

MAY 19 2009

STATE OF VERMONT

ENVIRONMENTAL COURT  
Docket No. \_\_\_\_\_

\_\_\_\_\_  
**LAND USE PANEL of the** )  
**NATURAL RESOURCES BOARD,** )  
 Petitioner )  
 )  
 v. )  
 )  
**AUTOMOTIVE SERVICES** )  
**INTERNATIONAL, INC.,** )  
**MOUNTAIN OPERATIONS AND** )  
**DEVELOPMENT, LLC and** )  
**CATAMOUNT/BOLTON LAND,** )  
 LLC )  
 Respondents )  
 \_\_\_\_\_

**ASSURANCE OF DISCONTINUANCE**

**VIOLATION**

- I. Constructing new trail sections and making improvements and adding obstacles to existing trails on a driver training course without approval in violation of Conditions No. 3 and 6 of Land Use Permit Amendment #4C0436-26A and 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 Automotive Services International, Inc., Mountain Operations and Development, LLC, and Catamount/Bolton Land, LLC (collectively Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

1. Respondents Mountain Operations and Development, LLC (formerly Mountain Operations and Development, Corp.) and Catamount/Bolton Land, LLC, (jointly "BV") each own tracts of land located in Bolton, Vermont and described in Book 59, Pages 490-496 and Book 61, Pages 32-35 of the Town of Bolton land records (the project tract) upon which they operate a four season resort known as "Bolton Valley".
2. On March 13, 2006, the District 4 Environmental Commission issued Land Use Permit Amendment #4C0436-26 to BV which specifically authorized the operation of an off-road driver training school on roads and trails at the resort.

3. Respondent Automotive Services International, Inc. operates the off-road driver training school on the project tract.
4. On July 30, 2008, the District 4 Environmental Commission issued Land Use Permit Amendment #4C0436-26A to Mountain Operations and Development, LLC, and Catamount/Bolton Land, LLC, which specifically authorized the expansion of the operation of the off-road driver training school located on roads and trails at the Bolton Valley resort.
5. A "Warmup Area" was approved in original permit 4C0436-26 and amendment permit 4C0436-26A and is approximately 15 acres. The limits of the Warmup Area are identified with boundary lines on Maps provided as Exhibits in both applications. The Warmup Area is located in the vicinity of the Timberline Lodge; more specifically it is located adjacent to the west and south sides of the Timberline parking lots.
6. Prior to the original permit application in 2004, this Warmup Area had undergone logging activities. This area, therefore, had several logging trails and roads throughout. The intent for the Warmup Area, both within the original 2004 application and the 2008 permit amendment was to gain approval for the off-road driver training school to use these existing logging trails and roads. As part of the original permit, specific and limited obstacles or features were put in place upon the existing logging roads and trails. The logging roads and trails in this area were improved with slight grading or reshaping in some areas and reinforced with crushed stone to prevent erosion and to control sediment wash out. Additionally, 5 very short sections of improved logging trails were created.
7. Although there was an intent for these specific features to be a part of the off-road driver training school, details or descriptions of the features within the Warmup Area were not expressly called out within the original application or the '-26A' amendment application and therefore were not specifically approved as part of such permits.
8. Condition No. 3 of Land Use Permit Amendment #4C0436-26A states: "The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #4C0436-26A, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit."
9. Condition No. 6 of Land Use Permit Amendment #4C0436-26A states: "No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Natural Resources Board Rules."
10. As of October 29, 2008, Respondents had constructed new trail sections and had made improvements and added obstacles to existing trails within the Warmup Area.

These changes to the project were not approved by the District Coordinator or the District 4 Environmental Commission.

