

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 15-2-12 Vtec

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Jack Bowen,
Respondent.

VIOLATION

Commencement of development without a Land Use Permit. 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 Jack Bowen (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Jack Bowen owns an approximately 16-acre parcel located off of Walker Mountain Road in the Town of Clarendon, Vermont; the parcel was purchased from Peter Altrui and is identified in Book 113, Page 566 of the Town of Clarendon, Vermont land records (the project tract).
2. Respondent Jack Bowen also owns an approximately 129-acre parcel located off of Walker Mountain Road in the Town of Clarendon, Vermont; the parcel is identified in Book 55, Pages 1-5 of the Town of Clarendon, Vermont land records. This parcel was subject to an Act 250 permit, although authorization to extract from this parcel expired in the early 2000s.
3. On November 12, 2003, the Coordinator for the District 1 Environmental Commission issued Jurisdictional Opinion #1-363 to the Respondent. The Jurisdictional Opinion found that even though it was "more likely than not that sand and gravel was commercially extracted prior to 1970" from the project tract, the "historical extraction rate had not been demonstrated," and therefore



the pit operations on the project tract could not be grandfathered and are subject to Act 250, and a Land Use Permit is required for continued operations on the tract. The Jurisdictional Opinion was not appealed and is therefore final.

4. The Respondent owns Jack Bowen Excavating, a commercial excavation contracting business.
5. Respondent presently utilizes the 129-acre parcel for residential purposes.
6. The Respondent extracted material from the project tract for use in his business in response to Tropical Storm Irene in 2011 without registering the extraction with the State as required.
7. The Respondent has brought earth resources material from other sites on to the project tract for transfer or storage.
8. No Act 250 (10 V.S.A. Ch. 151) Land Use Permit or other authorization has been obtained for the earth resources operations on the project tract.
9. The Respondent has commenced development at the project tract without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

AGREEMENT

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

- A. The Respondent shall immediately cease any and all earth resources operations at the project tract, including the extraction, importation, screening, processing, storage, or otherwise handling of earth resources, except as allowed in Paragraph D below.
- B. No earth resources operations or development as defined in 10 V.S.A. 6001(3)(A) may occur on the project tract or on the 129-acre parcel until the District 1 Environmental Commission has issued a Land Use Permit for said operations or other activity, except as allowed in Paragraph D below.
- C. Within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division, the Respondent shall commence the implementation of the reclamation plan for the project tract attached to this Assurance as Exhibit A (plan and map) and shall complete such reclamation plan pursuant to its terms; a certification report of the reclamation of



Assurance of Discontinuance
Land Use Panel, Natural Resources Board v. Jack Bowen
Docket No. 15-2-12 Vtec

Page 3 of 6

the project tract shall be filed with the Panel within 30 days after the completion of the reclamation. Upon reasonable notice to the Respondent, Coordinator Warren Foster may inspect the project tract to determine compliance with the plan at any time.

- D. Notwithstanding the restrictions stated in Paragraphs A and B, above, the Respondent may:
1. remove from the project tract approximately 60 truckloads of existing stone (small boulders) or gravel that were brought onto the project tract during the summer of 2012; such removal shall occur only on Monday - Friday between the hours of 8:00 AM and 6:00 PM, and all such material shall be removed no later than August 1, 2013;
 2. remove from the project tract up to 1500 cy material to be used solely on the project tract or the said 129-acre Clarendon parcel owned by the Respondent for the construction of roads or house sites or for the repair and maintenance of existing roads, all on said project tract; such removal and associated activity shall occur only on Monday - Friday (in addition to one Saturday in August 2013 and one Saturday in September 2013) between the hours of 8:00 AM and 6:00 PM and shall be completed on or before October 1, 2014; nothing in this paragraph is intended to exclude normal maintenance and repair of the internal parking areas and roads using materials obtained off-site after October 1, 2014;
 3. no loading or unloading of earth resources from trucks shall be allowed at the project tract or the said 129-acre Clarendon parcel and neither parcel shall be used as a station to transfer earth resources or otherwise handling of earth resources or for truck/equipment maintenance. Nothing herein shall exclude the delivery of material for new construction or for existing houses on the project tract or the 129-acre parcel that would not independently trigger Act 250 jurisdiction.
 4. in compliance with the remediation plan (attached to this Assurance as Exhibit A), transport to the project tract material needed to engage in remediation; however, once brought on to the project tract; this material shall not be removed, and such transport shall occur only on Monday - Friday between the hours of 8:00 AM and 6:00 PM.
- E. Any restrictions on the use of the project tract or the said 129-acre Clarendon parcel owned by the Respondent established by this Assurance of Discontinuance may be lifted or modified by a Land Use Permit issued by the District 1 Environmental Commission.



