

I. Introduction

Attached is survey work completed in February 2020, by Vermont Survey Consultants, LLC. (hereafter VSC) in response to Michaela Stickney's February 27, 2018 request that my property be surveyed with coordinates. The following narrative, maps, and survey work will serve to substantiate my prior claims that the Danby Pit operations of Roblee Farm Inc. have encroached on two adjoining property owners, committed numerous violations of conditions in the Act 250 permit, and have infringed on waters of the state.

Stantec G101 (Exhibit 1) serves as a location identifier of the overall site, and is highlighted and labeled in order to facilitate an understanding of the narrative presented herein. The RLF site has 4 separate pit names with multiple phases; this letter will address the Danby Pit Phase 1, which is south of Kelly Hill Road (the area of encroachment) and Sheldon Pit Phases 1 & 2, which is north of (and has frontage on) Kelly Hill Road.

VSC mapping (Exhibit 2) shows the property line boundaries between my (Wesko) and the former Roberts (now Evans) property lines, and the adjacent boundaries with RobLee Farms, Inc. (hereafter RLF) Danby Pit Phase 1 site. The VSC mapping includes two overlays of the survey onto the Stantec C-201 (Exhibit 3) and C-203 (Exhibit 4) maps, with coordinates of property corners, boundary pins, boundary lines, percent slope, elevations, existing topographic features, roads and structures.

The following narrative summarizes the events and conditions at both the Danby and Sheldon Pit sites.

II. RLF Danby Pit Excavation Site

In 2012, RLF was anticipating a timber harvest. I walked the fence line boundaries between our properties with members of the Mason family (the owners of Roblee Farms) and Kyle Mason, Bennington County forester. Fence lines were agreed to be the property lines and were marked with orange tape, while line trees were painted with blue slash markings by forester Mason. These highly visible markings delineated the Danby Pit boundaries, and a timber harvest/clearcut was performed in accordance with our mutually agreed upon property boundaries.

In 2016, aggressive excavation by RLF and pit operator McLellan encroached onto the two adjoining property owners of the Danby Pit, Wesko and (then) Roberts. These encroachments are clearly shown on VSC mapping (Exhibit 2). With paint blazed trees and fence lines highly visible, RLF disregarded clearly marked property lines. Their actions destroyed tree buffer lines, altered original earth elevations and removed earth materials outside of the Limits Of Disturbance as detailed on the submitted ACT 250 plans by Stantec C-203.

This gross over extraction outside of the Limits of Disturbance also destroyed a riparian buffer area located on the RLF lands of the Danby Pit, and potentially altered a large year round spring outflow located on the Evans property. The spring is noted on VSC mapping (Exhibits 2, 3 & 4), and reflected in photos (Exhibits 5, 6 & 7).

The *only* area on Stantec's submitted plans to Act 250 which shows a 100+/- feet setback & Limit of Disturbance, occurs at the southwest corner of the Evans property (Exhibit 4.) This corner has been excavated into the Evans property by more than 35 feet, and is currently 10 feet below its original elevation (Exhibits 2, 3 & 4). From the southwest property line corner pin of Evans, heading east along their southerly line, an additional 500 feet of excavation clearly outside the stated Limits of Disturbance has occurred (Exhibit 4, highlighted in red). Along this 500 foot excavated property line fence, lies the top of the spring's bank (Exhibits 5 & 6). The

property line is 27 feet from the base of this complex spring and the basin of the spring outflow at its widest point is over 75 feet (Exhibit 6). This spring area, and a large portion of the Evans property have identical geographic features and is contiguous with my property which is upstream and to the east of the spring.

In a 2008 Baseline Document prepared by Vermont Land Trust of the Whaley Estate (now Wesko), this area is delineated as a "SENSITIVE RIPARIAN AREA" (Exhibit 8). This spring is well documented and listed as an "accepting and reserving" clause in the land transfer deed of Mason to Roberts in 1966, recorded in the Town Of Pawlet Records deed book 32 page 290 (Exhibit 9). Corresponding to the deed description, a surveyor map (Exhibit 10) made by Welch in 1966, clearly identifies the spring location and is documented in the Town of Pawlet Land Recordings, Hanging Map #11.

Stantec plans repeatedly state a 50 foot MINIMUM setback to water sources, streams, and wetlands. Stantec, *only* in this area, extends the buffer to 100 feet. It would appear that special consideration was given to this highly sensitive area by Stantec engineers with intent to protect the waters of the state and this riparian buffer area.

According to **Vermont ANR Guidance for Agency Act 250/Section 248 Riparian Buffers** published on December 9, 2005:

Section III, Part C Acceptable Activities within Buffer Zone Areas

The definition of a riparian buffer zone as provided in this Guidance includes the description "undisturbed." Generally, "undisturbed" means no construction; no earth-moving activities; no storage of materials; no tree, shrub, or ground cover removal; and no mowing.

Also included in this publication are graphs and charts which show riparian buffer areas to be greater than 100 feet.

