

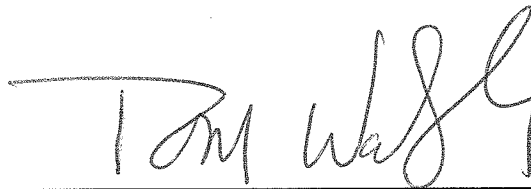
STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)	
Petitioner,)	
)	
v.)	Docket # 27-3-17 Vtec
)	
Long Trail Brewing Company,)	
Respondent.)	

ORDER

The Assurance of Discontinuance signed by the Respondent on February 1st, 2017, and filed with the Superior Court, Environmental Division, on March 20th, 2017, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 22nd day of March 2017.



Thomas Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

Natural Resources Board,)
Petitioner,)

v.)

Long Trail Brewing Company,)
Respondent.)

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and the Long Trail Brewing Company ("LTBC" or "Respondent") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

ALLEGED VIOLATIONS

- I. Material Change to existing Permit; LTBC failed to obtain a permit amendment to Land Use Permit #3W0704 (series) prior to constructing a material change to the project.
- II. LTBC has violated Condition 9A of LUP 3W0704-4, Condition 13 of LUP 3W0704-6 regarding stream buffers and Condition 14 of Land Use Permit #3W0704-8.

STATEMENT OF FACTS AND DETERMINATION OF ALLEGED VIOLATIONS

Background:

1. The subject property (the "Property") is located in the town of Bridgewater, Vermont, a "1-acre town" for the purpose of assessing "development" under Act 250.
2. LTBC is the owner of a 14,000+/- square foot brewery with a related visitor's center, parking, wastewater treatment system and related facilities located in Bridgewater Corners, Vermont.
3. On May 31, 2007, LTBC purchased a two acre parcel of land from Vaughan Taylor. The two acre parcel abuts the lands of LTBC as identified in the above-stated permits, and is located at the corner of Route 4 and Route 100A. At the time of its purchase, the parcel contained a residential structure (single family home) with an attached barn and a second detached barn.
4. On September 21, 2011, the District 3 Environmental Commission issued a permit amendment authorizing LTBC to demolish the detached existing barn and construct an unheated, unplumbed pole barn and storage facility on the two acre parcel purchased from Vaughan Taylor.

5. In 2013, a small room in the barn attached to the residential structure was partially renovated to house a pilot brewing system which is used by LTBC to develop small batches of new beers and beer flavors. The water used to develop the new beer flavors is transported from the brewery to the barn via 250 gallon totes. Any wastewater produced by the system is then transported back to the main brewery building in separate 250 gallon totes and processed through the LTBC existing permitted industrial wastewater treatment facility. No renovation occurred in the existing farm house or to any other part of the two acre parcel.
6. Neither the residential structure nor the pilot brewing system has added any new employees nor increased the number of vehicular trips approved for this site. The pilot brewing system did not require the installation of any new signage or new light fixtures. The use of the pilot brewing system has not produced new process emissions or sources of noise, nor was there any earth disturbance or any new impervious surfaces created.
7. The LTBC property has frontage along the Ottawaquechee River and the Act 250 permit series requires certain buffers with respect to the River.

Farmhouse Pilot Brewery Violation:

8. On December 18, 2013, District Coordinator April Hensel issued Jurisdictional Opinion 3-163, in which she determined that, "the previous[ly] completed renovation of a portion of a barn for a 'pilot brewing system' ... constitutes a material change to the existing permit and an Act 250 permit is required."
9. The renovation of the barn was completed without the appropriate land use permit amendment.
10. On January 29, 2014, Ms. Hensel issued a partial reconsideration of Jurisdictional Opinion 3-163, in which her determination remained unchanged that a permit amendment is required for the pilot brewing system.
11. Neither Jurisdictional Opinion 3-163 nor the partial reconsideration of that Jurisdictional Opinion was appealed. Thus they are both final and binding.
12. At the time of the issuance of the Jurisdictional Opinion, LTBC had completed the renovations to the room in the barn. It was LTBC's belief that purely internal renovations would not require a permit.
13. Following the issuance of the Jurisdictional Opinion, LTBC promptly filed an application to amend its existing Act 250 permits to include the renovations to the room in the barn. LTBC applied for and was granted an "as built" permit for the farmhouse pilot brewery (Land Use Permit #3W0704-11). The permit was issued as a "minor." Act 250 Rule 51(c).

