

STATE OF VERMONT
ENVIRONMENTAL COURT

FILED

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VERMONT
ENVIRONMENTAL COURT

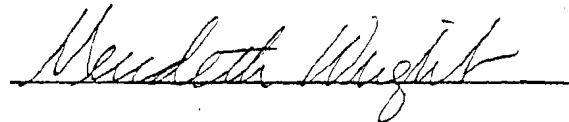
Vermont Natural Resources Board)
Land Use Panel,)
Petitioner,)
)
v.)
)
Riverside Horse Farm, LLC and)
Joseph DeSena,)
Respondent.)

Docket # 95-5-08 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on May 6, 2008, and filed with the Environmental Court on May 15, 2008, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 16th day of May 2008.



Merideth Wright,
Environmental Judge

STATE OF VERMONT
ENVIRONMENTAL COURT

_____)
)
) Docket No.
)
)
) LAND USE PANEL of the
) NATURAL RESOURCES BOARD,
) Petitioner,
)
) v.
)
) RIVERSIDE HORSE FARM, LLC ,
)
) and
)
) JOSEPH DESENA,
) Respondents.
)
_____)

ASSURANCE OF DISCONTINUANCE

VIOLATIONS

Violation of Condition No. 14 of Land Use Permit #3W0948 by failing to allow the first 25 feet from the top of the banks of the Tweed River to grow unmanaged as an undisturbed, naturally vegetated, unmowed buffer strip.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Riverside Horse Farm and Joseph DeSena (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Riverside Horse Farm, LLC (Riverside) owns an approximately 300 acre tract of land on Tweed River Drive in Pittsfield and Stockbridge, Vermont known as Riverside Horse Farm. Joseph DeSena operates Riverside and Riverside Horse Farm.
2. On June 2, 2006, the District 3 Environmental Commission (Commission) issued Land Use Permit #3W0948 (Permit) to Respondent Riverside Horse Farm, LLC, c/o Joseph DeSena authorizing the construction of a 5,000 square foot storage/function barn, a 2,000 square foot shelter barn, and two (2) 1,000 square foot shelter/barns.

3. Condition No. 14 of the Permit states:

The permittee shall establish a riparian management plan for the remainder of the streambank along the Tweed River which is currently mowed. The permittee shall allow the first 25 feet from the top of the streambank to grow "unmanaged." The permittee shall plant trees and shrubs in the remaining 25 feet of the stream buffer, and may mow this area. Prior to October 1, 2006, the permittee shall plant at least three trees and six shrubs in this area. The plantings shall all be native to Vermont, and not cultivars. Trees shall be at least 1-2 inch caliper and shall be planted 15 to 20 feet apart.

4. Thereafter, Respondents mistakenly continued to mow within the first 25 feet of the riparian buffer from the top of streambank on the northern and southern banks of the Tweed River and mistakenly continued to passively maintain a flower garden with boulders within that portion of said buffer on the southern side of the Tweed River.
5. The land on northern bank of the Tweed River is roughly triangular in shape, less than an acre in size, and lies between the Tweed River, Tweed River Drive, and Vermont State Route 100. Respondents have taken control of said land with the permission of the record owner and have erected signage and maintained a mowed lawn thereon. Upon information and belief, the record owner of said land is Robert Salmeri, P.O. Box 578, Killington, VT 05751.
6. On October 4, 2006, the District Coordinator sent Respondents a Notice of Alleged Violation (NOAV) pursuant to 10 V.S.A. § 8006(b), regarding Respondents' violation of Condition 14 of the Permit. On July 25, 2007, the District Act 250 Coordinator sent Respondents a second NOAV regarding Respondents' continuing violation of Condition 14 of the Permit.
7. On October 17, 2007, the District Coordinator observed the riparian buffer area from Tweed River Drive. As of that date, the buffer had been mowed and maintain as lawn within 25 feet of the top of each streambank, and a flower garden bordered with boulders was being maintained within the buffer on the southern streambank of the Tweed River.
8. On December 17, 2007, the Permit Compliance Officer (PCO) conducted a site visit accompanied by Respondent Joseph DeSena and his agent. At that time, the PCO measured 25 feet from top of each streambank of the Tweed River. The location of the flower garden on the southern streambank was identified based on the boulders which formed its borders.
9. The PCO's measurements determined that the flower garden was located 17 feet from the top of the eastern streambank at its furthest point from said bank, and that the entire flower garden was located within the first 25 feet of the riparian buffer on the southern streambank.

