

STATE OF VERMONT

**ENVIRONMENTAL COURT
Docket No.**

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Devost Leasing, Gerry Devost,
and Ronald Devost
Respondents

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 Land Use Panel of the Natural Resources Board (Panel) and Devost Leasing, Gerry Devost, and Ronald Devost (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own and operate a commercial timber harvesting operation on an approximately 3,351 acre tract of land (the Project Tract) in Warren's Gore, Vermont east of Vermont Route 114, and west of Bluff Mountain, which includes access via an existing gravel road from Vermont Route 114.
2. Between the summer of 2008 and 2011 the Respondents harvested approximately 2/3 of the timber from an approximately 24.6 acre portion of the Project Tract located above 2,500 feet elevation.
3. Although some waterbars were installed on the main skid trails, Respondents did not harvest the timber in accordance with Acceptable Management Practices for Maintaining Water Quality in Logging Jobs in Vermont.
4. The failure to smooth and install waterbars on secondary skid trails resulted in rutting and channelization, which can result in reduced water quality.

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5. The total value of the timber harvested amounts to approximately \$10,275.00 in stumpage value.
6. Respondents are in the process of applying for Land Use Permit 7E1332.
7. 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. Respondents shall continue to diligently pursue their application for Land Use Permit 7E1332, which covers the activities described above.
- B. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 7 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission. Respondents shall not be responsible for delays outside their control, including those caused by the Commission.
- C. If issued, Respondents shall comply with permit series 7E1332.
- D. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division Respondents shall:
 - a. pursuant to 10 V.S.A. Ch. 201, pay a civil penalty in the amount of **Seventeen Thousand Eight Hundred Dollars and Zero Cents (U.S.)(\$17,800.00)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont."
 - b. pursuant to 10 V.S.A. §8010(e)(2), pay the amount of **Thirty-Six Dollars and Forty-One Cents (U.S.) (\$36.41)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board."
 - c. Pursuant to 10 V.S.A. §8010(e)(2), pay the amount of **Three Hundred Seventy-Five Dollars and Zero Cents (U.S.) (\$375.00)** to reimburse the Vermont Agency of Natural Resources for the costs of this enforcement action by good check made payable to the "Vermont Agency of Natural Resources."

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- d. pay the amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Westmore land records, by good check made payable to the "Town of Westmore, Vermont."
 - e. sign and mail the Panel an executed Acceptance of Service, on a form approved by the Panel, showing that Respondent has actual notice of the judicial Order and Assurance.
- E. All payments and documents required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- F. 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.
 - G. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
 - H. 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.
 - I. 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.
 - J. 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.
 - K. This Assurance sets forth the complete agreement of the parties, and it 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. Alleged representations not set forth in this Assurance, whether written or oral,

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shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.

- L. 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.
- M. 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 Norton, Vermont, this 15th day of January, 2013.

Gerry Devost
Gerry Devost, Individually

Ronald R. Devost
Ronald Devost, Individually

Devost Leasing

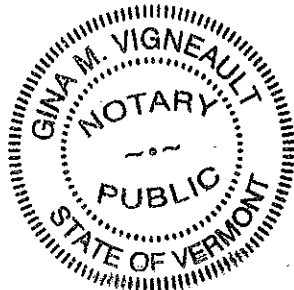
Gerry Devost
By Ronald R. Devost
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Essex, ss.

BE IT REMEMBERED that on the 15th day of January, 2013, personally appeared Gerry & Ronald Devost, individually and as the duly authorized agent of **Devost Leasing** 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 **Devost Leasing** and that he has the authority to contract on behalf of **Devost** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

BE IT REMEMBERED that on the 15th day of January, 2013, personally appeared **Gerry Devost** and **Ronald Devost**, signers of the foregoing instrument who are known to me or who satisfactorily established their identity to me and acknowledged the same to be their free act and deed.

Before me,



Gina M. Vigneault
Notary Public
My Commission Expires: 02/10/15

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

Dated in Montpelier, Vermont, this 19th day of February, 2013.

LAND USE PANEL

By:



Ronald A. Shems, Chair