

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

James Bahrenburg and
Betsy Bahrenburg,
Respondents

VIOLATIONS

Failure to comply with the following permit conditions:

- 16 of Land Use Permit 4C0677-5B;
- 21 of Land Use Permit 4C0677-5C;
- 16 of Land Use Permit 4C0677-5C and 5D;
- 23 and 24 of Land Use Permits 4C0677-5D and -5C;
- 6 of the 4C0677 permit series; and
- 33 of Land Use Permit 4C0677-5D.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and James Bahrenburg and Betsy Bahrenburg (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own Lots 9-1, 9-2, and 9-3 of the Shelburne Meadows Business Park identified in Book 117, Pages 110 of the land records of the Town of Shelburne, Vermont as the subject of a deed to James Bahrenburg and Betsy Bahrenburg, the as Grantees (the Project Tract).
2. The Project tract is subject to Land Use Permit series 4C0677, including Land Use Permits 4C0677-5B, 5C, and 5D (the Permit, or Permit series).
Buffer and Waterway Protection
3. Respondents cut trees within the 50-foot buffer of a class II wetland on lot 9-3.
4. Condition 16 of Land Use Permit 4C0677-5B and condition 21 of Land Use Permit 4C0677-5C requires the maintenance of a "50-foot undisturbed, naturally vegetated buffer strip between all watercourses on the project site and any disturbed areas."

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5. By cutting trees within the 50-foot buffer of a class II wetland on lot 9-3, Respondents violated condition 16 of Land Use Permit 4C0677-5B and condition 21 of Land Use Permit 4C0677-5C.

Snow Fence

6. Prior to the start of construction of buildings on lots 9-1 and 9-2, Respondents did not have a snow fence installed on lots 9-1 and 9-2.
7. Condition 21 of Land Use Permit 4C0677-5C states, "prior to the start of construction, the Permittee shall memorialize the 50-foot buffer of the stream (Westside) on Lots #9-1 and #9-2 with a snowfence."
8. Respondents did not install a snow fence as required by the Permit prior to the start of construction, and therefore violated condition 21 of Land Use Permit 4C0677-5C.

Erosion Control Devices

9. On April 12, 2013 the District #4 Coordinator observed sediment laden and improperly maintained erosion control devices on the Project Tract, which resulted in the transport of sediment beyond the area necessary for construction.
10. Condition 16 of both Land Use Permit 4C0677-5C and -5D requires Respondents to "prevent the transport of any sediment beyond that area necessary for construction... [and] all erosion control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas."
11. Respondents' failure to properly clean, replace, and maintain the erosion control devices on Lot 9-1 violates conditions 16 of both Land Use Permit 4C0677-5C and 5D.

Unauthorized Forestry

12. Respondents cut trees on both on lot 9-3 and lot 9-1 (outside the building envelope) without prior approval from the District Commission.
13. Condition 3 of all three permit amendments state, the project shall be completed, operated, and maintained in accordance with the plans and exhibits on file with the District Environmental Commission and the conditions of the permit.
14. Condition 6 of all three permit amendments 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 Act 250 Rules."
15. Condition 33 of Land Use Permit 4C0677-5D states, in pertinent part, that "no further ... alteration and/or development of any parcel of land approved herein

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shall be permitted with the written approval of the District Commission or a written determination from the District Coordinator that a permit is not required.”

16. The Permit series and accompanying exhibits and plans do not contemplate cutting beyond the building envelopes of lots 9-1 and 9-2 or any cutting on lot 9-3 without an approved forest management plan.
17. In fact, condition 23 and 24 of Land Use Permits 4C0677-5D and -5C, respectively, allow clear cutting only within the building envelopes, and in accordance with an approved forest management plan on lot 9-3.
18. Respondents did not submit a forest management plan to the District Commission or District Coordinator prior to clear cutting lot 9-3 or areas outside the building envelope on lot 9-1.
19. By cutting trees outside the building envelope on lot 9-1 and cutting trees on lot 9-3 prior to approval of a forest management plan; Respondents violated conditions 23 and 24 of Land Use Permits 4C0677-5D and -5C, condition 6 of the permit series, and Condition 33 of Land Use Permit 4C0677-5D.

Additional Facts

20. On April 15, 2013, the District #4 Environmental Commission Coordinator issued a Notice of Alleged Violation to the Respondents.
21. On April 25, 2013, Respondents, through their consultants, responded to the April 15, 2013 NOAV and presented evidence of their efforts to address the violations outlined in the NOAV.
22. After receipt of the NOAV, Respondents immediately removed the excess earth material on lot 9-3 and stabilized the area; installed the proper snow fence; repaired all erosion control devices; submitted the forest management plan to the District Coordinator; and agreed to submit a tree re-planting plan, which has been subsequently submitted. Respondents also planted 42 cedar trees on the Project Tract as part of a planting schedule.

