

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

LAND USE PANEL of the)	
NATURAL RESOURCES BOARD,)	
Petitioner)	
)	
v.)	Docket No.
)	
NANCY ANN TOOLEY REVOCABLE)	
TRUST,)	
Respondent)	

VIOLATIONS

- I. Clearing approximately 4 acres on land subject to an Act 250 permit without a permit amendment, in violation of Land Use Permit 5L0357 and Act 250 Rule 34(A).

- II. Constructing a pond, an outhouse, and road improvements, on land subject to an Act 250 permit without a permit amendment, in violation of Land Use Permit 5L0357 and 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 the Nancy Ann Tooley Revocable Trust (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On December 20, 1975, the District 5 Environmental Commission issued Land Use Permit #5L0357 (the Permit) to the Stowe Corporation, authorizing the creation of two rights-of-way and the construction of roadways thereon to serve 12 single-family residential lots and 4 parcels in Stowe, Vermont (the Subdivision).

2. The Subdivision includes a 200-acre parcel to the east, on which no construction of any type was authorized (the 200-acre Parcel). The Findings of Fact and Conclusions of Law supporting the Permit contain the following reference to the 200-acre Parcel:

Land Use Permit # 5L0310 has been transferred to the Stowe Corporation from the original permit holders. The project involves approximately 96 acres of a total 270

acres. Approximately 200 acres will be retained by The Stowe Corporation, upon which no development is planned at this time. The applicant envisions that this land may be sold to the State of Vermont.

3. The Nancy Ann Tooley Revocable Trust (Respondent) owns the 200-acre Parcel and Lot 25 of the Subdivision. Lot 25 is adjacent to the 200-acre Parcel.
4. Respondent also owns a third lot, which is adjacent to and not part of the Subdivision. Nancy Ann Tooley has a private residence on this third lot.
5. There are no mapped primary agricultural soils on Lot 25 or on the 200-acre Parcel, and this land is undeveloped. In addition, there are no deer wintering areas or rare, threatened or endangered species identified on these parcels.
6. The Commission found, in the Criterion 9C Findings supporting the Permit, that the lots and parcels, including Lot 25 and the 200-acre Parcel, "are of a sufficient size to allow logging to be accomplished on an individual lot basis."
7. Lot 25 and the 200-acre Parcel are of a size and location, relative to adjoining land uses, natural condition, and ownership patterns, so that they are capable of supporting or contributing to a commercial forestry operation.
8. In or around 2007, Respondent cleared approximately four acres on the 200-acre Parcel without an Act 250 permit amendment.
9. Such clearing had the potential to cause significant impact under one or more Act 250 criteria, including Criterion 4 (erosion) and Criterion 8 (aesthetics).
10. In approximately 2008 or 2009, Respondent constructed a pond, approximately 0.54 acres in area, and an outhouse, in the previously cleared area, and improved at least one road with gravel leading to the previously cleared area on the 200-acre Parcel, without an Act 250 permit amendment.
11. The construction of the pond and outhouse, and construction of road improvements on the 200-acre Parcel had the potential to cause significant impact under one or more Act 250 criteria, including Criterion 4 (erosion) and Criterion 9(C) (productive forest soils).
12. By creating a four-acre clearing and constructing a pond, outhouse, and road improvements without a permit amendment, Respondent made material changes to the permitted Subdivision in violation of Land Use Permit 5L0357 and Act 250 Rule 34(A).
13. On or about June 21, 2012, Respondent obtained a Zoning Permit from the Town of Stowe Zoning Department for the construction of a 18' x 32' summer house

with 8' wide porches on 3 sides and a 13' x 16' screened porch on the north side, without power, water, sewer or insulation, and a sleep cabin 12' x 16' in size with a 5.5' x 12' covered front porch, near the cleared area on the 200-acre Parcel.

14. Such construction would constitute a material change to the permitted subdivision.

AGREEMENT

- A. Respondent shall comply with Land Use Permit 5L0357, as amended, and shall construct no further improvements or changes on Lot 25 or the 200-acre Parcel of the Subdivision without an Act 250 permit amendment or written jurisdictional opinion from the District Coordinator stating that no permit amendment is necessary.
- B. Within 90 days of the date this Assurance is entered as a judicial order, Respondent shall file a complete Act 250 permit amendment application for the improvements made to date and for any further changes Respondent wishes to make to Lot 25 and the 200-acre Parcel of the Subdivision. Respondent shall diligently pursue said permit amendment application.
- C. Within 10 days of the date this Assurance is entered as a judicial order, Respondent shall send the Panel a check in the amount of **\$10.00** (U.S. dollars), payable to **Town of Stowe**, to pay the fee for recording a notice of this Assurance in the land records of the municipality where the Project is located.
- D. Within 30 days of the date this Assurance is entered as a judicial order, Respondent shall pay:
- a. a civil penalty in the amount of **\$6,000.00** (U.S. dollars) , by check payable to: **Treasurer, State of Vermont**:
 - b. reimbursement for the costs of enforcement in the amount of **\$280.00** (U.S. dollars), by check payable to: **Vermont Natural Resources Board**.
- E. All payments required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Natural Resources Board
National Life Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201
- F. 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.

- G. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure 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 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 additional civil or criminal penalties with respect to the specific facts described herein, provided that the Respondent fully complies with this Assurance.
- 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 Superior Court, Environmental Division.
- L. Violation of any provision of this Assurance, as this Assurance is entered as a judicial order pursuant to 10 V.S.A. § 8007(c), shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief or penalties or both, including penalties set forth in 10 V.S.A. chapters 201 or 211 or both.
- 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 PL LAUDERDALE, Vermont, this 11TH day of MARCH, 2013.

NANCY A. TOOLEY REVOCABLE TRUST

By: Nancy A. Tooley
Authorized Agent

Nancy Ann Tooley Trustee
(Print Name)

BE IT REMEMBERED that on the 11th day of March, 2013,
personally appeared Nancy A. Tooley, signer 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 his/her free act and deed and the free act and
deed of the Nancy A. Tooley Revocable Trust.

Before me: Richard Leo Samu
Notary Public

Commission Expires:

Richard Leo Samu

April 26, 2015



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

DATED in Montpelier, Vermont, this 23rd day of April, 2013.

LAND USE PANEL

By: Ronald A. Shems
Ronald A. Shems, Chair