

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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

VIOLATIONS

Noncompliance with Assurance of Discontinuance entered as an Order of the Environmental Court on May 16, 2008, Docket No. 95-5-08 Vtec, for 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.

ADMINISTRATIVE ORDER

Having found that Riverside Horse Farm and Joseph DeSena (Respondents) committed the violation set forth above, the Land Use Panel of the Natural Resources Board, pursuant to its authority set forth in 10 V.S.A. § 8008, hereby issues the following Administrative Order:

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.

ADMINISTRATIVE ORDER

Land Use Panel v. Riverside Horse Farm, LLC

Page 2 of 5

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. Respondents entered into an Assurance of Discontinuance (AOD) on May 6, 2008 for violations of Condition 14 of Land Use Permit #3W0948. The AOD was entered as an Order of the Environmental Court on May 16, 2008. A true and complete copy of the AOD is attached hereto as **Exhibit C** and made part hereof.

5. As is set forth more fully in the accompanying affidavit of Land Use Panel Permit Compliance Officer John Wakefield (PCO Wakefield), Respondents violated Conditions "A" and "B" of the AOD by: (1) failing or refusing to remove the garden located in the buffer zone on the eastern side of the Tweed River; (2) failing or refusing to implement the plan titled Riverside Horse Farm Riparian Restoration Plan (attached to the AOD as **Exhibit A** thereto and made part thereof), and; (3) failing to implement the plan per the instructions and specifications described in the document titled Riverside Horse Farm Riparian Restoration Protocol (attached to the AOD as **Exhibit B** thereto and made part thereof).

6. As is set forth more fully in the accompanying affidavit of PCO Wakefield, Respondents violated Condition "C" of the AOD by: failing or refusing to immediately seek and diligently pursue an administrative amendment of LUP #3W0948 in order to conform Condition 14 thereof to the provisions of the AOD.

7. As is set forth more fully in the accompanying affidavit of PCO Wakefield, Respondents' violations of the AOD have been continuous since at least October 1, 2008.

ORDER

- A. After June 1, 2009 and prior to September 15, 2009, 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 to the AOD as **Exhibit A** thereto, and is incorporated herein and made part hereof. All work must be in place and fully stabilized by October 1, 2009. 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 to the AOD as **Exhibit B** thereto, 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 receipt of this Order, Respondents shall pay a penalty of **twenty thousand and seventy-five dollars (\$20,075.00)**. Payment shall be by check made payable to the "Treasurer, State of Vermont" and 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

The above penalty amount is without prejudice to the extent it does not include the costs incurred by the Panel for the enforcement of the above described violations (aside from an initial \$75.00 assessment for service of process-related costs and staff time) or the amount of economic benefit gained by the respondent from the violations. The Panel reserves the right to augment the above stated penalty through evidence presented at hearing. In accordance with 10 V.S.A. § 8010, the penalty may be increased by the costs incurred by the Panel for the enforcement of the described violations, the amount of economic benefit gained by the Respondent from the violations and any and all other penalty factors enumerated in 10 V.S.A. § 8010(b), each according to proof at the hearing.

- E. 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.
- F. Any payment by the Respondents pursuant to this paragraph is made to resolve the violations set forth in this Order 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 Order from Respondent(s) state or federal taxes.

**RESPONDENT'S RIGHT TO A HEARING BEFORE THE
ENVIRONMENTAL COURT**

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. § 8012 by filing a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondent receives this Administrative Order. The Respondent must file, within the time limit, a Notice of Request for Hearing with both the Land Use Panel and the Environmental Court at the following addresses:

Chair, Land Use Panel
c/o Mark Lucas, Associate General Counsel
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Clerk, Environmental Court
2418 Airport Road Suite 1
Barre, VT 05641-8701

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

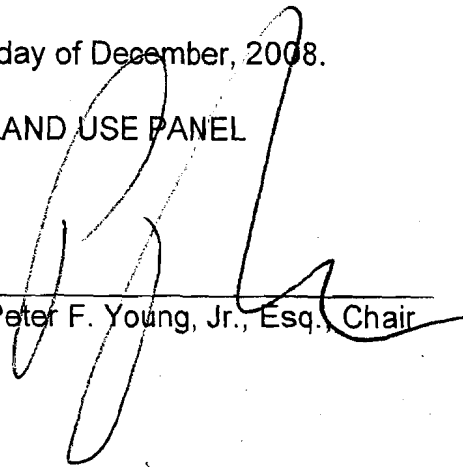
This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as set forth above. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not timely file a Notice of Request for a Hearing, this Administrative Order shall become a final Administrative Order.

