

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. _____

LAND USE PANEL of the)
 NATURAL RESOURCES BOARD,)
 Petitioner)
 v.)
 ROCKING STONE FARM, LLC,)
 Respondent)

ASSURANCE OF DISCONTINUANCE

VIOLATIONS

- I. Construction of unapproved aesthetic ponds and diversion of groundwater across the property and into unapproved aesthetic ponds in violation of Conditions No. 2 and 3 of Land Use Permit #8B0570 and Act 250 Rule 34(A).
- II. Failure to plant areas of additional low vegetative screening by October 30, 2008 in violation of Conditions No. 2 and 21 of Land Use Permit #8B0570.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Rocking Stone Farm, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns an approximately 302-acre parcel of land off of Route 7A in Manchester, Vermont, described in Book 232, Page 58 of the Town of Manchester Land Records (the project tract).
2. On June 24, 2005, the District 8 Environmental Commission (the Commission) issued Land Use Permit #8B0570 (the Permit) to Respondent specifically authorizing the Permittees to “subdivide 302 acres into 13 single family house lots, one 10.4 acre parcel with 14 units in four buildings, one 13.3 acre common parcel improved with a “sugarhouse”; retain 203 acres of Forest/Rec zone land; build 2500’ of common roadway; and construct a community well.”

I.

3. Condition No. 2 of the Permit states: “[t]he project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #8B0570, (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: “[n]o 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. Exhibit No. 118 of the application for the Permit, includes Site Plan C-2.1, titled “Proposed Site Layout Plan,” dated May 2005.
6. Exhibit No. 118 does not show the presence of or proposal for any aesthetic or recreational ponds on the project tract other than a pre-existing pond on Lot #1 near the entrance to the project tract. No other exhibit (other than Exhibit 99, “Draft, Declaration of Covenants, Conditions and Restrictions of Rocking Stone Farm, May 10, 2005”, which references ponds in the list of “built elements” to be constructed by lot owners on the project tract), finding or permit condition of the Permit or subsequent amendments to the Permit addresses the creation of new ponds on the project tract.
7. Four aesthetic ponds have been constructed on the project tract on lots #9, #11, #13 and #14. The uphill pond on lot #13 drains into the pond on lot #14.
8. A groundwater source called the “Bell Spring” is located on the upper elevations of the project tract and was originally conveyed, by a non-potable water line, downhill and adjacent to the roadway within the project tract to the eastern edge of the project tract where the non-potable water line pipe crosses Route 7A to serve neighboring parcels.
9. Respondent has diverted a portion of the groundwater flow from the “Bell Spring” non-potable water line to a small basin and drainage ditch constructed by Respondent, which begins near the northwest corner of lot #12 where it becomes surface flow and runs across and downhill on the project tract and empties into the aesthetic pond constructed on Lot 14.
10. Any excess water diverted to the aesthetic ponds on lots #13 and #14 ultimately discharges from the pond on lot #14 through an outlet toward the southwesterly corner of lot #14.
11. Respondent failed to complete the project in accordance with the Findings of Fact and Conclusions of Law and the plans and exhibits on file with the Commission for this project. Respondent violated Conditions No. 2 and 3 by constructing aesthetic ponds not included on any site plans on file with the Commission, and by introducing a surface flow of groundwater to the project tract which is diverted to the aesthetic ponds on lots #13 and #14, all without the written approval of either the Commission or District Coordinator.

II.

12. Condition No. 21 of the permit states in relevant part: “[a]ll site work and construction shall be completed in accordance with the approved plans by October 30, 2008 unless an extension of this date is approved in writing by the Commission.”
13. Exhibit No. 118 of the application for the Permit depicts two areas, one on lot #13 and one on lot #14, where “additional low screening” is to be planted on the project tract.
14. Respondent failed to plant the additional low screening by October 10, 2008, and has not sought or received an extension for finishing that screening.
15. Respondent violated Conditions No. 2 and 21 by failing to plant such additional screening as indicated by the plans and exhibits on file with the Commission by October 10, 2008.

