

STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

| | | |
|-----------------------------|---|-----------------------|
| NATURAL RESOURCES BOARD |) | Docket No. |
| Petitioner, |) | |
| |) | |
| v. |) | ASSURANCE OF |
| |) | <u>DISCONTINUANCE</u> |
| LOREN & BERNARDINE STOLP, |) | |
| DENNIS M. JOHNSON & JANE E. |) | |
| JOHNSON |) | |
| Respondents. |) | |
| |) | |
| |) | |
| |) | |

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and, Dennis M. Johnson and Jane E. Johnson (hereinafter, collectively "Respondents") hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

VIOLATION

Respondents have failed to obtain a permit amendment pursuant to NRB Rule 34 (A) prior to commencing the activities discussed herein.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Land Use Permit 3W0468 (the Permit) was issued on August 16, 1985. The Permit authorized the construction of 3 condominium units.
2. The Permit was later amended to permit "a total of 30 condominium units in ten buildings..." (LUP 3W0468-A).
3. Condition 1 of the LUP states that: "The project shall be completed as set forth in Findings of Fact and Conclusions of Law #3W0468, 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." (Emphasis added).
4. The Commission found that: "...special care must be taken in the location of buildings 5, 6, and 7 to prevent clearing of existing vegetation along the top of the slope toward Echo Lake in order to keep the buildings from creating an undue adverse effect on the scenic and natural beauty of the area. In addition to assurances made by the applicant that existing vegetation will be maintained to the fullest extent possible, **the Commission will impose a condition on any permit issued to prohibit removal of any existing vegetation within 15 feet of the top of**

the slope and to require that a temporary snow fence be erected along that line prior to construction to discourage contractors from excessive cutting.” (Finding of Fact 8.H., emphasis added).

5. Condition 13 of the Permit states: “The construction shall be no closer than 15 feet to the top of the slope toward Echo Lake. No existing vegetation may be removed beyond the limit.”
6. Respondents have violated Conditions 1 and 13 of the Permit by clearing existing vegetation in contravention of the LUP in the vicinity of building 7.
7. More specifically, Respondents have removed and disturbed vegetation on the Project Tract behind Building 7, Units 20 and 21, within the area between 15 feet from the top of the slope toward Echo Lake and the lakeshore in contravention of the LUP.
8. The Johnsons own Unit 20, and the Stolps own unit 21.
9. The removal and disturbance of vegetation on the Project Tract is in direct contravention of the express terms of the LUP. As such, Respondents have violated the terms of the LUP and Act 250 by failing to obtain a permit amendment prior to commencing the activities discussed herein. The activities are considered a material change to the permitted project pursuant to Act 250 Rule 34(A) and, 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 shall (a) respond to any and all requests for information from the Act 250 District 3 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.
- C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
 1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **One Thousand Six Hundred Dollars and Zero Cents (\$1,600.00)** for the violations noted herein, by good check made payable to: “Treasurer, State of Vermont.”
 2. Pursuant to 10 V.S.A. § 8010(e)(2), the amount of **Five Hundred Fifteen Dollars and**

Zero Cents (\$515.00), to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to: "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 Plymouth land records, by good check made payable to: "Town of Plymouth, Vermont."
- 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. All payments and documents required by this Assurance shall be sent to:

Vermont 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. The Respondents shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- H. 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.
- 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, 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.
- 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 St James, North Carolina, this 4th day of November, 2013.

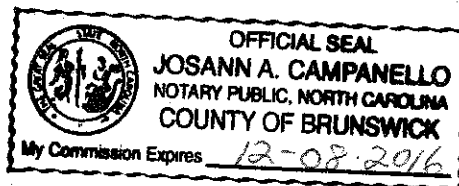
Bernadine Stolp

By Bernadine Stolp
(Signature)

STATE OF NORTH CAROLINA
COUNTY OF Brunswick, ss.

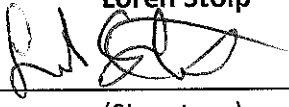
BE IT REMEMBERED that on the 4th day of November, 2013, personally appeared Bernadine Stolp, **Bernadine Stolp** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me.

Before me,
Josann A. Campanello
Notary Public
My Commission Expires: _____



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

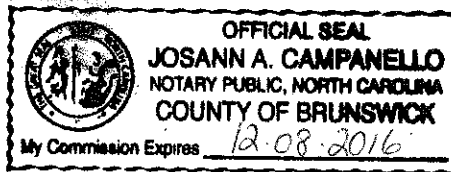
Dated at St James, North Carolina, this 4th day of November, 2013.