COMPLIANCE WITH A JUDICIAL ORDER

Should this Administrative Order becomes a Judicial Order and the Respondent fails or refuses to comply with the conditions of that Judicial Order, the Land Use Panel shall have cause to initiate an enforcement action against the Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

DATED in Montpelier, Vermont, this 30th day of December, 2008.

LAND USE PANEL

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

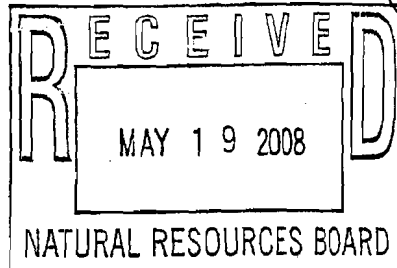
VERMONT ENVIRONMENTAL COURT



(802) 828-1660

2418 Airport Road, Ste. 1
Barre, Vermont 05641 - 8701

May 16, 2008



Mark Lucas
VT Environmental Board
National Life Records Center Building
Drawer 20
Montpelier, VT 05620-3201

RE: Vermont Environmental Board, Land Use Panel v. Riverside Horse
Farm, LLC and Joseph DeSena
Docket No: 95-5-08 Vtec

Dear Attorney Lucas:

Enclosed is an Order issued May 16, 2008, by Judge Merideth Wright relative to the Assurance of Discontinuance filed in the above-referenced matter. I have forwarded a copy of the order to Scot Kline, Esq., of the Attorney General's Office, as well as Christopher Corsones, Esq., counsel for the Respondents.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Lott".

Kathleen Lott
Assistant Clerk
Environmental Court

cc: Scot Kline, Esq.
Christopher Corsones, Esq.

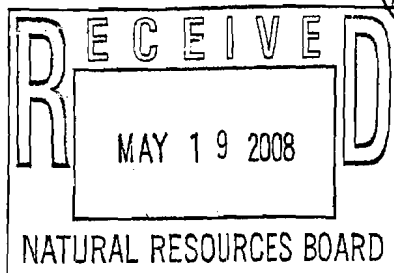
VERMONT ENVIRONMENTAL COURT



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2418 Airport Road, Ste. 1
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May 16, 2008



Mark Lucas
VT Environmental Board
National Life Records Center Building
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Montpelier, VT 05620-3201

RE: Vermont Environmental Board, Land Use Panel v. Riverside Horse
Farm, LLC and Joseph DeSena
Docket No: 95-5-08 Vtec

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Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Lott".

Kathleen Lott
Assistant Clerk
Environmental Court

cc: Scot Kline, Esq.
Christopher Corsones, Esq.

STATE OF VERMONT
ENVIRONMENTAL COURT

FILED

MAY 16 2008

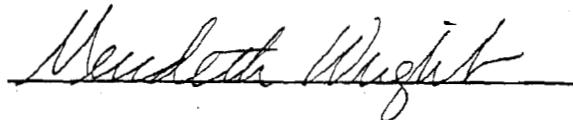
VERMONT
ENVIRONMENTAL COURT

Vermont Natural Resources Board)
Land Use Panel,)
Petitioner,)
)
v.) Docket # 95-5-08 Vtec
)
Riverside Horse Farm, LLC and)
Joseph DeSena,)
Respondent.)

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

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) 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 DeSera, 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.

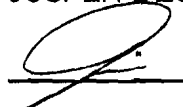
Dated at Putland, Vermont, this May 6th day of May, 2008.

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.