Long Trail Brewing Company
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14. The December 18, 2013 Jurisdictional Opinion and the January 19, 2014 reconsideration decision that a material change had occurred as a result of the internal renovations described above was based upon the coordinator's belief that the use of the barn room for a pilot brewing system could potentially impact Criteria 1(B) Waste Disposal, 1(D) Floodways, 5 Traffic Safety, 8 (historic sites), 9(F) Energy Conservation and, ostensibly, 9(K).
15. Despite the fact that LTBC reasonably believed that no permit or permit amendment was necessary and despite that fact that LTBC expeditiously applied for and received a permit, the failure to initially secure a permit is a violation of 10 V.S.A. § 6081.

Buffer Management Violations:

16. Land Use Permit 3W0704-4 contains, in part, the following Condition 9A:

A 15-foot undisturbed, unmowed, naturally vegetated buffer shall be maintained from the top of the river bank and any disturbed area in the vicinity of the current building. The permittee shall enhance this portion of the buffer with plantings of at least ten three-foot high, native trees.

17. In Land Use Permit 3W0704-6, dated October 9, 2003, the buffer conditions with respect to the LTBC property were amended in condition 13 to read as follows:

13. The permittee shall maintain a 60-foot undisturbed, unmowed, naturally vegetated buffer strip from the Ottauquechee River and any disturbed area with the following exceptions:

A. A 15-foot undisturbed, unmowed, naturally vegetated buffer shall be maintained from the top of the river bank and any disturbed area in the vicinity of the current building.

B. The area between the existing deck and the top of the river bank may be maintained in a managed, landscaped condition. NO ADDITIONAL AREA OTHER THAN BETWEEN THE EXISTING DECK AND THE TOP OF THE RIVER SHALL BE LANDSCAPED.

18. The trees required to be planted in the -4 Permit were never planted. However, that requirement was omitted in the -6 Permit. Consequently, the plantings requirement contained in Land Use Permit -4 was removed and an area between the existing deck and the top of the river bank was allowed to be maintained in a "managed landscaped condition."

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19. In Land Use Permit 3W0704-8 dated December 2, 2008, the 60-foot buffer was reduced to 50-feet and signage with respect to the buffer was required. The basis for the reduction in the buffer is not explained in the decision. Land Use Permit 3W0704-8 permit conditions 13 and 14 state as follows:

13. The permittee shall maintain a 50-foot undisturbed, naturally-vegetated, unmowed buffer strip from the top of the bank of the Ottawaquechee River and any disturbed areas. Snowplowing or storage of any materials within the stream buffer shall not be permitted.

14. In order to prevent inadvertent encroachment into the river buffer, the permittee shall permanently mark the buffer with signs. The signs shall be 9 inches by 12 inches and mounted on posts at **50-foot intervals** and shall state, "River Buffer Do Not Disturb." Minor changes to the sign requirements may be allowed with written approval from the District Environmental Commission.

20. In condition 10 of Land Use Permit 3W0704-10 dated April 4, 2014, the 60-foot buffer was reinstated.

21. As of January 17, 2014, approximately 170 feet west of the parking area, the buffer signage and associated vegetated buffer rapidly tapered eastward to less than 50 feet. By the time that line of buffer signs reached the stockade fence on the west side of the brew pub's outdoor dining area, the distance from the top of bank to the signage was approximately 25 feet, half of the 50 feet required under the -8 Permit, and substantially less than of the 60 feet required under the newly issued -10 Permit.

22. Based upon the above permits and permit conditions, from December 2, 2008 to April 4, 2014, the wider of the two permit buffer zones was 50-feet from the top of the river bank. LTBC admits that between those dates, a swath of vegetation, up to 15 feet in width, and located within this buffer area, was periodically mowed. Similarly, LTBC admits that for a portion of the summer 2014, after the buffer was reverted back to 60 feet, a swath of vegetation within the buffer area was again periodically mowed.

23. Photographs taken by ANR Fisheries Biologist Rich Kirn on October 23, 2013, and ANR Watershed Coordinator Marie Caduto on May 22, 2014, confirmed that the Respondent had mowed between the installed buffer signage and the river.

24. During a site inspection by the Board's Permit Compliance Officer on January 17, 2014, LTBC confirmed that portions of the 15-foot wide Buffer south of the brewery building are regularly weed-whacked.

