

3. The Panel's First Order addressed Respondent's violation of 10 VSA § 6081[a] with respect to a parcel of land consisting of roughly five (5) acres located on the westerly side of Route 30 in the Town of Pawlet, Vermont and adjacent to the Mettowee River (the Project Parcel) and a structure which Respondent constructed on the Project Parcel (the Project Building).
4. Sections A through D of the Panel's First Order directed Respondents as follows:
 - A. Respondent shall immediately cease all commercial use of the Project Building; including but not limited to, ceasing all storage and maintenance of Respondent's construction equipment utilized in Respondent's excavation business.
 - B. Within thirty (30) calendar days of service upon Respondent of this Order, Respondent shall file an administratively complete Act 250 Land Use Permit Application for the Project Building. Respondent shall pursue obtaining an Act 250 permit in good faith.
 - C. Respondent shall comply fully with the final decision on Respondent's application for a land use permit for the Project Building.
 - D. Should Respondent choose not to comply with paragraph B above, Respondent shall take down the Project Building and fully restore the Project Parcel to its original condition prior to Respondent's commencing construction of the Project Building.
5. The Environmental Court Order affirmed the Panel's First Order in all relevant respects, and provided that Respondents' deadline for compliance with the Panel's First Order was August 28, 2006.
6. Respondents have not ceased commercial use of the Project Building as required by Section A of the Panel's First Order. Said violation has been continuous since August 28, 2006.
7. To date, Respondents have not filed or pursued any kind of Act 250 Land Use Permit Application with respect to the Project Parcel and/or the Project Building.
8. Section "D" of the Panel's First Order directs, in the event that Respondents chose not to comply with Section B of said Order, to "take down the Project Building and fully restore the Project Parcel to its original condition which existed prior to Respondent's commencement of construction of the Project Building." To date, Respondents have not complied with Section D of the Panel's First Order.

9. Respondents violated Sections A, B and D of the Panel's First Order, as affirmed by the Environmental Court Order. Said violations have been continuous since August 28, 2006.
10. Respondents violated 10 V.S.A. §§ 6001(3)(A)(ii) and 6081(a) by failing to obtain an Act 250 Land Use Permit prior to commencing development for a commercial purpose on the project site.
11. On July 13, 2007, acting on Respondent's behalf and authorization, Respondent's counsel accepted service of an Administrative Order issued by the Land Use Panel of the Natural Resources Board pursuant to 10 VSA § 8008 and dated July 12, 2007, for violations of 10 VSA § 6081[a] (the Panel's Second Order).
12. The Panel's Second Order directed Respondents to raze the Project Building and fully restore the entire parcel, and demanded a penalty of \$40,300.00 from Respondents.

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 of 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 Thirty Thousand Dollars (\$30,000.00) 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
- B. Any payment by the Respondents 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. Respondents shall, within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, permanently cease all commercial use of the Project Building and/or the Subject Parcel, including but not limited to discontinuing all storage and maintenance of Respondents' construction

vehicles and equipment (including office equipment and business records) utilized in Respondents' excavation business, Respondents' subsidiary business known as Sheldon Jacking and Moving, and any other commercial enterprise owned or operated by Respondent(s).

- D. Nothing herein shall prohibit Respondent James Sheldon from parking his personal vehicle(s) in the Subject Property or on the Subject Parcel, regardless of whether said personal vehicle(s) is/are also used by Respondent James Sheldon in the commercial activities of Respondent(s).
- E. Respondents shall immediately convert the use of the Project Building and Subject Parcel from commercial to residential/agricultural.
- F. Notwithstanding Paragraphs "C" and "E" hereof, nothing in this Agreement prohibits Respondents from seeking an Act 250 Land Use Permit which authorizes commercial use of the Project Building and Subject Parcel.
- G. In the event that Respondent subsequently receives an Act 250 Land Use Permit which authorizes commercial use of the Project Building and Subject Parcel, Paragraphs "C", "E" and "H" hereof shall be superseded by the terms of said permit.
- H. In order to ensure compliance with Paragraphs "C" and "E" hereof, Respondents shall permit personnel from the Land Use Panel and/or the Agency of Natural Resources to conduct inspections of the Project Building and the Subject Parcel during normal business hours.
- I. Respondent shall immediately remove all fill within fifty (50) feet of the Mettowee River and/or within fifty (50) feet of the small tributary on the west side of the Subject Parcel. Fill placed within such buffer zone(s) shall be removed and the riparian vegetation restored, under the supervision of a professional with expertise in erosion prevention and sediment control, and in consultation and with the approval of the ANR District stream alteration engineer and fisheries biologist. Such buffer(s) shall remain undisturbed (no mowing, vegetation removal, etc.).
- J. 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.
- K. 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.
- L. 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.

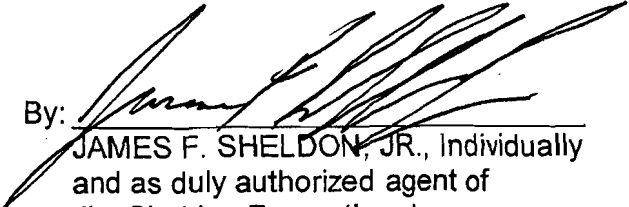
- M. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- N. 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.
- O. 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.
- P. 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 MANCHESTER Vermont, this 13th day of NOVEMBER 2007.

JAMES F. SHELDON, JR.

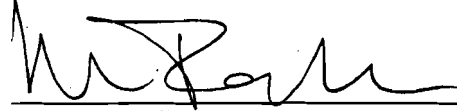
By: 
JAMES F. SHELDON, JR., Individually
and as duly authorized agent of
Jim Sheldon Excavating, Inc.

STATE OF VERMONT
COUNTY OF BENNINGTON, ss.

At MANCHESTER, Vermont, this 13th day of NOVEMBER, 2007,

James F. Sheldon, Jr. personally appeared and swore to the truth of the foregoing.

Before me,



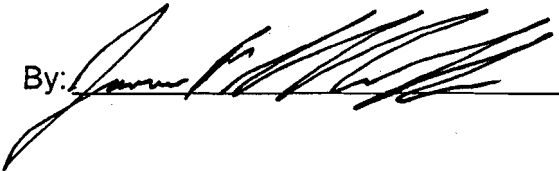
Notary Public

My Commission Expires: 2/11/10

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, JAMES SHELDON, the undersigned, hereby state under oath that I am JAMES SHELDON of Jim Sheldon Excavating, Inc., that I have the authority to contract on behalf of Jim Sheldon Excavating, Incorporated, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Montpelier, Vermont, this 13th day of November, 2007.

JIM SHELDON EXCAVATING, INC.

By: 

James F. Sheldon, Jr., President

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

Dated in Montpelier, Vermont, this 28th day of November, 2007.

LAND USE PANEL

By: Peter F. Young, Jr.
Peter F. Young, Jr., Esq., Chair

by John H. Watson
General Counsel