

STATE OF VERMONT

**ENVIRONMENTAL COURT
Docket No.**

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Raj Bhakta and WhistlePig, LLC.,
Respondents

VIOLATION

Construction of Improvements for commercial purpose without a Land Use Permit. 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Raj Bhakta (Respondent) owns an approximately 467 acre parcel located at 2139 Quiet Valley Road, recorded in Book 68, pages 395, 397-400 of the Town of Shoreham land records (Project Tract).
2. Raj Bhakta is the registered agent of WhistlePig, LLC (Respondent), which operates on the Project Tract.
3. According to the Secretary of State's corporations database, WhistlePig Pastures, LLC, and GoAmericaGo Beverages, LLC are affiliated with the above captioned Respondents, and, to the extent they are affiliated with the activities herein, those entities are considered Respondents in this enforcement matter.
4. On April 1, 2010 Geoff Green, District Coordinator, issued a Jurisdictional Opinion (JO) requiring an Act 250 permit for the Project Tract via a Project Review Sheet requested by the Respondent, Raj Bhakta.
5. The Project Review Sheet described the project as:

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. WhistlePig, LLC and Raj Peter Bhakta.

Page 2 of 7

Conversion of an existing dairy barn into a farm based distillery. Phase I consist of importing, processing, bottling, warehousing and shipping. Modification of an existing water source by adding filtering treatment, construction of a connection to an existing septic system.

6. The Respondents did not file a request for reconsideration with the District Coordinator or an appeal with the Environmental Court of the JO within 30 days of the issuance of that opinion.
7. The Respondents assert that they believed the project did not require an Act 250 (10 V.S.A. Ch. 151) because they modified their project and obtained a decision from the Permit Specialist stating that no permit was required from the Wastewater Management Division.
8. Respondents converted an existing barn on the Project Tract into a bottling room and an office suite without an Act 250 (10 V.S.A. Ch. 151) Land Use Permit.
9. Since 2010, Respondents have operated a facility on the Project Tract to import, age, bottle, and ship for re-sale whiskey, which was produced off-site.
10. Respondents have commenced development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).
11. On November 16, 2012 Respondents filed Land Use Permit Application 9A0348 for the development.

AGREEMENT

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

- A. Respondents shall diligently pursue Land Use Permit Application 9A0348 and any necessary amendments with the District 9 Environmental Commission.
- B. 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 9 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

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. WhistlePig, LLC and Raj Peter Bhakta.

Page 3 of 7

those caused by the Commission or ANR or by other parties to its applications.

- C. If Respondents fail to pursue the Land Use Permit Application, or it is denied by the Commission and said denial becomes final, then Respondents shall immediately cease all commercial use of the Project Tract.
- D. Provided the Respondents follow all provisions outlined in this Assurance, including A and B above, the Respondents may continue their present commercial operations on the Project Tract. However, no further improvements shall be made on or to the Project Tract unless an Act 250 Land Use Permit and/or 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.
- E. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall:
1. pay ***Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00) (U.S.)*** by good check made payable to the "Treasurer, State of Vermont."
 2. pay, pursuant to 10 V.S.A. §8010(e)(2), the amount of ***Two-Hundred Ninety-Three Dollars and Forty Cents (\$293.40) Dollars (U.S.)***, 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. sign and send to the Panel, an acceptance of service, on a form approved by the Panel, showing that Respondents have actual notice of the Order and Assurance.
- F. All payments and documents required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- G. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- H. The State of Vermont and the Land Use Panel reserve continuing jurisdiction

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. WhistlePig, LLC and Raj Peter Bhakta.

Page 4 of 7

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), the 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, 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.

Assurance of Discontinuance

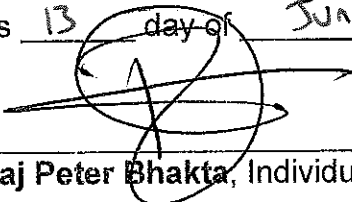
Land Use Panel, Natural Resources Board v. WhistlePig, LLC and Raj Peter Bhakta.

Page 5 of 7

SIGNATURES

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

Dated at Shoreham, Vermont, this 13 day of June, 2013.



Raj Peter Bhakta, Individually

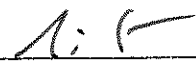
WhistlePig, LLC

By _____
Raj Peter Bhakta, Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Addison, ss.

BE IT REMEMBERED that on the 13 day of June, 2013, personally appeared **Raj Peter Bhakta**, individually and as the duly authorized agent of **WhistlePig, LLC** signer and sealer 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 and the free act and deed of **WhistlePig, LLC** and that he has the authority to contract on behalf of **WhistlePig, LLC** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

SIVAN COTEL
Notary Public, State of Vermont
My Commission Expires Feb. 10th, 2015

Before me,


Notary Public
My Commission Expires: 2/10/15

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. WhistlePig, LLC and Raj Peter Bhakta.

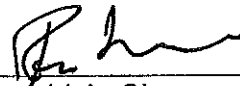
Page 6 of 7

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

Dated in Montpelier, Vermont, this 17th day of July, 2013.

LAND USE PANEL

By:



Ronald A. Shems, Chair

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. WhistlePig, LLC and Raj Peter Bhakta.

Page 7 of 7

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