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**LAND USE PANEL of the** )  
**NATURAL RESOURCES BOARD,** )  
 )  
 Petitioner )  
 )  
 v. )  
 )  
**A.S.H. INC., and** )  
**A. SCOTT HOWE** )  
 )  
 Respondents )  
 \_\_\_\_\_)

**ADMINISTRATIVE ORDER**

Having found that A.S.H., Inc. and A. Scott Howe (collectively "Respondents") committed a violation as defined in 10 V.S.A. § 8002(9), the Land Use Panel of the Natural Resources Board (the Panel), pursuant to the authority set forth in 10 V.S.A. § 8008, hereby issues the following Administrative Order:

**VIOLATION**

- I. Stockpiling, processing and/or selling extracted earth materials without approval in violation of Condition No. 2 of Land Use Permit Amendment #2W0410-3 and Act 250 Rule 34(A).

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

1. On March 30, 2005, the District 2 Environmental Commission issued Land Use Permit Amendment #2W0410-3 to Jamaica Cottage Shop, Inc., which specifically authorized the subdivision of an approximately 40.7± acre parcel located at 170 Winhall Station Road in South Londonderry, Vermont into four separate lots, including "Lot 2 with 7.41 acres and existing sawmill and garage." These lands are described in Book 61, Pages 50-54 of the Town of South Londonderry land records.
2. Respondent Howe subsequently purchased Lot 2 (the Project tract).
3. Prior to the subdivision of the 40.7± acre tract, the property, including the Project tract, was used as a sawmill.
4. Condition No. 2 of Land Use Permit Amendment #2W0410-3 states: "No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Environmental Board Rules."

5. As of September 5, 2008, Respondents were engaged in the stockpiling, processing and sale of extracted earth materials on the Project tract.
6. The stockpiling, processing and sale of extracted earth materials on the Project tract is a material change from the previously permitted project.
7. Respondents failed to obtain written approval from the District 2 Coordinator or the District 2 Environmental Commission for the change in use of the project.
8. Respondents failed to obtain an Act 250 Land Use Permit Amendment for this material change to Land Use Permit Amendment #2W0410-3.
9. Respondents violated Condition No. 2 of Land Use Permit Amendment #2W0410-3 and Act 250 Rule 34(A) by stockpiling, processing and/or selling extracted earth materials on the Project tract without first obtaining a Land Use Permit Amendment for those activities.

### ORDER

Having found that Respondents have committed a violation as defined in 10 V.S.A. § 8002(9), **it is hereby ORDERED:**

- A) The Respondents shall cease and desist all processing, storage and sale of earthen materials on the Project tract until all necessary permits or permit amendments from Act 250 and the Department of Environmental Conservation (DEC) are obtained allowing this change in use.
- B) The Respondents shall pay a penalty of Five Thousand Six Hundred and Fifty Dollars (\$5,650.00) 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

- C) Any payment by the Respondents pursuant to this paragraph is made to resolve the violation 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. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondents' state or federal taxes.

D) The above penalty amounts do not include the costs incurred by the Panel for the enforcement of the above described violation, or the amount of economic benefit gained by the Respondents 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 Respondents 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.

### RESPONDENTS' RIGHT TO A HEARING BEFORE THE ENVIRONMENTAL COURT

Pursuant to 10 V.S.A. § 8012, any Respondent has the right to request a hearing before the Environmental Court concerning this Administrative Order, if such Respondent files a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondent receives this Administrative Order. The Notice of Request for Hearing must be filed 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

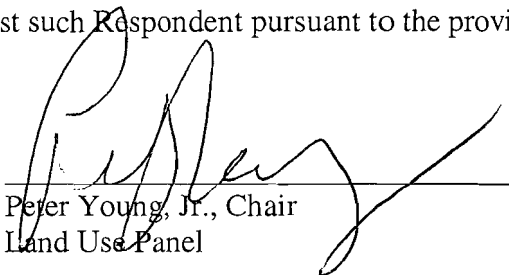
### EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective as to a Respondent on the date it is received by such Respondent unless that 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 such Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order as to that Respondent pending a hearing by the Environmental Court. If a 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 a 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 such Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: 4/29/10

  
Peter Young, Jr., Chair  
Land Use Panel

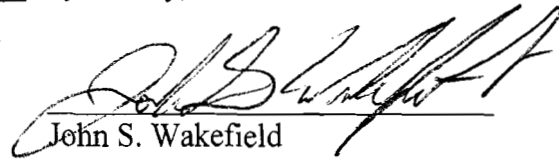
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**AFFIDAVIT OF  
JOHN WAKEFIELD**

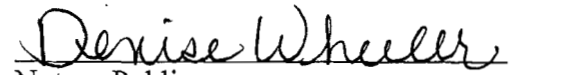
John Wakefield, being duly sworn, hereby deposes and states the following:

- 1) I am of legal age and competent to testify to the facts stated herein.
- 2) I am employed as the Permit Compliance Officer for the Vermont Natural Resources Board and was so at all times relevant hereto.
- 3) I make this Affidavit based upon personal knowledge, and my review of the Natural Resources Board files regarding this matter. As to those facts alleged upon information and belief, I believe them to be true.
- 4) I make this Affidavit in support of the Land Use Panel's Administrative Order in the above captioned matter.
- 5) On September 5, 2008, I visited the Project tract described in the above captioned Administrative Order. I observed A. Scott Howe operating a loader on site and A.S.H. Inc. trucks and equipment operating on site.
- 6) I observed trucks delivering excavated earth materials to the site and stockpiling those materials. I also observed a screener used for the processing of earth materials located on site.
- 7) I observed A.S.H. Inc. trucks removing stockpiled earth materials from the site and delivering that material for sale.
- 8) Neither A. Scott Howe nor A.S.H. Inc. had an Act 250 Land Use Permit Amendment authorizing the storage, processing or sale of earth materials at that site. Neither A. Scott Howe nor A.S.H. Inc. have since obtained an Act 250 Land Use Permit authorizing that activity.

DATED at Montpelier, Vermont, this 3 day of May, 2010.

  
John S. Wakefield

Subscribed and sworn to before me this 3 day of May, 2010.

  
Notary Public  
My Commission Expires: 2/10/2011