Assurance of Discontinuance
Land Use Panel, Natural Resources Board v. Jack Bowen
Docket No. 15-2-12 Vtec

Page 4 of 6

- F. The Respondent shall request any extensions of time for any of the deadlines set forth in Paragraphs C and D above before the deadlines pass, and the Panel shall not unreasonably withhold approval of such extensions.
- G. No later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay Ten Thousand (\$10,000.00) Dollars (U.S.) to the State of Vermont to resolve this matter.

Payments shall be made payable to the "Treasurer, State of Vermont" and shall be sent to:

Denise Wheeler, Business Manager
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- H. Within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division, the Respondent shall
 - 1. pay the amount of Ten (\$10.00) Dollars (U.S.), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Clarendon land records, by check made payable to the "Town of Clarendon, Vermont" and sent to Denise Wheeler at the above address.
 - 2. sign and send to the Panel an acceptance of service, on a form approved by the Panel, showing that Respondent has actual notice of the order and this Assurance.
- I. The Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from the Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- J. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- K. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.



Assurance of Discontinuance
Land Use Panel, Natural Resources Board v. Jack Bowen
Docket No. 15-2-12 Vtec

Page 5 of 6

- L. This Assurance shall become effective only after it is signed by all parties and entered as an order by the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, 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.
- M. 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 set forth herein, provided that the Respondent fully complies with this Assurance.
- N. 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 Superior Court, Environmental Division. 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.
- O. When this Assurance is entered as a judicial order by the Superior Court, Environmental Division, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. Chapters 201 and/or 211.
- P. This Assurance is subject to the provisions of 10 V.S.A. §8007 and §8020.
- Q. The January 17, 2012 Administrative Order in this matter is dismissed.

A handwritten signature in black ink, appearing to be the initials 'J.B.', is located in the bottom right corner of the page.

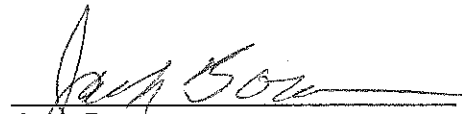
Assurance of Discontinuance
Land Use Panel, Natural Resources Board v. Jack Bowen
Docket No. 15-2-12 Vtec

Page 6 of 6 plus 2 page site plan + two maps

Signatures

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

Dated at Rutland, Vermont, this 16 day of May 2013.



Jack Bowen

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 16th day of May 2013, personally appeared Jack Bowen, signer of the forgoing instrument, who is known to me or who satisfactorily established his identity to me, and acknowledged the same to be his signature on this document and his free act and deed.

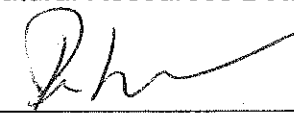
Before me,


Notary Public
My Commission Expires: 2-10-15

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

Dated at Montpelier, Vermont, this 15th day of July 2013.

Land Use Panel
Natural Resources Board

By: 

Ronald A. Shems, Chair

BOWEN SITE PLAN

Attached hereto are copies of two maps showing the reclamation plan for the Bowen 16 acre gravel pit; one shows the reclamation plan on a topographic map and one shows the reclamation on the tax map. A synopsis of the reclamation plan is as follows:

1. Reshape and grade the bottom of the pit so that the drainage generally flows in the current direction toward Walker Mountain Road. (Orange)
2. The bottom of the pit will be seeded after all work is completed.
3. Create a swale to direct water from the steep slopes toward a concrete catch basin with 2' x 2' cover, four feet deep. (Swale shown in blue, catch basin in yellow)
4. The southerly and southwesterly portions of the pit are too steep and too close to adjoiner's property lines to reshape or re-grade. These slopes will be left alone. These slopes pre-existed Bowen's ownership of the 16 acres.
5. The westerly bank is very steep with ledge. However, it will be reshaped as much as possible below the newly created swale and seeded. (Shown in pink) Because of the steep grade some washout may reoccur.
6. Create an upper swale on the westerly side of pit area above the bank to be re-graded, reshaped and seeded. (Blue)
7. The northerly side of the pit area, southerly of the access road serving other Bowen property, shall be re-graded and seeded. (Orange)
8. The area shaded green is a hard limestone type deposit that will be left in place.
9. The areas shown in red will be excavated, reshaped and re-graded with material from these areas utilized to reshape and re-grade other areas of the pit except that the area along Walker Mountain Road will not be excavated, although it may be shaped.
10. The upper site located outside the main pit area, westerly and slightly southerly of the main pit area will be excavated for access to a new house site. The material from this area will be utilized to repair the internal driveways, parking areas and the farm road. (House site in red, area to be excavated in dark green; internal drives/roads shown in purple.) Approximately 1500 yards will be removed from this area for personal use on the Bowen property. Bowen shall have until October 1, 2014 to complete the work involving the new house site area and roads. (Also #11 & #12)
11. The upper area excavated will be re-graded and seeded (except the roadway).
12. A swale will be created along the westerly side of the access road to the new house site.
13. Material from off site stored in the pit area will be removed from the site before re-grading and reclamation of the site begins, but no later than August 1, 2013.
14. Existing trees and vegetation along Walker Mountain Road will be retained.