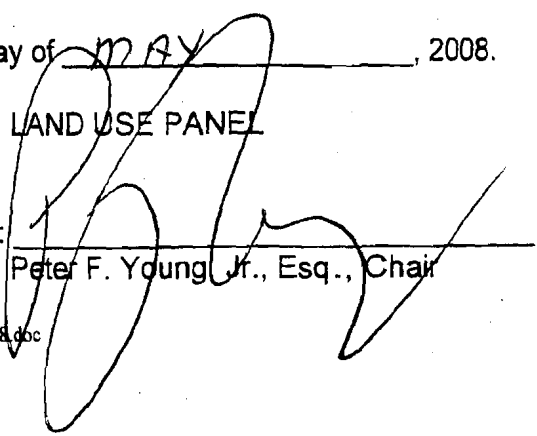
Before me,


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

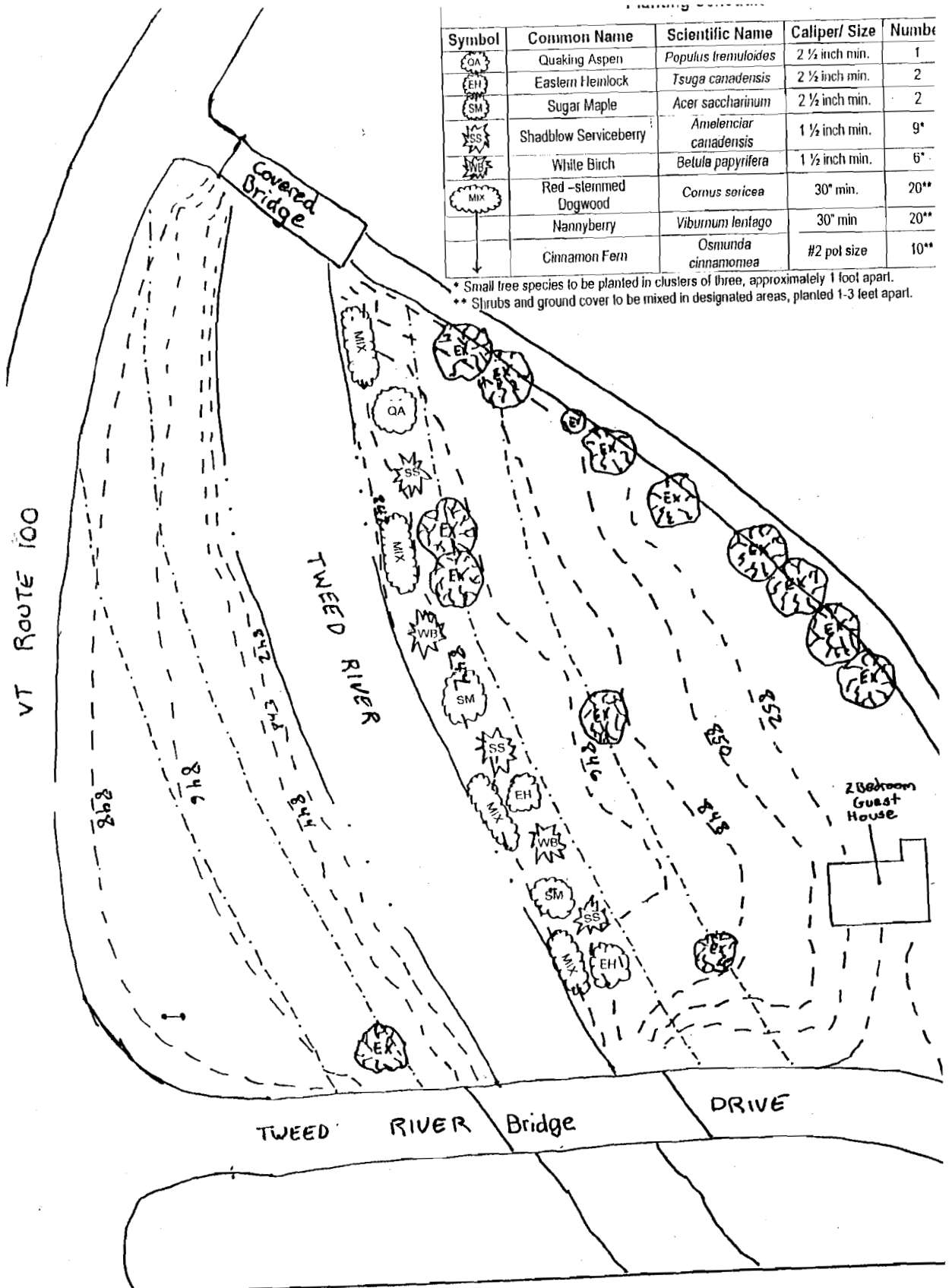
By: 

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

EXHIBIT A

| Symbol | Common Name | Scientific Name | Caliper/ Size | Number |
|--------|-----------------------|------------------------------|-----------------|--------|
| QA | 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 soricea</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.

