

STATE OF VERMONT

Superior Court

Environmental Division  
Docket No.

Natural Resources Board,  
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

David and Katie Babic,  
Respondents

**VIOLATIONS**

- I. Failure to comply with Permit Conditions 1, 11, 12, 16, 29C and 29E of Land Use Permit 5W0777 (Corrected).
- II. Failure to obtain an Act 250 Permit Amendment pursuant to Act 250 Rule 34(A).

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and David and Katie Babic (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. On September 29, 1984, the District 5 Environmental Commission issued Land Use Permit 5W0777 (Corrected) ("the Permit") for the construction of 3,700 feet of roadway and the creation of a residential subdivision located along Woodbury Lake off Town Road 15 in Calais, Vermont.
2. The Commission noted in its Findings of Fact that "the potential for damage to the lake is so great from erosion risks from the project that several other conditions will be necessary" to meet the criteria. Findings of Fact p. 7-8.
3. Respondents, David and Katie Babic, own a 4.3-acre lot (Lot 13) described by the Permit. Respondents purchased Lot 13 in 2007.
4. From approximately 2007 to 2014 Respondents undertook various construction

activities on Lot 13 prior to obtaining a Land Use Permit Amendment in violation of the Permit.

5. On December 30, 2014 the Natural Resources Board issued a Notice of Alleged Violation to the Respondents, which notified the Respondents of the violations and required that they submit a permit amendment with the District Environmental Commission by February 28, 2015.
6. Respondent filed their application on April 14, 2015, which was deemed incomplete. Respondent's application was re-filed and deemed complete on June 6, 2015.

#### **Relocation of House Site and Driveway**

7. Respondents excavated a house site, and constructed a driveway on Lot 13 in different locations and a far greater extent than the locations depicted on Exhibit 15 of the Permit, the approved plans.
8. Condition 1 of the Permit states:

The project shall be completed as set forth in Findings of Fact and Conclusions of Law 5W0777, in accordance with the plans and exhibits stamped "Approved".
9. The Findings of Fact, under Criterion 4, Soil Erosion, pages 7-8 state:

The Commission shall also require that each lot purchaser be provided a copy of the final site plan (Exhibit 15) in order that improvements (i.e. homes, drives and disposal areas) shall take place as shown and as approved herein by this Commission
10. Condition 22 of the Permit specifically states that "a revised site plan must be submitted within 30 days of this decision which depicts the relocation of the drive for lot 13."
11. The particular location of homes and driveways was critical to the issuance of the Permit due to concerns over aesthetics and the protection of water quality in Woodbury Lake.
12. Without first obtaining a permit amendment, the Respondents excavated sites for a driveway, a home, and associated infrastructure in different locations than those depicted on Exhibit 15 of the Permit. Therefore, Respondents violated Condition 1 of the Permit and Act 250 Rule 34(A).

### Erosion Control

13. In approximately 2007, Respondents began earthwork and removal of forested cover on Lot 13. By 2014, Respondents cleared over an acre, which extended well-beyond the area of permitted improvements. This area was disturbed and uncovered during the Board's Enforcement Officer's visit on December 2, 2014.
14. Respondents failed to properly install erosion control devices and failed to implement the required erosion control practices including seeding and mulching, jute netting, and hay bale dams.
15. These activities violate permit conditions 1, 11, and 29E and contravene the approved plans and exhibits.
16. Condition 1 of the Permit states:

The project shall be completed as set forth in Findings of Fact and Conclusions of Law 5W0777, in accordance with the plans and exhibits stamped "Approved".
17. Condition 11 of the Permit states, in part, that "...No earthwork is to be performed between October 15 and May 1."
18. Condition 29E of the Permit states, "all lot owners shall strictly adhere to the individual lot development erosion control plan during construction of homes, drives and waste disposal systems."
19. The general controls approved as Exhibit 10 state, in relevant part, the following:
  - a. "All disturbed areas are to be seeded and heavily mulched (6 inches of hay or straw) immediately after completion of construction and by October 15 regardless of the status of completion."
  - b. "On slopes greater than 15% all mulch is to be anchored with jute netting."
  - c. Hay bale dams or silt fences are to be placed along the top of all banks (slopes 15% or greater).
  - d. "The amount of soil disturbance shall be minimized as much as possible. Do not disturb vegetation *more than 15 feet beyond any improvement.*"
20. The specific controls for Lot 13 state, "[p]lace HBD (hay bale dams) as shown. Maintain 50 foot undisturbed (except for path to lake) vegetative buffer between drive and lake. Build drive at grade with no road ditch. Allow runoff to flow

evenly off road to vegetative buffer.”

