

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 67-5-10 Vtec

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

THOMAS HOWRIGAN
Respondent

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Commencing development without an Act 250 Permit, 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 Thomas Howrigan (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1) Respondent owns an 824± acre tract of land in Fairfield, Vermont described in Book 59, Pages 269-270 of the town of Fairfield land records (the Howrigan property).
- 2) A number of gravel pits are located on the Howrigan property. These pits include the so-called "Bread Loaf Pit," the "Pit South of Morey Road," the "Boot Hill Pit," "Area 1," "Area 2," and the "Proposed Pit."
- 3) On August 30, 1999, in Declaratory Ruling #358 (the DR), the Environmental Board held that an Act 250 permit is required for extraction of earth materials at the pits noted in Paragraph 2, above. This DR was not appealed and is therefore final.
- 4) On August 3, 2000, in Dkt. No. S 417-98-FC, the Franklin Superior Court held that the Respondent needed an Act 250 Permit for extraction of earth materials at the Howrigan property. On June 20, 2001, the Vermont Supreme Court affirmed the Superior Court's decision. *State v. Howrigan*, 172 Vt. 641 (2001).

- 5) On June 2, 2004, District 6 Coordinator Geoff Green issued a Notice of Alleged Violation to the Respondent for extracting earth material from the "Boot Hill Pit," reiterating the Environmental Board's decision that an Act 250 permit is required for extraction operations on the Howrigan property.
- 6) On March 24, 2008 the District 6 Environmental Commission issued Land Use Permit #6F0602 to B & T Black Creek Farms, LTD. Respondent is the President and Registered Agent of B & T Black Creek Farms, LTD. Permit #6F0602 authorizes the extraction of earth materials from the "Boot Hill Pit."
- 7) Respondent did not obtain an Act 250 Land Use Permit to extract earth materials from the "Bread Loaf Pit" or any other pit or area on the Howrigan property at that time.
- 8) On June 7, 2011, the District 6 Environmental Commission issued Land Use Permit #6F0630 to B & T Black Creek Farms, LTD. Permit #6F0630 specifically authorizes the Respondent to operate a new gravel pit on the Howrigan property called the "Tin Barn Pit," and further approves the reclamation of the so-called "Pit South of Morey Road," the "Area 1" pit, the "Area 2" pit and the "Proposed Pit."
- 9) Respondent has violated 10 V.S.A. § 6081 by extracting earth materials without an Act 250 Land Use Permit.

AGREEMENT

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

- A. Respondent shall submit and diligently pursue a complete Act 250 Land Use Permit application for the aforementioned Bread Loaf pit within 90 days of the date this Assurance is ordered by the Environmental Division of the Superior Court. If Respondent timely files a complete application and that application is denied and that denial becomes final, Respondent shall reclaim the so-called Bread Loaf pit to the satisfaction of the District 6 Coordinator within 90 days of said final denial.
- B. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Eleven Thousand Dollars (U.S.) (\$11,000.00)** for the violation noted herein by good check made payable to the "Treasurer, State of Vermont" pursuant to the following payment schedule:
 - 1) A payment of **\$3,670.00** within 30 days of the date this Assurance is ordered by the Environmental Division of the Superior Court.
 - 2) A payment of **\$3,670.00** within 60 days of the date this Assurance is ordered by the Environmental Division of the Superior Court.
 - 3) A payment of **\$3,660.00** within 90 days of the date this Assurance is

ordered by the Environmental Division of the Superior Court.

- C. Within 30 days of the date this Assurance is ordered by the Environmental Division of the Superior Court, Respondent shall pay to the State of Vermont the amount of **Ten Dollars (U.S.) (\$10.00)**, by a separate check made payable to the "Treasurer, State of Vermont", for the purpose of paying the recording fee for the filing of a notice of this Assurance of Discontinuance in the land records of the municipality where this project is located.
- D. All payments shall be by good check 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. 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.
- F. **This Assurance supersedes the Land Use Panel's Administrative Orders in the above captioned matters. Upon entry of this Assurance as an Order, the Administrative Orders shall be dismissed.**
- G. 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.
- H. 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.
- I. 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 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.
- J. 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.

- K. 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.

- L. 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.

- M. 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 St. Albans, Vermont, this 24th day of June, 2011.

THOMAS HOWRIGAN

Thomas Howrigan

STATE OF VERMONT
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 24th day of June, 2011, personally appeared THOMAS HOWRIGAN, 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,

Pat Farina

Notary Public

My Commission Expires: 2/10/15

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

Dated in Montpelier, Vermont, this 30th day of June, 2011.

LAND USE PANEL

By:

Ronald A. Shems

Ronald A. Shems, Chair