STATE OF VERMONT
ENVIRONMENTAL COURT

) Docket No.
)
)

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
Petitioner,)

) AFFIDAVIT OF JOHN WAKEFIELD
)

v.)
)

RIVERSIDE HORSE FARM, LLC,)
)

and)
)

JOSEPH DESENA,)
Respondents.)

STATE OF VERMONT)
) ss.
COUNTY OF WASHINGTON)

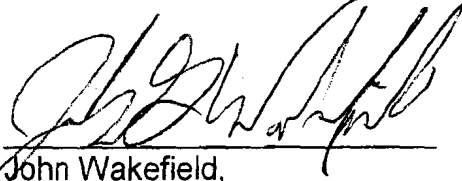
John Wakefield, being duly sworn, hereby deposes and states the following:

1. I am of legal age and competent to testify to the facts stated herein.
2. I make this Affidavit based upon personal knowledge, my review of the Land Use Panel's files in this matter, and the weekly Act 250 agenda distributed by the Vermont Agency of Natural Resources, which reports Act 250 permit applications, amendments applications, and actions taken thereon.
3. As to those facts alleged upon information and belief, I believe them to be true.
4. I am the Permit Compliance Officer for the Land Use Panel of the Vermont Natural Resources Board, and was so at all times pertinent herein. As such, I am familiar with the facts, circumstances, and prior proceedings in the above-captioned matter.
5. The property and project at issue in this case is known as Riverside Horse Farm, which is located at Tweed River Drive in Pittsfield and Stockbridge, Vermont.

6. Riverside Horse Farm is not a farm, but is a type of luxury function facility/resort which provides facilities, lodging, and catering and other services for weddings (see assorted Riverside Farm web page printouts, true and complete copies of which are attached hereto as **Exhibit D**).
7. Upon information and belief, the barns, the stable and other buildings at Riverside Horse Farm are not used for agricultural purposes, but are instead used as function halls and lodging for guests (see **Exhibit D** hereto).
8. 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 (Respondents) 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.
9. Condition No. 14 of the Permit requires the establishment and maintenance of a riparian buffer, as is more fully described in the accompanying Administrative Order.
10. Respondents entered into an Assurance of Discontinuance (AOD) on May 6, 2008 for violations of Condition 14 of Land Use Permit #3W0948. The AOD required restoration of the riparian buffer by September 15, 2008.
11. Conditions "A" and "B" of the AOD provided terms for restoration of the riparian buffer. Restoration of the riparian buffer was to include, among other things, the removal of a flower garden which had been located in the buffer (which included boulders and subsurface fabric or plastic sheeting) and the implementation of a Riparian Restoration Plan for planting vegetation (see **Exhibit A** to the AOD) consistent with the specifications of a Riparian Restoration Protocol (see **Exhibit B** to the AOD).
12. Condition "C" of the AOD also required Respondents to seek and diligently pursue an administrative amendment of LUP #3W0948 in order to amend Condition 14 of LUP #3W0948 to be consistent with the provisions of the AOD.
13. On or about October 1, 2008, I observed that Respondents had not removed the flower garden from the riparian buffer, and had not completed (or even begun) the riparian restoration which the AOD required to be completed between June 1, 2008 and September 15, 2008.
14. I issued a Notice of Alleged Violation (NOAV) dated October 1, 2008 (a true and complete copy of which is attached hereto as **Exhibit E**) to Respondents which notified Respondents that they had failed to remove the flower garden or restore the riparian buffer.
15. Upon information and belief, Respondents also failed or refused to apply for an administrative amendment to amend Condition 14 of LUP #3W0948 to be consistent with the provisions of the AOD.