21. Exhibit 16 of the Permit, the applicant’s proposed Findings of Fact states, in part, “The agricultural or forestry potential of these soils will not be significantly reduced because of the minimal construction involved and the project’s effort to design its components so as to limit impact on existing forested areas.”
22. Respondents failed to comply with the erosion control plan by removing forested cover, including stumps, far in excess of 15 feet from the improvements depicted on Exhibit 15 and noted in Exhibit 10. Respondents failed to construct the driveway at grade. Respondents terraced, excavated, and regraded approximately one acre of forest soils, creating new slopes in excess of 15%. Respondents failed to install seed and mulch or jute netting in accordance with the Erosion Control Addendum, despite the commencement of construction in mid-October. In addition, Respondents failed to install hay bale dams or silt fences along the top of all banks. Finally, silt fences that were installed on the site were not properly keyed-in to the soil; and therefore, were not effective in trapping sediment.
23. By conducting earthwork on Lot 13 as described above, Respondents violated Conditions 1, 11 and 29 E of the Permit.

### **Outdoor Lighting**

24. Respondents installed two halogen floodlights on an existing outbuilding (“the boat house”) without any shielding.
25. Condition 12 of the Permit states, in part, that “all outdoor lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view substantially beyond the perimeter of the area to be illuminated.”
26. By installing the floodlights without proper shielding, Respondents violated Condition 12 of the Permit.

### **Lakeshore Buffer Zone**

27. Through various uses, including: open burning, equipment storage, cutting, vegetation disturbance, trail maintenance, and the construction of improvements; Respondents disturbed the natural condition of the shoreline of Woodbury Lake on Lot 13 within 50 feet of the edge of the shoreline.
28. Condition 16 of the Permit states, that “the owners of lots 9, 11, 12, 13, 14, 16 and 17 shall maintain a 50-foot-wide undisturbed buffer on the Lake’s

shoreline.”

29. Additionally, condition 29 C of the Permit states, in part, that “all lake front lots shall maintain a 50-foot-wide undisturbed buffer zone as measured from the edge of the shoreline.”

30. By disturbing the shoreline as described above, Respondents violated Conditions 16 and 29C of the Permit.

### **Respondent’s Subsequent Actions**

31. On July 20, 2015 the District Commission issued Land Use Permit Amendment 5W0777-3 to the Respondents, which approved a revised site plan, construction of a single family home and garage, relocation of the driveway, and associated as-built improvements.

32. As of a May 5, 2017 site visit, Respondents have removed boats and substantial portions of the ski jump from the 50-foot buffer although some portions of the latter still remain.

33. Respondents have agreed to re-vegetate areas of the shoreline and forest areas in accordance with this agreement and as demarcated on the May 5, 2017 site visit.

### **AGREEMENT**

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

- A. Respondents shall comply with the Permit and all amendments.
- B. If Respondents choose to remove Japanese barberry (*Berberis thunbergii*) from within any buffer designated on Lot 13, Respondents shall do so by manually pulling or digging and properly disposing of the plant at a certified solid waste facility. In the alternative, if any other method of removal and disposal of this exotic invasive species is proposed, then Respondents shall consult with an invasive species expert and develop a plan for submission and approval by the District Environmental Commission prior to implementation of that plan. The plan may be approved by Administrative Amendment at the discretion of the District Commission under Act 250 Rule 34(D).
- C. By no later than **July 31, 2018**, Respondents shall restore all disturbed portions of the 50-foot Buffer Zone as follows:

1. Remove all firewood or brush stored within the 50-foot Buffer Zone;
  2. Remove all ski jump/slide, floating ramp/dock materials, and associated plastic barrels from within the 50-foot Buffer Zone;
  3. Replant all areas of the Buffer Zone indicated on Attachment A (Zone One) that are not already dominated by woody plants with a combination of native shrubs and trees (such as red osier dogwood (*Cornus sericea*) in a band adjacent to the lakeshore, and balsam fir (*Abies balsamea*) or northern white cedar (*Tsuga canadensis*) on the drier upslope edges of Zone One. These shrubs and trees may be procured from the construction area of the path on the southern peninsula identified in Land Use Permit Amendment 5W0777-3. Trees and shrubs shall be at least 1 foot in height, spaced a maximum of 10 feet apart with equidistant spacing from existing trees and shrubs and each other. The planting objective shall be to enable the formation of a future overstory of hemlock forest on upland areas of the 50-foot Buffer Zone, with a band of shrub swamp comprised of native species closer to the shoreline of Woodbury Lake. The Respondents shall pay particular attention to restoring and naturalizing the areas to the east of the small patio & fire ring on both sides of the existing five-foot path, and the two locations identified on the southern end of the peninsula.
  4. Plantings shall be watered as needed during the first year of establishment. Other than maintenance to ensure the health or survival of the plants (e.g., watering and staking), no maintenance, including mowing, cutting, brush hogging, or pruning, shall be permitted.
  5. Twelve to eighteen months following initial installation, dead plants shall be replaced in accordance with the specifications outlined in Paragraph 3.
- D. By no later than **July 31, 2018**, the Respondents shall restore all disturbed portions of the existing wooded buffer as indicated on **Attachment A** as follows:
- i. Following final grading of the site, Respondents shall plant: (A) in zone two, a mixture of Respondent's choice of the following low-growing native species: Striped Maple (*Acer pensylvanicum*), Hobblebush (*Viburnum alnifolium*), Shadbush/Serviceberry (*Amelanchier sp.*), and/ or Beaked hazelnut (*Corylus cornuta*) placed every 15 feet on center, and (B) in zone three, a mixture of Respondents' choice of hemlock forest successional species: white pine (*Pinus strobus*), paper birch (*Betula papyrifera*), or Quacking aspen (*Populus tremuloides*) (5-7 feet in height) placed every 15-feet on center. The planting objective shall be to enable the formation of a hardwood forest.
  - ii. Plantings shall be watered as needed during first year of establishment. Other than maintenance to ensure the health or survival of the plants (e.g.,

watering and staking), no maintenance, including mowing, cutting, brush hogging, or pruning shall be permitted.

- iii. Twelve to eighteen months following initial installation, dead plants shall be replaced in accordance with the specifications outlined in Paragraph D.
    - i.
- E. On or before **August 1, 2018**, Respondent shall contact the Board to arrange a site visit. The site visit may be attended by Respondents or their representative, and the Board's Enforcement Officer, and shall occur on or before June 15, 2018, to confirm that all of the terms of this Restoration Plan have been fully implemented. Respondents shall promptly address deficiencies identified during the site visit, if any. In such case, Respondent shall contact the Board's Enforcement Officer when the deficiencies have been remedied; and shall participate in an additional site visit, at a mutually decided time, to confirm completion of the remedy work.
- F. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$4,800.00** for the violations noted herein, by good check made payable to the "State of Vermont."
  2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,228.36**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont."
  3. the amount of Ten Dollars (**\$10.00**) Dollars (U.S.), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Calais land records, by good check made payable to the "Town of Calais, Vermont."
- 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. Respondents are jointly and severally liable for all obligations under this Assurance.
- I. 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.

- J. 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.
- K. 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.
- L. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. 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.
- M. 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.
- N. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- O. 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.
- P. 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. 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 the imposition of further enforcement action including injunctive relief, contempt proceedings, and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- R. 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 Waitsfield, Vermont, this 1<sup>st</sup> day of September, 2017

David Babic                      Katie Babic  
David Babic                      AND                      Katie Babic

STATE OF VERMONT  
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 1 day of September, 2017, personally appeared David and Katie Babic, signer(s) of the foregoing instrument who are known to me or who satisfactorily established their identity to me and acknowledged the same to be their free act and deed.



