

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

Vermont Natural Resources Board, )  
Petitioner, )

v. )

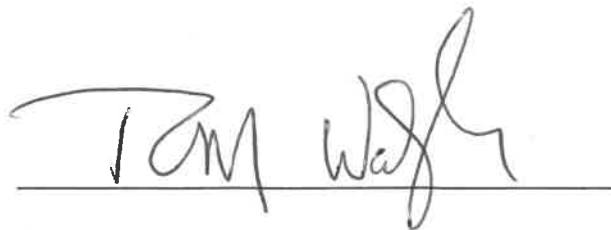
Docket # 47-4-18 Vtec

Bryce Realty and James Bryce, )  
Respondents. )

**ORDER**

The Assurance of Discontinuance signed by the Respondents on March 12, 2018, and filed with the Superior Court, Environmental Division, on April 27, 2018, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 1<sup>st</sup> day of May 2018.



Thomas G. Walsh, Judge  
Vermont Superior Court  
Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division  
Docket No.

Natural Resources Board,  
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Bryce Realty and James Bryce,  
Respondents

**VIOLATION**

*Failure to comply with Permit Conditions 11, 16, 17, 18, and 19 of Land Use Permit 6F0489-4*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board), Bryce Realty Inc. and James Bryce (Respondents) hereby enter this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondents own approximately 17.8 acres identified in Book 266, Page 226, of the Land Records of the Town of Georgia, Vermont (the Project Tract). The Project Tract is subject to Land Use Permit 6F0489.
2. Condition 11 of the Permit states,  
  
“The Permittee will identify VT-FR-357, an associated 5 meter buffer, and the 100-200 ft. wide natural buffer zone along Arrowhead Mountain Lake as no-to-be-disturbed [*sic*] archaeological buffer zones on the site plans.”
3. Condition 16 of the Permit states,  
  
“In the event that maintenance of all or part of the archaeological buffer zones is no longer desirable, or improvements requiring ground disturbance are proposed, an archaeological study to further evaluate or mitigate any impact to the affected areas will be carried out by a qualified consulting archaeologist

prior to any disturbance.”

4. Condition 17 of the Permit states,

“All archaeological studies must be conducted by a qualified consulting archaeologist and should follow the Division’s Guidelines for Conducting Archaeological Studies in Vermont (2002). The Permittee’s archaeological consultant should submit any scope of work to the Division for review and approval.”

5. Condition 18 of the Permit states,

“Any part of the archaeological buffer zones will not be impacted until any necessary mitigation measures have been carried out. Mitigation may include but is not limited to further site identification, evaluation, data recovery, redesign of one or more proposed project components, or modification of the buffer zone boundaries or the specific conditions that refer to the same.”

6. Condition 19 of the Permit states,

“Mitigation measures will be discussed with and approved by the Division prior to implementation, and a copy of all mitigation proposals will be filed with the District #6 Environmental Commission. The archaeological studies will result in one or more final reports, as appropriate, that meet the Division’s Guidelines for Conducting Archaeological Studies in Vermont (2002). Copies will be submitted both to the District #6 Environmental Commission and to the Division.”

7. In the fall of 2014, without any prior approval by the Division for Historic Preservation or the District 6 Environmental Commission, and without performing the required archaeological studies, Respondents constructed over 1,200 linear feet of 6-foot high chain link fence, with posts set in concrete footers, within the designated 100- and 200-foot wide buffer zones.
8. If approval had been obtained prior to construction, the Vermont Division of Historic Preservation would have required a Phase I site identification survey given the existence of a prehistoric (~ 7,000-year-old) archeological site discovered in 2008 only a 100-feet from the current location of the installed fence. Such a study would likely cost between \$13,500.00 and \$27,000.00 depending on initial findings.
9. On December 1, 2014, Respondents received an after-the-fact Land Use Permit Amendment (LUP 6F0489-5), which authorized the “construction of the 6-foot tall chain link fence that was installed without approval within sections of the 100-foot and 200-foot archeological “not to be disturbed” buffer zones in violation of Land

Use Permit 6F0489 and amendments.”

10. Respondent admits the factual findings described above, solely for purposes of resolving this case.
11. The State alleges that the above conduct constitutes a violation of permit conditions 11, 16, 17, 18, and 19 of Land Use Permit 6F0489-4.
12. 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. Respondent shall comply with Permit series 6F0489.
- B. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above to resolve all outstanding disputes.
- C. Respondent agrees that the violations alleged are deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of Respondents’ past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- D. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay, **in three separate checks**, the following:
  1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$6,600.00** 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 **\$366.89** 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 recording fee for the filing of a notice of this Assurance in the Georgia land records, by good check made payable to the “*Town of Georgia, Vermont*”.
- E. 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.

- F. 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*

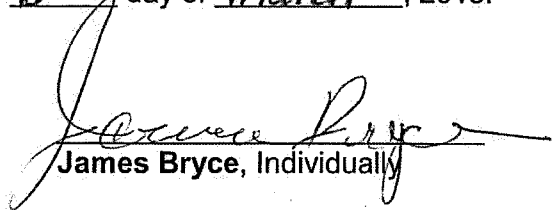
- G. Respondents are jointly and severally liable for all obligations under this Assurance.
- H. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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 Respondent's control.
- N. 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.

- O. 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.
- P. 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.
- Q. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

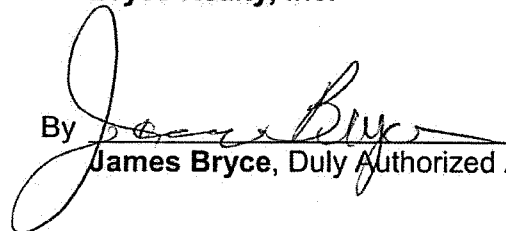
**SIGNATURES**

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

Dated at Georgia, Vermont, this 12<sup>th</sup> day of March, 2018.

  
James Bryce, Individually

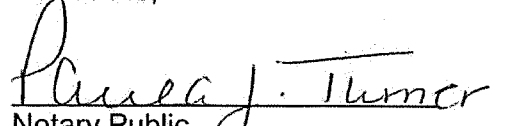
**Bryce Realty, Inc.**

By   
James Bryce, Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 12<sup>th</sup> day of March, 2018, personally appeared **James Bryce**, individually and as the duly authorized agent of **Bryce Realty, 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 **Bryce Realty, Inc.** and that he has the authority to contract on behalf of **Bryce Realty, 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: 2/2019

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**Assurance of Discontinuance**

**Natural Resources Board v. Bryce Realty Inc. and James Bryce**

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

Dated in Montpelier, Vermont, this 17 day of April, 2018.

**Natural Resources Board**

By:

  
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Diane B. Snelling, Chair