15. Southerly driveway access will be blocked with a berm which will be seeded.
16. Reseeding and mulching shall occur in the event of washouts in those areas newly shaped, graded and seeded. The reseeding shall not be required on those areas that are too steep.
17. All grading, shaping, seeding, etc. in the lower pit area shall be accomplished no later than October 1, 2013.

A handwritten signature in black ink, appearing to be the initials 'J.B.', located in the bottom right corner of the page.

Wheeler, Denise

From: GLicausi@aol.com
Sent: Wednesday, June 19, 2013 5:50 AM
To: NRB - Comments
Cc: glicausi@aol.com; Gill, Peter
Subject: Comment on Land Use Panel v. Jack Bowen

As a neighbor and abutting landowner to Mr. Jack Bowen, I would like to add my comments re the Assurance of Discontinuance issued as Docket No. 15-2-12 Vtec:

The berm along Walker Mt. Road has been severely degraded and sections have been excavated below grade. Several trees in the berm have fallen onto Walker Mt. Road and last August, one of Mr. Bowen's trees fell across the utilities wires with a fire resulting requiring the Clarendon Fire Dept. as well as several other communities assisting. I would like to see this berm returned to its former strength to maintain the remainder of trees along the berm as well as filling in the below grade sections along the berm in the pit area and also including the rest of the gravel pit.

Several "ponds" and areas of standing water have been uncovered during Mr. Bowen's long time excavation of his unpermitted gravel pit. I have deeded rights to a spring on his property and I would like this area to remain intact and the ponds and standing water areas once more covered.

Hopefully, the idling of his trucks while rehabilitating the site will not be allowed before his daily restricted hours begin. In addition, I am very grateful that this Assurance of Discontinuance has been issued. Thank you very much.

Sincerely,
Gale M. LiCausi

Wheeler, Denise

From: GLicausi@aol.com
Sent: Wednesday, June 19, 2013 7:54 AM
To: NRB - Comments
Cc: glicausi@aol.com; Gill, Peter
Subject: Comment on Land Use Panel v. Jack Bowen

The following comments refer to Docket No. 15-2-12 Vtec. and specifically to the proposed Bowen Site Plan:

No. 3 refers to a catch basin with a 2' x 2' cover, four feet deep. How far will the catch basin be from my deeded spring identified on the site plan maps and how large will the catch basin be? It is highly important that the catch basin not impact or restrict my deeded spring.

No. 4 is incorrect in stating that Mr. Bowen did not impact the southerly and southwesterly portions of the pit. Mr. Bowen repeatedly excavated the bottom of the steep slopes thus going beyond his property line and impacting his neighbors' property.

No. 9 refers to using material on site to re grade and reshape the affected areas. More material needs to replenish what has been removed. Many areas are below grade and these areas need to be brought back to their original grade level.

Additionally, the maps are vague and need more exact measurements, including but not limited to distances from one area to another, i.e. from the catch basin to the aforementioned deeded spring.

Thanking you for the enforcement of this matter.

Sincerely,

Gale M. LiCausi

Wheeler, Denise

From: GLicausi@aol.com
Sent: Wednesday, June 19, 2013 8:24 AM
To: NRB - Comments
Cc: glicausi@aol.com; Gill, Peter
Subject: Comment on Land Use Panel v. Jack Bowen

The following comment refers to Docket.No. 15-2-12 Vtec on page 3 of 6, D. 1. and 2.

