

STATE OF VERMONT

ENVIRONMENTAL COURT  
Docket No.

Land Use Panel of the  
Natural Resources Board,  
Petitioner

v.

**ASSURANCE OF  
DISCONTINUANCE**

Joseph Gay  
Respondent

**VIOLATIONS:**      *Violation of Condition 6 of Land Use Permit #4C0975,  
Conditional Use Permit #94-514, Vermont Wetland Rules.*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Joseph Gay (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. On September 24, 1996, the District 4 Environmental Commission issued Land Use Permit Amendment #4C0975 (Permit) to Rod Reynolds.
2. The Permit authorizes the subdivision of a 27 acre parcel in Williston, Vermont into 15 single family residential lots.
3. Condition 6 of the Permit states:
  6. This permit hereby incorporates all of the conditions of the Conditional Use Permit #94-515 (*sic*) issued on September 10, 1996 by the Water Quality Division, Agency of Natural Resources.
4. Condition D of Conditional Use Permit #94-514 (CUD) states:
  - D. No filling, draining, dredging, excavating, alteration of the flow of water, removal of vegetation including logging or mowing, or similar activities shall occur on any lot, including retained lot A and B and open space/buffer D, E, and F, other than specifically described in this section.

5. Respondent owns Lot 5 of the permitted subdivision.
6. On or before March 31, 2011 the Respondent began to mow the Class II wetland located on Lot 5 of the subdivision in violation of both the Permit and the CUD.
7. On or before March 31, 2011 the Respondent constructed a children's playground, sandbox and an eleven foot by fifteen foot garden shed within the Class II wetland on Lot 5 without amending the CUD, in violation of the Vermont Wetland Rules.

### ORDER

- A. Respondent shall comply with Land Use Permit series #4C0975, and Conditional Use Determination #94-514.
- B. Respondent shall cease mowing the wetland area and remove all constructed improvements located within the wetland on Lot 5 prior to **June 15, 2012**.
- C. Following the entry of this Assurance of Discontinuance 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 **Five hundred (\$500.00) Dollars (U.S.)**, as partial payment for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont" by no later than **June 15, 2012**;
  2. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Five hundred (\$500.00) Dollars (U.S.)**, as partial payment for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont" by no later than **August 15, 2012**;
  3. no later than 30 days from the entry of this Assurance of Discontinuance as an Order by the Superior Court, Environmental Division, the amount of **Ten (\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Williston land records, by good check made payable to the "Town of Williston, Vermont."

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D. 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  
National Life Drive  
Montpelier, Vermont 05620-3201

- E. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- F. 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.
- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- H. 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.
- I. 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 set forth herein, provided that the Respondent fully complies with this Assurance.
- J. 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.
- K. 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.
- L. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

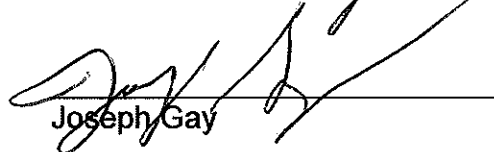
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**SIGNATURES**

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

Dated at Williston, Vermont, this 1 day of May, 2012.

  
Joseph Gay

STATE OF VERMONT  
COUNTY OF Chittenden, ss. Williston

BE IT REMEMBERED that on the 1<sup>st</sup> day of May, 2012,  
personally appeared Joseph Gay 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,

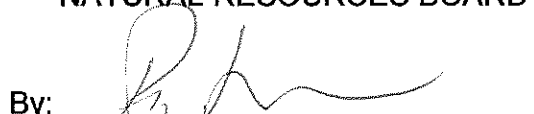
  
Notary Public  
My Commission Expires: 2-10-15

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

Dated in Montpelier, Vermont, this 4<sup>th</sup> day of May, 2012.

LAND USE PANEL  
NATURAL RESOURCES BOARD

By:   
Ronald A. Shems., Chair