16. Accordingly, Respondents have been in violation of conditions "A", "B" and "C" of the AOD since at least October 1, 2008.
17. Moreover, since the AOD was entered into to resolve long-standing riparian buffer violations (see AOD at ¶¶ 2-4), the riparian buffer violations existed prior to the time the AOD was agreed to (see NOAV dated October 4, 2006, a true and complete copy of which is attached hereto as **Exhibit F**).

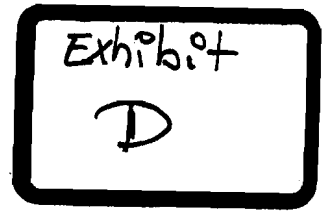
DATED at Montpelier, Vermont, this 30 day of December, 2008.



John Wakefield,
Permit Compliance Officer

Subscribed and sworn to before me this 30th day of December, 2008.

Denise Wheeler
Notary Public (2/10/2011)



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Vermont weddings

Riverside Farm for your picture perfect wedding in Vermont.

Vermont wedding memories that will last a lifetime. Thinking of a Vermont wedding? Riverside Farm is a luxurious private country estate in Vermont that provides an ideal and exclusive setting for your dream Vermont wedding. Nearly three hundred sprawling acres of exquisitely manicured grounds and pristine Vermont mountain vistas make it Vermont's most breathtaking country wedding estate. Vermont weddings with "A blend of city chic style with rustic Vermont country elegance"- Riverside Farms for your dream Vermont wedding.

Specializing in the destination Vermont weddings, this Vermont wedding estate hosts elegant and unique barn weddings, outdoor weddings, rehearsal dinners, ceremonies and receptions. Imagine your Vermont wedding of a life time as a three-day celebration, which would include a delicious rehearsal dinner, a beautiful outdoor ceremony, a magnificent reception and a farewell Sunday brunch, each utilizing a different location on the property. You may select a tented event on the fabulous landscaped grounds or an event in one of the property's stunning barns — the Stonewell Barn or the Red Barn — which have been masterfully restored to maintain a rich feeling of Vermont history, while allowing for every modern convenience. Riverside Farm can provide a customized wedding package and menu designed to suit every taste as well as an on-site wedding coordinator to assist you with every last detail of your wedding, ensuring your wedding runs smoothly and with precision.

Located in the four-season state of Vermont, and just 7 miles from the East Coasts biggest ski resort - Killington Ski Resort, Riverside Farm is the ideal location for couples who want to take advantage of all Vermont has to offer throughout the seasons. To make your Vermont wedding unique consider having hot air balloon rides, fireworks, outdoor barbeques and horse rides in the warmer months. When the cold weather sets in, imagine cozy fire-side wine tasting and incredible catered dinners, or brave the winter weather for some dog-sledding, snow shoeing or

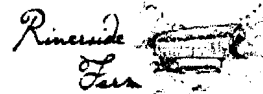
sleigh rides.

Whether you are dreaming of a winter wonderland in Vermont, romantic fall foliage, spring or green/eco wedding, Riverside Farm in Vermont can assist you and help plan an elegant country wedding, one that you and your guests will always remember. The town of Killington and Killington Resort are less than 8 miles away.

Vermont wedding memories that you will cherish... Always and Forever!

*Please note if you are using Safari, you will not be able to view the photo's on this website. Please download Firefox here: <http://www.firefox.com>.

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Riverside Farm Weddings - Imagine the possibilities!

If you envision a warm reception overflowing with candles, or a ceremony on the meadow by the "Kissing Tree" with haystacks and a walkway paved with wildflowers - Riverside Farm help you plan your dream Vermont wedding. Here at Riverside Farm we are dedicated to transforming your Vermont wedding vision into a memorable celebration that will be talked about for years to come. Our property enables couples to let their imaginations run wild to virtually plan an exclusive tented event with hot air balloons, small elegant formal receptions with long white linens in the iconic barns, or a relaxed country barbeque - whatever your wedding wishes are, we will assist you to make them come true.

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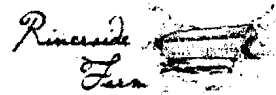
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[The Red Barn](#) | [The Stonewell Barn](#) | [The White Horse Barn](#) | [The Garden Barn](#) | [The Meadow](#)

The Grounds

Located in a quaint New England town, Riverside Farm is one of the few gorgeous old world farming estates. The 300 acre estate has been considered one of the most private wedding venues in all of Vermont.

