



NATURAL RESOURCES BOARD
Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201

8/25/2017

Jennifer Teske, Court Manager
Vermont Superior Court
Environmental Division
32 Cherry St., 2nd Floor, Suite 303
Burlington, VT 05401

Re: Assurance of Discontinuance

Natural Resources Board v. *George Carpenter*

Dear Jennifer:

Enclosed is an Assurance of Discontinuance in the above-referenced matter for filing with the Vermont Superior Court, Environmental Division.

A copy of this letter and the Assurance of Discontinuance is also being sent to the Attorney General's Office in accordance with 10 V.S.A. § 8007(c).

Pursuant to 10 V.S.A. §8020(b), the Natural Resources Board posted the Assurance of Discontinuance on its website for the 30-day public notice and comment period.

The 30-day public notice and comment period ended on 8/18/2017.

Enclosed please find copies of the comments that were received on this Assurance of Discontinuance during the 30-day public notice and comment period.

Because comments were received and changes to the Draft AOD were made accordingly, concurrent with this filing, the Final Assurance of Discontinuance is being posted, beginning on the date of this letter, on the Natural Resources Board website for the additional 14-day public notice period required by 10 V.S.A. §8020(b).

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Gill".

Peter J. Gill
Associate General Counsel



DATE
Page 2 of 2

Encl.

cc: Robert McDougall, Chief of the Environmental Division, Attorney General's Office and
Kim Ingraham (**via email**) Clancy Desmet Coordinator, District #5 Environmental Commission
(**via email**) Rudy Polwin and Jordan Gonda (**via email**)

Respondent(s) Address:

George Carpenter
3180 North Road
Waitsfield, VT 05673



STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

George M. Carpenter, Jr.,
Respondent

VIOLATION

Commencement of development 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 Natural Resources Board and George Carpenter (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns approximately 165 acres in the Towns of Waitsfield and Moretown (the Property).
2. On February 27, 1996, the District 5 Environmental Commission issued Land Use Permit 5W1230 (the Permit) "authorizing permittees to operate a sand and gravel pit at an extraction rate of 10,000 cubic yards per year" to occur on a 12.5-acre portion of the Property ("the Project Area").
3. Condition 12 of the Permit states:

Pit Reclamation shall proceed in a timely manner consistent with the project plans.
4. Condition 14 of the Permit states:

This permit shall expire on October 1, 2000 by which time all disturbed surfaces must be fully reclaimed. However, the permittees may file a timely request to extend the life of this permit.

5. After expiration of the Permit, on November 28, 2000 and March 14, 2001, the District 5 Environmental Coordinator issued two memoranda, which explicitly prohibited further extraction and required either site reclamation or a new permit application be filed pursuant to condition 14. Therefore, Respondent should have known a renewed permit was needed for continued extraction.
6. Respondent continued to extract sand and gravel from the Project Area and completed intermediate reclamation activities for approximately 16 years after the expiration of the Permit.
7. Respondent has procured a quote (**Attachment C**) for the remaining reclamation of the Property from a contractor and has agreed to cease extraction and complete final reclaim of the Project Area by no later than September 30, 2017 in accordance with **Attachment A** and **B**.
8. The Permit application indicated that the goal of the reclamation plan was to return the site to rich, productive, agricultural soils.
9. By operating the extraction operation beyond the Permit's expiration date without obtaining a permit renewal, Respondent has commenced development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

AGREEMENT

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

- A. Respondent shall immediately cease all sand and gravel extraction operations at the Property inconsistent with this agreement. Notwithstanding this prohibition of extraction operations, earth extraction in furtherance of the reclamation as permitted by this agreement, and earth extraction and use of sand and gravel that is related to agricultural practices, shall be allowed.
- B. Respondent shall reclaim the Project Area by no later than **September 30, 2017** in accordance with **Attachments A** and **B**. Parties agree that underlying aerial photo in **Attachment B** does not accurately reflect the current condition of the land, but portrays a general overview of the Project Area sufficiently accurately for these purposes.
- C. By **October 16, 2017** or no later than 30 days following reclamation of the Project Area in accordance with the provisions of this AOD (whichever is earlier), the Respondent shall contact the Board's Enforcement Officer Aaron

