

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Concrete Foundation, Inc.,
Respondent

VIOLATION

Failure to obtain a Land Use Permit Amendment prior to the construction of improvements in violation of Condition No. 1 of Land Use Permit #7R0666 and Act 250 Rule 34 (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 Concrete Foundation, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns an approximately 142-acre parcel of land at 535 Lost Nation Road in Craftsbury, Vermont; described in Book 64, Page 609 of the Town of Craftsbury land records (Project tract).
2. The Project tract is subject to Land Use Permit #7R0666 (Permit), as amended.
3. Condition 1 of the Permit states in relevant part: "No changes shall be made in the project without the written approval of the District Environmental Commission."
4. On August 30, 2011, Respondent applied to the District 7 Environmental Commission for an amendment to the Permit to allow phase one of the construction of a phased snow-making system, including water withdrawal from Great Hosmer Pond via a 2 inch intake sleeved in an existing 4 inch diameter pipe; a below-grade pump house; ±2,400 feet of water pipe; and a 228 square foot building addition to the existing wood boiler room, to house pump and generator (Snowmaking Project).

5. On October 28, 2011, Permit Compliance Officer John Wakefield visited the project tract and became aware that Respondent had begun construction on the Snowmaking Project approximately three weeks earlier.
6. On November 18, 2011, the District 7 Environmental Commission (Commission) issued the Land Use Permit Amendment #7R0666-1, authorizing the Snowmaking Project.
7. Respondent violated Condition No. 1 of the Permit by initiating construction of both the pump and generator addition and the snowmaking infrastructure prior to obtaining an amendment to the Permit.
8. Respondent, by commencing construction on the Snowmaking Project, has created a material change to the development.
9. Respondent has violated Act 250 Rule 34 (A) by failing to obtain the required permit amendment to the Permit for a material change prior to beginning the Snowmaking Project.

AGREEMENT

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

- A. Respondent shall abide by Land Use Permit #7R0666, as amended.
- B. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Four Thousand Five Hundred Dollars (4,500.00) (U.S.) for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont."
 2. the amount Ten Dollars (\$10.00) (U.S.), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Craftsbury land records, by good check made payable to the "Town of Craftsbury 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

C. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth herein and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. 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.

D. 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 violation set forth herein above.

E. 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.

F. 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.

G. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein, provided that the Respondent fully complies with the agreements set forth above.

H. 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.

I. 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.

J. 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 MORRISVILLE, Vermont, this 12TH day of JANUARY 2012.

Concrete Foundation, Inc.

By: *Richard Dreissigacker*

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 12 day of January 2012, personally appeared Richard Dreissigacker as the duly authorized agent of Concrete Foundation, Inc., signer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be the free act and deed of Concrete Foundation, Inc. and that he/she has the authority to contract on behalf of Concrete Foundation, Inc. and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Christine W. Shum

Notary Public

My Commission Expires: 2.11.2014

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

Dated in Montpelier, Vermont, this 20th day of January, 2012.

LAND USE PANEL

R Shems

By: Ron Shems, Chair