

**STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

PILGRIM PARTNERSHIP, LLC
Respondent

Docket No.

VIOLATION

Causing a material change to a permitted project, by placing excavated soils in a mapped floodplain on a site to the north of Demeritt Place, without an amendment to Act 250 permit 5W0894-13/5W1156-13/5W0867-6, in violation of Act 250 Rule 34(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 Pilgrim Partnership, LLC enter into this Assurance of Discontinuance, and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On September 14, 2010 the District 5 Commission issued Land Use Permit 5W0894-13/5W1156-13/5W0867-6 (the Permit) to Pilgrim Partnership, LLC and Green Mountain Coffee Roasters, Inc., authorizing the construction and use of a privately owned connector road, approximately 950 feet in length, running between Pilgrim Park Road and Demeritt Place in the Village of Waterbury (the Project).
2. During the District Commission proceedings on the Permit application, the applicants represented that the excavated soils would be used as cover material at a landfill in Moretown. The applicants further suggested that some of the excavated soils could be deposited at the contractor's storage yard or other sites south of Demeritt Place. The applicants made no representation that the excavated soils would be disposed of on lands owned or controlled by either or both Respondents.
3. During construction of the Project, Pilgrim Partnership, LLC (Respondent) disposed of approximately 1,645 cubic yards of soils excavated from the Project on a site to the north of Demeritt Place, owned by Respondent.
4. Approximately 283 cubic yards of these soils were disposed of in a mapped floodplain.

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5. On or about October 17, 2011, the District 5 Coordinator issued Jurisdictional Opinion #5-18 (the JO), which held that said disposal of soil constituted a material change, and therefore required a permit amendment under Act 250 Rule 34(A). The JO concluded that said placement of fill "resulted in a demonstrable likelihood of impacts on the values sought to be protected under Act 250 by at least criteria 1(B) (stormwater runoff), 1(D) (floodway fringe), 4 (erosion) and 8 (aesthetics). The JO is attached hereto and incorporated herein as **Exhibit A**.
 6. The JO further held that the unauthorized fill site constituted involved land because it is part of the Project. Owners of property adjoining the unauthorized disposal site were not given notice or an opportunity to be heard regarding said disposal of soil on that site.
 7. The JO was not appealed.
 8. By placing fill on a site not authorized by the Permit, Respondent made a material change to the permitted project without a permit amendment in violation of Act 250 Rule 34(A).

AGREEMENT

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

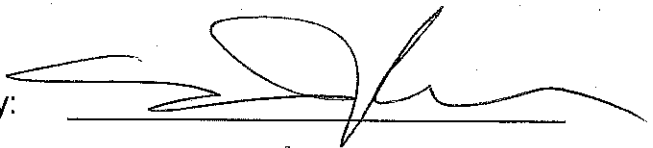
- A. No later than thirty days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall pay:
 1. A civil penalty for the violations set forth herein, pursuant to 10 V.S.A. Ch. 201, in the amount of **\$6,000.00** (U.S. dollars), by check made payable to: Treasurer, State of Vermont
 2. A check in the amount of **\$10.00** (U.S. dollars). To pay the fee for recording a notice of this Assurance in the land records of the municipality where the project is located, payable to: **Village of Waterbury**.
- B. No later than thirty days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall file a complete permit amendment application with the District 5 Environmental Commission to address the placement of fill and any other improvements Respondent wishes to retain on the site north of Demeritt Place.
- C. Respondent shall diligently pursue said permit amendment application, including making timely responses to any requests from the Commission for additional information.

- D. If Respondent's permit amendment application is denied by the Commission, then within sixty days of the date upon which said permit denial becomes final, Respondent shall file a complete permit amendment application for removal of said fill and its placement at another site.
- E. All payments required by this Assurance shall be sent 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
- F. Respondent shall neither deduct, nor attempt to deduct, any payment, penalty, contribution, or other expenditure required by this Assurance from its state or federal taxes.
- G. 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.
- H. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives.
- I. This Assurance shall become effective only after it is signed by all parties and entered as an order of 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.
- J. Pursuant to 10 V.S.A. § 8007(d), Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein, provided that Respondent fully complies with the agreements set forth above.
- K. When this Assurance has been entered as a judicial order pursuant to 10 V.S.A. § 8007(c), 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 set forth in 10 V.S.A. chapters 201 and/or 211.
- L. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Stephen Van Esen, the undersigned, hereby state under oath that I am duly authorized to enter into this Assurance of Discontinuance on behalf of Pilgrim Partnership, LLC.

PILGRIM PARTNERSHIP, LLC

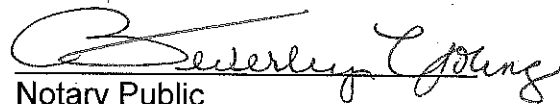
By: 

Stephen Van Esen

(print name)

BE IT REMEMBERED that on the 10th day of April, 2012, personally appeared Stephen Van Esen, signer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed.

Before me,



Notary Public

My Commission Expires: Beverley Young

Notary Public, State of Vermont

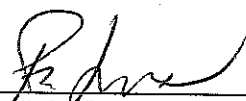
Washington County, SS

Term Expires February 10, 2015

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

DATED in Montpelier, Vermont, this 17th day of April, 2012.