Brondyke and Associate General Counsel Peter Gill to arrange a site visit of the Property to determine whether reclamation has been accomplished in accordance with this AOD. The Board shall promptly issue a written determination to Respondent explaining whether reclamation has been satisfied in accordance with this AOD or if deficiencies exist. If it is determined that reclamation has been completed in accordance with the provisions of this AOD, Act 250 jurisdiction shall lift from the entire Property as defined herein, unless otherwise independently triggered under 10 V.S.A. 6081. If deficiencies exist, the Board shall identify such deficiencies and determine a reasonable timeframe for their completion. Act 250 Jurisdiction shall not lift unless and until all deficiencies regarding reclamation in accordance with this AOD have been met to the Board's satisfaction. Nothing herein shall lift the Board's enforcement authority under 10 V.S.A. Ch. 201 to collect penalties or enforce provisions of this AOD as entered as a Court Order.

- D. The Parties agree that Respondent's procurement of relevant permits (WW-5-7355 and WW-5-7357 and Waitsfield DRB Permits) in furtherance of the proposed subdivision (as referenced in *Carpenter Farm JO Reconsideration* Docket No. 62-5-17 Vtec) do not independently trigger Act 250 subdivision jurisdiction or material change jurisdiction without construction. The Parties also agree that whether construction under those permits would trigger jurisdiction need not be resolved here.
- E. No later than **6 months** following the entry of this Assurance as an Order by the Environmental Court, Respondent shall pay:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$7,425.00** for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$455.48** to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont"; and
 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 Town of Waitsfield land records, by check made payable to the "Town of Waitsfield, Vermont."
- F. Any lien on the Property for purposes of collection of the penalty defined herein or any other fee, or for any other purpose associated with this Agreement, shall not affect or otherwise encumber the Waitsfield and Moretown parcels of the Property as identified in **Attachment D**; Map of Waitsfield and Moretown parcels.

- G. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall mail the Board an acceptance of service, on a form approved by the Board, showing that the Respondent has actual notice of the Order and Assurance.
- H. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- I. Respondent 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.
- J. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction, prior to reclamation being satisfied in accordance with provision (C) of this Assurance, to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- K. 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.
- L. 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.
- M. 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.
- N. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause or for circumstances presented that are beyond Respondent's control.
- O. 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.

- P. 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.
- Q. 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.
- R. 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.

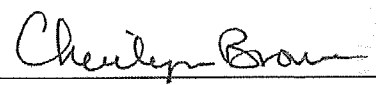
Dated at Montpelier, Vermont, this 24 day of Aug, 2017.


George M. Carpenter, Jr.

STATE OF VERMONT
COUNTY OF Washington, ss.

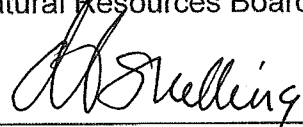
BE IT REMEMBERED that on the 24th day of August, 2017, personally appeared George Carpenter, signer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed.

Before me,


Notary Public
My Commission Expires: 02/10/2019

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

Dated in Montpelier, Vermont, this 24 day of August, 2017.

Natural Resources Board
By: 
Diane B. Snelling, Chair

Attachment A – Reclamation Narrative

The area encircled in red on **Attachment B** shall be reclaimed by September 30, 2017 in accordance with the reclamation provisions below.

The areas in blue hatch represent areas that remain undisturbed or that have been successfully reclaimed as of the date of this Assurance.

Areas that have been undisturbed or have been reclaimed shall remain undisturbed except for the continuation of use for agricultural purposes.