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Fence/Outdoor Dining Area Buffer Violation:

25. LTBC has constructed a combination stockade fence and split-rail fence surrounding an outdoor dining area.
26. The split rail fence was installed after tropical storm Irene to protect against injuries near the rip-rap drop off created to support the river bank. This fence is within the 15-foot buffer area; however the plans submitted with the Dash 10 Permit show this fence and the plans were approved by the District Commission as part of the permit issuance.
27. Prior to the issuance of the Dash 10 Permit a portion of the stockade fence was likely within the 60-foot buffer area, however the plans submitted with the Dash 10 Permit and approved by the District commission indicate that the placement of the stockade fence is not within the buffer
28. The existing alleged fence violations can be viewed in 2013 Google Earth imagery, and are partially depicted on the LTBC's own Site Plan and Detail, provided by Otter Creek Engineering, dated 9/16/13. This plan was in error, however, and Otter Creek has since revised its plans to show the stockade fence outside of the 60 foot buffer.
29. LTBC regularly mowed an outdoor dining area to maintain a lawn, placed tables and chairs within it, and served food and beverages to customers there, in violation of Condition 13 of Land Use Permit #3W0704-6.

AGREEMENT

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

30. LTBC shall immediately cease any and all non-permitted activities on the Project Tract.
31. No later than thirty (30) days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, and 30 days following the receipt of any necessary local permits, whichever is later, Respondent shall file a request that the AOD (and Order), and the Buffer Management Plan (Exhibit A), which is incorporated herewith and made a part hereof, as if more full set out herein, with the District Commission be incorporated into the Permit series via an Administrative Amendment. Respondent shall make best efforts to obtain any "necessary local permits" in a timely manner. If, for any reason, any "necessary local permit" application is denied, Respondent agrees to notify the Board within 20 days of the denial becoming final and to seek approval of the District Commission for any changes to the Buffer Management plan necessary to satisfy local permitting authorities. Further, Respondent agrees not to seek any amendments to the Buffer Management Plan until this AOD (and Order) is filed with the District Commission pursuant to this paragraph. This Buffer Management Plan supersedes all prior buffer conditions for Respondents tracts

Long Trail Brewing Company
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depicted on Exhibit A.

32. Respondent shall implement the "buffer plan" as shown on Exhibit (A), including, but not limited to, implementing and maintaining the "Drawing notes", "Knotweed management plan" and buffer planting schedules and planting layout as shown on Exhibit (A). No changes to the Buffer Management Plan shall be made without first obtaining a Jurisdictional Opinion from the District Coordinator, and approval from the District Commission when necessary.
33. Respondent shall implement the planting, fencing and signage as shown on Exhibit A by June 15, 2017. Upon completion of the work, Respondent shall retain a duly licensed Vermont surveyor or duly licensed Vermont engineer and verify on a plan (Verified Plan) that all fencing, signage and plantings as required in Exhibit A have been implemented and that the buffer zone has been correctly delineated. Once Respondent obtains the Verified Plan, and no later than August 1, 2017, Respondent shall forward a copy of said verified plan to the Agency of Natural Resources and the Board.
34. All required plantings shall be monitored over a two-year period. Any dead planting during that period shall be replaced.
35. The split rail fence depicted in Exhibit A, shall be constructed of red cedar (a flood resistant material) and each fence post will be buried three feet below existing grade to anchor them in place and prevent dislodging or collapse during a base flood event.
36. Respondent shall (a) respond to any and all requests for information from the Act 250 District 3 Environmental Commission or the Coordinator for the Commission by the date set by the Commission or Coordinator; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission.
37. No later than thirty (30) days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the LTBC shall pay the following:
 - a. Pursuant to 10 V.S.A. Chapter 201, a civil penalty in the amount of **\$6,000.00**, for the violations noted herein, by good check made payable to: "State of Vermont."
 - b. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$2,802.12**, to reimburse the Board for the costs of this enforcement action by good check made payable to: "State of Vermont."
 - c. The amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Bridgewater land records, by good check made payable to: "Town of Bridgewater, Vermont."

Long Trail Brewing Company
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38. No later than sixty (60) days following the entry of this assurance LTBC shall retain a duly licensed Vermont surveyor and verify on a plan that all signage as required in L.U.P. 3W0704-8 delineates the buffer zone.
39. No later than thirty (30) days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, LTBC shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that LTBC has actual notice of the Judicial Order and Assurance of Discontinuance.
40. All payments and documents required by this Assurance shall be sent to:
Natural Resources Board – Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
41. LTBC shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that LTBC's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
42. The State of Vermont and the Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
43. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected LTBC's continuing obligation to comply with applicable state or local statutes, regulations or directives.
44. 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.
45. Pursuant to 10 V.S.A. § 8007(d), LTBC shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the LTBC fully comply with this Assurance.
46. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division. 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.

Long Trail Brewing Company
AOD

47. 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 injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.

48. 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 Bridgewater Greens, Vermont, this 1st day of Feb, 2017.

LONG TRAIL BREWING COMPANY, INC.