LAND USE PANEL

By: 
Ronald A. Shems, Chair



Natural Resources Board
District #5 Environmental Commission
5 Perry Street, Suite 60
Barre, VT 05641-4267

October 17, 2011

Pilgrim Partnership, LLC
Attn: Stephen Van Esen and Ed Steele
PO Box 447
Waterbury Vermont 05676

Green Mountain Coffee Roasters
Attn: Paul Comiey
33 Coffee Lane
Waterbury Vermont 05676

RE: Jurisdictional Opinion 5-18
Pilgrim Partnership, LLC/Green Mountain Coffee Roasters: Introduction of Fill off Demeritt Place,
Village of Waterbury

Dear Stephen, Ed and Paul:

This letter constitutes a Jurisdictional Opinion, pursuant to Act 250 Rule 3, and is issued in response to a request from Kathryn Grace, a resident at 144 South Main Street, Waterbury and who visited the District 5 Environmental Commission office on September 22, 2011. A proposed Jurisdictional Opinion was circulated for comments until October 14, 2011. Comments were filed on October 14, 2011 by Debra L. Bouffard, Esq., on behalf of Green Mountain Coffee Roasters, Inc. No other person filed comments with respect to the proposed Jurisdictional Opinion. As explained below, a land use permit was, and is, required for the placement of the excavated soils at the site off Demeritt Place.

Facts

1. On July 30, 2010, Green Mountain Coffee Roasters (GMCR) and Pilgrim Partnership, LLC (PP) filed an application for an amended land use permit for the construction of a connector road, approximately 950 feet in length, and running between Pilgrim Park Road and Demeritt Place in the Village of Waterbury.
2. The submittals included with the amendment application indicated that the project would involve the excavation of approximately 28,000 cubic yards of soils.
3. The applicants represented that the excavated soils would be used as cover material at a landfill in Moretown. The applicants further suggested that some of the excavated soils could be disposed of at the contractor's storage yard or other sites southerly of Demeritt Place. No representations were made that excavated soils would be disposed of on lands owned or controlled by the applicants.
4. The District Commission issued Land Use Permit and Findings of Fact 5W0894-13/ 5W1156-13/5W0867-6 on September 14, 2010 and approved the construction of the connector road.
5. During excavation on the project tract, the permittees allowed excavated soil to be disposed of at a site located to the north of, and adjacent to, Demeritt Place. This site is to the west of the road project site and the two sites are separated by the Grand Trunk Western Railroad corridor.
6. The fill site is owned by Pilgrim Partnership, LLC and is approximately 2 acres in area.
7. Notations on a plan for the fill site that was filed by PP on August 22, 2011 along with an application for a Town/ Village of Waterbury zoning permit indicate that approximately 1,420 cubic yards of excavated soil were placed on the PP fill site.

8. As depicted on the site plan filed with the Town/Village on August 22, 2011, the fill was placed within a mapped flood plain area.
9. Kathryn Grace and her husband Robert own three properties on South Main Street in the Village. These three properties adjoin the fill site.

Conclusions

Under Act 250, the jurisdictional tract for a permitted tract includes one or more physically contiguous parcels of land owned or controlled by the same person or persons [Act 250 Rule 2 (c)(12)]. The review of proposed development under Act 250 also includes "involved land" which in relevant part is defined as:

The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by a reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction. [Rule 2(C)(5)]

The PP fill site is located within 100 feet (ie across the railroad tracks) from the PP tract on which the road project excavation was undertaken.

In neither the application submittals nor in testimony at the District Commission's hearing did the applicants represent that the 2± acre site would be used for the disposal of fill. The District Commission has a right to rely upon the material representations made by an applicant in obtaining a land use permit [See Montpelier Broadcasting, Inc. 5W0396-EB (February 17, 1994)].

Because the 2 acre fill site was not included in the material representations as to the scope of the project, notice was not provided by the District Commission to Kathryn and Robert Grace, as well as other property owners who adjoin the fill site.

The introduction of fill on the 2 acres of "involved land" constituted "physical action" recognized under Rule 2(C)(3) and resulted in a demonstrable likelihood of impacts on the values sought to be protected under Act 250 by at least criteria 1(B) (stormwater runoff), 1(D) (floodway fringe), 4 (erosion) and 8 (aesthetics).

The placement of the excavated soil on "involved land" without benefit of a land use permit was in contradiction of 10 V.S.A. 6081(a). The placement of the fill was, and is, a "material change" pursuant to Rule (C)(6) and an amendment application must be filed for the review of the District Commission.

Attorney Bouffard's comments indicated that Pilgrim Partnership intends to address "any local and Act 250 issues" and that, therefore, the final Jurisdictional Opinion should be directed solely to Pilgrim Partnership and not Green Mountain Coffee Roasters. In that the Jurisdictional Opinion addresses a permitted project that included both Pilgrim Partnership and Green Mountain Coffee Roasters as co-permittees, the final Jurisdictional Opinion references both corporate entities. However, the anticipated amendment application will be deemed administratively complete under Rule 10(D) with Pilgrim Partnership as an individual applicant subject to the provisions of Rule 10(A) which allow the District Commission to join others as necessary co-applicants if so required by factual circumstances.

Sincerely,

/s/ Edward Stanak
Edward Stanak
District Coordinator

Jurisdictional Opinion 5-18

Pilgrim Partnership, LLC/Green Mountain Coffee Roasters

Page 3

This is a jurisdictional opinion issued pursuant to 10 V.S.A. §.6007(c) and Natural Resources Board Rule 3(A).

Reconsideration requests are governed by Natural Resources Board Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Ctr. Bldg., National Life Drive, Montpelier, Vermont 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660)



