

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No.

Natural Resources Board, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) Green Mountain Land Development & )  
 ) Gravel Co., Inc., Peter Fischer and Michael )  
 ) Fitzpatrick )  
 )  
 ) Respondents. )  
 \_\_\_\_\_ )

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Green Mountain Land Development & Gravel Co., Inc., Peter Fischer, and Michael Fitzpatrick (collectively, hereinafter, "Respondents") hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**VIOLATIONS**

1. Initiating a the construction of improvements for a commercial purpose or a substantial change to a pre-existing development without the required land use permit, in violation of 10 V.S.A § 6081(a), 10 V.S.A § 6081(b) and Act 250 Rule 2(C)(4)&(7).
2. Violation of Vermont Wetland Rules Section 9. Grading, dredging, filling in a Class II Wetland without a permit.

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

3. Green Mountain Land Development & Gravel Company, Inc. is comprised of two principals: Peter Fischer, and Michael Fitzpatrick. Respondents own and operate a gravel pit and quarry on a tract of approximately 250 acres stretching northward from Forrester Road to Forrester Pond in the Town of Jamaica, Vermont ("Project Tract").
4. Michael Fitzpatrick runs the day to day operations at the quarry and gravel bank.
5. Respondents own approximately 90% of the shoreline of Forrester Pond.
6. The Project Tract is approximately 80% forested. The balance of the Project Tract is either former gravel pit, active gravel pit, or open water.

**Assurance of Discontinuance**

***Natural Resources Board v. Green Mountain Land Development & Gravel Company***

Page 2 of 9

7. The active pit slopes and drains generally eastward. It is comprised of two general extraction areas.
8. Forrester Pond is located just north of the pit. It is completely undeveloped.
9. Forested Class II wetland and buffer have been converted to a gravel pit as described by Respondents' consultant Ward Smith, Professional Wetland Scientist, in a letter dated November 13, 2013.
10. Disturbance from sand and gravel excavation encroaches to less than 100 feet from the shoreline of Forrester Pond at one area.
11. In at least one area, Respondents have excavated to the seasonal high groundwater table.
12. The Respondents did not appeal Jurisdictional Opinion #2-290 issued by Stephanie Gile, Assistant District Coordinator, District 2 on October 11, 2013, and therefore, the Jurisdictional Opinion is final as to the Respondents.
13. In Pertinent part, the Jurisdictional Opinion found "Green Mountain's extraction operation requires an Act 250 permit because there have been substantial changes to a pre-existing development. A substantial change has occurred in two respects: the pre-existing average annual extraction rate was exceeded by more than ten percent with accompanying potentially significant impacts under the criteria and the active operations are now located a substantial distance away from the pre-existing extraction area. Please submit the Act 250 application by November 1, 2013."
14. Operations, in violation of Act 250, continued at the Project Tract through at least November 26, 2013.
15. Respondents' unpermitted earth materials extraction operations yielded a substantial amount of both aggregate and quarried stone, resulting in significant profits from 2008 through 2013.
16. On February 7, 2014, Respondents submitted an application to the Act 250 District 2 Commission for Land Use Permit 2W1316, to continue operation of the gravel pit and quarry on the Project Tract.
17. On February 11, 2014, District 2 Coordinator April Hensel issued an Incomplete Letter requesting significant additional information and a new application package.
18. In July of 2014, without first consulting with the Board or the Agency, Respondents trucked-in approximately 26 loads of short paper fiber (SPF) from paper mills in Putney, Vermont and Rochester, NY, and fewer loads of dried biosolids from the Concord, NH Wastewater Treatment Facility for the purpose of creating an artificial topsoil for use in reclamation of mined areas on

**Assurance of Discontinuance**

***Natural Resources Board v. Green Mountain Land Development & Gravel Company***

Page 3 of 9

the Project Tract. By July 11, 2014, Respondents had brought in approximately 3,000 cubic yards of SPF and 300 tons of biosolids. Some of the SPF was dumped within running surface waters from an onsite spring that flows into Ball Mountain Brook. At the Board's request, Respondent removed materials from within those surface waters, but as of June 2015, piles of SPF remained within 50 feet of those surface waters, contrary to the Board's direction.

