

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. _____

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
)
 v.)
)
MT. MANSFIELD COMPANY, INC.,)
and SPRUCE PEAK REALTY, LLC)
 Respondents)

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Failure to reclaim a gravel extraction site in a manner consistent with associated bear habitat functions by September 15, 2005, in violation of Conditions No. 40 and No. 46 of Land Use Permit #5L1338(Altered).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Mt. Mansfield Company, Inc. and Spruce Peak Realty, LLC (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. Respondent, Mt. Mansfield Company, Inc., owns land identified in Book 43, Page 344; Book 48, Page 416; Book 518, Pages 115-119; Book 468, Page 141; Book 419, Page 263; Book 341, Page 10; Book 305, Page 10; and Book 305, Page 91 of the land records in the town of Stowe, Vermont (the project tract).
- 2. The project tract is subject to Land Use Permit #5L1338(Altered) (the permit) as amended. On September 17, 2003, the District 5 Environmental Commission (the Commission) issued the permit to Respondents Mt. Mansfield Company, Inc. and Spruce Peak Realty, LLC, specifically authorizing Respondents to complete phase one of a master plan proposal.
- 3. Condition No. 2 of the permit states: "The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #5L1338, 5L1338 (Motion to Alter), 5L1338-1, and 5L1338-1 (Motion to Alter), (b) the plans and exhibits on file with the District Environmental Commission,

and (c) the conditions of this permit.”

4. Condition No. 3 of the permit 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. One aspect of the phase one improvements under the master plan specifically authorized by the permit involves a temporary gravel extraction site located on the project tract within necessary black bear habitat functioning as a travel corridor.
6. Condition No. 40 of the permit states: “The new gravel pit site must be reclaimed in a manner consistent with associated bear habitat functions and the Permittees shall strictly adhere to all monitoring/compliance provisions in accordance with Findings of Fact 5L1338 and 5L1338-1.”
7. Finding No. 176 of Findings of Fact and Conclusions of Law and Order 5L1338-1 (Altered) states: “The applicant provided a detailed process to ensure that the gravel pit reclamation will proceed in a manner consistent with the associated bear habitat functions and includes monitoring/compliance provisions. (Exhibit 66).”
8. Exhibit 66 is a memorandum from Respondents’ representative, Rob Apple, to then wildlife biologist John Austin of the Vermont Agency of Natural Resources (ANR) Department of Fish and Wildlife, dated January 8, 2003, which includes a detailed narrative gravel pit reclamation plan (the reclamation plan).
9. The reclamation plan contemplates a detailed “Planting Methodology” in which plants from the area to be used as the new gravel pit and from the immediate vicinity would be dug, transplanted and stockpiled in a nursery-type area where they would be maintained until replanting. The reclamation plan also states that:

“The exposure (location on site and in adjacent areas) and density of plant material and their associations found on site and in the vicinity of the existing gravel pit will be documented by the Landscape Architect to guide the replanting plan as part of the overall reclamation strategy. This assessment and a list of transplanted materials by species and number will be drawn up and provided for review to the Agency of Natural Resources.”
10. The assessment described in paragraph 9 herein, to be completed by Respondents’ Landscape Architect and submitted for review to the ANR, was never done.
11. The reclamation plan states that the transplanted material will be replanted in a way that replicates the association, numbers and densities documented by the Landscape Architect. The plan also states that “the transplanted material will be

supplemented by bare root and field grown stock to complete the planting cover.”

12. Respondents failed to transplant any original plant material, and chose to revegetate the gravel pit site with approximately 900 seedlings purchased commercially.
13. The reclamation plan laid out in Exhibit 66 further states:

“Upon completion of the reclamation area planting the Landscape Architect will certify in writing to the Agency of Natural Resources Department of Fish and Wildlife that the project has been implemented in accordance with the plans. If any changes are made to the plans, these changes will be forwarded for approval to the Department prior to implementation.”
14. Respondents failed to submit to ANR a written certification by a Landscape Architect that the project had been implemented in accordance with the plans. Respondent Spruce Peak Realty, however, did submit a letter dated September 24, 2005 to the Commission’s District Coordinator, Ed Stanak, which stated that the gravel pit area had been completely reclaimed in accordance with the Reclamation Plan approved by ANR on December 22, 2000.
15. Condition No. 46 of the permit states that, “[f]ull reclamation shall take place by September 15, 2005.
16. Respondent Spruce Peak Realty discovered in the spring of 2006 that the trees planted at the gravel pit had not survived the winter and so informed the District Coordinator and ANR, suggesting that ANR coordinate a site visit to observe the site and review options for successful re-vegetation.
17. On July 27, 2006, at the invitation of Spruce Peak Realty, John Austin conducted a site visit of the project tract for the purpose of monitoring compliance with the reclamation plan. Austin acknowledged that full reclamation consistent with the approved reclamation plan described in Exhibit 66 had not taken place.
18. Working in collaboration with ANR, the Lamoille County Conservation District and the Lamoille County Forester, Respondent Spruce Peak Realty developed a viable re-vegetation plan for the gravel pit site. On October 11, 2007, Respondents submitted an Act 250 amendment application to the Commission with the amended planting plan as reviewed and approved by ANR, the Lamoille County Conservation District and the Lamoille County Forester.
19. On April 15, 2008, the Commission issued Land Use Permit Amendment #5L1338(Altered)-12 to the Respondents, specifically authorizing an alternative replanting plan for the gravel extraction area within the bear travel corridor.

20. In 2008, Respondent Spruce Peak Realty implemented the amended planting plan at a cost in excess of \$35,896.00.
21. Respondents violated Conditions No. 40 and 46 of Land Use Permit #5L1338(Altered) by failing to reclaim the gravel extraction site in the specific manner described in the permit by September 15, 2005.

AGREEMENT

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

- A. Respondents shall comply with Land Use Permit Amendment #5L1338(Altered)-12.
- B. Within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Six Thousand Two-Hundred Fifty Dollars (U.S.) (**\$6,250.00**) for the violation noted herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded 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
- C. Any payment by the Respondents 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. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.
- D. 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.
- E. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.


- F. 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.
- G. Pursuant to 10 V.S.A. § 8007(d), the Respondents 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 Respondents fully comply with the agreements set forth above.
- 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. This Assurance or a notice thereof may be filed within the land records of the town(s) in which the property is located.

SIGNATURES

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

Dated at STOWE, Vermont, this 21st day of AUGUST, 2009.

Mt. Mansfield Company, Inc.

By: 
C.R. MCELANEY CEO/PRESIDENT
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 21 day of August, 2009,
personally appeared Robert McElaney, duly authorized agent of Mt.
Mansfield Company, Inc., signer and sealer of the foregoing written instrument who is
known to me or who satisfactorily established his/her identity to me and acknowledged
the same to be the free act and deed of Mt. Mansfield Company, Inc. and that he/she has
the authority to contract on behalf of Mt. Mansfield Company, Inc. and that he/she has
been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]
Notary Public
My Commission Expires: 2/10/11

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

Dated at Stowe, Vermont, this 21st day of AUGUST, 2009.

Spruce Peak Realty, LLC

By: [Signature]

WALTER FRAME, Director of Development
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Lamoille, ss.


BE IT REMEMBERED that on the 21 day of August, 2009,
personally appeared Walter Frame, duly authorized agent of
Spruce Peak Realty, LLC, signer and sealer of the foregoing written instrument who is
known to me or who satisfactorily established his/her identity to me and acknowledged
the same to be the free act and deed of Spruce Peak Realty, LLC and that he/she has the
authority to contract on behalf of Spruce Peak Realty, LLC and that he/she has been duly
authorized to enter into the foregoing Assurance on behalf of that entity.

Assurance of Discontinuance

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Before me,

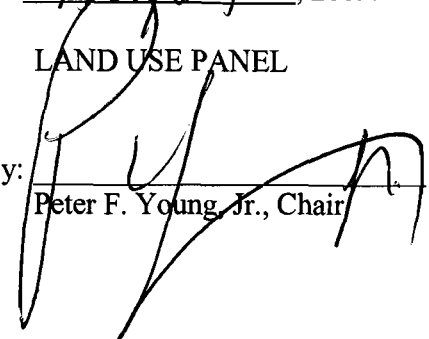

Notary Public
My Commission Expires: 2/10/11

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

Dated in Montpelier, Vermont, this 22nd day of August, 2009.

LAND USE PANEL

By:


Peter F. Young Jr., Chair