

**STATE OF VERMONT**

**ENVIRONMENTAL COURT**  
**Docket No.**

Land Use Panel of the  
Natural Resources Board,  
Petitioner

**ASSURANCE OF DISCONTINUANCE**

v.

Kermit and Gail Weed,  
Respondents

**VIOLATION**

*Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A) and Permit Condition 1 of Land Use Permit #7C1065.*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. ' 8007, the Land Use Panel of the Natural Resources Board (Panel) and Kermit and Gail Weed (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

- A. Respondents, Kermit and Gail Weed, own an approximately 23.7 acre parcel of land (the Property) on Route 5 in West Burke, Vermont identified in Book 69, pages 462-463 of the lands records of West Burke, Vermont.
- B. On August 12, 1998, the District 7 Environmental Commission issued Land Use Permit #7C1065 to Respondents for the operation of a gravel pit on 10 acres of the Property.
- C. Condition 1 of Land Use Permit #7C10765 states, in part, that "no changes shall be made in the project without the written approval of the District Environmental Commission."
- D. Respondents have constructed a 25 tent-site campground on approximately 22 acres of the Property (collectively, the Campground).
- E. On August 18, 2009 the Act 250 District 7 Assistant District Coordinator issued a Project Review Sheet for the Campground.

- F. The Project Review Sheet required the Respondents to obtain an Act 250 Permit Amendment from the District Environmental Commission for the construction of the Campground, and simultaneously found that Act 250 jurisdiction attached because the project constitutes a "material change" to the existing permit pursuant to Act 250 Rule 2(c)(6).
- G. The Project Review Sheet also required the Respondents to obtain Wastewater System and Potable Water Supply Permits from the Agency of Natural Resources (ANR) for the construction of the Campground.
- H. Respondents did not appeal the Project Review Sheet determination.
- I. On November 4, 2009, ANR issued Wastewater System and Potable Water Supply Permit # WW-7-2923 (WW Permit) to Respondents, which approved construction of a 25 tent-site campground with a central comfort station facility.
- J. The WW Permit specifically states that the WW Permit, "does not relieve you, as applicant, from obtaining all approvals and permits as may be required from the Act 250 District 7 Environmental Commission...PRIOR to construction." *WW Permit General Conditions 1.7.*
- K. About a year ago, the Respondents informed the District 7 Environmental Coordinator that they would submit an Act 250 amendment application.
- L. To date the District 7 Environmental Coordinator has not received an Act 250 amendment application from the Respondents for the Campground.
- M. Respondents have failed to comply with permit condition #1 of Land Use Permit #7C1065.
- N. Respondents have failed to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A).

### AGREEMENT

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

- A. Respondents shall comply with Land Use Permit #7C1065.
- B. Within **60 days** following the entry of this Assurance as an Order by the Superior Court Environmental Division, the Respondents shall file an

**Assurance of Discontinuance**

**Land Use Panel, Natural Resources Board v. Kermit and Gail Weed.**

Page 3 of 6

amendment application to Land Use Permit #7C1065 (Amendment Application) for the construction of the Campground to the District 7 Environmental Commission. Respondents shall diligently pursue the Amendment Application.

- A. For purposes of this Assurance, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 7 Environmental Commission, or the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR.

Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.

- B. If Respondents fail to timely file the Amendment Application, or timely file said application and it is denied by the Commission and said denial becomes final, then:
- i. Respondents shall immediately cease all commercial use of the Campground.
  - ii. Any commercial use of the Campground shall be prohibited, unless an Act 250 permit or permit amendment is obtained prior to the commencement of that activity.
- C. Provided that the Respondents follow all provisions outlined in this Assurance, including C above, the Respondents may continue their present commercial operations of the Campground. However, no further improvements shall be made on or to the Campground unless an Act 250 Land Use Permit Amendment is first obtained. If, however, the Respondents fail to follow all provisions outlined in this Assurance, the NRB reserves the right to pursue an Administrative Order under 10 V.S.A. §8008 as necessary.
- D. Following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
1. A civil penalty, pursuant to 10 V.S.A. Ch. 201, in the amount of **Nine Thousand Nine Hundred Dollars and Zero Cents (\$9,900.00 (U.S.))**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont" in accordance with the following:
    - A. Respondent shall pay \$6,600.00 no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.

**Assurance of Discontinuance**

***Land Use Panel, Natural Resources Board v. Kermit and Gail Weed.***

Page 4 of 6

- B. Respondent shall pay \$3,300.00 no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
  - C. Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty to become immediately due and owing.
  - D. Any late payment shall be subject to an annual interest rate of 12%.
- 2. The amount of **Fifty-Three Dollars and Seventy-Four Cents (\$53.74) (U.S.)**, pursuant to 10 V.S.A. §8010(e)(2), to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
  - 3. The amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)** for the purpose of paying the recording fee for the filing of a notice of this Assurance of Discontinuance in the land records of the municipality where the Project is located, by check made payable to the Town of Burke, Vermont.

All payments pursuant to this paragraph 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

- E. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- F. The State of Vermont and the Land Use Panel reserve 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 Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.

**Assurance of Discontinuance**

***Land Use Panel, Natural Resources Board v. Kermit and Gail Weed.***

**Page 5 of 6**

- 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), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies 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, 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.

**SIGNATURES**

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

accepted.

Dated at BURKE, Vermont, this 10 day of Aug, 2012.

Kermit A WEED  
Gail Weed  
Kermit Weed and Gail Weed  
KERMIT WEED and GAIL WEED

STATE OF VERMONT  
COUNTY OF Vermont, ss.

BE IT REMEMBERED that on the 10 day of August, 2012

personally appeared Kermit and Gail Weed, signers of the foregoing instrument who are known to me or who satisfactorily established their identity to me and acknowledged the same to be their free act and deed.

Before me,

Linda Hackett-Cory  
Notary Public  
My Commission Expires: 2-10-2015  
Linda Hackett-CORRY

\*\*\*

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

Dated in Montpelier, Vermont, this 18<sup>th</sup> day of September, 2012

LAND USE PANEL

By: Rh  
Ronald A. Shems, Chair