

**STATE OF VERMONT
ENVIRONMENTAL COURT**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

Docket No.

VERMONT COUNTRY INN, ROUTE
100 PITTSFIELD, LLC,
Respondent

VIOLATIONS

- I. Commencement of "development" without a Land Use Permit, in violation of 10 V.S.A. § 6081.
- II. Past failure to apply for appropriate stormwater discharge permit coverage for more than one acre of earth disturbance; past failure to submit a new notice of intent for coverage under the construction general permit for stormwater discharges after expanding disturbed area substantially outside authorized limits; failure to adhere to winter shutdown requirements; past failure to properly implement and maintain requirements in Low Risk Handbook for Erosion Prevention and Sediment Control, in violation of 10 V.S.A. Chapter 47 § 1258, and, in part, General Permit for Construction Sites 3-9020.
- III. Failure to comply with Wastewater System and Potable Water Supply Permit # WW-3-1383.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board on behalf of itself and the Vermont Agency of Natural Resources ("the Panel") and Vermont Country Inn, Route 100 Pittsfield, LLC (the "Respondent" or "VCI") hereby enter into this Assurance of Discontinuance ("Assurance" or "AOD"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. VCI is a Vermont limited liability company formed in 2006. Michael Halovatch, who resides in New York City, is a member and principal owner of VCI.
2. Joseph DeSena is a member of VCI and its registered agent. He resides in Pittsfield, Vermont, with his wife, Courtney DeSena.

3. VCI owns a 26.48-acre parcel of land, part of the former Amee Farm, on both sides of Vermont Route 100 in the Town of Pittsfield, Vermont (the "Project" or the "Project Tract"). The address of the Project is 4275 Route 100, Pittsfield, Vermont.
4. The Project Tract retained by VCI consists of 14.18 acres located on the north side of Route 100 containing a residence, related outbuildings and improvements (the "House Parcel"), and 12.3 acres on the south side of Route 100 which at the time of its acquisition contained an old barn, outbuildings and other improvements (the "Barn Parcel"). The Project is called "the Amee Farm."
5. On December 26, 2006, a Project Review Sheet jurisdictional opinion ("PRS") was issued to Mike Halovatch as owner and Joe DeSena as "applicant or representative." The PRS indicated that an Act 250 permit was not required for a project generally described as:

Moving the former Amee residence farther away from Route 100. The house and barn will be restored and used as a residence. The existing well will be used for water and the existing septic system will be updated to meet state specifications and village permit requirements. The property consists of 14.18 acres on the west side of Route 100 and 12.3 acres on the east side of Route 100.
6. In this PRS jurisdictional opinion, the district coordinator concluded that there was no Act 250 jurisdiction, and stated that: "This opinion is based on NO commercial use of the site. This opinion is VOID if there is any commercial use." (Emphasis in original.) This PRS jurisdictional opinion was not appealed.
7. When VCI first acquired an interest in the Project Tract in September 2006, it was part of a larger 37.2-acre parcel. The larger parcel on the north side of Route 100 has since been subdivided and two smaller lots sold to other unrelated parties.
8. On or about June 28, 2007, Joseph DeSena applied for a wastewater system and potable water supply permit for the subdivision of the 37.2-acre Project tract into 3 lots, two of which (Lot 1, 5.46 acres; and Lot 2, 5.26 acres) to remain undeveloped. Regarding Lot 3, Mr. DeSena proposed to "Convert existing single family five bedroom home to a single family twelve bedroom home with existing on-site well and proposed new [septic] on property across VT Route 100 which is owned by Mr. DeSena."
9. On or about August 1, 2007, a PRS was issued to Joseph Desena, incorrectly identified as the "owner of project site" and Richard Wilson, a consultant for VCI, identified as the "Applicant or representative." The PRS indicated that an

Act 250 permit was not required for a project generally described as: "37.2 Acre Parcel to be subdivided, Lot #1 and Lot #2 will be under deferral and Lot #3 has an existing 5-bedroom house that will be converted to a 12-bedroom house and the existing house moved - The proposed new septic system will be on the property across VT Route 100 which is owned by Mr. Desena. Town ID # 99-4275.000."

