

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

NRB v Roblee Farm, Inc.

22-ENV-00003

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 5th and 8th days of November, 2021 and filed with the Superior Court, Environmental Division, on the 10th day of January, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 1/26/2022 8:55 AM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

**Natural Resources Board,
Petitioner**

v.

**Roblee Farm, Inc.,
Mark Mason, Craig Mason, and
Charles Mason,
Respondents.**

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**ASSURANCE OF
DISCONTINUANCE**

VIOLATIONS

1. *Failure to comply with Land Use Permit #1R0932-2, Conditions 1, 2, 4, 9, and 11*
2. *Failure to obtain a permit amendment, in violation of Act 250 Rule 34*

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and Roblee Farm, Inc. ("Roblee"), and Mark Mason, Craig Mason, and Charles Mason ("Mason") (collectively "Respondents") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. This Assurance applies to lands identified in Book 37, pages 489-499, of the land records of the Town of Pawlet, Vermont, where the deed to the land or the permit is recorded.
2. Respondents own approximately 307 acres at 608 Kelley Hill Road in the Town of Pawlet, Vermont (the "Project Tract") which is subject to Act 250 Land Use Permit Series #1R0932 (collectively, the "Permit"). The facility is a sand, gravel, and construction aggregate quarry which includes two areas of excavation named the Sheldon Pit and the Danby Pit. The Danby Pit has been fully reclaimed as of the date of this Assurance, except that it now contains an unpermitted road as further described below.

3. On April 5, 2006, the District 1 Environmental Commission issued Land Use Permit #1R0932 to Respondents, specifically authorizing the Respondents to operate a phased expansion of two existing gravel pits involving the extraction of up to 20,000 cubic yards per year for a period of 20 years (with a three-year reclamation period) on the Project Tract. (Since then, the permit has been amended twice to allow for some subdivision and reconfiguration of the lots, the incorporation of an Agency of Natural Resources ("Agency") Wastewater permit, the use of a large portable crusher, limited blasting, and the opening of several new extraction areas.)
4. On April 12, 2006, the District Environmental Commission issued Administrative Amendment #1R0932-1 to the Respondents, specifically authorizing the subdivision of the 27-acre parcel (also identified as the Sheldon Quarry parcel) into two lots of 10 acres and 17 acres in size as set forth in Exhibit #37 to Land Use Permit #1R0932 and as authorized by Agency Potable Water Supply and Wastewater System Permit #WW-1-1387. This administrative amendment was issued to clarify the project description as approved by the District Commission in Land Use Permit #1R0932.
5. On December 17, 2007, the Vermont Superior Court, Environmental Division issued an Order (Docket #147-7-07 Vtec) against pit operator James Sheldon for failure to obtain a Land Use Permit prior to commencing development on the Project Tract for a commercial purpose.
6. On August 7, 2008, the District Environmental Commission issued Land Use Permit #1R0932-2 to Respondents, specifically authorizing the Respondent to use a portable crusher with a maximum capacity of greater than 150 tons per hour; to perform limited blasting to open a new extraction area (Danby Feedlot); and the extraction of sand from pre-existing pit; and reconfiguration of the 27-acre parcel from 10 and 17 acres to 7 and 20 acres. The project was subject to Act 250 jurisdiction because it was a material change to previously permitted Land Use Permit series.
7. On August 21, 2008, the Vermont Superior Court, Environmental Division issued an Order (Docket #183-8-08 Vtec) against pit operator James Sheldon for operating a stone crushing plant without first obtaining an air pollution control permit from the Agency and without first obtaining permission from the District Environmental Commission.

8. On May 21, 2009, the Vermont Superior Court, Environmental Division issued an Order (Docket #108-6-09 Vtec) against owner Roblee Farm, Inc., for expanding the area of excavation and conducting blasting without first obtaining written approval from the District Environmental Commission, for failing to comply with an Agency stormwater Construction General Permit.
9. On December 16, 2016, the Board and the Agency issued a Notice of Alleged Violation (NOAV) citing multiple violations, specifically related to stormwater, solid waste, and air quality permitting (*Attachment A*).
10. In May 2020, Agency representatives stated to the Board that the air quality issue and the solid waste issue referenced in the December 16, 2016 NOAV had been resolved.
11. On July 25, 2020, the Board's Enforcement Officer conducted a site visit to the Project Tract and noted that stormwater infrastructure required by the Permit and Multi-Sector General Permit 3-9003 (Roblee Permit number 4221-9003) needed either installation, or if already installed, maintenance, in order to function properly. Additionally, signs marking the riparian buffer around the wetland by the Sheldon Pit were missing and needed to be reinstalled.
12. On September 22, 2020, the Board's Enforcement Officer conducted a joint site visit with a representative of the Agency's Stormwater Management Program in order to determine which stormwater infrastructure elements remained to be completed, which required ongoing maintenance, and which were no longer applicable.
13. In October 2020, Respondents began re-routing the access road to their upper agricultural fields through the bottom portion of the already reclaimed Danby Pit without first obtaining a permit amendment.
14. On May 19, 2021, the Board's Enforcement Officer conducted a site visit to investigate new complaints related the access road through the bottom portion of the Danby Pit. The access road involves extraction of gravel from the bottom portion of the Danby Pit where the access road is being placed, which is trucked to the Sheldon Pit for screening, and then returned and applied to the new access road surface.

15. Respondents began extracting a portion of Phase 2 in the Sheldon Quarry, but have abandoned those efforts, and have not reclaimed the abandoned portions in a manner consistent with Condition 4 of LUP-2.

Relevant Permit Conditions and Violations Thereof: Land Use Permit #1R0932-2

16. **Condition 1 states:** *All conditions of Land Use Permit #1R0932, as amended, are in full force and effect except as amended herein.*

17. **Condition 2 states:** *The project shall be completed, operated and maintained in accordance with: (a) the plans and exhibits on file with the District Environmental Commission, and (b) the conditions of this permit.*

18. Respondents have failed to comply with permit **conditions 1 and 2** of Land Use Permit #1R0932-2. The following requirements remain out of compliance based on a site visit by the Board's enforcement officer on July 27, 2020 and a site visit by the Board's enforcement officer and a stormwater analyst from the Vermont Department of Environmental Conservation on September 22, 2020:

A. **Requirement:** Demarcate the edges of all extraction areas and phases with continuous construction fence or 4-inch orange barrier tape, as depicted on Exhibits 17 (Sheet C-103), 19 (Sheet C-105), 23 (Sheet C-203), and 31 (Sheet C-501).

- The July and September 2020 site visits substantiated that the edges of all extraction areas were not demarcated with continuous construction fence or barrier tape, which is a violation of Land Use Permit #1R0932-2, Conditions 1 and 2. This violation was noted in the December 16, 2016 NOAV, and has yet to be rectified.

B. **Requirement:** Remove any stockpiled earth materials from within the 25-foot wide property line setbacks depicted on Exhibits 17 (Sheet C-103), 18 (Sheet C-104), 19 (Sheet C-105), and 23 (Sheet C-203).

- The July and September 2020 site visits substantiated that stockpiled earth materials were stored within the 25-foot property line setbacks, which is a violation of Land Use Permit #1R0932-2, Conditions 1 and 2. This violation was noted in the

December 16, 2016 NOAV, and has yet to be rectified.

C. **Requirement:** Construct the stabilized construction entrance as depicted on Exhibits 17 (Sheet C-103), 18 (Sheet C-104), 19 (Sheet C-105), and 31 (Sheet C-501).

- The July and September 2020 site visits substantiated that the construction entrance to the Sheldon Quarry required maintenance, which is a violation of Land Use Permit #1R0932-2, Conditions 1 and 2. This violation was noted in the December 16, 2016 NOAV, and has yet to be rectified.

19. *Condition 4 states: The project shall be progressively reclaimed, topsoiled, seeded, mulched and landscaped as described in Exhibits 17, 31 and 32.*

20. Respondents have failed to comply with permit **condition 4** of Land Use Permit #1R0932-2 as follows. The following requirement remains out of compliance based on a site visit by the Board's enforcement officer on July 27, 2020 and a site visit by the Board's enforcement officer and a stormwater analyst from the Vermont Department of Environmental Conservation on September 22, 2020:

A. **Requirement:** Reclaim all completed portions of Phase 1 of the Sheldon Quarry, and all unpermitted operation areas located outside of the permitted Limits of Disturbance in accordance with Exhibits 18 (Sheet C-104), 31 (Sheet C-501), and 32 (Sheet C-502), and Exhibit 17 of LUP 1R0932 (Sheet L1) Vegetating Vermont Sand and Gravel Pits, USDA 1988).

- The July and September 2020 site visits substantiated that some completed portions of the Sheldon Quarry Phase I remained unreclaimed, which is a violation of Land Use Permit #1R0932-2, Condition 4. This violation was noted in the December 16, 2016 NOAV, and has yet to be rectified. The planting requirements referenced in Exhibit 17 of the original permit have been satisfied.

21. *Condition 9 states: The Permittees shall comply with Exhibits #17, 31 and 32 for erosion control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established*

on all slopes and disturbed areas. The Commission reserves the right to schedule hearings and site inspections to review erosion control and to evaluate and impose additional conditions with respect to erosion control as it deems necessary.

22. Respondents have failed to comply with permit **condition 9** of Land Use Permit #1R0932-2. The following requirements that remain out of compliance based on a site visit by the Board's enforcement officer on July 27, 2020 and a site visit by the Board's enforcement officer and a stormwater analyst from the Vermont Department of Environmental Conservation on September 22, 2020:
- A. **Requirement:** Install temporary stone check dams as depicted on Exhibits 17 (Sheet C-103), 18 (Sheet C-104), 19 (Sheet C-105) and 32 (Sheet C-502).
- The July and September 2020 site visits substantiated that the check dam reaching the sedimentation pond was not adequately capturing and conveying stormwater run-off to the sedimentation pond, and required maintenance, which is a violation of Land Use Permit #1R0932-2, Condition 9. This violation was noted in the December 16, 2016 NOAV, and has yet to be rectified.
23. *Condition 11 states: The permittees shall maintain a 50 foot undisturbed, naturally vegetated buffer strip between all watercourses on the project site and any disturbed areas. Prior to construction, the stream/ wetland buffers shall be permanently marked with signs. The signs shall be 9-inches by 12-inches with green letters on white background, mounted on wooden posts at 50-foot intervals and will state) "Stream/Wetland Buffer Do Not Disturb." No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules.*
24. Respondents have failed to comply with permit **condition 11** of Land Use Permit #1R0932-2 as follows: The July 27, 2020 site visit substantiated that, with the exception of one post also missing signage, wetland buffer signage had not been maintained and was missing from along the wetland buffer. The missing wetland buffer signage is a violation of Condition 11. This violation was noted in the December 16, 2016 NOAV.
25. Respondents exceeded the Limits of Disturbance within the now-reclaimed Danby Pit by approximately 0.5 acre. This acreage includes approximately 0.3

acre along the Wesko boundary, and approximately 0.2 acre around the old silo area. This exceedance is a violation of Land Use Permit #1R0932-2.

26. Respondents began re-routing the access road, including extracting gravel to construct the access road, from the entrance of the now reclaimed Darby Pit towards some agricultural fields. This development occurred without a permit amendment and is a violation of Land Use Permit #1R0932-2.
27. Respondents admit the factual findings described above, solely for purposes of resolving this case.
28. The Board alleges that the above conduct is in violation of the land use permits issued in Land Use Permit Series #1R0932 pursuant to 10 V.S.A. Chapter 151, including the requirement contained therein to obtain District Commission approval for any further development on the subject land.
29. The Board further alleges that the failure to obtain a permit amendment for the re-routed access road is a violation of Act 250 Rule 34.
30. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed claims, and is in the public interest.

AGREEMENT

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

- A. Respondents shall comply with Permit series #1R0932.
- B. **No later than 30 days** after the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall re-demarcate the edges of all extraction areas and phases with continuous construction fence or 4-inch orange barrier tape, as depicted on Exhibits 17 (Sheet C-103), 19 (Sheet C-105), 23 (Sheet C-203), and 31 (Sheet C-501) in areas where the demarcation tape has naturally worn or has been knocked down by work encroachment.
- C. **No later than 30 days** after the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall remove any stockpiled earth materials from within the 25-foot-wide property line setbacks depicted on Exhibits 17 (Sheet C-103), 18 (Sheet C-104), 19 (Sheet C-105), and 23 (Sheet C-203).
- D. **No later than 30 days** after the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall fully reclaim all completed portions of Phase 1, AND the abandoned portion of Phase 2, of the Sheldon Quarry, and all unpermitted operation areas located outside of the permitted Limits of Disturbance in accordance with Exhibits 18, 31, and 32.
- E. **No later than 10 days** after the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall maintain the stabilized construction entrance as depicted on Exhibits 17, 18, 19 and 31, so that stormwater runoff is directed back into the pit and not onto Kelly Hill Road (Note: See Sheet C-103 Sheldon Area Phase 1 Full Extraction Plan).
- F. **No later than 30 days** after the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall apply for and diligently pursue Land Use Permit amendment for work that has already commenced to relocate the access drive to the reclaimed Danby Pit. Diligently pursue shall mean: (a) responding to all requests for information from the District Commission or the District Coordinator for the Commission by the date set by the District Commission or District Coordinator; and (b) in good faith

meeting and complying with all scheduling or other orders or memoranda issued by the District Commission. If such an application is denied by the commission and the denial becomes final, respondents shall reclaim the road in conformance with directives from the Natural Resources Board.

- G. No later than **10 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay, by separate checks, the following:
1. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$3,393.05** ("**Three thousand, three hundred and ninety-three dollars and 05 cents**") by check made payable to the "State of Vermont" to reimburse the Natural Resources Board for the costs of this enforcement action.
 2. the amount of **\$15.00** ("**Fifteen dollars and 00 cents**") by check made payable to the "Town of Pawlet, Vermont" for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Pawlet land records.
- H. Pursuant to 10 V.S.A. Ch. 201, the Respondents shall pay a civil penalty in the amount of **\$14,300.00** ("**Fourteen thousand, three hundred dollars and 00 cents**") for the violations noted herein. The Respondents shall pay this penalty in eleven (11) equal and consecutive monthly installments of **\$1,300.00** ("**One thousand, three hundred dollars and 00 cents**"), by checks made payable to the "State of Vermont," on or before the last day of each month, with the first installment to be made in the month following the payments made pursuant to Section G. above.
- I. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above to resolve all outstanding disputes.
- J. Respondents agree that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- K. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board a

notarized, written acknowledgement of receipt of the Court's Order.

- L. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201

- M. Respondents are jointly and severally liable for all obligations under this Assurance.
- N. Respondents 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.
- O. 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.
- P. 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.
- Q. 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.
- R. 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 Respondent fully complies with this Assurance.
- S. 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.
- T. 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.

- U. 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.
- V. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- W. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

[Signatures on following pages]

SIGNATURES

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

Dated at Florence, Vermont, this 5 day of November 2021.

ROBLEE FARM, INC.

By Mark Mason
MARK MASON, individually and
as Duly Authorized Agent for Roblee
Farm, Inc.

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 5th day of November, 2021, personally appeared **MARK MASON**, individually and as the duly authorized agent of **ROBLEE FARM, INC.** 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 **ROBLEE FARM, INC.** and that he has the authority to contract on behalf of **ROBLEE FARM, INC.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Roxana J. Daves
Notary Public
My Commission Expires: 01/31/23

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

Dated at Rupert, Vermont, this 8th day of November, 2021.

ROBLEE FARM, INC.

By Craig Mason
CRAIG MASON, Individually and
as Duly Authorized Agent for Roblee
Farm, Inc.

STATE OF VERMONT
COUNTY OF BENNINGTON, ss.

BE IT REMEMBERED that on the 8th day of November, 2021, personally appeared CRAIG MASON, individually and as the duly authorized agent of ROBLEE FARM, INC. 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 ROBLEE FARM, INC. and that he has the authority to contract on behalf of ROBLEE FARM, INC. and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,



Notary Public
My Commission Expires:

John C. Thrasher - Notary Public
State of Vermont Lic #157.0000157
My Commission Expires Jan 31 2023

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

Dated at Rupert, Vermont, this 5th day of November, 2021.

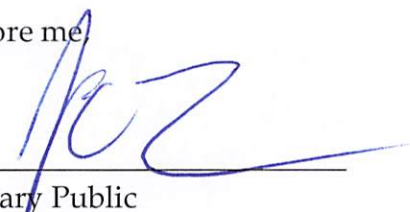
ROBLEE FARM, INC.

By Charles B. Mason
CHARLES MASON, Individually and
as Duly Authorized Agent for Roblee
Farm, Inc.

STATE OF VERMONT
COUNTY OF BENNINGTON ss.

BE IT REMEMBERED that on the 5th day of November, 2021, personally appeared **CHARLES MASON**, individually and as the duly authorized agent of **ROBLEE FARM, INC.** 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 **ROBLEE FARM, INC.** and that he has the authority to contract on behalf of **ROBLEE FARM, INC.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me



Notary Public
My Commission Expires:

John C. Thrasher - Notary Public
State of Vermont Lic #157.0000157
My Commission Expires Jan 31 2022

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

Dated in Montpelier, Vermont, this 22nd day of December, 2021.

Natural Resources Board

By:

Sabina Haskell

Sabina Haskell, Chair