

**STATE OF VERMONT  
ENVIRONMENTAL COURT**

LAND USE PANEL of the  
NATURAL RESOURCES BOARD,  
Petitioner,

Docket No.

v.

READING HEIGHTS, LLC.,  
Respondent

**ADMINISTRATIVE ORDER**

**I. VIOLATION**

Construction of a road without a permit amendment, in violation of Land Use Permit #2S0042, as amended, and in violation of Act 250 Rule 34(A).

**II. ADMINISTRATIVE ORDER**

Having found that Reading Heights, LLC (Respondent) committed violations as defined in 10 V.S.A. § 8002(9), the Environmental Court, pursuant to the authority set forth in 10 V.S.A. §§ 8008 and 8012, hereby issues the following Administrative Order:

**III. STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Land Use Permit #2S0042-5A (the Permit), issued on March 25, 2005, authorizes the subdivision of a 424-acre tract in Reading and West Windsor, Vermont into two lots including a 164-acre lot, and the conveyance of the 164-acre lot.
2. Respondent Reading Heights, LLC purchased the 164-acre lot in 2005, and is the current owner.
3. A significant portion of the 164-acre lot was identified and mapped by the Department of Fish and Wildlife as critical deer wintering habitat.
4. Condition 6 of the Permit provides that:

There shall be no development or alteration of the land for either lot without an amendment to this permit. Forest

management activities, under a forest management plan approved in writing by the District 2 Environmental Commission, are permitted.

5. To date, Respondent has not submitted a forest management plan to the District 2 Environmental Commission.
6. In 2007, Respondent had a road built on the 164-acre lot. This road is not authorized by the Permit.
7. The road is at least 2,100 feet long, and it has been ditched and graded. The road is in the mapped deer wintering area and crosses an intermittent stream.
8. The road has the potential for significant adverse impact on the mapped deer wintering area and on the intermittent stream.
9. To date, Respondent has not applied for an Act 250 permit amendment for the road.
10. Respondent's failure to obtain an Act 250 permit amendment prior to commencing construction of the road on the 164-acre lot violates the Permit and Act 250 Rule 34(A).

### **ORDER**

- A. Within thirty (30) days of the date upon which this Order becomes final, Respondent shall submit a complete Act 250 permit amendment application to the District 2 Environmental Commission, seeking authorization for the road in question, approval of a forest management plan, and any other changes Respondent plans to make to the 164-acre lot. Respondent shall diligently pursue this application and shall comply with all requests for information from the District 2 Environmental Commission and its staff.
- B. If the Respondent fails to file a permit amendment application in compliance with the preceding paragraph, or file a complete and timely application and the Commission denies said application and said decision becomes final, Respondent shall replant the road with hemlock trees and other vegetation and restore it to its natural condition in accordance with a plan approved by the Department of Fish and Wildlife. Respondent shall file the approved restoration plan with the Land Use Panel and with the District 2 Environmental Commission at least thirty (30) days prior to commencing restoration.

- C. Said restoration shall be completed within two hundred and ten (210) days after this Order becomes final if Respondent does not file an application in accordance with Paragraph A, above, or within one hundred eighty (180) days of the date on which any decision denying the permit amendment application referenced herein becomes final.
- D. Respondent shall pay a penalty of \$10,000.00 within thirty (30) days of receipt of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and sent to:

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

This penalty does not include the costs incurred for enforcement or the amount of economic benefit gained by Respondent from the violations. The Panel reserves the right to augment this penalty through evidence presented at hearing. In accordance with 10 V.S.A. § 8010, the penalty may be increased by the costs incurred for the enforcement of the described violations, the amount of economic benefit gained by Respondent from the violations, the need for deterrence, and any and all other penalty factors enumerated in 10 V.S.A. § 8010(b), each according to proof at the hearing.

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

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 that Respondents receive this Administrative Order. 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:

Melanie Kehne, Associate General Counsel  
Natural Resources Board, Land Use Panel  
National Life Records Center, National Life Drive  
Montpelier, VT 05620-3201

Ms. Jacalyn Fletcher, Court Manager  
Vermont 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 Respondent unless the Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided in the preceding section. 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 THIS ADMINISTRATIVE ORDER**

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

DATED in Montpelier, Vermont, this 21st day of May, 2008.

LAND USE PANEL

By: 

Peter F. Young, Jr., Chair

**STATE OF VERMONT  
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**AFFIDAVIT OF CHRIS BERNIER**

I, Chris Bernier, being duly sworn, hereby state the following:

1. I am of legal age and competent to testify to the facts stated herein.
2. I am, and have been at all relevant times, employed as a Fish and Wildlife Specialist by the Vermont Agency of Natural Resources' Department of Fish and Wildlife.
3. On or about November 29, 2007, I visited the 164-acre tract owned by Reading Heights, LLC and subject to Land Use Permit #2S0042, in response to a report that a road was being built on the permitted tract.
4. During that visit, I observed a road approximately 2100 feet in length, extending into a mapped deer wintering area and crossing an intermittent stream on the permitted tract.
5. This road has the potential for significant impact on this wildlife habitat.


DATED at Springfield, Vermont, this 19<sup>th</sup> day of May, 2008.

  
Chris Bernier

STATE OF VERMONT  
COUNTY OF Windsor, SS.

BE IT REMEMBERED that on the 19<sup>th</sup> day of May, 2008,  
personally appeared Chris Bernier, signer of the foregoing written instrument who is  
known to me or who satisfactorily established his identity to me and acknowledged the  
same to be his free act and deed.

Before me,

  
Notary Public  
Commission Expires: 2/10/11