10. Respondents violated Condition 14 of Land Use Permit #3W0948 by failing to allow the first 25 feet from the top of the banks of the Tweed River to grow unmanaged as an undisturbed, naturally vegetated, unmowed buffer strip.

AGREEMENT

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

- A. After June 1, 2008 and prior to September 15, 2008, Respondents shall remove the garden located in the buffer zone on the eastern side of the Tweed River and implement the plan titled Riverside Horse Farm Riparian Restoration Plan, prepared by the PCO and dated February 15, 2008, copy of which is attached hereto as **Exhibit A**, and is incorporated herein and made part hereof. All work must be in place and fully stabilized by October 1, 2008. Erosion control measures shall be in place while work is conducted to ensure that no sediments are discharged into the Tweed River.
- B. Respondent shall implement the plan per the instructions and specifications described in the document titled Riverside Horse Farm Riparian Restoration Protocol, a copy of which is attached hereto as **Exhibit B**, and is incorporated herein and made part hereof. Respondents shall allow the first 25 feet from the top of the northern streambank to grow unmanaged, but may mow the remaining 25 feet of riparian buffer.
- C. Respondent shall immediately seek and diligently pursue an administrative amendment of LUP #3W0948 in order to conform Condition 14 thereof to the provisions of this Assurance.
- D. Within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Four Thousand Dollars (\$4,000.00)** (U.S.), for the violations noted herein. Respondent 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
- E. Any payment by the Respondents pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.

- F. 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.
- G. 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.
- H. 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.
- I. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable to the Land Use Panel 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.
- J. 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.
- K. 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.
- 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, Joseph DeSava, the undersigned, hereby state under oath that I am Member-Manager of Riverside Horse Farm, LLC which I have the authority to contract on behalf of Riverside Horse Farm, LLC, and that I have been duly

authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.


Dated at Putland, Vermont, this ~~May 6th~~ day of May, 2008.

RIVERSIDE HORSE FARM

By: 

Joseph Desena
(Print Name and Title)

JOSPEH DESENA, INDIVIDUALLY



BE IT REMEMBERED that on the 6 day of May, 2008 personally appeared Joseph Desena, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

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 12th day of MAY, 2008.