Respondent may extract or allow for the extraction of up to 1,200 cubic yards of sand and/or gravel from the Project Area in lieu of payment for the performance of reclamation activities. This extraction shall be in accordance with expired Land Use Permit 5W1230, and for the sole purpose of reclamation, as follows: (1) the hours of operation shall be no longer than 7:00 A.M. and 4:00 P.M. weekdays, (2) truck trips shall not exceed 22 truck trips (44 passes) per day, with no more than 11 travelling south and 11 traveling north on North Road, (3) there shall be no screening, crushing, or washing of earth material on the Property, and (4) Respondent shall ensure that reasonable precautions are taken at all times to control fugitive particulate matter (dust) emissions from the site including the haul roads, traffic areas, storage piles, and exposed surfaces, which shall include the application of water or calcium chloride as necessary to the haul roads, traffic areas and storage piles and the covering of all trucks entering, exiting or operating at the site that are loaded with materials that may generate fugitive dust.

The materials depicted in black ovals and designated by letter on **Attachment B** represent the following:

- A. Stockpile of gravel placed on the Property related to Tropical Storm Irene
- B. Woodchips/Compost Pile
- C. Ditch Dirt from the Town
- D. Compost
- E. Compost

The materials designated in ovals **A** and **B**, may remain on the Property so long as they are used for agricultural purposes or as part of the reclamation.

Materials designated in ovals **C**, **D**, and **E**, shall either be used as part of reclamation, or may remain on the Property so long as it is used solely for agricultural purposes.

The Parties agree that **Attachment B** does not accurately reflect the current condition of the land, but portrays a general overview of the Project area and the general area

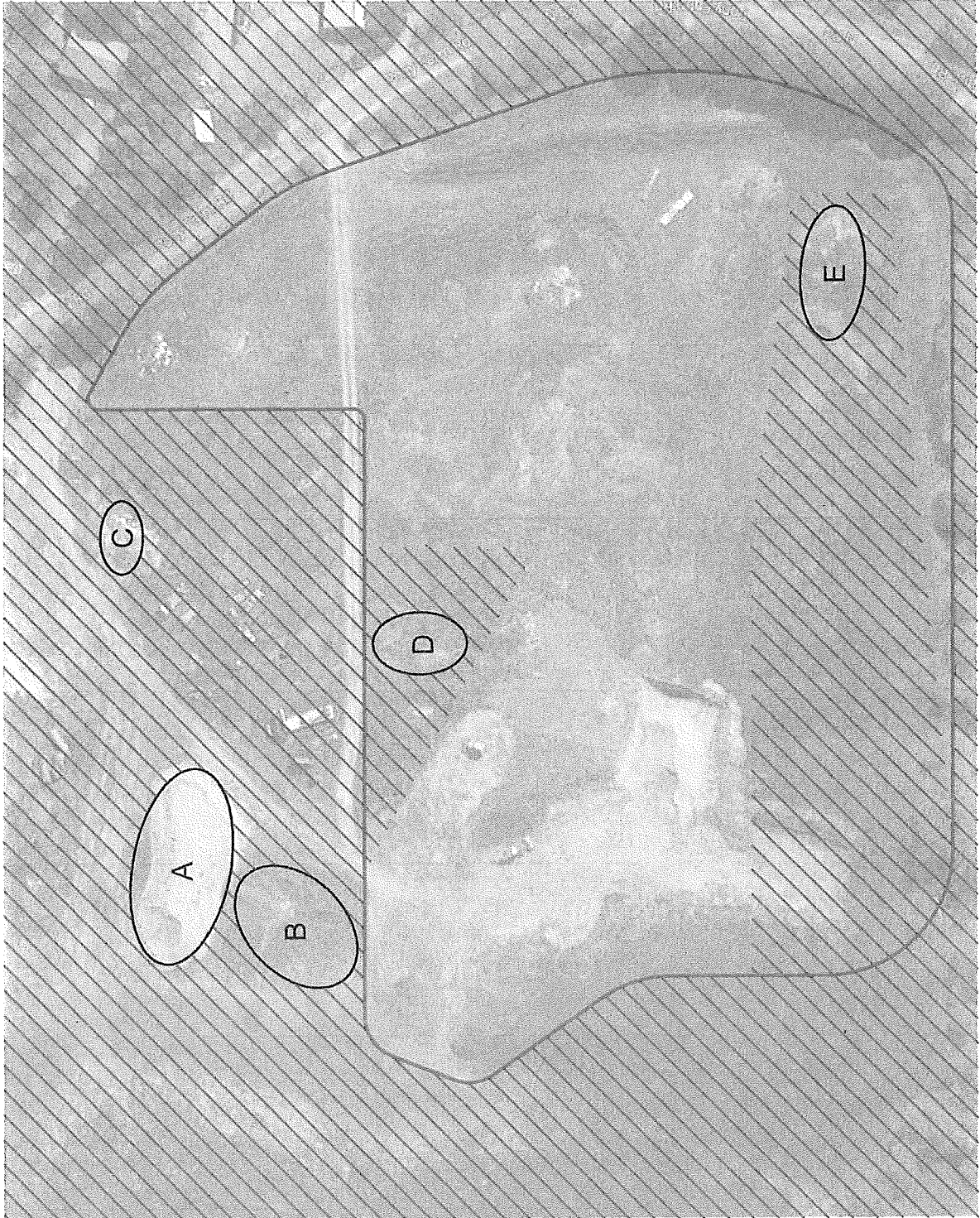
requiring reclamation. Parties agree that locations are approximate.

