



STATE OF VERMONT  
ENVIRONMENTAL COURT

FILED  
OCT 17 2007  
VERMONT  
ENVIRONMENTAL COURT

Vermont Natural Resources Board, )  
Land Use Panel )  
Petitioner, )  
v. )  
Hurkes Corporation, )  
Respondent. )

Docket # 218-10-07 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on October 3, 2007, and filed with the Environmental Court on October 11, 2007, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007 (c).

Dated this 17th day of October 2007.

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin,  
Environmental Judge

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No.

**LAND USE PANEL of the  
NATURAL RESOURCES BOARD,**

Petitioner,

**ASSURANCE OF DISCONTINUANCE**

v.

**HURKES CORPORATION**

Respondent.

**VIOLATION**

I. Construction of an eight (8) lot subdivision without a permit amendment in violation of Act 250 Land Use Permit #4C1009.

**ASSURANCE OF DISCONTINUANCE**

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

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondent, Hurkes Corporation, is a Vermont corporation having its principal place of business in Milton, Vermont.
2. Respondent owned an approximately 117 acre parcel of land in Milton, Vermont, identified in book 50, page 153 of the Town of Milton land records.
3. On July 14, 1997, the District 4 Environmental Commission (Commission) issued Land Use Permit #4C1009 to Respondent authorizing the permittee to subdivide a 117-acre parcel into 51 residential lots and two open space lots and to construct related infrastructure.
4. The 117-acre parcel is comprised of two separate parcels, commonly referred to as Parcel A and Parcel B. Parcel A contains the 51 residential lots approved by Land Use Permit #4C1009 and an open space lot. The other open space lot, Parcel B, is a 21.4-acre parcel; Parcel B was originally identified as containing an archeologically sensitive area.
5. Condition 1 of Land Use Permit #4C1009 states:

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2 Federal Street, Suite 115  
St. Albans, Vermont 05478

TEL 802.524.0080



The project shall be completed, operated and maintained as set forth in the Findings of Fact and Conclusions of Law #4C1009, in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.

6. Condition 34 of Land Use Permit #4C1009 states:

No further subdivision and/or development of any parcel of land approved herein shall be permitted without the written approval of the District Commission.

7. During 2004, Respondent subdivided Parcel B into eight lots. Several houses and related infrastructure have been constructed on Parcel B. The area that was originally identified as being potentially archeologically sensitive has been disturbed.

8. Respondent did not obtain a permit or permit amendment to Land Use Permit #4C1009. Several Project Review Sheets or Jurisdictional Opinions were issued between 2004 and the present and the parties hereto dispute the facts upon which the opinions were based and whether or not the opinions were binding.

9. Respondent has since applied for, and obtained, a Land Use Permit amendment #4C1009-1 for the creation of this eight-lot subdivision.

10. By subdividing Parcel B and constructing improvements on Parcel B without a permit amendment, Respondent violated Land Use Permit #4C1009.

### AGREEMENT

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

A. No later than thirty (30) days from the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Forty Thousand Dollars (\$40,000.00) (U.S.), for the violations noted herein. Respondent shall make said payment by good 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

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THOMAS G. WALSH, ESQ.

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Montpelier, Vermont 05620-3201

B. Any payment by the Respondent 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.

C. 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.

D. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.

E. 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.

F. 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 described herein and about which the State has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.

G. 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.

H. 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.

I. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

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SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Norma Hurteau, the undersigned, hereby state under oath that I am the Secretary and a Director of Hurkes Corporation, that I have the authority to contract on behalf of Hurkes Corporation, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Georgia, Vermont, this 3<sup>rd</sup> day of October, 2007.

HURKES CORPORATION

By: Norma C. Hurteau  
Norma Hurteau, Secretary and Director

STATE OF VERMONT  
COUNTY OF Franklin, ss.

At Georgia, Vermont, this 3<sup>rd</sup> day of October, 2007,  
Norma Hurteau personally appeared and swore to the truth of the foregoing.

Before me,  
[Signature]  
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 9<sup>th</sup> day of October, 2007.

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