AGREEMENT

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

- A. Respondent shall abide by Land Use Permit #8B0570 as amended.
- B. No later than 90 days after the date this Assurance is signed by the Environmental Court, Respondent shall file with the District 8 Environmental Commission a complete Act 250 Land Use Permit Amendment application requesting approval for (i) the construction of the aesthetic ponds on lots #13 and #14, as built, and (ii) the diversion of a portion of the groundwater flow from the “Bell Spring” non-potable water line into the aesthetic pond constructed on Lot 14; and addressing the planting of “additional low screening” required by Land Use Permit #8B0570 on Lot #13.
- C. If Respondent’s amendment application is denied by the Commission and that denial becomes final, or if Respondent fails to file a permit amendment application within 90 days after the date this Assurance is signed by the Environmental Court, then within 90 days of any final permit denial or Respondent’s failure to file said amendment application, Respondent shall:
 - i. Alter or remove and restore the ponds constructed on Lots #13 and/or #14, any unapproved diversion of the Bell Spring water line, and/or the drainage ditch described in paragraph 9 herein consistent with the Commission’s decision or as directed by the District Coordinator, as the case may be.
 - ii. Complete the planting of “additional low screening” required by Land Use Permit #8B0570, unless such screening requirement is revised by the

Commission. This planting shall be completed as soon as seasonably possible.

- D. Within thirty days of the date on which this Assurance is signed by the Environmental Court, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Three Thousand Three Hundred and Sixty-Five Dollars (U.S.) (\$3,365.00) 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 Respondent pursuant to this Assurance is made to resolve the violations set forth herein 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 Assurance from Respondent's state or federal taxes.
- F. A notice of this Assurance shall be filed in the land records of the municipality where this project is located within thirty days of the date on which this Assurance is signed by the Environmental Court. Within fifteen days of the date on which this Assurance is signed by the Court, the Respondent shall forward payment in the amount of Ten Dollars (\$10.00), by check made payable to the municipality in question, to the Land Use Panel at the address listed above for the purpose of paying the recording fee.
- 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 violation 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 applicable to the Respondent.
- I. 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.
- J. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any 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 Respondent fully complies with the agreements set forth above.

- K. 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.
- L. 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.
- M. 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.

Dated at Bellevue Falls, Vermont, this 12th day of February, 2009^{10th}.

ROCKING STONE FARM, LLC

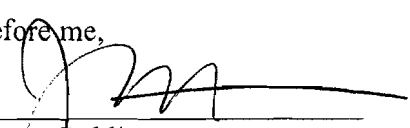
By: _____


TOMMY HARMON,
Member and Duly Authorized Agent

STATE OF VERMONT
COUNTY OF WINDHAM, ss.

BE IT REMEMBERED that on the 12th day of February, 2009¹⁰,
personally appeared TOMMY HARMON as the duly authorized agent of ROCKING
STONE FARM, LLC, signer of the foregoing instrument who is known to me or who
satisfactorily established his identity to me and acknowledged the same to be the free act
and deed of ROCKING STONE FARM, LLC and that he has the authority to contract on
behalf of ROCKING STONE FARM, LLC and that he has been duly authorized to enter
into the foregoing Assurance on behalf of that entity.

Before me,



Notary Public

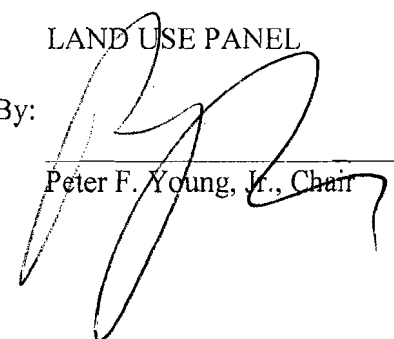
My Commission Expires: 1/10/2011

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

Dated in Montpelier, Vermont, this 17th day of FEBRUARY, 2009. 2010

LAND USE PANEL

By:



Peter F. Young, Jr., Chair