Notwithstanding the foregoing, the Respondent shall identify and mark on the ground, in coordination with the Board's Enforcement Officer, all areas requiring reclamation. **Attachment A** and **B** shall be read in tandem, however, if an ambiguity in interpretation arises between **Attachment A** and **B**, **Attachment A** shall prevail.

The following reclamation provisions shall apply to the areas encircled in red, exclusive of any blue hatched areas already reclaimed:

1. Return the land to agricultural use.
2. Grade the land surface, only where necessary, to obtain slopes no greater than 2:1.
3. Spread all existing stockpiles of earthen material and rake the ground surface to obtain an even, stone-free surface.
4. Apply topsoil uniformly such that all areas are covered by no less than 4 inches of topsoil.
5. Augment the soil in accordance with Acceptable Agricultural Practices as necessary to ensure soil fertility.
6. Apply an appropriate grass/legume seed mix uniformly over all disturbed areas to stabilize the surface. This mix may include a timothy and clover mix.

Attachment B – Reclamation Site Plan



Rudy Polwin
Jordan Gonda
3256-2 North Road
Waitsfield, VT 05673

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

August 16, 2017

Re: Public Comment on George M. Carpenter Jr.

Dear Members of the Board,

As parties to a Purchase and Sales Agreement of two parcels of land owned by Mr. Carpenter, we submit the following comment to be considered prior to the final AOD being executed.

The intent and purpose of Provision F of the AOD is to allow the sale of the parcels to proceed after reclamation but prior to payment of any penalty or fee by Mr. Carpenter to avoid encumbering the two parcels prior to the sale.

The current language attempts to do this by allowing an extended period of time (15 months) before any lien is "placed" on the property (including the two parcels subject to the proposed sale). However, after review of the proposed AOD by Vermont Attorneys Title Corporation, the underwriter that must be satisfied prior to a title insurance policy being issued for the two parcels, it has been determined the issuance of this AOD does not, in and by itself, create marketable title (i.e., would encumber the parcels prior to sale) unless the parcels are specifically excluded from the effect of the AOD.

In light of the above, we propose the following revision and map to be incorporated into the final AOD to not affect marketable title:

- F. Any lien on the Property for purposes of collection of the penalty defined herein or any other fee, or for any other purpose associated with this Agreement, shall not affect or otherwise encumber the Waitsfield and Moretown parcels of the Property as identified in Attachment D; Map of Waitsfield and Moretown parcels.

We believe that this proposed change is not a substantive one, but instead one that resolves and satisfies the original intent of the proposed AOD.

Sincerely,

Rudy Polwin Jordan Gonda

Rudy Polwin and Jordan Gonda

Attachment: Map of Waitsfield and Moretown parcels

