

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. _____

_____)
LAND USE PANEL of the)
NATURAL RESOURCES)
BOARD,)
 Petitioner,)
)
 v.)
)
OKEMO REALTY, INC.)
 Respondent.)
 _____)

ASSURANCE OF DISCONTINUANCE

VIOLATION

10 V.S.A. Chapter 151; and Act 250 Rule 34(A): Undertaking a material/substantial change to a permitted project without a Land Use Permit amendment, in violation of LUP #2S0691-4 Condition 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 Okemo Realty, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance) and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. This Assurance incorporates by reference the contents of Jurisdictional Opinion #2-556, a true and complete copy of which is attached hereto as **Exhibit A** and made part hereof.
2. The project is and was, at all times pertinent herein, subject to Land Use Permit #2S0691-4.
3. Condition No. 1 states “No changes shall be made in the project without the prior approval of the District Environmental Commission.”
4. Condition No. 6 of the permit incorporated all conditions of the January 29, 1990 Vermont Health Department’s construction permit for the water system (PID #1104) (hereinafter the “Public Water Supply Permit”).
5. Respondent received a new Public Water Supply Permit dated December 22, 2006

and an amended Public Water Supply Permit dated December 26, 2006, which changed the source of the project's water supply.

6. Respondent failed to seek an amendment of its Act 250 Permit in violation of Condition 1 thereof.
7. On June 25, 2008, the District 2 Assistant Environmental Coordinator issued Jurisdictional Opinion #2-556 (**Exhibit A** hereto) which found, *inter alia*, that a change in the project's water supply was a material change to Land Use Permit #2S0691 and that a permit amendment was required. *Id.* at 3-4.

AGREEMENT

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

- A. Any payment by the 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, business expense, or other deductible expense under the federal or state tax codes. *See* Internal Revenue Code §162(f); Treasury Regulation § 1.162-21. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- B. No Later than 30 days following an entry of this Assurance as an Order by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **ONE THOUSAND ONE HUNDRED AND TWENTY FIVE DOLLARS (\$1,125.00)** (U.S.) for the violations noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and 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

A notice of this Assurance shall be filed in the land records of the municipality where this project is located within thirty days of the date on which this Assurance is signed by the Environmental Court. The Panel shall file a notice of this Assurance in the land records of the municipality where this project is located. The Respondent shall be responsible for the payment of the recording fee for such notice and shall send to the Panel a check in the amount of Ten (\$10.00)

Dollars, made payable to the said municipality.

JUNE 1ST 2010

- C. Respondent shall obtain the outstanding and required Act 250 permit amendment by ~~February 28, 2010~~, or shall have filed complete applications for, and be diligently pursuing the same by February 28, 2010.
- D. 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.
- E. 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 Respondent.
- F. 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.
- G. 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 described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- H. 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.
- I. 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.
- J. 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 Ludlow, Vermont, this 18th day of March, 2010

Okemo Realty, Inc.

By: Douglas Burns, Pres.

Douglas Burns, President
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 18th day of March, 2010,
personally appeared Douglas Burns, individually and as the duly
authorized agent of Okemo Realty, Inc. signer and sealer of the foregoing instrument who
is known to me or who satisfactorily established his/her identity to me and acknowledged
the same to be his/her free act and deed and the free act and deed of Okemo Realty, Inc.,
and that he has the authority to contract on behalf of Okemo Realty, Inc. and that he/she
has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Theresa A. Call

Notary Public
My Commission Expires: 2/10/11

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

Dated in Montpelier, Vermont, this 22 day of MARCH, 2010

LAND USE PANEL

By: Peter F. Young, Jr., Esq., Chair