

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. \_\_\_\_\_

Land Use Panel of the  
Natural Resources Board,  
Petitioner

**ASSURANCE OF DISCONTINUANCE**

v.

Dwight and Stephen Abbott,  
Respondents

**VIOLATION**

Failure to comply with Condition 5 of Land Use Permit #7C0364.

**ASSURANCE OF DISCONTINUANCE**

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

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

1. Respondents own land located off Back Center Road in Lyndonville, Vermont, identified in Book 66, Page 252 and in Book 69, Page 30 of the Land Records of the Town of Lyndon, Vermont (project tract).
2. The project tract is subject to Land Use Permit series #7C0364.
3. Condition 5 of Land Use Permit #7C0364 states: "Applicants shall leave undisturbed at all times a fifty-foot wide buffer strip along the Passumpsic River."
4. On or about March 26, 2009, Respondents cut vegetation within 50 feet of the Passumpsic River.
5. Respondents violated Condition 5 of Land Use Permit #7C0364 by disturbing the fifty-foot wide buffer along the Passumpsic River.

## AGREEMENT

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

- A. Respondents shall comply with Land Use Permit series #7C0364.
- B. Prior to June 30, 2009 Respondents shall present to the Natural Resources Board Permit Compliance Officer for approval, a Riparian Restoration Plan prepared by either a Certified Landscape Architect or Vermont Tree Nursery which will include at a minimum nine (9) native tree species at a breast height caliper size at least three (3) inches. If approved, the Plan shall be implemented no later than September 15, 2009. If the plan is not approved, the Respondents shall resubmit another plan to be implemented by a point in time which will ensure the establishment of the plantings.
- C. Respondents shall allow the areas between the plantings implemented through the Riparian Restoration Plan to revegetate naturally and remain undisturbed in the future.
- D. Within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Eight Hundred and Fifty (\$850.00 (U.S)) Dollars, for the violation noted herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded 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 Respondents pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- F. 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.
- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or

Assurance of Discontinuance  
Land Use Panel v. Dwight Abbott and Stephen Abbott  
Page 3 of 4

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directives applicable to the Respondents.

- H. 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.
- I. Pursuant to 10 V.S.A. § 8007(d), the Respondents 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 Respondents fully comply with the agreements set forth above.
- J. 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.
- K. 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.
- L. 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 Newport, Vermont, this 16 day of June, 2009.

Dwight Abbott  
Dwight Abbott

STATE OF VERMONT  
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 16 day of June

Assurance of Discontinuance  
Land Use Panel v. Dwight Abbott and Stephen Abbott  
Page 4 of 4

2009, personally appeared Dwight Abbott, 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,

Andrea Machado  
Notary Public  
My Commission Expires: 2/10/11

Dated at Newport, Vermont, this 16 day of June, 2009

Steven Abbott  
Steven Abbott

STATE OF VERMONT  
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 16 day of June, 2009, personally appeared Steven Abbott, 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,

Andrea Machado  
Notary Public  
My Commission Expires: 2/10/11

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

Dated in Montpelier, Vermont, this 29<sup>th</sup> day of June, 2009.

LAND USE PANEL

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