By 
Loren Stolp
(Signature)

STATE OF NORTH CAROLINA
COUNTY OF Brunswick, ss.

BE IT REMEMBERED that on the 4th day of November, 2013, personally appeared Loren Stolp, **Loren Stolp** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established her identity to me.

Before me,
Josann A. Campanello
Notary Public
My Commission Expires: 12-08-2016



Dated in St James, North Carolina this 4th day of November, 2013

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

Dated at _____, Connecticut, this _____ day of _____, 2013.

Dennis M. Johnson

By _____
(Signature)

STATE OF CONNECTICUT
COUNTY OF _____, ss.

BE IT REMEMBERED that on the _____ day of _____, 2013, personally appeared _____, **Dennis M. Johnson** 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: _____



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

Dated at _____, Connecticut, this _____ day of _____, 2013.

Jane E. Johnson

By _____
(Signature)

STATE OF CONNECTICUT
COUNTY OF _____, ss.

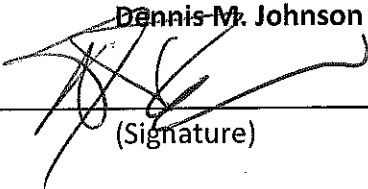
BE IT REMEMBERED that on the _____ day of _____, 2013, personally appeared _____, **Jane E. Johnson** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established her identity to me.

Before me,

Notary Public

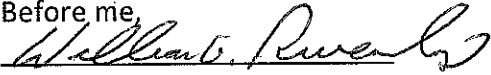
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at New Britain, Connecticut, this 6 day of November, 2013.

By Dennis M. Johnson

(Signature)

STATE OF CONNECTICUT
COUNTY OF HARTFORD, ss. New

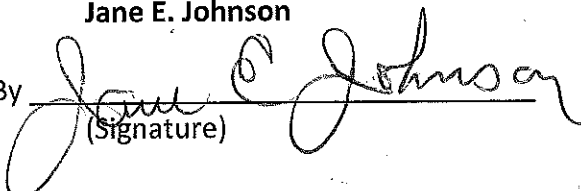
BE IT REMEMBERED that on the 6 day of NOVEMBER, 2013, personally appeared DENNIS M JOHNSON, **Dennis M. Johnson** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me.

Before me,

Notary Public
My Commission Expires: MARCH 31, 2015

WILLIAM G. RIVENBURG
NOTARY PUBLIC, CONNECTICUT
MY COMMISSION EXPIRES MARCH 31, 2015

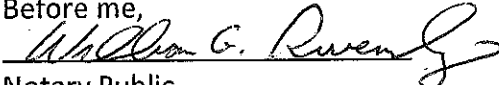
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at New Britain, Connecticut, this 6 day of November, 2013.

By Jane E. Johnson

(Signature)

STATE OF CONNECTICUT
COUNTY OF HARTFORD, ss. New Britain

BE IT REMEMBERED that on the 6 day of November, 2013, personally appeared JANE E JOHNSON, **Jane E. Johnson** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established her identity to me.

Before me,

Notary Public

WILLIAM G. RIVENBURG
NOTARY PUBLIC, CONNECTICUT
MY COMMISSION EXPIRES MARCH 31, 2015

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

Dated at _____, North Carolina, this _____ day of _____, 2013.

Loren Stolp

By _____
(Signature)

STATE OF NORTH CAROLINA
COUNTY OF _____, ss.

BE IT REMEMBERED that on the _____ day of _____, 2013, personally appeared _____, **Loren Stolp** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established her identity to me.

Before me,

Notary Public

My Commission Expires: _____

Dated in _____, North Carolina this _____ day of _____, 2013

WILLIAM G. LINDEN
NOTARY PUBLIC, COMMISSION
COMMISSION EXPIRES MARCH 31, 2013

NRB v. Stolps & Johnsons (Birch Landing)
Assurance of Discontinuance
Docket No.

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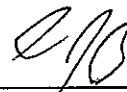
My Commission Expires: _____

Dated in _____, Connecticut, this _____ day of _____, 2013.

NATURAL RESOURCES BOARD

Dated: 12/18/13

By:



For /

Ronald A. Shems, Chair

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discontinuance -- birch landing.docx