

STATE OF VERMONT

ENVIRONMENTAL COURT  
Docket No.

Land Use Panel of the  
Natural Resources Board,  
Petitioner

**ASSURANCE OF DISCONTINUANCE**

v.

Mark and Julie Pernokas,  
Respondents.

**VIOLATIONS**

*Failure to comply with Permit Conditions 2, 3, 6, and 7 of Land Use Permit  
7R0226-7-E*

*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 Mark and Julie Pernokas (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. The Respondents own an approximately 1.64 acre parcel of land (the Property) identified in Book 37, Pages 40-42 of the land records of the Town of Westmore, Vermont with frontage on Lake Willoughby.
2. Land Use Permit 7R0226-7-E (the Permit) covers to the Property, and specifically authorizes the "construction of a gravel path, maximum 3 feet wide, and its widening to maximum 6 feet for a maximum 12 month period (for maintenance repair construction access).
3. Condition 2 of the Permit states:

The project shall be completed, operated, and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #7C0226-7-E, (b) the plans and exhibits on file with the District Commission, and (c) the conditions of this permit.

4. In their analysis of criteria 1B, 1F, 4, and 8, the District Environmental Commission relied on Finding of Fact number 11 which states:

The project area features naturalized vegetation consisting of grass, shrub type vegetation, and trees, as observed by the Commission during its site visit. The proposed project will retain a significant majority of this existing vegetation.
5. Condition 3 of the Permit states,

No changes shall be made in the design or use of this project without a jurisdictional opinion from the District Coordinator or a permit amendment from the District Commission.
6. Condition 6 of the Permit states,

The permanent path shall be located to follow the alignment of the temporary 6 feet path identified on the site plan, whereby the removal and restoration of the temporary 6 feet path shall consist of removal and restoration of a portion of the temporary path (e.g. a 3 foot strip along its length).
7. Condition 7 states, in part,

The restoration of the temporary 6 feet wide path shall be completed within 12 months of commencement of its construction.
8. The Permit and accompanying materials do not contemplate a temporary path wider than 6 feet. In fact, the Respondents withdrew an earlier application which requested a 10 foot by 140 foot temporary path for the same repair construction access.
9. In the summer of 2012, the Respondents constructed a temporary gravel access path and cleared an area approximately 18 to 20 feet wide (Disturbed Area) in order to construct repairs to an existing concrete dock.
10. In an email to District Coordinator, Kirsten Sultan, dated August 28, 2012 Respondent Mark Pernokas cited safety concerns as the reason for the increased width of the temporary access path.
11. The Respondents have one prior violation of Act 250 as evidenced by an Assurance of Discontinuance signed by the Respondents on July 30<sup>th</sup>, 2009.

12. The Respondents failed to comply with Act 250 Permit 7R0226-7-E, and 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. Respondent shall comply with Permit series 7R0226 and any modifications described here.
- B. 60 days following the entry of this AOD as an Order by the Superior Court, Environmental Division, the Respondents shall file for an Act 250 permit amendment with the District Environmental Commission outlining a Re-vegetation Restoration Plan for the Disturbed Area.
- C. The Re-vegetation Restoration Plan shall address the fact that the Disturbed Area is wider and more extensive than the area allowed under the Permit. Therefore, the amendment may require a more aggressive restoration approach than the approach contemplated under condition 7 of the Permit. Respondents shall diligently pursue said application.
- D. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 7 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission. Respondents shall not be responsible for delays outside their control, including those caused by the Commission.
- E. The respondent shall provide a written and pictorial report to the District 7 Environmental Commission and the Land Use Panel within 30 days of completion of the Re-vegetation Plan.
- F. Respondents shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Six Thousand Five Hundred Dollars and Zero Cents (U.S.)(\$6,500.00)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont" no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.

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2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Hundred Forty-Five Dollars and Fifty Cents (U.S.) (\$145.50)**, 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" no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.

3. The amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Westmore land records, by good check made payable to the "Town of Westmore, Vermont" no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.

G. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Panel an executed Acceptance of Service, on a form approved by the Panel, showing that Respondent has actual notice of the judicial Order and Assurance.

H. All payments and documents 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

Except, with respect to provision E, the report should be sent to the above address as well as the following address:

Kirsten Sultan  
District 7 Environmental Commission  
1229 Portland St., Suite 201  
St. Johnsbury 05819

I. 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.

J. 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.

K. Nothing in this Assurance shall be construed as having relieved, modified,

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waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.

- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. This Assurance is subject to the provisions of 10 V.S.A. § 8007 and §8020.

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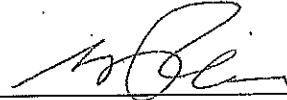
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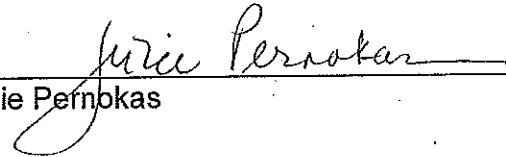
SIGNATURES

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

Dated at WOBURN, MA., this 29<sup>th</sup> day of NOVEMBER, 2012.



Mark Pernokas

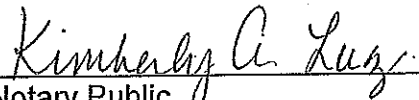


Julie Pernokas

STATE OF MASSACHUSETTS  
COUNTY OF MIDDLESEX, ss.

BE IT REMEMBERED that on the 29<sup>th</sup> day of NOVEMBER, 2012, personally appeared Mark Pernokas and Julie Pernokas, 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,



Notary Public

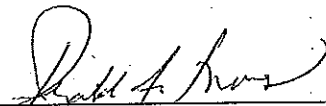
My Commission Expires: 5/11/2018

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

Dated in Montpelier, Vermont, this 16<sup>th</sup> day of January, 2013.

LAND USE PANEL

By:



Ronald A. Shems, Chair