19. On April 14, 2015, Respondents submitted an application to the Act 250 District 2 Commission for Land Use Permit 2W1316-1, to close, rehabilitate, and reclaim the gravel pit and quarry on the Project Tract also known as "Forrester Pit".
20. On April 15, 2015, Respondents formally withdrew their application for Land Use Permit 2W1316.
21. On May 19, 2015, then District 2 Chair Stephan Morse issued a Hearing Recess Order requiring the Respondents to submit supplemental evidence.
22. On July 26, 2016, Respondents submitted a response to the Hearing Recess Order as well as a motion for an expedited permit.
23. On August 17, 2016, the District 2 Environmental Commission extended the time to submit responses to the most recent information submitted by the Respondents until September 2, 2016.
24. On September 16, 2016, Respondents withdrew their motion for an expedited permit, citing insufficient time to commence reclamation that season, and further requested that no hearing be scheduled until after January 1, 2017, to give Respondent's engineer additional time to confer with adjoining landowner Forrester's engineer regarding Forrester's concerns about the proposed Reclamation Plan.
25. As of November 2017, neither the Board nor the District 2 Office had heard anything further from the Respondents regarding the Project Tract.
26. On April 23, 2019, LUP 2W1316-1 issued, which requires all site work, rehabilitation, and reclamation, including wetland restoration, monitoring, reporting, and invasive species management, to be completed in accordance with the approved plans (all of which are incorporated herein).
27. The Respondents violated Act 250 by initiating a the construction of improvements for a commercial purpose or a substantial change to a pre-existing development without the required land use permit, in violation of 10 V.S.A § 6081(a), 10 V.S.A § 6081(b) and Act 250 Rule 2(C)(4)&(7).
28. Respondents have also violated Vermont Wetland Rules Section 9 by grading, dredging, and

filling in Class II Wetlands without first obtaining a Wetland Permit.

29. Respondent admits the factual findings described above, solely for purposes of resolving this case.
30. The State alleges that the above conduct constitutes violations as indicated above.

#### **AGREEMENT**

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

31. Respondents shall (a) respond to any and all requests for information from the Act 250 District 2 Environmental Commission, the District Coordinator, or Agency of Natural Resources staff; 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.
32. Respondents shall conduct and complete all site work, rehabilitation, and reclamation, including wetland restoration, monitoring, reporting, and invasive species management in accordance with the timeframes identified in LUP 2W1316-1.
33. No later than 30 days following the entry of this Assurance 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 \$30,000.00, for the violations noted herein relative to the Natural Resources Board and \$7,000.00 relative to the Agency of Natural Resources violation (Wetlands violation); pursuant to 10 V.S.A. §8010(c)(2), the amount of \$5,000.00, for the economic benefit resulting from the violations noted herein. Respondents shall issue a check for these violations, by good check made payable to: "State of Vermont" for the total amount of **\$42,000.00**.
  - 2) Pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$4,391.27** to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to: "State of Vermont."
  - 3) The amount of **\$15.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Jamaica land records, by good check made payable to: "Town of Jamaica, Vermont."
34. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respondents have actual notice of the Judicial

Order and Assurance of Discontinuance.

35. All payments and documents required by this Assurance shall be sent to:

Natural Resources Board  
Dewey Building  
1 National Life Drive  
Montpelier, Vermont 05620-3201

36. Respondents are jointly and severally liable for all obligations under this Assurance. Notwithstanding the foregoing, in exchange for Peter Fischer paying the full amounts as set forth above on behalf of the corporation, the Board agrees to release Peter Fischer from any further personal liability in connection with any matters set forth herein.. However, Peter Fischer may be held liable with respect to any work performed pursuant to LUP 2W1316-1 should Peter Fischer be considered a responsible corporate officer for that work.
37. Each Respondent shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
38. Except as noted above with respect to Peter Fischer, the State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
39. Except as noted above with respect to Peter Fischer, 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.
40. 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.
41. Pursuant to 10 V.S.A. § 8007(d), 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.
42. 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.

**Assurance of Discontinuance**

***Natural Resources Board v. Green Mountain Land Development & Gravel Company***

**Page 6 of 9**

43. 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.
44. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.
45. Respondent agrees that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of R/D's past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
46. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

**SIGNATURES ON FOLLOWING PAGE**

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

Dated at BOONE, N.C. [CITY AND STATE], this 23<sup>rd</sup> day of August, 2019.

