

STATE OF VERMONT

SUPERIOR COURT – ENVIRONMENTAL DIVISION

|                           |                             |
|---------------------------|-----------------------------|
| _____ )                   |                             |
| LAND USE PANEL of the )   | Docket No. _____ Vtec       |
| NATURAL RESOURCES BOARD ) |                             |
| Petitioner )              |                             |
| )                         |                             |
| v. )                      |                             |
| )                         |                             |
| JIM RYAN, )               |                             |
| Respondent )              | Assurance of Discontinuance |
| _____ )                   |                             |

**VIOLATIONS**

- I. Failure to comply with the Assurance of Discontinuance issued on February 19, 2009, by placing cars and other items in the buffer of the Winhall River, failing to mark the buffer with boulders, and failing to let the buffer revegetate.
- II. Failure to comply with Condition No. 13 of Land Use Permit Amendment #2W0835-3 by failing to allow the first 100 feet from the top of the banks of the Winhall River to grow unmanaged as an undisturbed, naturally vegetated, unmowed buffer strip.

**ASSURANCE OF DISCONTINUANCE**

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

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

- 1. Respondent Jim Ryan owns a tract of land on Route 30 in Jamaica, Vermont (the Project tract) where he operates a business known as "Landscape Constructions."
- 2. On September 19, 2006, the District 2 Environmental Commission issued Land Use Permit Amendment #2W0835-3 (Permit) to Jim Ryan authorizing the conversion of a previously permitted retail video store to an office, operation of a landscaping business from the property and construction of an unheated, unplumbed, 30-foot by 40-foot barn to be used for storing landscaping equipment.

3. Condition No. 13 of the Permit states that:

The permittee shall maintain the 100-foot undisturbed, naturally vegetated, unmowed, buffer strip measured from the top of the bank of the Winhall River and any disturbed areas including filled areas. During site preparation and construction of the barn, the 100-foot river buffer shall be clearly marked by means of a snow fence, continuous flagging, or other approved marker to prevent encroachment of equipment and fill into the buffer. No tree or brush removal within the buffer strips shall be permitted without prior written approval from the District Fisheries Biologist and the District Environmental Commission. Snowplowing or storage of any materials within the stream buffer shall not be permitted.

4. On February 19, 2009, the Vermont Environmental Court issued an Assurance of Discontinuance in *Land Use Panel v. Jim Ryan*, No. 27-2-09 Vtec (2009 Assurance), for Respondent's violation of Condition 13 of the Permit.

5. The 2009 Assurance provides, in relevant part, that:

- A. Within thirty (30) days of the date on which this Assurance is signed by the Superior Court, Environmental Division, the Respondent shall remove all vehicles, equipment, stockpiles and any other materials located within the 100 foot buffer strips referred to in Condition 13 of the Permit.
- B. Respondent shall permanently mark the boundary of the 100 foot buffer strips along the Winhall River with boulders or by similar means to prevent future encroachment into the buffer.
- C. Respondent shall allow the 100 foot buffer strips to revegetate naturally and shall maintain the buffers in this manner once vegetation has become established.

6. As of October 8, 2010, there were materials in the 100-foot buffer, including several cars and pallets of landscaping stone.

7. Also as of October 8, 2010, the 100-foot buffer had not been allowed to revegetate naturally. Grass in the buffer had been mowed.

8. No permanent boundary marking such as boulders had been placed along the 100-foot buffer on the Project tract as of October 8, 2010.

9. Shortly after having been contacted by the Land Use Panel regarding the violation, Respondent removed the materials from the 100-foot buffer, placed

boulders to mark the buffer off, and ceased mowing the buffer to allow it to revegetate.

10. Respondent's failure to clear out the buffer and allow it to revegetate violated Condition 13 of Land Use Permit Amendment #2W0835-3 and the 2009 Assurance.
11. Respondent's failure to mark the buffer boundary permanently violated the 2009 Assurance.

### **AGREEMENT**

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

- A. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
  1. A civil penalty pursuant to 10 V.S.A. Ch. 201, in the amount of **\$5,000.00** (U.S. Dollars), for the violations noted herein, by check made payable to the "Treasurer, State of Vermont."
  2. The amount of **\$10.00** (U.S. Dollars), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Jamaica land records, by check made payable to the "Town of Jamaica."
- B. All payments required under this Assurance shall be sent to:

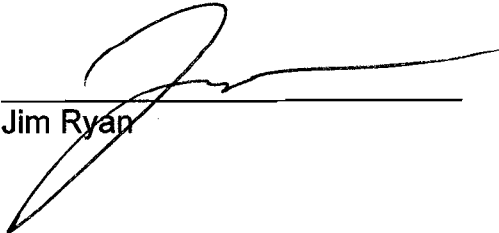
Denise Wheeler, Business Manager  
Land Use Panel of the Natural Resources Board  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201
- C. Any payment made to the State pursuant to this Assurance is made to resolve the violation set forth in this Assurance. Respondent shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from his reported income for tax purposes or attempt to get any other tax benefit from this payment.
- 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 Respondent.
- F. 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.
- G. 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 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 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.
- 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.

DATED at Sept 30<sup>th</sup>, Vermont, this 30 day of September, 2011.  
Stratton

  
\_\_\_\_\_  
Jim Ryan

STATE OF VERMONT  
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 30<sup>th</sup> day of September, 2011,  
personally appeared Jim Ryan, 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,

Nicole J. Moray  
Notary Public  
My Commission Expires: 2/10/2015

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

DATED at Montpelier, Vermont, this 3<sup>rd</sup> day of October, 2011.

LAND USE PANEL  
NATURAL RESOURCES BOARD

By: Ronald A. Shems  
Ronald A. Shems, Chair