

**STATE OF VERMONT  
ENVIRONMENTAL COURT**

**LAND USE PANEL of the  
NATURAL RESOURCES BOARD,**

Petitioner

Docket No.

v.

**FRANKLIN COUNTY FIELD DAYS, INC.**

Respondent

**VIOLATION**

Material changes to a permitted project without the required Land Use Permit Amendment, in violation of Act 250 Rule 34(A) and Condition 2 of Land Use Permit #6F0435-1.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. ( 8007, the Land Use Panel of the Natural Resources Board (Panel) and Franklin County Field Days, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Franklin County Field Days, Inc. (Respondent) leases land from the State of Vermont at the Franklin County State Airport in Highgate, Vermont. The entire tract is subject to Land Use Permit #6F0435 (the Permit) as amended.
2. On July 22, 1991 the Permit was issued to the State of Vermont Agency of Transportation (VTTrans) and Respondent for the construction of a 40' x 80' pole building without water and wastewater facilities for use during the Franklin County Field Days event.
3. On July 10, 1992 Land Use Permit Amendment #6F0435-1 was issued to Respondent and the State of Vermont Department of Transportation for the construction of the following: a 32' x 72' pole building used by 4-H, a 50' x 60' clear span pole building with no sides for cattle shows, a 28' x 50' addition to the milking shed, and a new cattle arena also to be used for the Franklin County Field Days event. No water or wastewater services were proposed or permitted..
4. Beginning in 2001, the Permit was amended eleven more times by VTTrans or

the Vermont Department of Buildings and General Services for improvements that did not take place on the portion of the property leased by Respondent.

5. On or about June 3, 2009, VTrans applied for Land Use Permit amendment #6F0435-12, to authorize construction of a secondary gravel access road to serve Respondent's Field Days event. Respondent was not a party to that permit amendment.
6. The Commission issued Land Use Permit #6F0435-12 on July 10, 2009.
7. Respondent has constructed several improvements which have not undergone Act 250 review, including:
  - a. A grandstand, approximately 120 feet in length, on a concrete slab, with a constructed canopy.
  - b. Another grandstand, approximately 50 feet in length, on a concrete slab.
  - c. A building used as a snack bar, with approximate dimensions of 60 feet by 20 feet.
  - d. A centralized washroom facility.
  - e. Approximately 34 power and water hookups for vendors.
  - f. A small building on a constructed pad.
  - g. Gravel improvements to a large area used for a tractor pull/demolition derby field, using fine compacted material.
  - h. An announcer's stand.
8. Condition 2 of Land Use Permit 6F0435-1 states that:

The project shall be completed, operated and maintained as set forth in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.
9. Land Use Permits 6F0435 and 6F0435-1 were issued prior to the terms of any of Respondent's current board members.
10. In 2006 VTrans applied for wastewater permits for a project at its Franklin County State Airport, and had an engineer procure the necessary wastewater permits for the central washroom at Respondent's site. Respondent constructed the central washroom in the mid-1990's with funds provided by the State of Vermont. VTrans' engineer obtained the state Wastewater System and Potable Water Supply Permits for the central washroom.
11. On or about May 25, 2006, the district environmental coordinator issued a

Project Review Sheet (PRS) stating that an Act 250 permit was required for the "construction of wastewater facilities for annual 'fair' served by onsite wastewater disposal and water supply."

12. Under "Basis for Decision," the PRS states "as per Admin. Amend. Procedures."
13. The PRS erroneously includes, in the list of "prior permits from this office," Act 250 permit 6F0288; a 1983 permit issued to Missisquoi Transportation for an 8,000 square foot addition in Highgate Vermont. The correct Act 250 permit number is not listed.
14. The 2006 PRS is addressed to Owner, Vermont Agency of Transportation and Applicant, FCFD, Inc. Jack Parent, 1307 US Route 7, Swanton, VT 05488..
15. At the time of the 2006 PRS Jacques Parent served as the Chair of Respondent's Board of Directors. Mr. Parent continues in that capacity today.
16. At all material times, Mr. Parent's mailing address has been 15 Monument Road, Swanton, VT 05488.
17. Mr. Parent has no recollection of ever receiving or being provided with a copy of the 2006 PRS.
18. To date, no Act 250 permit amendment application has been filed for the improvements described in the May 25, 2006 PRS.
19. Many of the improvements, including those made to the bleachers and the "small building," were made to pre-existing structures on the site that Respondent relocated and improved with the intent of providing a safer, more efficient fair experience. Some of these structures are mobile.
20. The canopy over "Grandstand 1" was funded by the State.
21. Many of the power and water hook-ups have been in existence for 20 years. Only some of these hook-ups are recent installments.
22. Respondent constructed the aforementioned improvements without a permit amendment or other written approval from the District Environmental Commission.
23. Respondent's construction of these improvements constitutes a material change to the permitted project. The FCFD site is level, minimizing erosion issues, and some of the structures were merely moved from one place to another. Respondent made these improvements to improve the safety,