On the lush meadows and rolling hills you will find two spacious fully restored turn of the century New England post and beam barns - an iconic Red Barn, and a darker wooden barn named The Stonewell Barn. You and your guests will enjoy the two venues including: the Stone Cellar, the White Horse Barn, the Garden Barn and the idyllic Meadow, for an entire weekend to host all of your events (rehearsal dinner, ceremony, cocktail party, wedding reception, farewell brunch.)



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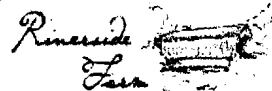
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The Red Barn | The Stonewell Barn | The White Horse Barn | The Garden Barn | The Meadow

Lodging.

Overnight wedding accommodations on the estate are available for up to twenty-five people. On our surrounding properties we are able to accommodate another 80+.

On Riverside Farm your guests may stay in the unique accommodations, which include the the River Studio, the Caretakers Cottage, and the recently renovated Stables, as well as the stunning Bridal Suite and new Groom's Cabin.

Riverside Farm can provide you and your guests with a weekend they will never forget. Please consult with our onsite-coordinator for rates and more information.



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Catering at Riverside Farm

Riverside Farm can provide a customized package and menu designed to suit every taste as well as an on-site wedding coordinator to assist you with every last detail, ensuring your wedding runs smoothly and with precision.

Our wedding planner will consult with you regarding all of your weekend events: rehearsal dinner/welcome Party, wedding reception, saturday or sunday brunch. There are plenty of ideas that will make your wedding weekend more fun: Elegant grill-style dinner, Country-style barbeque, Vegetarian fare, Pig roast, Clambake, Lobster bake, S'mores campfire, Wine or Scotch tasting - anything you can dream up, we can do!

Please [contact us](#) for a sample menu.

»

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STATE OF VERMONT
LAND USE PANEL OF THE NATURAL RESOURCES BOARD
NATIONAL LIFE RECORDS CENTER BUILDING
NATIONAL LIFE DRIVE
MONTPELIER, VT 05620-3201
NOTICE OF ALLEGED VIOLATION ("NOAV")
10 V.S.A., SECTION 8006(b)

E

Investigation Date: October 1, 2008

Town: Pittsfield

Alleged Violator (Respondent):

Name: Riverside Horse Farm, LLC
&
Joseph DeSena
Address: 57 Tweed River Drive
Pittsfield, VT 05762

You are hereby put on notice that the Land Use Panel of the Natural Resources Board believes that you are in violation of the following:

1. **A May 12, 2008 Assurance of Discontinuance between Riverside Horse Farm/ Joseph DeSena and the Land Use Panel of the Natural Resources Board.**

Description of Alleged Violation:

1. **Respondents have failed to remove the garden on the east side of the Tweed River and implement the plan titled Riverside Horse Farm Riparian Restoration Plan as required by Agreement Condition A of the Assurance of Discontinuance.**

Compliance directives:

1. **Respondent shall remove the garden on the east side of the Tweed River prior to November 14, 2008.**
2. **Respondent shall implement the proper erosion control measures during the removal of the garden to ensure that no sediments are discharged into the Tweed River.**
3. **Respondent shall not implement the Riverside Horse Farm Riparian Restoration Plan, as the deadline for doing so expired on September 15, 2008 and doing so would be futile this late in the season.**

4. **Respondent shall, pursuant to Condition 14 of Land Use Permit #3W0948, allow the first 25 feet from the top of banks of the Tweed River to grow unmanaged as an undisturbed, naturally vegetated, unmowed buffer strip.**

The Land Use Panel will follow up with more specific directives via an Administrative Order prior to the next construction season.

In response to the alleged violation, the Land Use Panel may, pursuant to its authority under 10 V.S.A., Chapter 201, as amended by Act No. 115 (2004 Adj. Sess.), proceed with an enforcement action, including but not necessarily limited to, an Administrative Enforcement Order (AO). The AO would require full compliance with all applicable statutes and regulations, assess penalties and, if necessary, require corrective/restorative action. Prompt correction of the alleged violation may lessen the likelihood, or severity, of any enforcement action taken by the Natural Resources Board.