10. In this PRS jurisdictional opinion, under "basis for decision," the district coordinator wrote that: "Creating fewer than 6 lots in Pittsfield and/or fewer than 10 lots in the district in a 5 year period does not trigger Act 250. No commercial construction. 10 VSA ' 6001(3)(A)(ii) and (19)." This opinion was not appealed.
11. VCI constructed a number of improvements on the Project Tract. The following improvements were constructed prior to March 1, 2008 for residential and/or agricultural purposes:
 - a. the residence on the House Parcel was relocated further back from Route 100 and substantial exterior modifications were made to the same, including raising the elevation of the house further above ground level, addition of a garage, construction of a porch, and other improvements.
 - b. the number of bedrooms at the residence was increased from 6 to 14, two attic rooms were added, a number of interior partition changes were made, and the number of bathrooms in the residence was increased from 5 to 12.
 - c. the existing driveway was extended from the existing access onto Route 100 to serve the relocated residence, and a parking area was created.
 - d. the garden barn on the Barn Parcel was demolished by a falling tree and VCI commenced reconstruction on the garden barn prior to March 1, 2008, but continued said construction after March 1, 2008. Said construction included improvements for livestock, poultry and related agricultural use.
 - e. a septic system was constructed on the Barn Parcel to serve the House Parcel and bathrooms and other facilities in the barn on the Barn Parcel pursuant to Waste Water/Water Supply Permit No. WW-3-1383.
12. On or about March 1, 2008, Michael Halovatch lost his job in the financial industry in New York City. At approximately this time, he decided to convert the Project to include commercial uses in order to support the ownership

expenses of the property and provide another source of income.

13. On or about March 1, 2008, VCI converted the former farmhouse on the House Parcel from purely residential use to a second home coupled with a whole house rental / conference and event center/ wedding business. Uses of the Barn Parcel continued to be primarily agricultural in nature, but also have included some occasional commercial use.
14. Since March 1, 2008, the Barn Parcel has been used for organic farming, weddings events, and camping during special events, and has been advertised as being available for use during weddings and other events at the Ameer Farm, and for Ameer Farm guests and members of the public to learn about organic farming and gardening.
15. Since March 1, 2008, VCI has constructed the following additional improvements on the House Parcel:
 - a. completion of the paving of the extended driveway.
 - b. installation of certain exterior lighting.
 - c. completion of a geothermal heating system.
16. Respondent did not obtain an Act 250 permit for the construction recited in Paragraph 15, or for the conversion of the House Parcel to commercial use.
17. Since March 1, 2008, VCI has constructed the following additional improvements on the Barn Parcel:
 - a. Construction was completed on the garden barn.
 - b. Construction of a greenhouse to the rear of the garden barn structure for growing of organic vegetables.
 - c. Reconstruction of an interior stair case, installation of electrical fixtures, lights and outlets, and installation of plumbing fixtures.
 - d. Construction of fencing for enclosure of livestock.
 - e. Construction of a small barn, referred to as the cow barn.
18. Respondent did not obtain an Act 250 permit for the construction recited in Paragraph 17, or for any commercial use of the Barn Parcel.
19. The Town of Pittsfield does not have both permanent zoning and subdivision regulations.
20. Beginning on March 1, 2008, VCI constructed improvements for a commercial purpose on a tract of land more than one acre in area without an Act 250 permit, in violation of 10 V.S.A. § 6081.

21. On or about June 5, 2008, the Department of Environmental Conservation issued Wastewater System and Potable Water Supply permit #WW-3-1383, authorizing the subdivision and the renovation of the farmhouse on the Project Tract as a 12-bedroom residence. This permit provides in part that:

3. This project has been reviewed and is approved for the construction of one single family residence with maximum twelve (12) bedrooms and maximum of twenty (24) person occupancy on the approved lot. Construction of additional buildings, including public buildings, single family residences, duplexes, long or short term rentals and condominium units, is not allowed without prior review and approval by the Division of Wastewater Management, and such approval will not be granted unless the proposal conforms to the applicable laws and regulations.

* * *

12. The water system for this project has been reviewed and approved as a Non-Public water system having fewer than 15 connections and/or serving less than an 25 users. Should at any time the number of users exceed 24 persons, the water system will require review and approval by the Water Supply Division as a Public Water Supply System. The water system as approved under this Water Supply/Wastewater Disposal Permit may not meet the requirements for a Public Community water system.

* * *

21. The single family residence located on lot #3 is restricted to residential use only. No other use(s) are implied or approved.
22. The barn on the existing 12.3 acre parcel is not approved for any water supply or wastewater disposal facilities, and shall contain no space for residential or commercial use. No service connections shall be made to the barn without prior written approval from the Division of Wastewater Management.
22. By increasing the number of bedrooms and potential occupants in the former farmhouse beyond those allowed in the Wastewater System and Potable Water Supply permit, and by using the Project for commercial purposes, Respondent violated Wastewater System and Potable Water Supply permit #WW-3-1383 and other applicable requirements.
23. On or before July 12, 2007, VCI commenced construction which disturbed over one acre of land without first obtaining coverage under a stormwater discharge permit.
24. On or about August 10, 2007, DEC issued NOI#5448-9020 authorizing coverage under Construction General Permit (CGP) 3-9020 for "septic installation and general landscaping" on the Project site.
25. On or about April 10, 2008, there were no erosion prevention and control measures observed on the Project site and earth disturbance was occurring substantially outside the originally authorized area, in violation of CGP 3-9020.

