

STATE OF VERMONT

**ENVIRONMENTAL COURT
Docket No.**

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Thomas Fuller, Jr.,
Fuller Sand & Gravel, Inc.,
Thomas Fuller, Sr.,
Brian Preble and Catherine Preble,
Respondents

VIOLATIONS

Failure to comply with Permit Condition 2 of Land Use Permit 1R0945.

Failure to obtain a Land Use Permit amendment pursuant to 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 Fuller Sand & Gravel, Inc., Thomas F. Fuller, Jr., Thomas F. Fuller, Sr., Brian Preble, and Katherine Preble (Respondents) hereby enter into this Assurance of Discontinuance (AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Thomas F. Fuller Sr. owns an approximately 14.8 acre parcel of land described in Book 62, Page 210 of the land records of the Town of Danby, Vermont (the Project Site).
2. Respondents Thomas F. Fuller, Jr. and Fuller Sand & Gravel, Inc. operate an earth extraction operation on the Project Site, and Thomas F. Fuller, Jr. is the duly authorized agent and president of Fuller Sand & Gravel, Inc..
3. Land Use Permit 1R0945 governs the Project Site, and condition 2 of the permit states:

The project shall be completed, operated and maintained in accordance with:
(a) the plans and exhibits on file with the District Environmental Commission,

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Fuller Sand & Gravel, Inc., et. al.

Page 2 of 7

and (b) the conditions of this permit. No changes shall be made in the design or use of this project without the written approval of the District Coordinator of the Commission, whichever is appropriate under the Act 250 Rules.

4. Since approximately 2009, Respondents have expanded the operations of the Project site by screening material on and stockpiling fill on a neighboring parcel (the Expanded Site) owned by Brian and Catherine Preble.
5. Respondents Brian Preble and Catherine Preble own property surrounding and including the Expanded Site, a neighboring parcel of land approximately 2 acres in size.
6. Respondents Brian Preble and Catherine Preble have gratuitously allowed Respondents Thomas F. Fuller, Jr. and Fuller Sand & Gravel, Inc. to operate on the Expanded Site.
7. The Expanded Site increased the area of the Project Site by approximately 2 acres.
8. Respondents, Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. have failed to comply with permit condition 2 of Land Use Permit 1R0945.
9. Respondents have failed to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A).

AGREEMENT

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

- A. Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall comply with Land Use Permit 1R0945.
- B. Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall immediately cease any and all operations at the Expanded Site.
- C. Within **90 days** following the entry of this Assurance as an Order by the Superior Court Environmental Division, the Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall file a complete application for an Act 250 Land Use Permit for the activities noted herein. Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall diligently pursue said application.

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Fuller Sand & Gravel, Inc., et. al.

Page 3 of 7

- D. "Diligently pursue" shall mean that Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall (a) respond to any and all requests for information from the Commission, or the Coordinator for the Commission, or other state or local agency by the date set by the Commission, or the Coordinator, or the agency; and (b) comply with all scheduling or other orders or memoranda issued by the Commission or other state or local agency. Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall not be responsible for delays outside their control, including those caused or directed by the Commission or state or local agency or by any other parties to its application.
- E. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents Thomas Fuller, Jr., Fuller Sand & Gravel, Inc., and Thomas Fuller, Sr. shall pay the following in total:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Eight Thousand Nine Hundred Dollars and Zero Cents (\$8,900.00) (U.S.)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".
 2. Pursuant to 10 V.S.A. § 8010(e)(2), the amount of **One Hundred Seventy-Nine Dollars and Fifty-Five Cents (\$179.55) (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
 3. The amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Danby land records, by good check made payable to the "Town of Danby, Vermont".
- F. All payments required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- G. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Fuller Sand & Gravel, Inc., et. al.

Page 4 of 7

- H. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- J. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, 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.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.
- L. 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 Superior Court, Environmental Division. 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.
- M. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- N. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Fuller Sand & Gravel, Inc., et. al.

Page 5 of 7

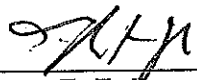
SIGNATURES

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

Dated at Danby, Vermont, this 12 day of October, 2012.


Thomas F. Fuller, Jr., Individually

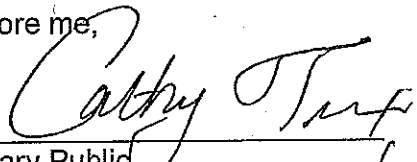
Fuller Sand & Gravel, Inc.

By 
Thomas F. Fuller, Jr., Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 12 day of October, 2012, personally appeared **Thomas F. Fuller, Jr.**, individually and as the duly authorized agent of **Fuller Sand & Gravel, Inc.** signer and sealer 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 **Fuller Sand & Gravel, Inc.** and that he has the authority to contract on behalf of **Fuller Sand & Gravel, Inc.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,


Notary Public
My Commission Expires: 2/15

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Fuller Sand & Gravel, Inc., et. al.

Page 6 of 7

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

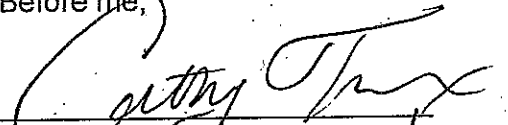
Dated at Darby, Vermont, this 12 day of October, 2012.


Thomas F. Fuller, Sr.

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 12 day of October, 2012, personally appeared Thomas F. Fuller, Sr., 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.

Before me,


Notary Public
My Commission Expires: 2/15

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Fuller Sand & Gravel, Inc., et. al.

Page 7 of 7

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

Dated at Danby, Vermont, this 11 day of October, 2012.

Brian Preble and Catherine Preble
Brian Preble Catherine Preble

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 11 day of October, 2012, personally appeared Brian Preble and Catherine Preble, signers of the foregoing instrument who are known to me or who satisfactorily established their identity to me and acknowledged the same to be their free act and deed.

Before me,

Cathy Tracy
Notary Public
My Commission Expires: 2/15

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

Dated in Montpelier, Vermont, this 26th day of November, 2012.

LAND USE PANEL

By: Ronald A. Shems
Ronald A. Shems, Chair