efficiency and aesthetics of the grounds.

24. By constructing these improvements without a Land Use Permit Amendment, Respondent violated Land Use Permit 6F0435-1 and Act 250 Rule 34(A).
25. Respondent is currently working with VTrans to prepare an Act 250 permit amendment application for approval of these improvements. Because VTrans is involved with the permit application, FCFD may have limited control over the timing and completion of the amendment application.

### **AGREEMENT**

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

- A. Respondent shall file a complete Act 250 permit amendment application with the District 6 Environmental Commission for the construction and use of the unpermitted improvements described herein, and shall notify the Panel in writing by letter or email when said application is filed. Said Act 250 amendment application shall be filed no later than 120 days after this Assurance is signed by the Environmental Court, unless the Panel grants an extension of this time. The Panel will grant reasonable extensions as appropriate, provided that Respondent is proceeding in good faith and with due diligence, including extensions for delays that are beyond the Respondent's control.
- B. If said Act 250 permit application is denied by the Commission, and said permit denial becomes final, then within sixty (60) days after said decision becomes final:
  - a. Respondent shall cease all commercial use of the unpermitted improvements.
  - b. If Respondent wishes to use the unpermitted improvements for a use that would not be subject to Act 250 jurisdiction, then Respondent shall request a jurisdictional opinion from the District Coordinator to ensure that each proposed use does not require an Act 250 permit amendment. Any use that requires an Act 250 permit amendment shall cease within thirty (30) days of the date upon which such jurisdictional opinion is issued. Any such use may only occur after an Act 250 permit amendment is obtained or after said jurisdictional opinion is modified upon reconsideration or appeal.
- C. Within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay a civil penalty of Five

Thousand (\$5,000) Dollars (U.S.) Payment shall be by Check made payable to the "Treasurer, State of Vermont," and shall send it to:

Denise Wheeler, Business Manager  
Land Use Panel  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

- D. Any payment made by Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- E. After this Assurance is signed by the Environmental Court, the Panel shall file a notice of this Assurance for recording in the land records of the Town of Highgate. Within fifteen days of the date on which this Assurance is signed by the Court, the Respondent shall forward payment in the amount of Ten Dollars (\$10.00), by check made payable to the Town of Highgate, to the Land Use Panel at the address listed above for the purpose of paying the recording fee.
- F. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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.
- I. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein or pursuant to any activities at or improvements constructed upon Respondent's Field Days site as of the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth herein.
- J. 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 Environmental Court. 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.

K. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.

L. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

**SIGNATURES**

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

DATED at Swanton, Vermont, this 29<sup>th</sup> day of December, 2009.

FRANKLIN COUNTY FIELD  
DAYS, INC.

By: Jacques Parent  
Jacques Parent  
(print name and title)

STATE OF VERMONT  
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 29<sup>th</sup> day of December, 2009, personally appeared JACQUES PARENT, signer of the foregoing written 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 Franklin County Field Days, Inc.

Before me: Auriston R. Rugg 2/10/11  
Notary Public Commission Expires:

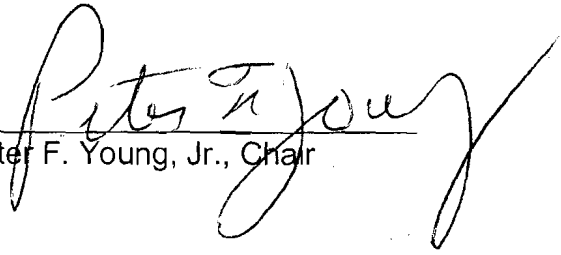
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED at Montpelier, Vermont, this 4<sup>th</sup> day of Jan,  
~~2009~~ 2010

LAND USE PANEL

By:

  
Peter F. Young, Jr., Chair