DEC sent Notice of the Alleged Violation to Joseph DeSena on or about April 15, 2008.

26. On or about April 21, 2008, there were inadequately stabilized areas, no construction entrance, and no limits of disturbance erected on the Project site, in violation of CGP 3-9020.
27. The Project site was partially stabilized by June 27, 2008.
28. On or about November 20, 2008, the Project site had unstabilized disturbed areas and soil stockpiles without installation of winter shutdown or winter construction requirements, in violation of CGP 3-9020.
29. VCI created impervious surface on the Project site and may need appropriate stormwater discharge permit coverage for the operation of the Project.
30. The principal of VCI, Michael Halovatch, continues to be unemployed and has no regular source of income. VCI has scheduled several weddings and other events at the Project since March 1, 2008 and into the 2009 season and otherwise continues to operate as a commercial rental and meeting facility as well as a second home for Mr. Halovatch. VCI will suffer significant financial damage if its anticipated commercial operations are shut down. In addition, VCI will employ others in its operation who will have to be laid off if it is shut down. VCI has already hired attorneys and other consultants with expertise in Act 250 to assist it in obtaining any necessary permits. However, it may need any revenue from continued operations to finance the cost of obtaining any necessary permits or amendments. None of the improvements constructed at the Project site since VCI acquired it or VCI's use of the same presently pose an imminent danger of environmental harm or significant potential adverse impacts under the 10 Criteria of Act 250.

AGREEMENT

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

- A. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$6,750.00** U.S. Dollars, for the violations noted herein, on the following schedule:

May 14, 2009	\$1750
June 15, 2009	\$1000
July 15, 2009	\$1000
August 14, 2009	\$1000
September 15, 2009	\$1000

October 15, 2009 \$1000

- B. Respondent shall make said payment by check or money order payable to the "Treasurer, State of Vermont" and shall send it to:

Denise Wheeler, Business Manager
Natural Resources Board, Land Use Panel
National Life Records Center
Montpelier, Vermont 05620-3201

- C. Interest. Late payments shall bear interest at the rate of twelve percent (12%) per annum.
- D. Acceleration. In the event that Respondent fails to make any payment by the date due, the Panel, at its option, may declare the whole amount then owing under this Assurance due and payable, any terms herein to the contrary notwithstanding.
- 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 or business expense under federal or state tax laws.
- F. No later than sixty (60) days after the date on which this Assurance is signed by the Environmental Court, the Respondent shall file with the District 3 Environmental Commission a complete permit application for: 1) the improvements constructed at the Project Tract beginning on March 1, 2008 when VCI converted the Project to commercial use, which improvements are identified in Paragraphs 15 and 17 above, subject to any applicable exclusions and limitations provided for in 10 V.S.A. Section 6001(3)(E); and 2) any commercial use of the Project Tract.
- G. If Respondent's Act 250 permit application is denied by the Commission, and said permit denial becomes final, then within sixty (60) days after said decision becomes final:
1. Respondent shall cease all commercial use of the Project Tract, except for use that constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or other use that would not be subject to Act 250 jurisdiction.
 2. Respondent shall request a jurisdictional opinion from the District Coordinator to ensure that each proposed use of the Project Tract constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or is otherwise exempt from Act 250 jurisdiction. Any use not determined to be exempt shall cease within thirty (30) days of the date upon which such jurisdictional opinion is issued. Any such use may only occur after

an Act 250 permit is obtained or after said jurisdictional opinion is modified upon reconsideration or appeal.

- H. No later than sixty (60) days after the date on which this Assurance is signed by the Environmental Court, the Respondent shall file with the Department of Environmental Conservation a complete application for all required stormwater and wastewater permits or amendments.
- I. Respondent shall file all required stormwater and wastewater permits or amendments with the District 3 Environmental Commission within thirty (30) days after said permits issue by the Agency
- J. Respondent and the Panel shall dismiss its appeal from the Jurisdictional Opinion # 3-130, Environmental Court Docket No. 13-1-09 Vtec, pursuant to a Stipulated Dismissal Order that provides that, as of March 1, 2008 when "development" commenced on the Project Tract as set forth in this Assurance of Discontinuance, Act 250 jurisdiction attached and that Act 250 approval is required for the Project Tract in the manner and solely to the extent provided for in Paragraph F above. Provided that the permits recited in this Agreement are applied for and pursued as recited herein, VCI may continue its commercial operations at the Project site during the pendency of said permit applications provided that no imminent risk of environmental harm exists or develops. The Stipulated Dismissal Order shall further provide that Courtney DeSena does not own or control any portion of the Project Tract.
- K. 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 violation set forth herein above.
- L. 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.
- M. 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.
- N. Pursuant to 10 V.S.A. § 8007(d), Respondent shall not be liable for 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.

