

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Valley Land Corporation,
Respondent

VIOLATIONS

Failure to comply with Permit Conditions 13 and 10 of Land Use Permits 3W0337-4 and 3W0337-5, respectively.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and Valley Land Corporation (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 15, 1986, the District Environmental Commission issued Land Use Permit 3W0337-4 (-4 Amendment") to the Respondent, which authorized the construction of two commercial/office buildings on lands identified in Book 94, Pages 14-15 of the land records of Hartford, Vermont ("the Property").
2. Two months later, the District Environmental Commission issued Land Use Permit 3W0337-5 ("-5 Amendment") to the Respondent, which authorized the construction of a 32-lane bowling center on lands subject to the same deed as above.
3. Both the -4 and -5 Amendments required preservation of prime agricultural soil on the Property as follows:

"Within 30 Days of the date of this permit, the permittee shall submit a plan to the Commission for approval showing an area of prime agriculture soil 1.5 acres in size on the 100+ acre involved parcel that will be preserved from

development for the duration of the permit.”
-4 Amendment Condition 13.

“Within 30 days of the date of this permit, the permittees shall submit a plan to the Commission for approval showing an area at least 7 acres in size containing primary agricultural soils to be set aside from future development. This area shall be contiguous to that set aside as a result of conditions imposed in Land Use Permit #3W0337-4.”
-5 Amendment Condition 10.

4. Respondent failed to set aside the contiguous 8.5 acres of prime agricultural land on-site as required by the -4 and -5 Amendment.
5. Long after the requirements of Conditions 10 and 13 became overdue, the Property was designated as a “growth center”, which subsequently allowed for off-site mitigation of impacted prime agricultural soils.
6. By failing to timely set aside 8.5 acres of prime agricultural land, the Respondents violated conditions 13 and 10 of the -4 and -5 Amendments.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series 3W0337.
- B. In accordance with the mitigation fee calculated pursuant to 10 V.S.A. § 6093, the Respondent, within **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, shall deliver a mitigation fee of **\$19,185.00** by check payable to the “Vermont Housing and Conservation Board (VHCB)” to the following address:

VHCB, Project Counsel
58 East State Street
Montpelier, VT 05602
- C. 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 in *three separate checks*:
 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$9,900.00** for the violations noted herein, by check made payable to the “State of

Vermont.”

2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$134.42**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the “State of Vermont.”
 3. the amount of **\$10.00** for paying the recording fee for the filing of a notice of this Assurance in the Hartford land records, by check made payable to the “Town of Hartford, Vermont.”
- D. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board notarized, written acknowledgement of receipt of the Court’s Order.
- E. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- F. Respondent shall not deduct, nor attempt to deduct, any payment of penalties 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. Payments made pursuant to paragraph B. above are mitigation fees and may be deducted as applicable under relevant federal and state law.
- G. 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.
- H. 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.
- 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 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.
- 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 set forth

herein, provided that the Respondent fully complies with this Assurance.

- K. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- L. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- M. 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.
- N. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- O. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

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

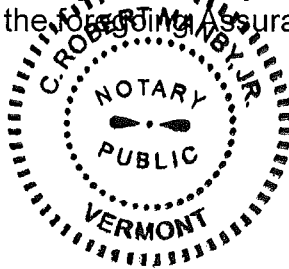
Dated at HARTFORD, Vermont, this 11th day of JULY, 2017.

VALLEY LAND CORPORATION

By: [Signature]
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF WINDSOR, ss.

BE IT REMEMBERED that on the 11th day of JULY, 2017, personally appeared REGINALD H. JONES, as the duly authorized agent of **Valley Land Corporation** 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 the free act and deed of **Valley Land Corporation** and that he has the authority to contract on behalf of **Valley Land Corporation** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.



Before me,

[Signature]
Notary Public

My Commission Expires: 2/10/19

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

Dated in Montpelier, Vermont, this _____ day of _____, 2017.

Natural Resources Board

By:

Diane B. Snelling, Chair