Before me,

Jennifer R. Peterca  
Notary Public  
My Commission Expires: 02-10-19

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

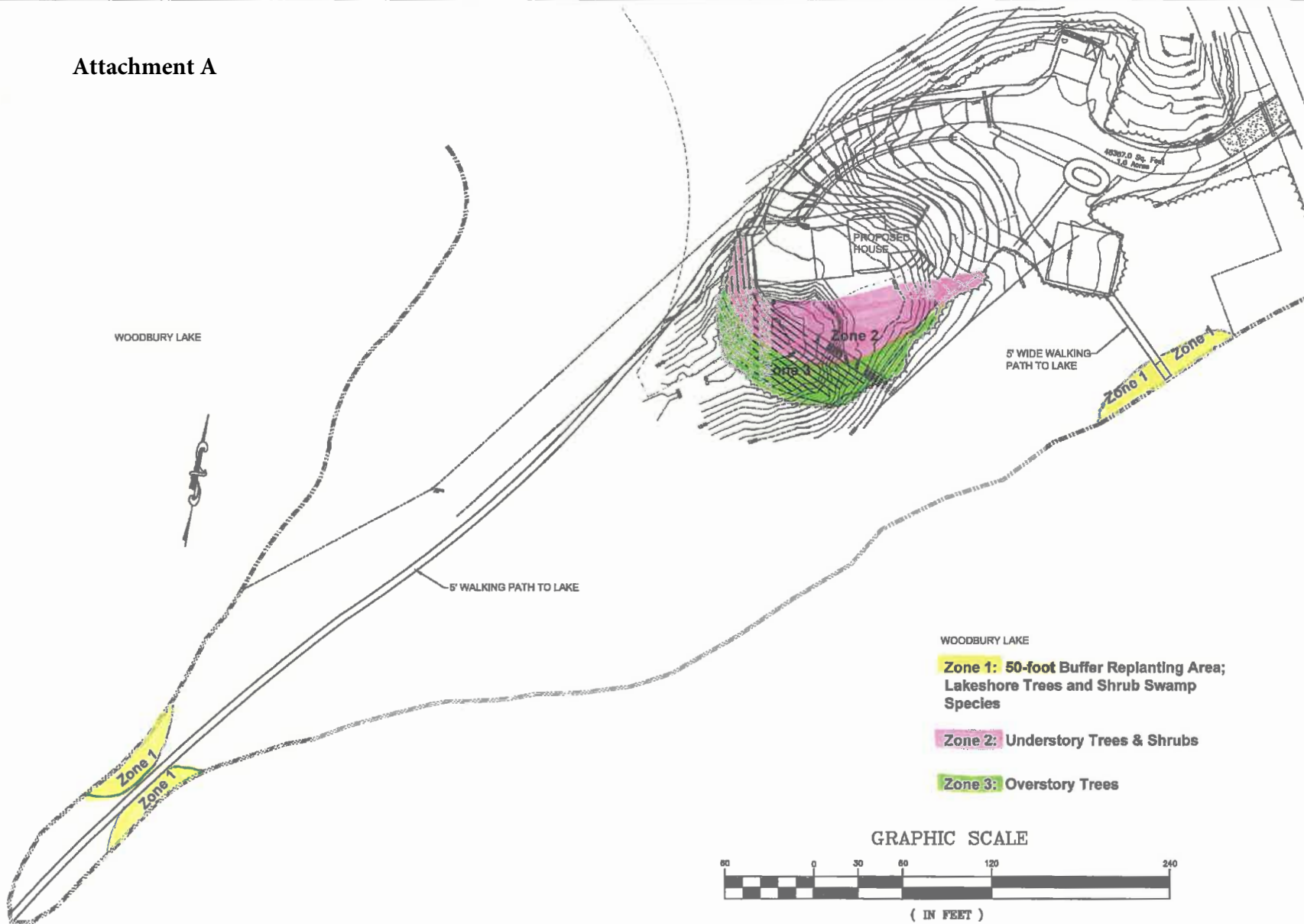
Dated in Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Natural Resources Board

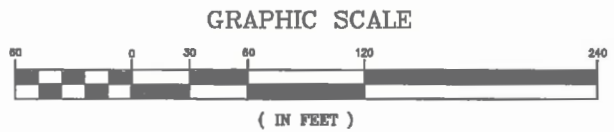
By:

\_\_\_\_\_  
Diane B. Snelling, Chair

Attachment A



- WOODBURY LAKE
- Zone 1:** 50-foot Buffer Replanting Area; Lakeshore Trees and Shrub Swamp Species
  - Zone 2:** Understory Trees & Shrubs
  - Zone 3:** Overstory Trees



marsh engineering services  
 73 Main Street, Room 28  
 Montpelier, VT 05602  
 Phone: (802) 224-9033

OVERALL SITE PLAN  
 FOR  
 DAVID BABIC  
 LOT 13  
 RATHBURN FARM SUBDIVISION  
 CALAIS, VERMONT

SURVEYED: OTHERS
DESIGNED: DRM
DRAWN: DAS
CHECKED: DRM
DATE: 3/26/2015
REVISED:
SITE PLAN OA-1
© 2015
PROJECT: 15002