

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Riverside Horse Farm, LLC,
Respondent

VIOLATIONS

Conditions 1, 7, 18 of Land Use Permit 3W0948 (Altered); and
Act 250 Rule 34(A)- Failure to obtain a Land Use Permit Amendment

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (the "Board") and Riverside Horse 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 property located on Tweed River Drive in Pittsfield and Stockbridge, Vermont (the Project Tract).
2. The operations on the Project Tract are authorized under Land Use Permit series 3W0948 (the Permit), which, among other things, authorized the permittee to construct a 5,000-square foot storage/function barn on the Project Tract.
3. The Project Tract includes a building located adjacent to the barn (Bachelor's Quarters, aka, Bathroom Cabin, Groom's Cabin).

Hours of Operation

4. Condition 18 of the Permit states:

All weddings and functions, including all music and public address announcements, shall end by 10:00 p.m. The permittee shall ensure all guests have vacated the premises prior to 10:30 p.m. All vehicles for clean-up shall be in the loading areas prior to 10:30 p.m. No back-up alarms shall sound after 10:30 p.m. There shall be no idling of any motors between 10:30 p.m. and 11:30 p.m. Clean-up from the wedding/function may continue until 11:30 p.m. All noise, including that created by vehicles and caterers shall totally cease at 11:30 p.m.

5. On the night of Friday, August 5, 2016, after a function had concluded, guests on the porch of the Bachelor's Quarters on the Project Tract played music from a small Bluetooth speaker which continued until approximately midnight.
6. A neighbor called and complained about the music; however, there is no evidence regarding how loud the music was. Respondent concedes that the music may have been audible at the neighbor's property line, which is approximately 200 feet from the Bachelor's Quarters. Respondent disputes that the music was higher than 40 db(A) at the property line.
7. Once notified of the unauthorized music, Respondent's staff responded quickly to have the music turned off.
8. Respondent already provides prior written notice regarding the noise restrictions of the Permit to guests and Respondent will continue to provide guests such written notice.
9. Respondent agrees to apply for an amendment to the Permit (the "Permit Amendment") for the Bachelor's Quarters and shall seek to clarify Respondent's responsibilities with respect to, and noise limits applicable to guest activities unrelated to Respondent-sponsored events after 11:30 p.m. Specifically, condition 18 purports to require any and all sound from the Property to "totally cease." If taken literally, any audible sound emanating from any source at the property line would constitute a violation of condition 18. A Permit Amendment is necessary to clarify applicable nighttime noise levels on the Property.
10. By allowing audible sounds beyond the property line, Respondent technically failed to comply with condition 18 of the Permit as it is written. However, given the lack of a clear nighttime noise standard, the Board will not count this technical non-compliance as a violation of the Permit, *provided that* Respondent files an application for the Permit Amendment requesting clarification of condition 18 within forty-five (45) days after the Effective Date.

Introduction of Outdoor Music

11. Act 250 Rule 34(A) states:

An amendment shall be required for any material change to a permitted development or subdivision, or any administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.

12. Act 250 Rule 2(C)(6) defines "material change" as:

any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10).

13. In the Memorandum of Decision that accompanies Land Use Permit 3W0948(Altered), the Commission noted that "the weddings are held *in* the large, open barn. The music for the functions are *inside* the barn. The permittee plans to have all music off by 10:00 p.m." (emphasis added).
14. For several years Respondent has allowed outdoor music for at least two functions on the Project Tract. Most recently, this occurred at a wedding held on Saturday, August 20, 2016 on the Project Tract.
15. Respondent maintains that outdoor events were always anticipated throughout the previous proceedings, and that the above-referenced statements in the Permit were intended to describe the nature and types of events that would (or that could) occur within the buildings that were being proposed, but were not intended to be exclusive of the nature and types of activities that would (or could) occur outside of those buildings. Respondent further maintains that it is unreasonable to suggest or to infer from the Permit that in applying for the Permit, Respondent was proposing to develop a facility designed as a destination for weddings and other events in a beautiful Vermont valley – to be held exclusively behind closed doors.
16. The Board acknowledges Respondent's interpretation of the Permit and understands there is conflicting evidence as to whether Respondent's hosting of outdoor events constitutes a "change in operations" in violation Act 250 34(A). Thus, the Board will not count the hosting of outdoor events as a violation, *provided that* Respondent files an application for the Permit Amendment

clarifying any restrictions on outdoor events within forty-five (45) days after the Effective Date

