

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)
Petitioner,)
v.)
Sunrise Homeowners Assoc, INC,)
Respondent.)

Docket # 29-2-19 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on December 29th, 2018, and filed with the Superior Court, Environmental Division, on February 14th, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 14th day of February 2019.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

NATURAL RESOURCES BOARD,
Petitioner

v.

SUNRISE HOMEOWNERS ASSOCIATION, INC.
d/b/a HIGH ALTITUDE ADVENTURES,
Respondent

VIOLATIONS

1. 10 V.S.A. Chapter 151, §6081(a): Failure to obtain Land Use Permit (LUP) prior to commencement of development.
2. Land Use Permit 1R0501-21 and Natural Resources Board (NRB) Rule 34(A): Failure to obtain LUP amendment prior to commencement of development and material change to permitted project

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. Section 8007, the Natural Resources Board (Board) and Sunrise Homeowner's Association d/b/a High Altitude Adventures (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent is a Vermont-registered corporation which owns property in Mendon, Vermont.
2. Respondent owns property that is subject to Land Use Permit 1R0501 and subsequent amendments through Land Use Permit 1R0501-21 (LUP series).
3. The permitted property is adjacent to the Coolidge State Forest in Killington, Vermont. The Coolidge State Forest is located on property owned by the State of Vermont.
4. On October 17, 2013, personnel from the Vermont Agency of Natural Resources (Agency) and the Natural Resources Board (Board) met at the property to conduct a site visit in response to a complaint that Respondent had constructed and was operating a wilderness camp without permission.
5. During the site visit, Agency and NRB personnel observed that Respondent had constructed

a complex of recreational structures in the Coolidge State Forest, on land that is also subject to the terms of a conservation easement held by Vermont Land Trust.

6. The complex included a wooden frame structure used as a kitchen and food prep area approximately 12 feet square plus attached porches; electric generator; building materials and tools; cut stacked firewood; PVC piping; electrical wiring; boardwalks; sheets of painted plywood affixed to wood pallets laid on the ground for walking and seating areas; two nylon canvas outhouse tents; a heavy duty canvas tent approximately 18 feet in length used as a dining and seating area; wooden benches, plastic Adirondack chairs and metal deck chairs; stereo equipment; electric lighting; signage identifying the "Wilderness Camp," High Altitude Adventures, and trail system; fire pit; smaller canvas tent with a central table, chairs and lighting; a third area of painted plywood laid on the ground to serve as another tent area; plastic and metal garbage cans; and cleaning equipment.
7. Board and Agency personnel observed that woody vegetation had been cut to clear the area for the complex. The complex had been constructed within a Hemlock-Balsam Fir-Black Ash Seepage Swamp, which is an S3 (uncommon) natural community and a wetland designated as a Class II Wetland pursuant to Vermont Wetland Rules §4.6. While Respondent believes it did not have to obtain a Wetland Permit for this activity, it is undisputed that Respondent has not obtained such a Permit.
8. Respondent left pallets, plywood, and structures in place long enough to cause the ground layer of vegetation to rot in place.
9. Respondent utilized the complex as a commercial dining and entertainment destination, charging residents of the Sunrise Mountain Village condominium development, their guests, and other visitors for guided lunch and dinner tours at the complex.
10. In the late winter and early spring of 2013, Respondents constructed a performance area at the complex using pallets and plywood, and charged attendees for three concerts on the site. Each concert was attended by 30-40 attendees.
11. Respondent also sold daily trail passes to access recreational trails for which it had easements within Coolidge State Forest, with the option of renting cross-country skiing and snowshoeing equipment for a small charge.
12. Land Use Permit series 1R0501 did not authorize construction and operation of a commercial wilderness camp complex and dining area. This activity constituted development pursuant to 10 V.S.A. Chapter 151, §6001(3)(A) and a material change to the

- existing land use permit series pursuant to NRB Rule 2(C)(6).
13. On November 15, 2013, the Agency issued Respondent a Notice of Alleged Violation (NOAV), directing it to remove all structures and material and immediately cease all activities not authorized by the existing land use permit series.
 14. Upon receipt of the NOAV, Respondent immediately removed all structures and materials and ceased all unauthorized activities.
 15. The area has since been allowed to fully revegetate as the Agency has directed.
 16. By commencing development without an Act 250 land use permit, Respondent violated 10 V.S.A. Chapter 151, §6081(a).
 17. By failing to obtain an amendment to the existing land use permit series prior to commencement of development activities and material change to the permitted project, Respondent violated Land Use Permit 1R0501-21 and NRB Rule 34(A).

AGREEMENT

Based on the foregoing Statements of Facts and Description of Violations, the parties agree as follows:

- A. 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, the Respondent shall pay a civil penalty in the total amount of \$6,000.00, for the violations noted herein. Payment shall be by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of \$2,060.40, 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 Mendon land records, by check made payable to the "Town of Mendon, Vermont."
- B. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201

- C. Respondent shall not initiate or engage in any non-permitted development activity unless an Act 250 permit is obtained prior to the commencement of that activity, or the District Coordinator determines through a Jurisdictional Opinion that no permit is required and no potential for significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §6086(a)(1)-(10) exists.
- D. Respondent shall not engage in any activity within the Coolidge State Forest or any other state land, other than use of recreational trails consistent with their easement, without permission from the Agency's Department of Forests, Parks, and Recreation.
- E. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- F. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondent's ongoing obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Respondent in the operation of its business.
- G. 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. In the event that such order is vacated, this Assurance shall be null and void.
- H. Respondent shall not be liable for additional civil or criminal penalties with respect to the specific sites and facts described herein occurring before the effective date of the Assurance, provided that Respondent fully complies with the agreements set forth above.
- I. 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 be of no legal force or effect.

- J. 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.
- K. 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. Further, I Mitch Cox, the undersigned, hereby state under oath that I am the President of Sunrise Homeowner's Association, Inc., and an authorized representative of Sunrise Homeowner's Association, Inc., and that I have the power to contract on behalf of that entity, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at 12-30-18, Vermont, this 29 day of December 2018.
Killington
Sunrise Homeowner's Association, Inc.
By: [Signature]
Mitch Cox, President

STATE OF VERMONT
COUNTY OF Rutland, ss.
At Killington, Vermont, this 29th day of December 2018, the above signatory personally appeared and swore to the truth of the foregoing. Before me,

[Signature]
Notary Public

Term expires: February 10, 2019

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

Dated at _____, Vermont, this _____, day of _____ 2018.

NATURAL RESOURCES BOARD

By: *D. Snelling* 2.13.19
Diane B. Snelling, Chair