11. The construction of new trail sections and obstacles on existing trails within the Warmup Area on the project tract is a material change from the previously permitted project.
12. Respondents failed to obtain written approval from the District Coordinator or the District 4 Environmental Commission for the changes to the project.
13. Respondents failed to obtain an Act 250 Land Use Permit Amendment for this material change to Land Use Permit Amendment #4C0436-26A.
14. Respondents violated Condition No. 3 and 6 of Land Use Permit Amendment #4C0436-26A by constructing new trails sections and obstacles on existing trails within the Warmup Area on the project tract without first obtaining a Land Use Permit Amendment for those activities.
15. On December 2, 2008, Respondents filed an Act 250 Amendment Application seeking, in part, after-the-fact approval for the above described expansion and improvements. On January 8, 2009, the Commission issued Land Use Permit Amendment #4C0436-26B granting said after-the-fact approval for the constructed improvements.

### **AGREEMENT**

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

- A. Respondents shall abide by Land Use Permit Amendment #4C0436-26 as amended.
- B. Within thirty (30) days from 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 Two Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$2,812.50) for the violations 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

- C. Any payment by the Respondents pursuant to this Assurance is made to resolve the violation set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' 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 Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.
- 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 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.
- 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 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.
- J. 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. Further, I, Michael Hopwood, the undersigned, hereby state under oath that I am PRESIDENT of Automotive Services International, Inc., that I have the authority to contract on behalf of Automotive Services International, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at So Burlington, Vermont, this 18<sup>th</sup> day of May, 2009.

AUTOMOTIVE SERVICES INTERNATIONAL,  
INC.

By:

[Signature]  
M J HOPWOOD PRES  
(Print Name and Title)

STATE OF VERMONT

COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 18<sup>th</sup> day of May, 2009, personally appeared Michael Hopwood, duly authorized agent of Automotive Services International, Inc., signer of the foregoing written instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of Automotive Services International, Inc.

Before me,

Wendy Coleman  
Notary Public  
My Commission Expires: 2/10/2011

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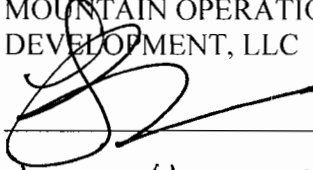
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Larry Williams, the undersigned, hereby state under oath that I am Principal of Mountain Operations and Development, LLC, that I have the authority to contract on behalf of Mountain Operations and Development, LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Burlington, Vermont, this 20th day of May, 2009.

MOUNTAIN OPERATIONS AND  
DEVELOPMENT, LLC

By:

  
\_\_\_\_\_  
Larry Williams, Principal  
(Print Name and Title)

STATE OF VERMONT  
COUNTY OF Ch. Herd, ss.

BE IT REMEMBERED that on the 20th day of May, 2009,  
personally appeared Larry Williams, duly authorized agent of  
Mountain Operations and Development, LLC, signer of the foregoing written instrument  
who is known to me or who satisfactorily established his/her identity to me and  
acknowledged the same to be his/her free act and deed and the free act and deed of  
Mountain Operations and Development, LLC.

Before me,

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 2/10/2011


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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and  
accepted. Further, I, Larry Williams, the undersigned, hereby state under oath  
that I am Principal of Catamount/Bolton Land, LLC, that I have the  
authority to contract on behalf of Catamount/Bolton Land, LLC, and that I have been  
duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that  
entity.

Dated at Burlington, Vermont, this 20th day of May, 2009.

CATAMOUNT/BOLTON LAND, LLC

By:

  
\_\_\_\_\_  
Larry Williams  
(Print Name and Title)

STATE OF VERMONT  
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 20<sup>th</sup> day of May, 2009,  
personally appeared Lenny Wilton, duly authorized agent of  
Catamount/Bolton Land, LLC, signer of the foregoing written instrument who is known  
to me or who satisfactorily established his/her identity to me and acknowledged the same  
to be his/her free act and deed and the free act and deed of Catamount/Bolton Land, LLC.

Before me,  
Wanda Metcalf  
Notary Public  
My Commission Expires: 2-10-2011

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

Dated in Montpelier, Vermont, this 27<sup>th</sup> day of MAY, 2009.

LAND USE PANEL  
By: [Signature]  
Peter F. Young, Jr., Chair