

STATE OF VERMONT
ENVIRONMENTAL COURT

Docket No. _____

LAND USE PANEL of the)
NATURAL RESOURCES)
BOARD,)
Petitioner,)
)
v.)
)
S.T. GRISWOLD & CO., INC.)
Respondent.)

**ASSURANCE OF
DISCONTINUANCE**

VIOLATIONS

10 V.S.A. Chapter 151; failure to file financial undertaking as security for mined land reclamation and failure to undertake reclamation in violation of LUP #6F0405 Conditions 7 and 11 and 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 S.T. Griswold & Co., Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance) and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On October 20, 1989, the District 6 Environmental Commission (Commission) issued LUP #6F0405 (the Permit) to Respondent's predecessor in interest, which authorized the operation of a 13.3 acre sand borrow pit (the Project) off of Lampkin Street in Highgate, Vermont, being more particularly described as the lands identified in Book 52, Page 300 of the land records of Highgate, Vermont (the Property).

2. Condition No. 7 of the Permit required the posting of a bond or other financial guarantee in the amount of \$10,000, to remain in effect until a registered engineer certified that reclamation of the Project was completed as required by the Permit and as per the final approval of the Commission.
3. No bond or other financial guarantee was ever posted for the Project, in violation of Condition No. 7 of the Permit. Such violations have been continuous from at least September 30, 2008 to date.
4. Condition No. 11 of the Permit required that the Property be reclaimed after the completion of each phase of the sand extraction process, and be re-vegetated with grass and trees after being graded to a gentle slope.
5. The Property was not reclaimed after the completion of each or any phase of the sand extraction process, and was not re-vegetated with grass and trees, in violation of Condition No. 11 of the Permit. Such violations have been continuous from at least September 30, 2008 to date.
6. Currently pending before the District 6 Environmental Commission is an amendment application filed pursuant to Act 250 Rule 34(E)(4)(c) requesting a *Stowe Club Highlands Analysis* in order to amend the Condition 11 of the Permit to allow construction of a housing development, including a shared road, driveways, drainage, utilities and house sites, in place of the reclamation required by Permit Condition 11 (the Pending Amendment Application).

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 **TWENTY THOUSAND DOLLARS (\$20,000.00)** (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 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 Dollars (\$10.00)**, made payable to The Town of Highgate.

- C. 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.
- D. Except as expressly set forth herein in Paragraph "E", the Land Use Panel reserves its enforcement rights with regard to Respondent's compliance going forward from the date of this Assurance including, without limitation, Condition 11 of the Permit. Consistent with 10 V.S.A. §§ 8007(a)(2) and (d), nothing contained in this Assurance relieves Respondent of its obligations to comply with the Permit, including Condition 11 thereof, going forward from the date of this Assurance.
- E. The Land Use Panel agrees to not enforce Permit Condition 11 against Respondent so long as Respondent diligently pursues the Pending Amendment Application. Following a final Commission decision on the Pending Amendment Application and/or the resolution of any appeal(s) with regard thereto, Respondent's obligations shall be determined either by the Permit or any amendment thereto granted by the Commission.
- F. Otherwise, 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 herein.

- G. This Assurance supersedes the Land Use Panel's Administrative Order dated March 19, 2010.
- 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.
- K. 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.
- L. 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.

SIGNATURES

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

Dated at Shelburne, Vermont, this 20th day of April 2010
2010

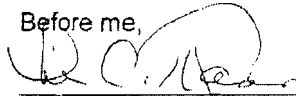
S.T. Griswold & Co. Inc.
By: [Signature]

Douglas H Griswold President
(Print Name and Title)

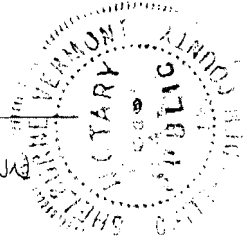
STATE OF VERMONT
COUNTY OF CHITTENDEN, ss.

BE IT REMEMBERED that on the 20TH day of APRIL, 2010, personally appeared DOUGLAS HAROLD GRISWOLD, as the duly authorized agent of S.T. Griswold & Co., Inc. signor 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 S.T. Griswold & Co., Inc., and that he has the authority to contract on behalf of S.T. Griswold & Co., Inc. and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,



Notary Public, Don C. Munn
My Commission Expires
February 10, 2011



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

Dated in Montpelier, Vermont, this 21ST day of APRIL, 2010

LAND USE PANEL

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

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