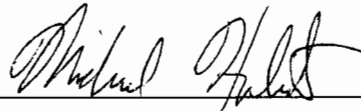
- O. In the event of a future violation by Respondent, or by any individual or entity that constitutes the same person as Respondent as defined at Act 250 Rule 2(C)(1), the facts agreed to herein shall constitute a violation for purposes of 10 V.S.A. § 8010.
- P. This Assurance sets forth the complete 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.
- Q. 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.
- R. 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 New York, NY, Vermont, this 30th day of April, 2009.

Vermont Country Inn, Route 100
Pittsfield, LLC

By: 

BE IT REMEMBERED that on the 30th day of April, 2009, personally appeared MICHAEL D. HALOWATCH, signer of the foregoing written instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of Vermont Country Inn, Route 100 Pittsfield, LLC.

Before me: 
Notary Public Commission Expires:

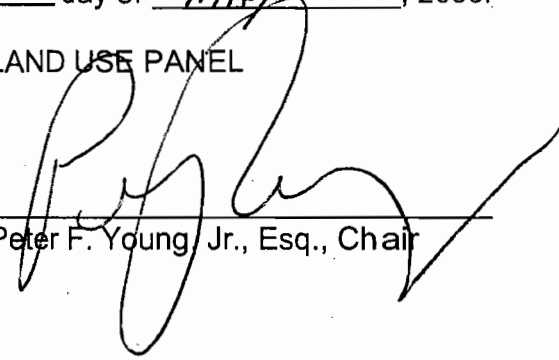
MOHAMED KAMARA
Notary Public, State of New York
No. 0TKA6162753
Qualified in New York County
Commission Expires 3-9-2011

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

DATED in Montpelier, Vermont, this 7TH day of MAY, 2009.

LAND USE PANEL

By:


Peter F. Young Jr., Esq., Chair

**STATE OF VERMONT
ENVIRONMENTAL COURT**

**VT COUNTRY INN, LLC
& DeSENA A250 JO 3-130**

**DOCKET NO. 13-1-09 Vtec
Act 250 Jurisdictional Opinion**

STIPULATED JUDGMENT ORDER

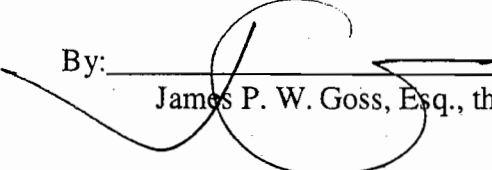
NOW COME Vermont Country Inn, Route 100 Pittsfield, LLC (the “LLC”), and Courtney DeSena, Appellants in the captioned matter (collectively, the “Appellants”), and the Land Use Panel of the Natural Resources Board and the Vermont Agency of Natural Resources (collectively the “Panel”), by and through their respective counsel, and hereby stipulate as follows:

1. Based on the facts and circumstances recited in the Assurance of Discontinuance in the matter “Land Use Panel of the Natural Resources Board v. Vermont Country Inn, Route 100 Pittsfield, LLC,” dated _____, 2009 (the “AOD”), which AOD is incorporated herein as if recast at length, it is hereby ORDERED and ADJUDGED that, Appellant, Courtney DeSena, does not own or control any portion of the lands and premises currently owned or controlled by the LLC.

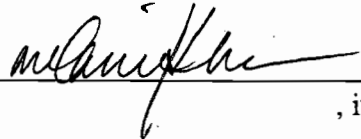
2. It is hereby ORDERED and ADJUDGED that Act 250 jurisdiction attaches to the lands and premises currently owned by the LLC solely in the manner and to the extent recited in the AOD.

Dated this 6th day of May, 2009.

Vermont Country Inn Route 100 Pittsfield, LLC
and Courtney DeSena

By:  _____
James P. W. Goss, Esq., their attorney

Land Use Panel of the Natural Resources Board
and Vermont Agency of Natural Resources

By:  _____
, its attorney

IT IS SO ORDERED.

Judge