By: [Signature]
Its Duly Authorized Agent

Name: Ed York

Title: EVP Finance

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 1st day of February, 2017, personally appeared Ed York, as the duly authorized agent of **Long Trail Brewing Company, Inc.**, signer and sealer of the foregoing 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 **Long Trail Brewing Company, Inc.** and that he has the authority to contract on behalf of **Long Trail Brewing Company, Inc.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]

Notary Public

Name: Bonnie Gerrett

My Commission Expires: 2/10/19

Dated at Montpelier, Vermont, this 20 day of MARCH, 2017.

NATURAL RESOURCES BOARD

Long Trail Brewing Company
AOD

By: 
Diane B. Snelling, Chair

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012017 to be signed.docx

Exhibit A

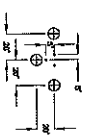
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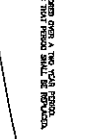
BUFFER PLANTING SCHEDULE

QUANTITY	TYPE	NOTES
77	60" OR SLIGHTLY HIGHER	PLANT SCHEDULE 1 TO 5 PLANT IN GROUPS
33	80" OR SLIGHTLY HIGHER	PLANT SCHEDULE 6 TO 10 PLANT IN GROUPS
12	100" OR SLIGHTLY HIGHER	PLANT SCHEDULE 11 TO 15 PLANT IN GROUPS

TYPICAL PLANTING LAYOUT (WEST OF FACILITY)



TYPICAL PLANTING LAYOUT (EAST OF FACILITY)



NOTE

PLANTING SHALL BE MAINTAINED OVER A TWO YEAR PERIOD. ANY DEAD PLANTING DURING THAT PERIOD SHALL BE REPLACED.

GENERAL NOTES

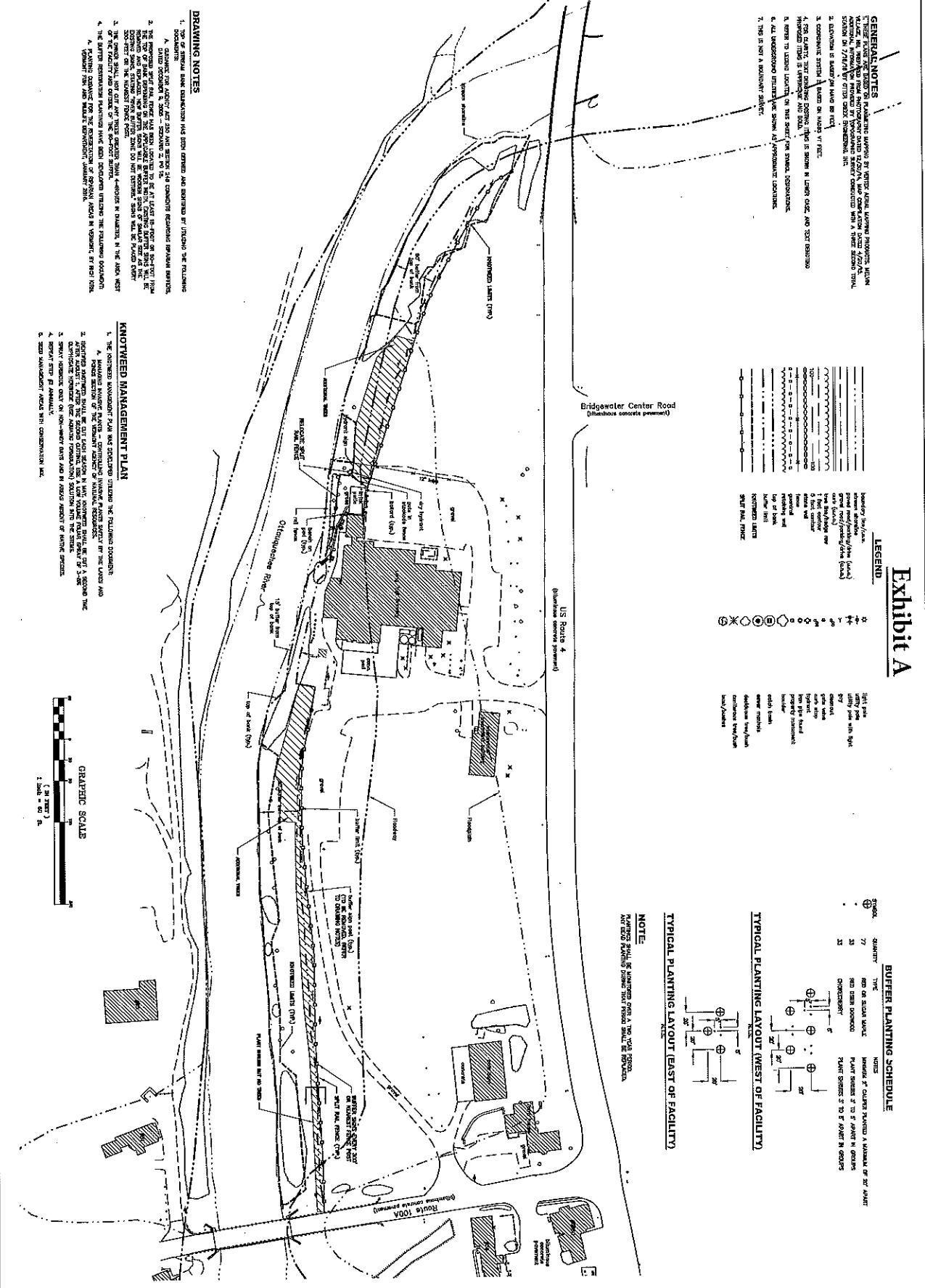
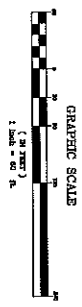
1. THIS BUFFER PLANTING SCHEDULE IS FOR THE LONG TRAIL BREWING COMPANY, 1000 ROUTE 100A, BRIDGEWATER, VERMONT. THE BUFFER PLANTING SHALL BE MAINTAINED OVER A TWO YEAR PERIOD. ANY DEAD PLANTING DURING THAT PERIOD SHALL BE REPLACED.
2. EXISTING VEGETATION SHALL BE MAINTAINED OR REPLACED WITH THE SAME SPECIES AND SIZE AS THE EXISTING VEGETATION.
3. EXISTING VEGETATION SHALL BE MAINTAINED OR REPLACED WITH THE SAME SPECIES AND SIZE AS THE EXISTING VEGETATION.
4. THE BUFFER PLANTING SHALL BE MAINTAINED OVER A TWO YEAR PERIOD. ANY DEAD PLANTING DURING THAT PERIOD SHALL BE REPLACED.
5. ALL UNDERGROUND UTILITIES SHALL BE MAINTAINED OR REPLACED WITH THE SAME SPECIES AND SIZE AS THE EXISTING UTILITIES.
6. THIS IS NOT A VEGEATION SCHEDULE.

DRAINAGE NOTES

1. EXISTING DRAINAGE SHALL BE MAINTAINED OR REPLACED WITH THE SAME SPECIES AND SIZE AS THE EXISTING DRAINAGE.
2. THE BUFFER PLANTING SHALL BE MAINTAINED OVER A TWO YEAR PERIOD. ANY DEAD PLANTING DURING THAT PERIOD SHALL BE REPLACED.
3. THE BUFFER PLANTING SHALL BE MAINTAINED OVER A TWO YEAR PERIOD. ANY DEAD PLANTING DURING THAT PERIOD SHALL BE REPLACED.
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5. THE BUFFER PLANTING SHALL BE MAINTAINED OVER A TWO YEAR PERIOD. ANY DEAD PLANTING DURING THAT PERIOD SHALL BE REPLACED.

KNOTWEED MANAGEMENT PLAN

1. THE KNOTWEED MANAGEMENT PLAN WAS DEVELOPED USING THE FOLLOWING COMPONENTS:
 - A. KNOTWEED MANAGEMENT PLAN - DEVELOPED USING THE FOLLOWING COMPONENTS:
 - 1. IDENTIFY KNOTWEEDS IN THE BUFFER PLANTING AND REMOVE THEM.
 - 2. IDENTIFY KNOTWEEDS IN THE BUFFER PLANTING AND REMOVE THEM.
 - 3. IDENTIFY KNOTWEEDS IN THE BUFFER PLANTING AND REMOVE THEM.
 - 4. IDENTIFY KNOTWEEDS IN THE BUFFER PLANTING AND REMOVE THEM.
 - 5. IDENTIFY KNOTWEEDS IN THE BUFFER PLANTING AND REMOVE THEM.



OTTE CREEK ENGINEERING
100 WATER STREET
BRIDGEWATER, VT 05705
PHONE: 802.863.8888
WWW.OTTEENGINEERING.COM

REGISTERED PROFESSIONAL ENGINEER
NO. 10000
STATE OF VERMONT
BRIDGEWATER, VERMONT
1998

BRIDGEWATER, VERMONT

LONG TRAIL BREWING COMPANY
RIVER BUFFER
BRIDGEWATER, VERMONT

DATE: 10/20/2023
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: AS SHOWN

REVIEW

DATE: 10/20/2023
BY: [Name]

PROJECT NO. 23010
RIVER BUFFER PLAN
A