

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)

Petitioner)

v.)

THOMAS HOWRIGAN,)

Respondent)

ADMINISTRATIVE ORDER

Having found that Thomas Howrigan (Respondent) committed a violation 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. Commencing development without an Act 250 Permit, in violation of 10 V.S.A. § 6081(a).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1) Respondent owns an 824± acre tract of land in Fairfield, Vermont described in Book 59, Page 269 of the town of Fairfield land records (the Howrigan property).
- 2) A number of gravel pits are located on the Howrigan property. These pits include the so-called "Bread Loaf Pit," the "Pit South of Morey Road," the "Boot Hill Pit," "Area 1," "Area 2," and the "Proposed Pit."
- 3) On August 30, 1999, in Declaratory Ruling #358 (the DR), the Environmental Board held that an Act 250 permit is required for extraction of earth materials at the pits noted in Paragraph 2, above. This DR was not appealed and is therefore final.
- 4) On August 3, 2000, in Dkt. No. S 417-98-FC, the Franklin Superior Court held that the Respondent needed an Act 250 Permit for extraction of earth materials at the Howrigan property. On June 20, 2001, the Vermont Supreme Court affirmed the Superior Court's decision. *State v. Howrigan*, 172 Vt. 641 (2001).

- 5) On June 2, 2004, District 6 Coordinator Geoff Green issued a Notice of Alleged Violation to the Respondent for extracting earth material from the "Boot Hill Pit," reiterating the Environmental Board's decision that an Act 250 permit is required for extraction operations on the Howrigan property.
- 6) On March 24, 2008 the District 6 Environmental Commission issued Land Use Permit #6F0602 to B & T Black Creek Farms, LTD. Respondent is the President and Registered Agent of B & T Black Creek Farms, LTD. Permit #6F0602 authorizes the extraction of earth materials from the "Boot Hill Pit."
- 7) Respondent has not obtained an Act 250 Land Use Permit to extract earth materials from the "Bread Loaf Pit" or any other pit or area on the Howrigan property.
- 8) On December 11, 2009, April 7, 2010, April 8, 2010, the Respondent extracted earth materials from the "Bread Loaf Pit."
- 9) Respondent has violated 10 V.S.A. § 6081 by extracting earth materials from the "Bread Loaf Pit" without an Act 250 Land Use Permit.

ORDER

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

- A. Respondent shall immediately cease all unpermitted earth extraction activities on the Howrigan property until Respondent obtains the appropriate Act 250 Land Use Permit approving such extraction or activities.
- B. Respondent shall submit and diligently pursue an Act 250 Land Use Permit application for the extraction of earth materials, operation, or reclamation at the "Bread Loaf Pit," the "Pit South of Morey Road," "Area 1," "Area 2," and the "Proposed Pit."
- C. The Respondent shall pay a penalty of Thirty-Nine Thousand Seven Hundred and Fifty Dollars (\$39,750.00 US) 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

- D. Any payment by the Respondent 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. 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.
- 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

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

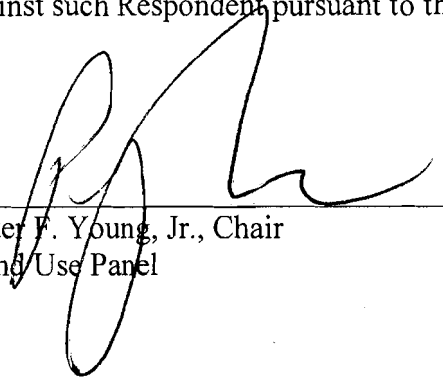
This Administrative Order shall become effective as to a Respondent on the date it is received by such Respondent unless that Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request 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: 4/20/2010



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