Summary of Violations

23. By cutting in the wetland buffer, failing to install a snow fence, failing to maintain erosion control devices, and cutting without prior approval of a forest management plan; Respondents failed to comply with the following permit conditions: 16 of Land Use Permit 4C0677-5B; 21 of Land Use Permit 4C0677-5C; 16 of Land Use Permit 4C0677-5C and 5D; 23 and 24 of Land Use Permits 4C0677-5D and -5C; 6 of the 4C0677 permit series; and 33 of Land Use Permit 4C0677-5D.

AGREEMENT

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

- A. Respondents shall comply with Permit series 4C0677.
- B. Respondents shall restore the Project Tract in accordance with **Attachment A**, the Bahrenburg Restoration Plan and Map.
- C. Any further forest management, not outlined in the Restoration Plan and Map, must occur in accordance with a forest management plan approved by the District #4 Environmental Commission.
- D. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall pay the following:
 - 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Two Thousand Four Hundred Seventy-Five Dollars and Zero Cents (U.S.) (\$2,475.00)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".
 - 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Hundred Forty Four Dollars and Sixty Eight Cents (U.S.) (\$144.68)**, 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".
 - 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 Shelburne land records, by good check made payable to the "Town of Shelburne, Vermont".
- 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. Respondents are jointly and severally liable for all obligations under this Assurance.
- G. Respondents shall not deduct, nor attempt to deduct, any payment made to the

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State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 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 Essex Jct, Vermont, this 1st day of Nov, 2013.

Betsy Bahrenburg
Betsy Bahrenburg

James Bahrenburg
James Bahrenburg

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 1st day of November, 2013, personally appeared James Bahrenburg and Betsy Bahrenburg, 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,

Renee J Kershner
Notary Public

My Commission Expires: Feb. 2015

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

Dated in Montpelier, Vermont, this 6th day of December, 2013.

Natural Resources Board

By:

Ronald A. Shems
Ronald A. Shems, Chair

Attachment A

Bahrenburg Restoration Plan and Map

1. In accordance with provision B. of this Assurance of Discontinuance and the schematic map (figure 2) below, the Respondents shall:
 - a. Plant fifteen (15) Red Maple, White Oak, or Bitternut Hickory trees within the class II wetland buffer equally spaced around the pond on lot 9-3, approximately as shown in figure 2. Plant seven (7) White Cedar trees equally spaced within and along the seasonal stream and class II wetland buffer on the south western side of lot 9-3. Plant two (2) White Cedar trees within the 50-foot stream buffer on lot 9-1. Each tree planted must be four feet tall or greater as measured above the root stock.
 - b. Memorialize the class II wetland and 50-foot stream buffers on all three parcels (9-1, 9-2 and 9-3) with large (1- 2 feet in diameter) stones (regionally appropriate dolostone or phyllite-schist) spaced evenly along the outer edge of the buffer boundary. Stone placement shall approximate the spacing on the attached map, but in no instance shall the stones be placed less than 100 feet apart along the buffer line.
 - c. Eliminate non-native invasive species from the class II wetland and wetland buffer on lot 9-3 with a re-sprout rate not to exceed 10%. Eliminate the non-native invasive species by herbicide application, mechanical removal, or a combination of the two techniques. Herbicide application must be performed by a certified applicator using ecologically sensitive techniques in observance of all state and federal laws. Mechanical removal shall ensure prohibition of any re-generation, and root death shall be ensured.
2. Respondents shall complete this Restoration Plan no later than **Monday, June 16, 2014**.
3. All trees planted that fail to survive beyond five (5) years from the completion date of this Plan shall be re-planted with comparable trees.
4. Within thirty (45) days of completion of this Restoration Plan and in no instance later than **Thursday, July 31, 2014**, the Respondents will submit a brief pictorial report documenting compliance with this plan to the District #4 Coordinator and the Natural Resources Board.
5. Upon reasonable notice to the Respondents, the District #4 Coordinator may inspect the Project Tract to determine compliance with the plan at any time.



Figure 1: Overview map including the project tract with red inset showing approximate boundaries of figure 2.



Figure 2: Shows schematic map of restoration plan for the project tract. Colored dots indicate approximate location of native hardwood trees as listed in the Assurance of Discontinuance (red), regionally appropriate stones (purple), and White Cedar trees (yellow).