**Green Mountain Land Development & Gravel Co., Inc.**

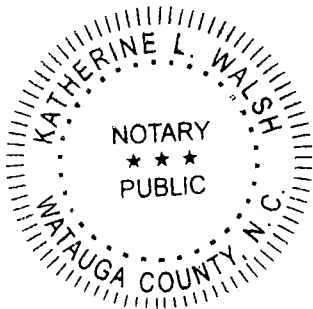
By Peter H. Fischer (Signature)  
Peter Fischer, Duly Authorized Agent

STATE OF N.C.  
COUNTY OF Watauga, ss.

BE IT REMEMBERED that on the 23<sup>rd</sup> day of August, 2019, personally appeared **Peter Fischer**, as the duly authorized agent of **Green Mountain Land Development & Gravel Co., 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 **Green Mountain Land Development & Gravel Co., Inc.** and that he has the authority to contract on behalf of **Green Mountain Land Development & Gravel Co., Inc.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Katherine L. Walsh  
Notary Public  
My Commission Expires: Aug 19, 2021



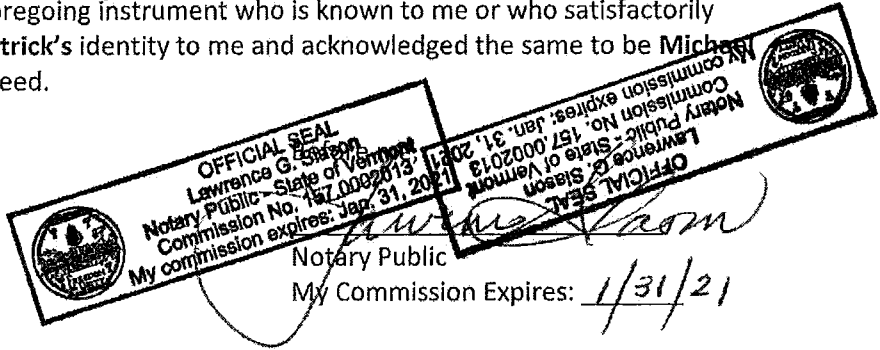
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED at Pottery, Vermont, this 29 day of August, 2019.

  
Michael Fitzpatrick

STATE OF VERMONT  
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 29 day of August, 2019, personally appeared Michael Fitzpatrick, signer of the foregoing instrument who is known to me or who satisfactorily established Michael Fitzpatrick's identity to me and acknowledged the same to be Michael Fitzpatrick's free act and deed.



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

DATED at \_\_\_\_\_, \_\_\_\_\_ [CITY AND STATE], this \_\_\_\_\_ day of August, 2019.

\_\_\_\_\_  
Peter Fischer

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, ss.

BE IT REMEMBERED that on the \_\_\_\_\_ day of August, 2019, personally appeared Peter Fischer, signer of the foregoing instrument who is known to me or who satisfactorily established Peter Fischer's identity to me and acknowledged the same to be Peter Fischer's free act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



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

DATED at \_\_\_\_\_, Vermont, this \_\_\_\_\_ day of August, 2019.

\_\_\_\_\_  
**Michael Fitzpatrick**

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, ss.

BE IT REMEMBERED that on the \_\_\_\_\_ day of August, 2019, personally appeared **Michael Fitzpatrick**, signer of the foregoing instrument who is known to me or who satisfactorily established **Michael Fitzpatrick's** identity to me and acknowledged the same to be **Michael Fitzpatrick's** free act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

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

DATED at BOONE, N.C. [CITY AND STATE], this 23<sup>rd.</sup> day of August, 2019.

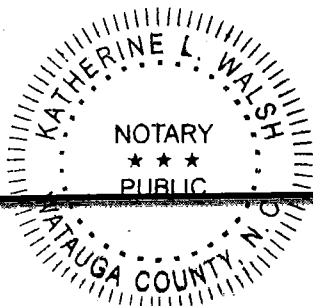
Peter H. Fischer  
**Peter Fischer**

STATE OF NC  
COUNTY OF Watauga, ss.

BE IT REMEMBERED that on the 23<sup>rd.</sup> day of August, 2019, personally appeared **Peter Fischer**, signer of the foregoing instrument who is known to me or who satisfactorily established **Peter Fischer's** identity to me and acknowledged the same to be **Peter Fischer's** free act and deed.

Before me,

Katherine L. Walsh  
Notary Public  
My Commission Expires: Aug. 19, 2021



**Assurance of Discontinuance**

***Natural Resources Board v. Green Mountain Land Development & Gravel Company***

**Page 9 of 9**

Dated in Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

NATURAL RESOURCES BOARD

By: \_\_\_\_\_

Diane B. Snelling, Chair