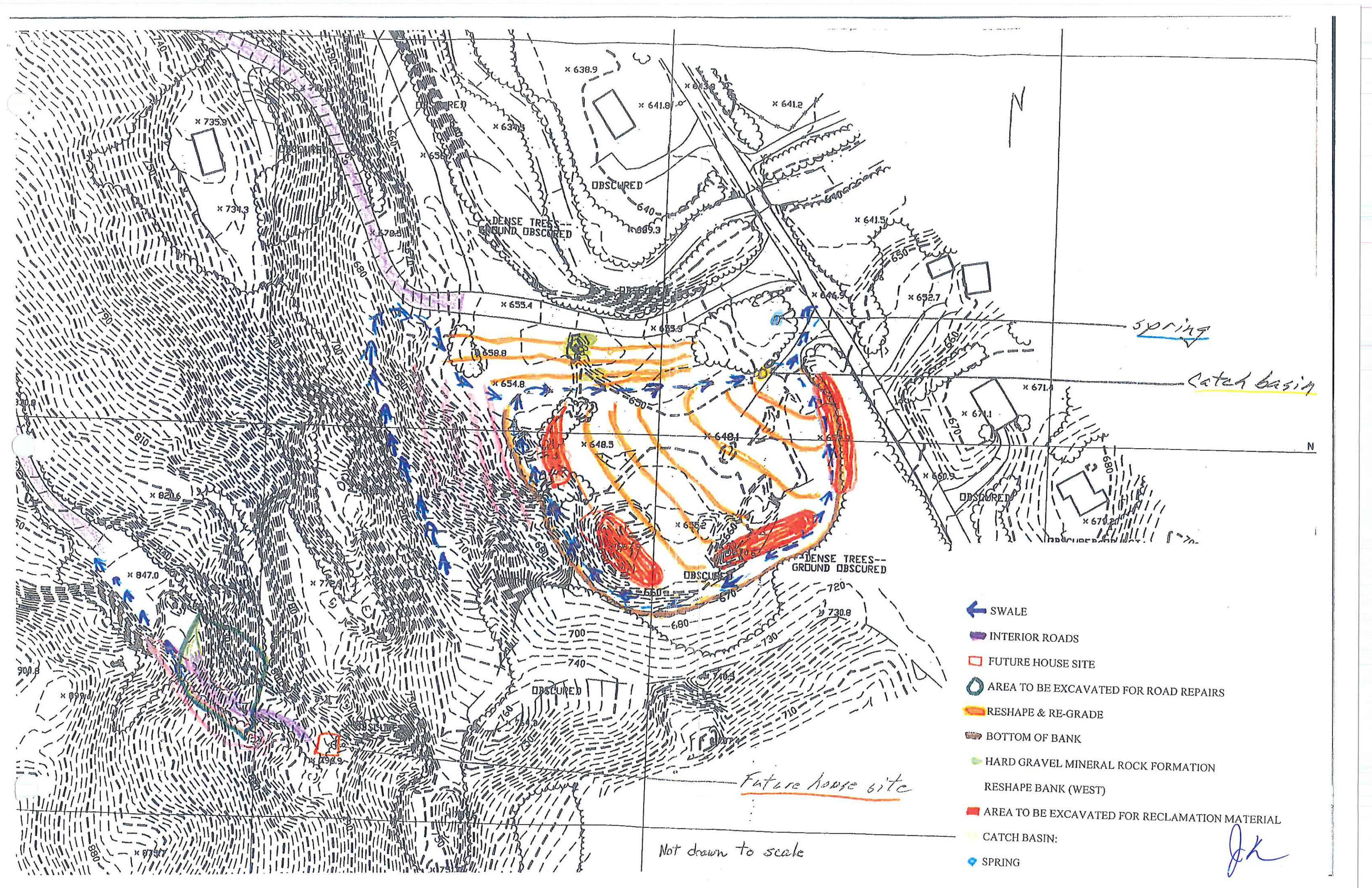
No. 1 states that approximately 60 truckloads of existing stone may be removed. First of all, 60 truckloads seems like too many to remove the small amount of material brought on-site last summer.(2012) I have photographs from many years ago showing piles of stone near the spring.

No. 2 mentions using up to 1500 cy to be removed. Hopefully more material will not be removed from the gravel pit because so much of the pit needs to be re graded and brought back to its former shape before the excavating activities.

In closing, I would like to comment on the amount of fine that Mr. Bowen will pay to the State of Vermont: I feel that the \$10,000. is not sufficient considering the damage that has incurred and the flagrant attitude of the Respondent while he was informed for many years that he needed permits to operate his gravel pit. The original fine of \$25,000. was more in line considering the damage, constant noise and inconvenience to our neighborhood. Mr. Bowen made a considerable income while operating without the necessary notice and permits and hopefully will not try to operate again with this enforcement action.

Thank you.

Sincerely,
Gale M. LiCausi



Spring
Catch basin

Future house site

Not drawn to scale

- ← SWALE
- INTERIOR ROADS
- FUTURE HOUSE SITE
- AREA TO BE EXCAVATED FOR ROAD REPAIRS
- RESHAPE & RE-GRADE
- BOTTOM OF BANK
- HARD GRAVEL MINERAL ROCK FORMATION
- RESHAPE BANK (WEST)
- AREA TO BE EXCAVATED FOR RECLAMATION MATERIAL
- CATCH BASIN:
- SPRING

Jk