Lodging in the Bachelor's Quarters

17. Condition 1 of the Permit states, "This project shall be completed, operated and maintained in accordance with Memorandum of Decision #3W0948.
18. Conclusion 22 of the Memorandum of Decision 3W0948 states:

The Bachelor's Quarters are located adjacent to the barn used for functions. The bathroom facilities are often used by the employees catering the function. There will be no sleeping facilities in the Bachelor's Quarters.
19. Condition 7 of Land Use Permit #3W0948(Altered) states, "This permit hereby incorporates all of the conditions of the Wastewater System and Potable Water Supply Permit #WW-3-0763-1 issued by the Wastewater Management Division, Agency of Natural Resources."
20. Wastewater System and Potable Water Supply Permit WW-3-0763-1 states: "25. The proposed Bathroom Cabin [aka, Bachelor's Quarters] is approved for bathroom facilities only, to serve the Wedding Barn."
21. Respondent rented the Bachelor's Quarters as commercial lodging for over a decade in violation of Condition 1 and 7 of the Permit.
22. Prior to the issuance of the Notice of Alleged Violation (NOAV), Respondent scheduled weddings and events for the 2017 Spring, Summer, and Fall seasons.
23. Upon receipt of the NOAV, Respondent closed the Bachelor's Quarters to commercial use and is no longer advertising the cabin as lodging on its website.
24. Respondent agrees to apply for and obtain the Permit Amendment and, as necessary, apply for and obtain an amendment to WW-3-0763-1 prior to scheduling any additional use of the Bachelor's Quarters beyond its previously permitted operations.

AGREEMENT

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

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- A. Respondent shall comply with Permit series 3W0948 (Altered).
- B. Respondent shall submit an application for the Permit Amendment within forty-five (45) days after the Effective Date. Pending issuance of a final and unappealable decision on the Permit Amendment application, Respondent may hold weddings and events on the Project Tract, provided that:
 - a. The Bachelor's Quarters:
 - i. May be used as lodging by guests attending weddings and events scheduled prior to November 7, 2016 (the date of the NOAV), consisting of those weddings and events listed on Schedule A attached hereto (the "Authorized Events"), provided that the amendment to WW-3-0763-1 as contemplated by Paragraph C, below, is first obtained;
 - ii. May not be used as lodging by guests attending weddings or events other than the Authorized Events except and to the extent authorized by the Permit Amendment, or as expressly authorized in writing by the Board, which authorization may be granted without an amendment to this Agreement and/or Court approval.
 - b. Outdoor events and amplified music shall end and/or shall be moved indoors prior to 9:00 p.m. Acoustic music, games, and gatherings may continue outdoors until 10:00 p.m. Nothing herein shall alter condition 18 of the Permit regarding ending times for weddings and functions, clean-up, etc.
 - c. Until such time as the Permit Amendment is issued clarifying condition 18, Respondent shall ensure that between 11:30 p.m. and 7:00 a.m., noise emanating from the Project Tract (including, without limitation, from the Bachelor's Cabin during Authorized Events) shall not exceed 55 dB(A) L_{max} at the exterior of any neighboring residence.
 - d. The terms set forth in this Paragraph B shall be superseded by any inconsistent terms or conditions set forth in the Permit Amendment.
- C. Respondent agrees to apply for and obtain, as necessary, an amendment to WW-3-0763-1 prior to any use of the Bachelor's Quarters beyond its currently permitted operations.
- D. Respondent agrees to continue to provide guests written notice regarding the noise restrictions of the Permit, as clarified herein. In its application for the

Permit Amendment, Respondent will seek to clarify any noise restrictions associated with any future proposal to use the Bachelor's Quarters as lodging.

