

STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

THE NATURAL RESOURCES BOARD,)	Docket No.
)	
Petitioner,)	
)	
v.)	<u>ASSURANCE OF DISCONTINUANCE</u>
)	
COMMON ACRES)	
CAMPGROUND LLC,)	
And EUGENE LEON,)	
<u>Respondents.</u>)	

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board), Common Acres, LLC and Eugene Leon (hereinafter "Respondents") hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

VIOLATION

Respondents have commenced an unpermitted activity: namely, hosting music festivals with amplified music in contravention of Respondents' Act 250 permit.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Land Use Permit 5L0826 (the Permit) was issued on September 27, 1985. The Permit authorized the construction of "a private recreation park."
2. The Permit was initially issued to Robert Houle, Jr. & Doris Houle.
3. The Permit applies to Mr. Houle's assigns and successors in interest.
4. Mr. Leon is the current owner of Common Acres Campground, LLC; consequently, he is bound by the Permit.
5. Condition #13 of the Land Use Permit reads as follows: "The park may be operated no earlier than 8:00 a.m. and no later than 11:00 p.m."
6. Findings of Fact and Conclusions of Law and Order (dated September 27, 1985) pertaining to the Permit specifically found that: "No public address system or loud speakers will be used." (Finding 8n).
7. The Findings of Fact and Conclusions of Law and Order (dated September 27, 1985) pertaining to the Permit specifically found that: "***The only activities taking place after***

sunset will be miniature golf and go-cart rentals. Summer activity resulting in detectable noise will include bumper boats, go-cart and intermittent racing.” (Finding 8j, Emphasis added).

8. On August 9, 2012, John Wakefield, the former Permit Compliance Officer of the Board, sent Mr. Leon a letter indicating that the NRB “has been made aware of an upcoming music festival occurring [at Common Acres] on Labor Day Weekend.” That letter also advised that “the music festival is not authorized under the land use permit. The festival may affect several criteria that Act 250 protects and an amendment to the permit is required. Proceeding without the required amendment is a violation of Act 250 and may result in enforcement action by the Natural Resources Board including monetary penalties.”
9. From Friday, August 31, to Sunday, September 1, 2012, Dragonfly Productions held a three-day music festival at Common Acres Campground.
10. Neither Common Acres, LLC nor Mr. Leon obtained the required amendment before the event was held; consequently, they violated the Permit. To date, neither Common Acres, LLC nor Mr. Leon have obtained a land use permit amendment and, therefore, any music festivals held at Common Acres Campground would continue to violate the Permit and Act 250.
11. On March 18, 2013, John Wakefield sent Mr. Leon a follow-up letter informing him that the he must submit a complete Act 250 permit amendment application for all of the unpermitted activities to the District 5 Environmental Commission as soon as possible in order to avoid further violations of Act 250, and possible monetary penalties.
12. On July 13, 2013, Lt. Ronald R. Audet, Jr. (Lamoile County sheriff’s Dept.) responded to a report of a loud band performing at Common Acres. Lt. Audet observed “a band playing music and people standing around them.”
13. Mr. Audet advised Mr. Leon that the band can only play until 11pm.
14. These events are considered a material change to the permitted project pursuant to Act 250 Rules 2(C)(6) and 34(A), thus an Act 250 permit amendment was required.

AGREEMENT

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

- A. The Respondents shall immediately cease any and all non-permitted activities on the Project Tract.

- B. Respondents recognize that the activities discussed herein are in violation of the Land Use Permit currently in place on the Project Tract. Respondents agree to obtain a Land Use Permit Amendment prior to conducting any activities, including activities similar to the activities discussed herein, that are not specifically permitted in the current Land Use Permit. Any future activities conducted on the Project Tract that are not permitted will constitute a violation of the Permit.
- C. Respondent shall (a) respond to any and all requests for information from the Act 250 District 5 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator; 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.
- D. 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.
- E. Respondents are jointly and severally liable for all obligations under this Assurance.
- F. The State of Vermont Natural Resources Board reserves continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- G. 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.
- H. 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.
- I. 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.
- 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

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.

- K. When this Assurance is entered as a judicial order, a 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.
- L. 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 MONTPELIER, Vermont, this 14 day of May, 2014.

Common Acres Campground, LLC

By 
(Signature)

Eugene Leon, Duly Authorized Agent
(Printed Name)

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 14 day of May, 2014, personally appeared Eugene Leon, as the duly authorized agent of **Common Acres Campground, LLC** 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 **Common Acres Campground, LLC** and that he has the authority to contract on behalf of **Common Acres Campground, LLC** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

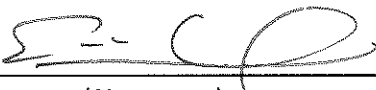
Notary Public
My Commission Expires: 2/10/15

Dated in Montpelier, Vermont, this _____ day of May, 2014.

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

Dated at MONTPELIER, Vermont, this 14 day of May, 2014.

Eugene Leon

By 
(Signature)

Eugene Leon
(Printed Name)

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 14 day of May, 2014, personally appeared Eugene Leon, **Eugene Leon** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me.

Before me,



Notary Public

My Commission Expires: 2/10/15

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Dated in Montpelier, Vermont, this 17th ^{June} day of ~~May~~, 2014.

NATURAL RESOURCES BOARD

By: 

Ronald A. Shems, Chair