

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

_____)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
)
)
v.)
)
DONALD DORR,)
 Respondent)
 _____)

ADMINISTRATIVE ORDER

Having found that Donald Dorr (Respondent) committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel, pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATION

- I. Material change to a permitted project without approval of the District Coordinator or the Commission in violation of Condition No. 10 of Land Use Permit Amendment #8B0018-2.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent Dorr owns an approximately 89-acre parcel of land located off Barnumville Road in Manchester, Vermont, described in Book 119, Page 107 of the Town of Manchester land records. (the project tract) The project tract is subject to Land Use Permit Amendment #8B0018-2.
2. Respondent Dorr also owns a parcel of land south of and adjacent to the project tract. (the adjacent property) Respondent operates a gravel pit on the adjacent property and actively extracts material from that pit.
3. On September 7, 1990, the District 8 Environmental Commission (Commission) issued Land Use Permit Amendment #8B0018-2 (the permit amendment) to Richard Booth specifically authorizing “a 19-lot residential subdivision with a 3500 foot road” on the project tract. Respondent Dorr subsequently purchased the project tract.
4. Condition No. 10 of the permit amendment states: “No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the

Environmental Board Rules.”

5. During July 2006, District Coordinator Warren Foster conducted a site visit at the project tract and observed active earth extraction on a portion of the project tract. Respondent had expanded the pre-existing pit from the adjacent lot onto the project tract.
6. Respondent failed to obtain written approval for the earth extraction from either the District Coordinator or the Commission.
7. Coordinator Foster issued Jurisdictional Opinion #8-247 finding that there has been a material change to the project tract which requires a Land Use Permit Amendment.
8. Jurisdictional Opinion #8-247 was not appealed and has gone final.
9. Respondent violated Condition No. 10 of Land Use Permit #8B0018-2 by making a material change to the permitted project tract without written approval.

ORDER

- A. The Respondent shall pay a penalty of One Thousand Two Hundred and Fifty Dollars (\$1,250.00) within thirty (30) calendar days of the receipt of this Order. Payment shall be by check made payable to the “Treasurer, State of Vermont” and forwarded to:

Denise Wheeler, Business Manager
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- B. Any payment by the Respondent pursuant to this Order is made to resolve the violations set forth in this Order and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondent’s state or federal taxes.
- C. The Respondent shall cease and desist all operation of the gravel pit on the project tract until all necessary permits from Act 250 and the Department of Environmental Conservation (DEC) are obtained.
- D. The Respondent shall file a complete Act 250 Land Use Permit Amendment

application and shall be diligently pursuing the same no later than October 31, 2008.

- E. The above penalty amounts do not include the costs incurred by the Natural Resources Board, Land Use Panel (Panel) for the enforcement of the above described violation, or the amount of economic benefit gained by the Respondent from the violation. The Panel reserves the right to augment the above stated penalties through evidence presented at hearing. In accordance with 10 V.S.A. § 8010, the penalties may be increased by the costs incurred by the Panel for the enforcement of the described violation, the amount of economic benefit gained by the Respondent from the violation, the need for deterrence, and any and all other penalty factors enumerated in 10 V.S.A. § 8010(b), each according to proof at the hearing.

RESPONDENT'S RIGHT TO A HEARING BEFORE THE ENVIRONMENTAL COURT

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. § 8012 by filing a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondent receives this Administrative Order. The Respondent must file, within the time limit, a Notice of Request for Hearing with both the Land Use Panel and the Environmental Court at the following addresses:

Natural Resources Board, Land Use Panel
c/o Ken Smith, Associate General Counsel
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Clerk
Environmental Court
2418 Airport Road
Barre, VT 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not timely file a Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order when filed with and signed by the Environmental Court. 10 V.S.A. § 8008(d).

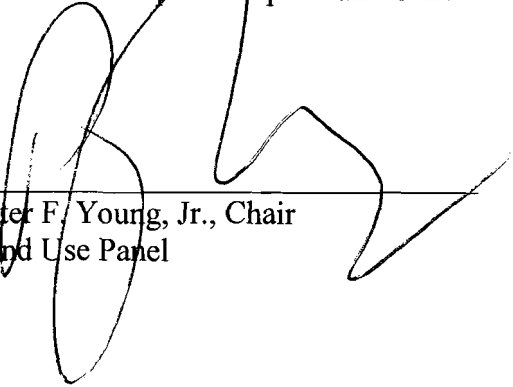
COMPLIANCE WITH A JUDICIAL ORDER

If this Administrative Order becomes a Judicial Order and the Respondent fails or refuses to comply with the conditions of that Judicial Order, the Land Use Panel shall have cause to initiate an enforcement action against the Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: _____

10/8/08

Peter F. Young, Jr., Chair
Land Use Panel



STATE OF VERMONT

ENVIRONMENTAL COURT

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

AFFIDAVIT OF WARREN FOSTER

v.

DONALD DORR,
Respondent

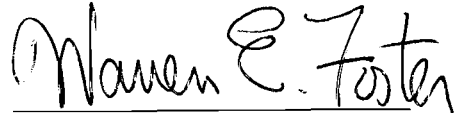
AFFIDAVIT OF WARREN E. FOSTER

Warren E. Foster, being duly sworn, hereby deposes and states the following:

1. I am of legal age and competent to testify to the facts stated herein.
2. I make this Affidavit based upon personal knowledge and my review of the Natural Resources Board files regarding this matter.
3. I am the District Coordinator for the District 8 Environmental Commission and was so at all times relevant hereto.
4. As the Coordinator, I am familiar with the facts and circumstances of the above-captioned matter.
5. I have reviewed the Administrative Order in the above-captioned matter, and I believe the "*Statement of Facts and Description of Violation,*" to be true.
6. I visited the Respondent's property, subject to Land Use Permit Amendment #8B0018-2, during July of 2006 and observed active earth extraction on the property.
7. Land Use Permit Amendment #8B0018-2 does not allow earth extraction on the property.
8. Respondent never received approval from the District Coordinator or the

Commission to conduct that extraction.

DATED at Rutland, Vermont, this 22th day of September,
2008.


Warren E. Foster

Subscribed and sworn to before me this 22th day of September, 2008.


Notary Public
MICHAEL METZ 2/10/10