- E. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$16,650.00**, for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$977.60**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 3. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Pittsfield land records, by check made payable to the "Town of Pittsfield, Vermont."
 4. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Stockbridge land records, by check made payable to the "Town of Stockbridge, Vermont."
- F. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
- G. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- H. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

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- J. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- K. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division (the "Effective Date"). When so entered by the Superior Court, Environmental Division, 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.
- L. 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 set forth herein, provided that the Respondent fully complies with this Assurance.
- M. The Board reserves the right to grant reasonable extensions of any deadline contained herein, upon prior reasonable request by the Respondent. Where this Assurance requires Respondent to file the Permit Amendment application within forty-five (45) days after the Effective Date, such requirement shall be deemed to be met upon the good faith filing of an amendment application with the District #3 Commission prior to said deadline; in the event that the District Coordinator issues any incompleteness notifications, such will not constitute a violation of the deadlines set forth herein provided that Respondent submits the missing information with reasonable promptness.
- N. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- O. 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.
- P. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- Q. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

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

Dated at Rutland, Vermont, this 7th day of April, 2017.

Riverside Horse Farm, LLC

By Peter M Borden
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 7th day of April, 2017, personally appeared Peter Borden, individually and as the duly authorized agent of Riverside Horse Farm, LLC signer and sealer of the foregoing instrument who is known to me or who satisfactorily established their identity to me and acknowledged the same to be the free act and deed of Riverside Horse Farm, LLC and that he has the authority to contract on behalf of Riverside Horse Farm, LLC and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Marsha Orzech
Notary Public
My Commission Expires: 2-10-19

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

Dated in Montpelier, Vermont, this 15 day of May, 2017.

Natural Resources Board

By:

Diane B. Snelling
Diane B. Snelling, Chair

Schedule A
Assurance of Discontinuance
Natural Resources Board, Petitioner
Riverside Horse Farm, LLC, Respondent

Authorized Events

Friday, May 05, 2017
May 5 --12 , 2017
Saturday, May 20, 2017
Friday, May 19, 2017
Friday, May 26, 2017
Saturday, June 03, 2017
Saturday, June 03, 2017
Friday, June 16, 2017
Friday, June 23, 2017
Friday, June 30, 2017
Friday, July 07, 2017
Friday, July 14, 2017
Friday, July 21, 2017
Friday, July 28, 2017
Friday, August 04, 2017
Saturday, August 12, 2017
Friday, August 18, 2017
Friday, August 25, 2017
Saturday, September 02, 2017
Friday, September 08, 2017
Friday, September 15, 2017
Friday, September 22, 2017
Friday, September 29, 2017
Friday, October 06, 2017
Saturday, October 14, 2017
Friday, October 20, 2017
Friday, October 27, 2017
Friday, October 27, 2017
Friday, November 03, 2017
Friday, November 10, 2017
Friday, November 17, 2017

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

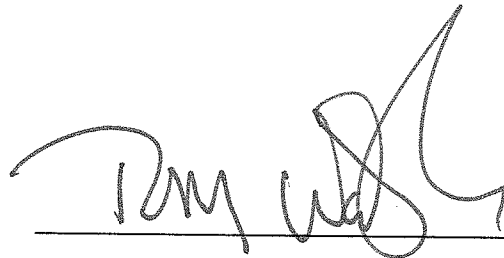
Vermont Natural Resources Board,)
Petitioner,)
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v.)
)
NRB v Riverside Horse Farm, LLC,)
Respondent.)

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ORDER

The Assurance of Discontinuance signed by the Respondent on April 7th, 2017, and filed with the Superior Court, Environmental Division, on May 15th, 2017, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 16th day of May 2017.



Thomas Walsh, Judge
Vermont Superior Court
Environmental Division