LAND USE PANEL

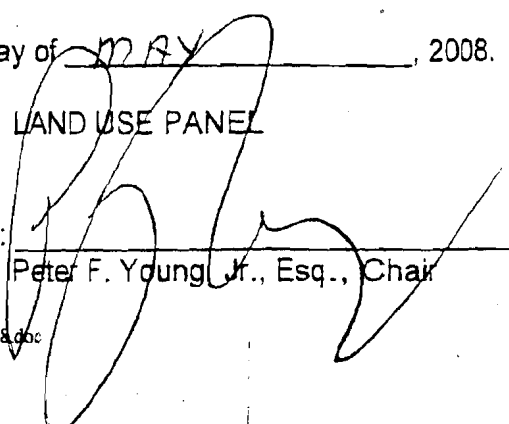
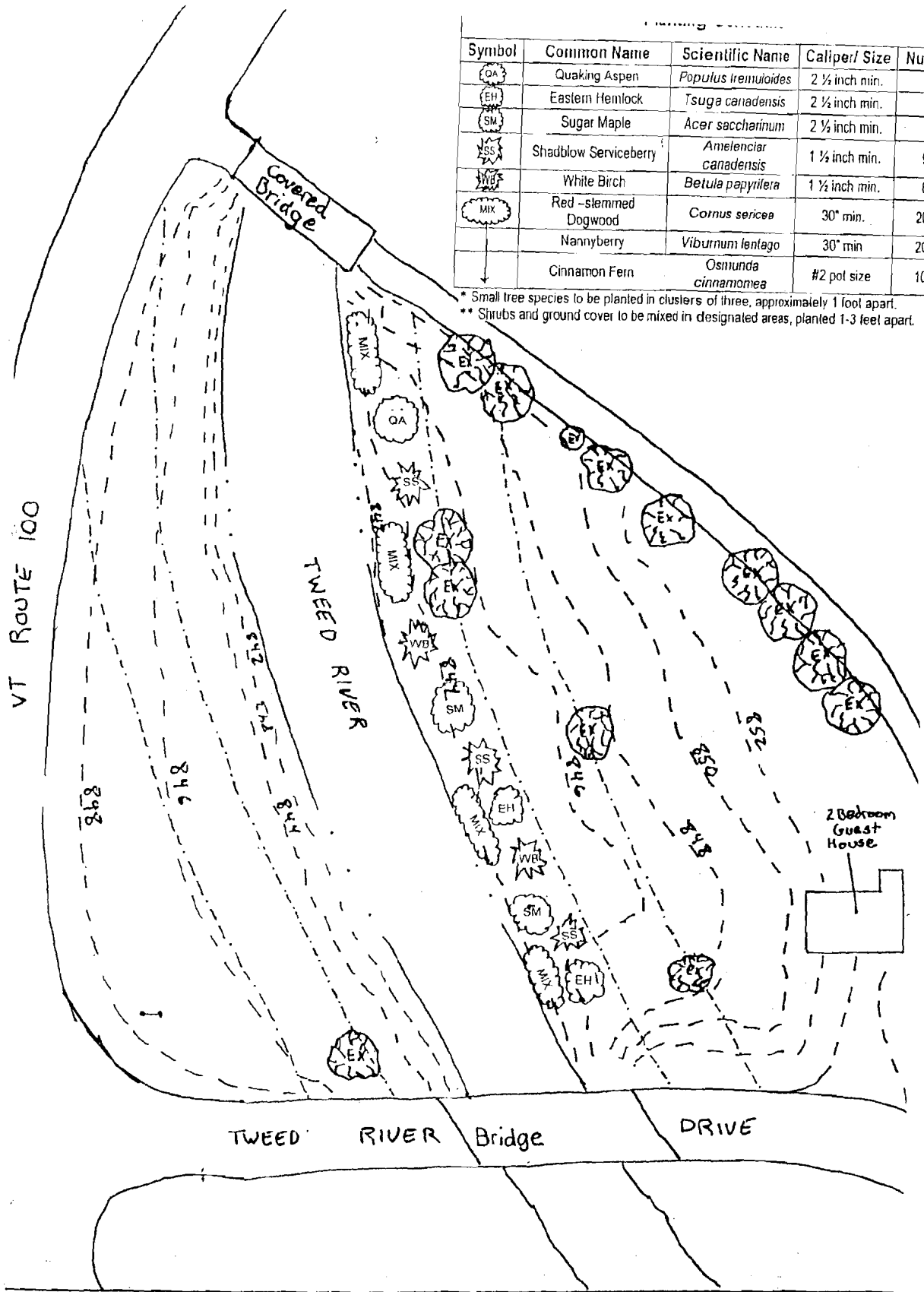
By: 
Peter F. Young, Jr., Esq., Chair

EXHIBIT A

Symbol	Common Name	Scientific Name	Caliper/ Size	Number
OA	Quaking Aspen	<i>Populus tremuloides</i>	2 1/2 inch min.	1
EH	Eastern Hemlock	<i>Tsuga canadensis</i>	2 1/2 inch min.	2
SM	Sugar Maple	<i>Acer saccharinum</i>	2 1/2 inch min.	2
SS	Shadblow Serviceberry	<i>Amelenciar canadensis</i>	1 1/2 inch min.	9*
WB	White Birch	<i>Betula papyrifera</i>	1 1/2 inch min.	6*
MIX	Red-stemmed Dogwood	<i>Cornus sericea</i>	30" min.	20**
	Nannyberry	<i>Viburnum lentago</i>	30" min.	20**
	Cinnamon Fern	<i>Osmunda cinnamomea</i>	#2 pot size	10**

* Small tree species to be planted in clusters of three, approximately 1 foot apart.
 ** Shrubs and ground cover to be mixed in designated areas, planted 1-3 feet apart.



Riverside Horse Farm
 Riparian Restoration Plan
 Pittsfield, VT

scale: Approx. 1" = 30' (11" x 17")

Date: February 15th 2008

KEY	
-----	50' Riparian Buffer
.....	25' Riparian Buffer
-----	Contour Line (2 Foot Interval)
-----	Top of Bank of Tweed River



EXHIBIT B

Riverside Horse Farm Riparian Restoration Protocol

Respondent shall restore the first 25 feet of the riparian buffer on the eastern bank of the Tweed River according to the plan titled *Riverside Horse Farm Riparian Restoration Plan*, dated February 15th, 2008 and prepared by the Permit Compliance Officer of the Natural Resources Board. Restoration shall be completed by September 15th, 2008. A detailed description of the plantings and planting procedures is as follows:

Large Trees

Respondent shall plant the following large trees in the locations specified on the restoration plan; one (1) *Populus tremuloides* (Quaking Aspen) shown on restoration plan as QA, two (2) *Tsuga Canadensis* (Eastern Hemlock) shown on the restoration plan as EH, and two (2) *Acer saccharinum* (Sugar Maple) shown on the restoration plan as SM. Large tree saplings shall be a minimum of 2 ½ inch caliper.

