

**STATE OF VERMONT**  
**SUPERIOR COURT**  
**ENVIRONMENTAL DIVISION**

Vermont Natural Resources Board,  
Petitioner,

v.

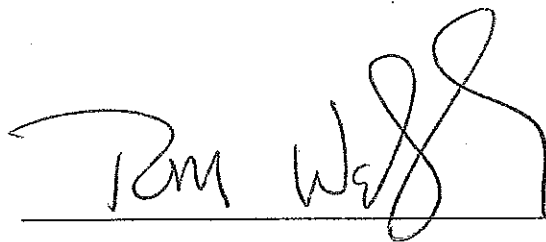
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Richard J. Colton, Arthur F. Shields,  
and Windy Wood Housing LLC  
Respondent.

**ORDER**

The Assurance of Discontinuance signed by the Respondent on March 2<sup>nd</sup>, 2017, and filed with the Superior Court, Environmental Division, on April 10<sup>th</sup>, 2017, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 12th day of April 2017.



A handwritten signature in black ink, appearing to read 'Tom Walsh', is written over a solid horizontal line.

Thomas Walsh, Judge  
Vermont Superior Court  
Environmental Division

STATE OF VERMONT

Superior Court

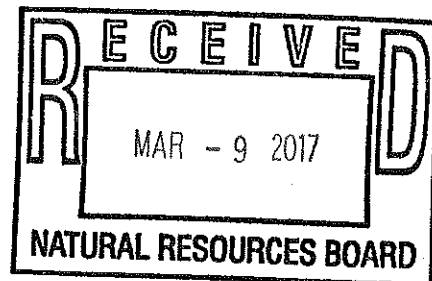
Environmental Division  
Docket No.

Natural Resources Board,  
Petitioner

v.

Richard J. Colton,  
Arthur F. Shields, and  
Windy Wood Housing LLC,  
Respondents

ASSURANCE OF  
DISCONTINUANCE



VIOLATIONS

Failure to comply with Permit Condition 22 of Land Use Permit 5W1480 (Altered)

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Natural Resources Board and Richard J. Colton, Arthur F. Shields, and Windy Wood Housing, LLC. (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. According to tax records, Respondent Windy Wood Housing LLC owns an approximately 50-acre tract located between Windy Wood Road and Wildwood Drive in the Town of Barre, Vermont (the Project Tract).
2. The Project Tract is subject to Land Use Permit 5W1480 (Altered), which authorized the Respondents to construct a 64-unit housing project and related infrastructure - including the reconstruction of a segment of Barre City municipal water line and construction of a sewer collection line across the adjacent tract of Lague, Inc. – on the Project Tract (the "Project").
3. On October 24, 2007, the Vermont Agency of Agriculture, Food and Markets issued "Mitigation Agreement 5W1480." This agreement required the Respondents to contribute \$184,255.20 to the Vermont Housing and Conservation Board prior to commencing construction of the project.

Assurance of Discontinuance

Natural Resources Board v. Richard J. Colton, Arthur F. Shields, and Windy Wood Housing LLC.

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4. On July 3, 2014, the Vermont Agency of Agriculture, Food and Markets issued "Amended Mitigation Agreement #5W1480." This amendment changed paragraph 1 of the Original Mitigation Agreement to require the Respondents to contribute \$149,108.08 to the Vermont Housing and Conservation Board prior to commencing construction of the project. All the other provisions of the Original Mitigation Agreement remained in full force and effect.
5. Condition 8 of Mitigation Agreement 5W1480, stated:

