

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

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

Assurance of Discontinuance

v.

Paul Lumbra, Respondent

VIOLATION

I. Change in use prior to the issuance of a permit amendment. 10 V.S.A. § 6081(a); Act 250 Rules 2(C)(6) & 34(A); Condition 1 of Land Use Permit #3R0795.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns a 11.2 acre parcel in the Town of Vershire, Vermont which is subject to Land Use Permit 3R0795 (Permit) issued to Respondent by the District 2 Environmental Commission (Commission) on May 1, 1998. The Permit authorized the Permittee to extract and remove 280 tons of rock per year on land and premises conveyed to the Respondent by deed of record in Book 27, Page 322 of the Vershire Land Records. (the project)
2. Condition 1 of the Permit required that: "No changes shall be made in the project without the prior written approval of the District Environmental Commission."
3. On February 16, 2007, Julia Schmitz, Commission District Coordinator issued a jurisdictional opinion (JO) in the form of a project review sheet which indicated a permit amendment was required for a project described as "Construction of an office /Garage for 3 employees on an 11.2 acres acre lot with an existing single family residence." (office/garage project) The JO concluded that an Act 250 permit was required because it was a commercial project on more than 10 acres of land in a 10 acre town and because it was

a material change to a permitted project under Act 250 Rule 2(C)(6). The JO was not appealed and is final.

4. The office garage building was constructed several years earlier. Coordinator Schmitz on May 19, 2000 issued a JO that the construction of the garage would not trigger the need to obtain a permit amendment because "private use of garage only; no commercial use or residential use; no employees use of garage."

5. In 2006, Respondent changed the use of the garage by moving his business into the building.

6. The Respondent's change in use of the office/garage building without securing an amendment of the Permit was in violation of Act 250 Rule 34(A) (material change to a permitted project) and condition 1 of the Permit.

7. On November 10, 2009 the Commission issued to Respondent #3R0795-1 (Dash-1) which amended the Permit allowing this change in use.

AGREEMENT

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

A. Respondents shall comply with all terms of the Permit and Dash-1, and their conditions and finding of facts and conclusions and any amendments.

B. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$2,700.00 for the violation noted herein by February 5, 2010. He shall make the payment by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Denise Wheeler, Business Administrator
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 violation set forth herein and shall not be considered 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 violations 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 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.

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 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.

K. This Assurance or a notice thereof will be filed in the Vershire Land Records. Respondents shall pay the recording fee of \$10.00 by issuing a check made payable to the "Town of Vershire" and forwarded to Denise Wheeler, Business Administrator, at the above address within 15 days of the date it is signed by the Court.

SIGNATURES

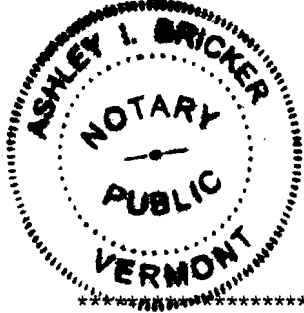
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Vershire, Vermont, this ___ day of January, 2010

Paul Lumbra

STATE OF VERMONT
COUNTY OF ORANGE, SS.

BE IT REMEMBERED that on the 22 day of January 2010, personally appeared the Respondent, signer and sealer of the forgoing 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,

Ashley I. Bricker
Notary Public
My Commission Expires: 2/10/2011

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

Dated in Montpelier, Vermont, this 27th day of January, 2010.

LAND USE PANEL

By: Peter F. Young, Jr.
Peter F. Young, Jr., Esq. / Chair