Respondent shall dig holes two to three times as wide as the root ball of the sapling, digging only to the depth of the root ball leaving the bottom of the space firm. Burlap, plastic, etc. shall be removed from the root ball and roots carefully freed. Respondent shall trim broken roots above the point of damage. Sapling shall be set in the hole such that the point where the stem emerged from the soil originally (which appears as a dark stain on the stem) is at soil level in its new location.

After ensuring that the sapling is at the proper depth, the original soil shall be used to fill in around the roots. The soil shall be firmed around the sapling to eliminate air holes but not compacted so much that root spread is inhibited. To ensure that air holes are eliminated and the soil is settled properly, the respondent shall use water intermittently while filling the hole with soil until the proper planting depth is reached.

In addition to watering during the planting to eliminate air holes, unless there is regular rainfall the respondent shall water the saplings weekly throughout the first growing season. Respondent shall also mulch the saplings with wood chips, bark mulch or leaves to a depth not exceeding 3 inches. Respondent shall not fertilize the saplings located within the buffer zone to avoid nutrients reaching the Tweed River.

Small Trees

Respondent shall plant the following small trees in the locations specified on the restoration plan; three (3) groups of *Amelenciar canadensis* (Shadblow Serviceberry) shown on the restoration plan as SS, each group containing 3 saplings planted approximately 1 foot apart for a total of 9 saplings, and two (2)

groups of *Betula papyrifera* (White Birch) shown on the restoration plan as WB, each group also containing 3 saplings planted approximately 1 foot apart for a total of 6 saplings. Small tree saplings shall be a minimum of 1 ½ inch caliper.

Respondent shall dig holes two to three times as wide as the group of 3 sapling root balls, digging only to the depth of the root ball leaving the bottom of the space firm. Burlap, plastic, etc. shall be removed from the root balls and roots carefully freed. Respondent shall trim broken roots above the point of damage. Saplings shall be set in the hole such that the point where the stem emerged from the soil originally (which appears as a dark stain on the stem) is at soil level in its new location.

After ensuring that the saplings are at the proper depth, the original soil shall be used to fill in around the roots. The soil shall be firmed around the saplings to eliminate air holes but not compacted so much that root spread is inhibited. To ensure that air holes are eliminated and the soil is settled properly, the respondent shall use water intermittently while filling the hole until the proper planting depth is reached.

In addition to watering during the planting to eliminate air holes, unless there is regular rainfall the respondent shall water the saplings weekly throughout the first growing season. Respondent shall also mulch the saplings with wood chips, bark mulch or leaves to a depth not exceeding 3 inches. Respondent shall **not** fertilize the saplings located within the buffer zone to avoid nutrients reaching the Tweed River.

Shrubs and Ground Cover

Shrubs and ground cover in the stream buffer area shall include the following; twenty (20) *Cornus serica* (Red-stemmed Dogwood) at a minimum size of 30 inches, twenty (20) *Viburnum lentago* (Nannyberry) also at a minimum size of 30 inches, and ten (10) *Osmunda cinnamomea* (Cinnamon Fern) sized at a #2 pot size. Plantings shall be a combination of the 3 species in the areas designated as MIX on the restoration plan and shall be planted 1 to 3 feet apart.

Respondent shall dig planting beds in the areas specified as MIX on the restoration plan wide enough to ensure the individual shrubs are 1 to 3 feet apart, digging only to the depth of the root ball leaving the bottom of the space firm. Burlap, plastic, etc. shall be removed from the root balls and roots carefully freed. Respondent shall trim broken roots above the point of damage. Shrubs shall be set in the bed such that the point where the stem emerged from the soil originally (which appears as a dark stain on the stem) is at soil level in its new location.

After ensuring that the shrubs are at the proper depth, the original soil shall be used to fill in around the roots. The soil shall be firmed around the shrubs to eliminate air holes but not compacted so much that root spread is inhibited. To

ensure that air holes are eliminated and the soil is settled properly, the respondent shall use water intermittently while filling the bed until the proper planting depth is reached.

In addition to watering during the planting to eliminate air holes, unless there is regular rainfall the respondent shall water the shrub beds weekly throughout the first growing season. Respondent shall also mulch the beds with wood chips, bark mulch or leaves to a depth not exceeding 3 inches. Respondent shall **not** fertilize the shrubs located within the buffer zone, to avoid nutrients reaching the Tweed River.