*The Applicant shall have no further obligations under this Agreement after it has provided the Mitigation Payment to VHCB. However, if the Applicant does not provide the entire amount of the Mitigation Payment to VHCB by one (1) year from the date that the Applicant is issued a final, non-appealed and non-appealable Land Use Permit for the Project, this Agreement shall be null and void and VHCB shall notify District Environmental Commission #5 that the Applicant has failed to comply with this Agreement and, therefore, is out of compliance with respect to any Land Use Permit or Amendment issued to the Applicant for the Project. (Emphasis added).*
6. On October 3, 2016, VHCB notified District Environmental Commission #5 that the Applicant has failed to comply with this Agreement and, therefore, is out of compliance with respect to any Land Use Permit or Amendment issued to the Applicant for the Project.
7. By the summer of 2014, the Respondents had commenced construction of the Project. By the fall of 2016, the Project included a partial road network and at least three complete houses, and no payment had been received. Respondents failed to make the mitigation payment prior to commencing construction, in violation of Condition 22 of Land Use Permit 5W1480 (Altered).
8. The Commission has determined that there are 32.3 acres of Primary Agricultural Soils (PAS) affected by the Project, and that "Appropriate circumstances" exist under 10 V.S.A. § 6093(a)(3)(B) to approve off-site mitigation for the affected acres of PAS. Payment of the Mitigation Fee is required to meet the conditions of the Land Use Permit.
9. The Mitigation Fee is calculated in accordance with § 6093:
  - (a) Multiplying the number of affected acres of PAS by the price per acre, \$2,448, which is the recent per-acre-cost to purchase conservation easements on productive agricultural soils in the geographic region of the Project as determined by the VAAFMSecretary; and

- (b) Multiplying the resulting product in (1) above by the ratios approved or determined pursuant to 10 V.S.A. § 6093(a)(2)(B):

**Prime Acres Impacted: 17.5**

**Statewide Acres Impacted: 14.8**

**17.5 acres (impact to soils in value group 3) x 2.5 (Stipulated multiplier) = 43.75 x \$2,448 = \$107,100**

**14.8 acres (impact to soils in value groups 6 or 7) x 2.0 (Stipulated multiplier) = 29.6 x \$2,448 = \$72,461**

**Total Mitigation Fee: \$179,561**

### AGREEMENT

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

10. Respondents shall comply with Land Use Permit series 5W1480 (Altered).
11. No later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall deliver the Mitigation Fee of **\$179,561** by check payable to the Vermont Housing and Conservation Board (VHCB) at the following address:  

VHCB, Project Counsel  
58 East State Street  
Montpelier, VT 05602
12. 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 **\$3,000.00**, for the violations noted herein, by good check made payable to the "State of Vermont."
  2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$299.31**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont."
  3. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Barre Town land records, by good check made payable to the "Town of Barre, Vermont."
13. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

**Assurance of Discontinuance**

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Natural Resources Board  
Dewey Building  
1 National Life Drive  
Montpelier, Vermont 05620-3201

14. Respondents are jointly and severally liable for all obligations under this Assurance.
15. 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.
16. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
17. 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.
18. 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.
19. 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 complies with this Assurance.
20. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondents' control.
21. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
22. 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.
23. When this Assurance is entered as a judicial order, violation of any provision of this

**Assurance of Discontinuance**

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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.

24. 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 South Burlington, Vermont, this 2nd day of March, 2017.

**WINDY WOOD HOUSING LLC**

By Richard J. Colton  
(Signature)

Richard J. Colton, Duly Authorized Agent  
(Printed Name)

STATE OF Vermont  
COUNTY OF Chittenden ss

BE IT REMEMBERED that on the 2nd day of March, 2017, personally appeared Richard J. Colton as the duly authorized agent of **Windy Wood Housing LLC**, signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of **Windy Wood Housing LLC** and that (s)he has the authority to contract on behalf of **Windy Wood Housing LLC** and that (s)he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

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RICHARD J. COLTON

Richard J. Colton

STATE OF VERMONT

COUNTY OF Chittenden

BE IT REMEMBERED that on the 2<sup>nd</sup> day of March, 2017, personally appeared Richard J. Colton, 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.

Before me,  
[Signature]  
Notary Public  
My Commission Expires: 2/10/2019

ARTHUR F. SHIELDS

Arthur F. Shields

STATE OF VERMONT

COUNTY OF Chittenden

BE IT REMEMBERED that on the 2<sup>nd</sup> day of March, 2017, personally appeared Arthur F. Shields, 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.

Before me,  
[Signature]  
Notary Public  
My Commission Expires:

**Assurance of Discontinuance**

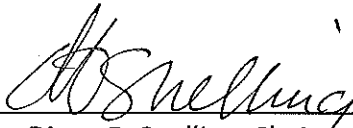
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**NATURAL RESOURCES BOARD**

By:

4.10.17 (Date)

  
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Diane B. Snelling, Chair