If you have any questions, you should call John Wakefield, Permit Compliance Officer, at (802) 828-3355. **We request a written response within 10 days of receipt of this NOAV, which sets forth the reasons for the existence of the alleged violation and your intentions with respect to prompt correction.** Our mailing address is at the top of this Notice.

This Notice of Alleged Violation was served on the above-designated alleged violator by certified mail.

Dated: October 2, 2008

Official: 
John Wakefield, Permit Compliance Officer

cc: Ken Smith, Associate General Counsel for Enforcement (hand delivered)
Linda Matteson, District #3 Coordinator (via mail)
Rich Kirn, VT Agency of Natural Resources, Fish and Wildlife Dept. (via mail)
Christopher Corsones, Counsel for Respondent (via mail)

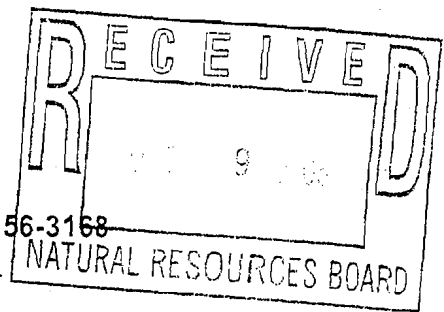
Exhibit
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STATE OF VERMONT
NATURAL RESOURCES BOARD
LAND USE PANEL

100 Mineral Street, Suite 305, SPRINGFIELD, VT 05156-3168

NOTICE OF ALLEGED VIOLATION ("NOAV")

10 V.S.A., SECTION 8006(b)



Investigation Date: _____

Complaint # _____

Town: **Pittsfield**

Alleged Violator (Respondent):

Name: **Riverside Horse Farm LLC, c/o Joseph and Courtney Desena**
Address: **57 Tweed River Drive**
Pittsfield, VT 05762

You are hereby put on notice that the Natural Resources Board believes that you are in violation of the following Vermont Statutes, Act 250 Rules and Permit:

1. **10 V.S.A., Chapter 151 (Act 250) and Land Use Permit (LUP) #3W0948, Conditions 2, 14 and 18.**

Description of Alleged Violation:

1. **Respondent has commenced construction of a chapel, by clearing the site, that was not included in the LUP.**

Condition 2 of the LUP states:

No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Environmental Board Rules

2. **Respondent has mowed within the stream buffer on the Tweed River.**

Condition 14 of the LUP 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.

3. **Respondent has installed plumbing in the "bachelor's quarters."**

Condition 18 of the LUP states:

The permittee may hold functions in the storage barn. Both the storage barn and the garden barn may be heated and have water to them. **The shelter/barns shall not be heated or supplied with water without prior approval** from the District Environmental Commission. (Emphasis added)

The "bachelor's quarters" was a "shelter/barn" in the application. The Respondent has filed a request for reconsideration of the LUP to include plumbing and heating in the bachelor's quarters.

Compliance Directive:

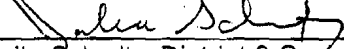
1. Cease all construction of the chapel.
2. Cease all mowing within the "unmanaged" portion of the streambank buffer.

In response to the alleged violation, the Natural Resources Board may, pursuant to its authority under 10 V.S.A., Chapter 201, proceed with an enforcement action, including but not necessarily limited to, an Administrative Enforcement Order (AO). The AO would require full compliance with all applicable statutes and regulations, assess penalties and, if necessary, require corrective/restorative action. Prompt correction of the alleged violation may lessen the likelihood, or severity, of any enforcement action taken by the Natural Resources Board.

If you have any questions, you should call Julia Schmitz, District 3 Coordinator, at (802) 885-8842. **We request a written response within 10 days of receipt of this NOAV, which sets forth the reasons for the existence of the alleged violation and your intentions with respect to prompt correction.** Our mailing address is at the top of this Notice.

This Notice of Alleged Violation was served on the above-designated alleged violator by certified mail.

Dated: October 4, 2006

Official: 
Julia Schmitz, District 3 Coordinator

cc: Richard Holmes, Esq., Associate General Counsel
Christopher Corsones, Esq.