmental Commission, #7C0783-1, on or before the thirtieth (30th) day of the date which this Assurance is signed by the Court and becomes a judicial order.
- F. Respondents' obligation to provide the Conservation Easement is unconditional and is assumed independently of whether the District 7 Environmental Commission determines to amend the Permit.
- G. No later than 30 days following the entry of this Assurance as an Order by the Environmental Court, the Respondent shall pay the following:
- (i) to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a total civil penalty in the amount of **THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00)** for the remaining violations noted herein, by good check made payable to the "Treasurer, State of Vermont," and;
 - (ii) for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Barnet land records, by good check in the amount of **TEN DOLLARS (\$10.00)** made payable to the "Treasurer, State of Vermont".

All payments pursuant to this paragraph shall be sent 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 by the Respondent pursuant to this Assurance is made to resolve the violations 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. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- I. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to


ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.

- J. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- K. 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.
- L. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- M. 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.
- N. 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.
- O. This Assurance is subject to the provisions of 10 V.S.A. § 8007.
- P. This Assurance or a notice thereof shall be filed within the land records of the town(s) in which the property is located.

SIGNATURES

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

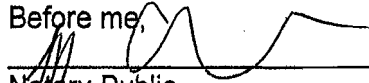
Dated at St Johnsbury, Vermont, this 27 day of December, 2010.



Calvin Bunnell


STATE OF VERMONT
COUNTY OF CALEDONIA, ss.

BE IT REMEMBERED that on the 27 day of December, 2010,
personally appeared Calvin Bunnell, signer(s) of the foregoing
instrument who is/are known to me or who satisfactorily established **his/her/their**
identity to me and acknowledged the same to be **his/her/their** free act and deed.

Before me, 
Notary Public
My Commission Expires: 2-10-11

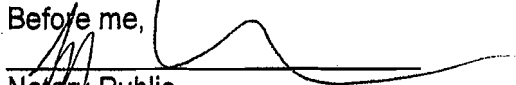
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and
accepted.

Dated at St Johnsbury, Vermont, this 27 day of December, 2010.


Cheryl Bunnell

STATE OF VERMONT
COUNTY OF CALEDONIA, ss.

BE IT REMEMBERED that on the 27 day of December, 2010,
personally appeared Cheryl Bunnell, signer(s) of the foregoing
instrument who is/are known to me or who satisfactorily established **his/her/their**
identity to me and acknowledged the same to be **his/her/their** free act and deed.

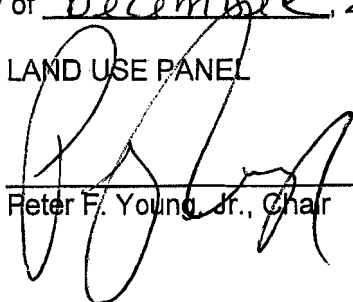
Before me, 
Notary Public
My Commission Expires: 2-10-11

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

Dated in Montpelier, Vermont, this 28th day of December, 2010.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair