

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No.

Natural Resources Board, Petitioner, )  
 )  
 v. )  
 )  
 Patricia A. Guttenberg Living Trust, )  
 Black Barn Arts L3C, and )  
 Daniel Kornguth, Respondents. )

**ASSURANCE OF  
DISCONTINUANCE**

**VIOLATION**

1. *Commencement of development without a Land Use Permit. 10 V.S.A. § 6081(a).*
2. *Violation of the Vermont Wetland Rules*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Patricia A. Guttenberg Living Trust, Black Barn Arts L3C, and Daniel Kornguth (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

**Act 250 Violation**

1. Respondent Patricia A. Guttenberg Living Trust owns approximately 3.1 acres located at 1247 and 1250 Weatherhead Hollow Road in the town of Guilford, Vermont (the "Project Tract").
2. Guilford is a "1-acre Town" for the purposes of determining jurisdiction under Act 250.
3. On October 24, 2013, Permit Specialist Jackie Carr issued a Project Review Sheet (PRS) to Respondent that described the project as follows:

Generative Arts VT will be an artists residency program and community arts and resource center. There is, currently, on the 2.7 acre property a house and four other structures which include a large sprawling barn, a small 2 story barn/former blacksmith shop, a 2 story garage/barn, and a dilapidated shed structure. There will be, on premises, parking for 12-20 cars on a regular basis and a field available for larger numbers of cars. As an entity and a location, Generative Arts will provide resources and spaces for the production of specific

projects, events, classes, seminars, retreats, camps and activities. The buildings will be used for specific residencies (efficiency apartments), artist's studios, woodworking/metal/mechanical shops spaces, digital media lab, dark room, performance space, gallery/exhibition space and activities studio.

The PRS included a Jurisdictional Opinion from the Drinking Water & Groundwater Protection Division Regional Office that advised that a Wastewater and Potable Water Supply Permit would be required, since the Respondents had proposed to change the use of a building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system. The PRS also included an Act 250 Jurisdictional Opinion that an Act 250 Land Use Permit was required because there will be construction of improvements for a commercial purpose on more than 1 acre of property (10 V.S.A. Section 6001(3)(A)(ii)). The Respondent did not appeal the PRS (Jurisdictional Opinion), and the decision became final.

4. Based on the information presented at a meeting of March 23, 2016, the , Vermont Advisory Council on Historic Preservation determined that at the time that the Jurisdictional Opinion was issued in October of 2013, the property met the Criteria for Evaluation and was eligible for listing in the State Register of Historic Places (SRHP). As such, the property met the definition of a "historic site" for the purposes of Act 250.
5. The Board's Enforcement Officer met with Respondent Kornguth and inspected the Project Tract on August 30, 2016. This inspection, and subsequent investigation, revealed the following facts.
6. Respondents commenced renovation of the main barn and main barn annex for use as five artist residency studios, a kitchen, three offices for Black Barn Arts staff, a gallery, dojo/dance space, media lab, four ADA compliant restrooms, and an event space.
7. Respondents demolished the silo and constructed a new addition to the barn in its place.
8. Respondents refurbished a carriage house attached to the main house for use as a dormitory space/2-bedroom artist residence, kitchen, bathroom, and living/dining area.
9. Respondents demolished and removed the former woodshed and performed earthwork on that hillslope in preparation for the construction of a 3-bedroom dormitory space/artist residence.
10. Respondents deconstructed the historic Blacksmith Shop, constructed a septic leach field and a drilled bedrock well, in part, to serve the proposed 3-bedroom artist residence, and constructed a drilled bedrock well, in part, to serve the carriage house apartment and proposed art barn and events facility. Respondents commenced construction of additional

improvements associated with the proposed arts and events facility, including grading for access and parking.

11. Much of the above referenced work is not reversible due to lack of documentation of the original structures and character-defining features. If the property were considered for listing in the SRHP in its current condition, according to the Vermont Division for Historic Preservation (VDHP), it would not meet the definition of a "historic site" for the purposes of Act 250.
12. By commencing demolition, renovation and construction of improvements, as addressed herein, for a commercial purpose on the Project Tract without first obtaining a Land Use Permit, Respondent violated 10 V.S.A. § 6081(a).

#### **Wetland Rules Violation**

13. There is a Class II wetland on the east side of the project tract.
14. During the construction of the Guttenberg Residence, excavation materials were placed within the buffer zone of the Class II Wetland, in violation of the Vermont Wetland Rules.

#### **AGREEMENT**

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

15. All commercial operations or commercial construction on the Project Tract shall **immediately** cease.
16. Respondents shall cease from causing additional ground disturbance on the Project Tract unless said disturbance is authorized under an approved Land Use Permit.
17. By no later than **April 15, 2019**, Respondents shall hire a wetland consultant to delineate the wetland during the growing season and prepare a wetland remediation plan or wetland permit application for area of the buffer zone encroachment.
18. Except for paragraph (18)(e), below, no later than **90 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division**, the Respondents shall:
  - a. Pursuant to 10 V.S.A. §8010(e)(2), pay the amount of **\$878.88**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont," and mailed to:

Natural Resources Board

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

- b. Pay the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Guilford land records, by check made payable to the “Town of Guilford, Vermont,” and mailed to:

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

- c. Mail the Board a notarized, written acknowledgement of receipt of the Court’s Order.
- d. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$4,500** for the violations noted herein relative to the Agency of Natural Resources violations. Respondent shall issue a check for these violations, by good check made payable to: “Treasurer, State of Vermont” and mailed to:

Administrative Assistant  
Agency of Natural Resources  
Environmental Compliance Division  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3803

- e. In lieu of reversing inappropriate structural alterations to the Project Tract, and in mitigation of irreversible adverse impact to archaeological resources, Respondent shall pay to the Vermont Division for Historic Preservation (Recipient’s) Historic Barn Preservation Grants Fund, the sum of **\$20,250** (paid pursuant to the schedule noted in paragraph (18)(f), below) for a Supplemental Environmental Project (SEP) (10 V.S.A. § 8007(b)(2)). This SEP payment shall be sent to the following address:

Laura V. Trieschmann, State Historic Preservation Officer  
Vermont Division for Historic Preservation  
Department of Housing and Community Development  
1 National Life Drive, Davis Bldg., 6th Floor  
Montpelier, VT 05620-0501

The Recipient shall use this sum for the following purpose and subject to the following guidelines:

- i. To stabilize or restore historic barns within Windham County, Vermont.

- ii. Historic Barns listed in, or eligible for, the State Register of Historic Places that are located in Windham County shall be considered for funding through the criteria set forth for the Barn Preservation Grants program administered by VDHP.
  - iii. Recipient agrees to the following:
    1. To maintain a current accounting of all monies received and expended in furtherance of the SEP, to be made available to the Board upon request;
    2. To provide to the Board a final accounting of all receipts and expenditures in furtherance of the SEP within thirty (30) days of exhausting the SEP funds.
    3. SEP funds may be used only for projects outlined herein.
    4. VDHP shall manage the sum (\$20,250.00) referred in accordance with VDHP's Barn Preservation Grant program.
  - f. Supplemental Environmental Project payment schedule:
    1. \$5,062.50 to be paid no later than 90 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division;
    2. \$5,062.50 to be paid no later than January 1, 2020;
    3. \$5,062.50 to be paid no later than July 1, 2020;
    4. \$5,062.50 to be paid no later than January 1, 2021.
19. By no later than **May 15, 2019**, Respondents shall have the wetland consultant submit to the Agency either:
- a. a Vermont Wetland Permit Application for the subject fill. The delineation required for the application shall be limited in scope to 100 feet in both directions of any impacted area of the wetland or wetland buffer; or
  - b. a remediation plan (the Plan) for review and approval. The Plan shall include, but is not limited to: a delineation of the wetland boundary and its 50-foot buffer zone; a plan for removal of all fill material; and restoration of all impacted areas. The delineation required for the Plan shall be limited in scope to 100 feet in both directions of any impacted area of the wetland or wetland buffer.
20. In the event the Agency rejects the Plan or Permit Application in whole or in part, Respondents shall have the consultant submit a revised Plan or Permit Application to the Agency, which addresses those aspects of the Plan or Permit Application that were rejected, for review and approval no later than seven (7) consecutive calendar days following the Agency's rejection. In the event of additional rejections, Respondents shall submit any

subsequent revisions for Agency approval within seven (7) consecutive calendar days following the rejection.

21. In the event Respondents submit a Plan pursuant to Paragraph 19.b and the Plan is approved, then no later than thirty (30) consecutive calendar days following Agency approval of the Plan, Respondents shall remediate all wetland and 50-foot buffer zone areas in accordance with the approved Plan.
22. No later than **90 days following the entry of this Assurance as an Order by the Superior Court**, the Respondents shall file a complete application for a Land Use Permit to construct and operate the proposed artists' residency and events facility on the Project Tract.
23. In conjunction with the Land Use Permit application, VDHP shall recommend that the structures located on the site not be considered a Historic Site for purposes of criterion 8 of Act 250.
24. As part of its Land Use Permit application, Respondents shall complete Phase 1 archaeological testing for all areas where additional ground disturbing construction activities are proposed, and shall submit the results of this testing to the VDHP for review and comment.
25. Respondents shall diligently pursue said permit. For purposes of this AOD, "diligently pursue" shall mean that Respondent shall (a) respond to any and all requests for information from the Act 250 District 2 Environmental Commission, the Coordinator for the Commission, or the Agency (as applicable) by the date set by the Commission or Coordinator or Agency; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or the Agency. Respondents shall not be responsible for delays outside their control, including those caused by the Commission or the Agency or by other parties to its applications.
26. If the Respondents fail to file said permit application within 90 days, or if Respondents' Land Use Permit application is denied by the Commission and said permit denial becomes final, then the Respondents shall timely comply with all property restoration directives from the Natural Resources Board and the VDHP.
27. Respondents are jointly and severally liable for all obligations under this Assurance.
28. 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.
29. 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.

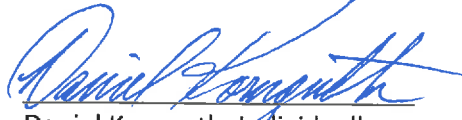
30. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
31. This Assurance shall become effective only after it is signed by all parties 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.
32. 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.
33. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond any Respondent's control.
34. 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.
35. 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.
36. 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.
37. 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.

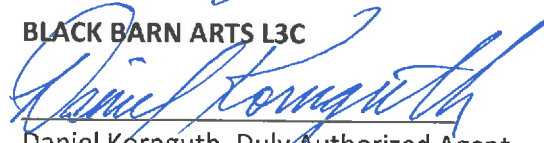
Dated at Brattleboro, Vermont, this 28th day of March, 2019.

  
\_\_\_\_\_

Daniel Kornguth, Individually

**BLACK BARN ARTS L3C**

By

  
\_\_\_\_\_

Daniel Kornguth, Duly Authorized Agent

STATE OF VERMONT

COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 28th day of March, 2019, personally appeared Daniel Kornguth, individually, as the duly authorized agent of Black Barn Arts L3C, 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 Black Barn Arts L3C and that he has the authority to contract on behalf of Black Barn Arts L3C, 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: 1/31/21

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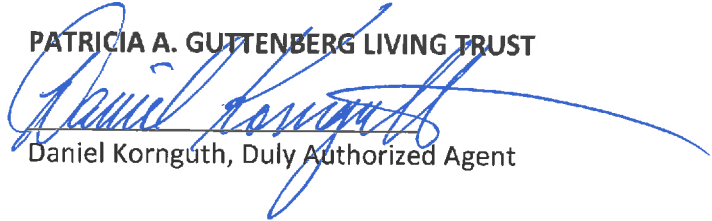


The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Brattleboro, Vermont, this 28<sup>th</sup> day of March, 2019.

**PATRICIA A. GUTTENBERG LIVING TRUST**

By

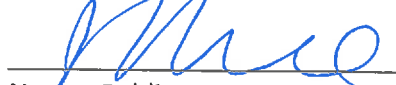
  
Daniel Kornguth, Duly Authorized Agent

STATE OF VERMONT

COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 28<sup>th</sup> day of March, 2019, personally appeared Daniel Kornguth as the duly authorized agent of Patricia A. Guttenberg Living Trust, signer and sealer of the foregoing instrument, who is known to me or who satisfactorily established her identity to me and acknowledged the same to be his free act and deed and the free act and deed of Patricia A. Guttenberg Living Trust, and that he has the authority to contract on behalf of Patricia A. Guttenberg Living Trust, 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: 1/31/21

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Assurance of Discontinuance

*Natural Resources Board v. Patricia A. Guttenberg Living Trust, Black Barn Arts L3C, and Daniel Kornguth*

Page 10 of 10

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

Dated in Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Natural Resources Board

By:

\_\_\_\_\_  
Diane B. Snelling, Chair

\*\*\*\*\*

DATED in Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Division for Historic Preservation  
(As to Paragraph 18.eonly)

By:

\_\_\_\_\_  
Laura V. Trieschmann, State Historic Preservation  
Officer

**GENERAL POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS**, that I, **Deborah K. Simone, Trustee of the Patricia A. Guttenberg Living Trust, dated January 23, 2010, Amendment to Trust Agreement, dated July 17, 2014 and 2<sup>nd</sup> Amendment and Restated Trust Agreement, dated March 28, 2017**, of Eugene, in the County of Lane and State of Oregon, hereby constitute and appoint **Daniel Kornguth**, of Guilford, Vermont, to be my attorney and to act in the name and for the use and benefit of me as Trustee of the Patricia A. Guttenberg Living Trust. Said **Daniel Kornguth** is hereby specifically authorized without limitation by reason of the enumeration the authority herein specifically conferred:

To demand, sue for, recover, collect and receive any and all monies, now or shall hereafter become due, owing, payable of belonging to or claimed by me, as Trustee, or on behalf of me, as Trustee, to use all lawful means for the recovery thereof by legal process in the name of me, as Trustee, or in my own name or otherwise; to compromise, release, subordinate, satisfy and discharge the same.

To contract concerning the purchase and sale of real or personal property and to receive and convey interest in or title to such property and to execute notes, deeds, mortgages and any other documents of instruments necessary for or related to any such contract, conveyance or purchase including, but not limited to the execution of promissory notes necessary or advisable for effecting such contracts, conveyances or purchases or necessary or advisable for raising cash required as consideration for such contracts, conveyances or purchases.

**GRANTING** to said **Daniel Kornguth** full power and authority to do everything advisable in the premises as fully as I, as Trustee, might do as if personally present, including the right to determine whether any transaction shall be for cash, credit, exchange or otherwise or with or without warranty on my behalf, and to fix or agree to all terms and conditions of every transaction on my behalf.

**SPECIFICALLY** authorizing **Daniel Kornguth** to act on my behalf fully, as Trustee and as hereinbefore outlined, and as authorized by the provisions of Chapter 123 of 14 V.S.A. as now or in the future may be in force and effect, and the within power of said **Daniel Kornguth** shall not be limited or affected by the subsequent legal incompetence of me or later uncertainty as to whether I am dead or alive.

**EXCEPT** for dealings constituting actual fraud or tortuous conversion, the death, disability or incompetence of the undersigned shall not revoke or terminate the authority of said **Daniel Kornguth** to act on my behalf, as Trustee, or any other person dealing with **Daniel Kornguth** without actual knowledge of such other person of the death, disability or competence. An affidavit executed by said **Daniel Kornguth** as authorized by Chapter 123 of 14 V.S.A., as now or in the future may be in force or effect, shall be conclusive proof of the nontermination of this Power of Attorney and when authenticated shall be recordable in the land records.

Hereby relieving and discharging said **Daniel Kornguth** of any duty or responsibility for management or

investment decisions so long as he acts in good faith for my account, as Trustee, exclusively.

The power of attorney shall not be affected by the disability of the principal.

This power of attorney shall remain in full force and effect until revoked by me in writing.

IN WITNESS WHEREOF, I hereunto set my hand and seal to this General Power of Attorney, this 21st day of March 2019.

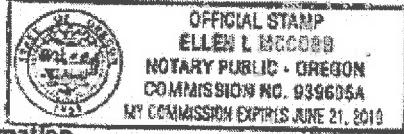
In presence of:

Keith I. Purmrose  
(witness)

Deborah K. Simone  
DEBORAH K. SIMONE

STATE OF OREGON  
COUNTY OF LANE

At Eugene, Oregon this 21st day of March 2019, personally appeared **Deborah K. Simone**, Trustee of the ~~Patricia A. Guttenberg Living Trust~~ the Principal, who is known to me or was otherwise ~~substantly~~ identified, did acknowledge to me that the execution of this Power of Attorney was her free act and deed and the free act and deed of the Patricia A. Guttenberg Living Trust.



Ellen L. McCobb  
Notary Public  
Commission Expires: 6/21/2019

**Witness Affirmation**

I, Keith I. Purmrose, witnessed the execution of this Power of Attorney by Deborah A. Simone, Trustee of the Patricia A. Guttenberg Living Trust, and I affirm that Deborah A. Simone appeared to be of sound mind and free from duress at the time of signing and that Deborah A. Simone affirmed that she was aware of the nature of the document and signed it freely and voluntarily.

Keith I. Purmrose  
(witness)

**Acceptance by Agent**

The undersigned Agent executes this Power of Attorney, and by such execution does hereby affirm that the Agent (a) accepts the appointment as agent, (b) understands the authority to act under the Power of Attorney; (c) understands the duties under the Power of Attorney and under the law if so specified in the Power of Attorney; (d) understands that Agent has a duty to act if expressly required to do so in the Power of Attorney consistent with 14 V.S.A. §3506(c); (e) understands that she is expected to use her special skills or expertise on behalf of the Principal, if so specified in the Power of Attorney; and (f) acknowledges the additional duties of the Agent set forth in 14 V.S.A. §3505.

3/30/2019  
(Date)

Daniel Kornguth  
Daniel Kornguth