In RLF's Land Use Permit of 2008 - Laws/Regulations Involved - Condition 13 states:

The permittee/s shall maintain a 50 foot undisturbed, naturally vegetated buffer strip between all water courses on the project site and any disturbed areas. Prior to construction, the streams/wetland buffers shall be permanently marked with signs. The signs shall be 9-inches by 12-inches with green letters on a white background mounted on wooden posts at 50-foot intervals and will state, "Stream/Wetland Buffer Do Not Disturb."

In the 2008 ACT 250 Schedule B - Short Form, submitted by RLF, multiple criterion items state a minimum 50 foot setback to streams and buffers:

- Criterion 1D) Floodways
- Criterion 1E) Streams
- Criterion 1G) Wetlands

RLF, and its pit operator, having removed the southerly tree buffer line, and excavating undisturbed protective land features in this riparian buffer area, have affected critical shading and topographic features of the spring and has potentially raised the spring's water temperature, affecting riparian aquatic life and plants. This spring provides a major water source to the headwaters of this unnamed brook, which originates on my property and flows through the Evans property into the Beaver Brook, and eventually the Mettowee River.

In the 2008 Act 250 Schedule B - Short Form Application, Criterion 1A) Headwaters "provide recharge to aquifers" is checked (NO) by RLF.

In 2008 Act 250 Schedule B - Short Form, 10 Criteria, Sub Criteria 2 and 3) water supply, item C RLF's response is that there are no anticipated impacts to existing private or public water supplies. However, it is the source of running water for the Evans residence, as noted in a 2018 real estate listing by McChesney Real Estate, for Roberts (Exhibit 11).

The Stantec plans submitted by RLF are incomplete with misleading details due to the absence of a licensed survey placement of property lines, town roads, streams, wetlands and private roads. This misleading and false information is further corroborated by Frank Parent of Long Trail Engineering. An email I received from Aaron Brondyke in August 2018, which included an attached email from Frank Parent to Act 250, contains a marked-up, highlighted in red, Stantec C-203 Final Reclamation map of Parent's work (Exhibit 12) and states:

"Attached is an updated plan based on our on-the-ground survey last February, where we located some iron pins, the farm road, and the "active" (but currently stabilized) extraction area. The actual, surveyed location of the farm road is within the permitted extraction limits, and all extraction has occurred within the permitted limits.

I don't know how the original Stantec plans were created, or how this error occurred, but it is likely due to some kind of scaling error. While the quarry is currently stabilized, the owners would like to extract some additional material (within the permitted limits) then finish final stabilization. They'd like to complete this work this summer." (Exhibit 13)

In reference to VSC mapping (Exhibits 2, 3 & 4), Frank Parent chose to provide false and misleading information to Act 250. He is not a Vermont state licensed surveyor; he was on site and located iron pins, property line boundaries, surveyed a portion of the farm road, identified location of open extractions and established Limits of Disturbance, and produced a marked-up Stantec C-203 Final Reclamation plan (Exhibit 12). He claimed the Stantec map to be compromised by "some kind of scaling error," with no explanation of the error. **His claim that "all extraction has occurred within the permitted limits" is clearly erroneous, if not misleading and fraudulent.** At that point in time, the southwest corner of the Evans property (Exhibits 2, 3 & 4), which lies over 100 feet from the limit of disturbance, had already been encroached upon, and an additional 500 feet (+/-) of the southerly line of Evans had also been excavated well outside the stated extraction limits (Exhibit 4/highlighted in red) [Emphasis Added].

With this on-the-ground knowledge of extractions well outside the Limits of Disturbance along the Evans line, Frank Parent nonetheless asked Act 250 that additional excavations be allowed "within the permitted limits." The approval by the Board of this request in the summer of 2018 results in RLF and pit operator McLellan excavating the original farm road out of existence. This farm road, having existed in its location for over 30 years, was replaced by a *new* road running through the middle of the Danby Pit extractions. This *new road* aligns itself with the haul road used during the extraction process of the pit as shown by VSC mapping (Exhibits 2, 3, & 4). What was the southern berm of the original farm road is now the top of slope of the Pit extractions. While excavating the original farm road, wetland buffer areas were again violated by RLF and pit operator. VSC mapping (Exhibit 2) shows a small brook highlighted in blue and a surrounding drainage swale which runs parallel to the original farm road location. The proximity of this brook and swale area is *less* than any stated minimum 50 foot buffer area. This brook and drainage swale is not depicted on the Stantec print and should have been added to the marked-up Stantec C-203 submitted to Act 250 by Frank Parent when the location of the farm road was adjusted. This area should have been posted as previously mentioned with 9" x 12" signs reading "Stream/Wetland Buffer Do Not Disturb."

Stantec mapping of the southerly footprint of the Danby Pit is flawed well beyond “some kind of scaling error.” These details and statements by an engineer on an Act 250 permitted site raise serious questions of professional ethics and responsibilities. If an engineer is going to make an adjustment to the placement of a road of over 100 feet on a plan, he should also make adjustments of the field conditions associated with that road adjustment, which he does not do.

Frank Parent fails to mention that extractions *did indeed* take place outside of the stated limits and on property not owned by RLF, that sensitive riparian buffers have been excavated out of existence, and benches, contours and the retention basin depicted in his marked-up reclamation plan are not installed. Frank Parent, having copied Mark Mason, RLF, and John Thrasher (Exhibit 13) made them aware and arguably complicit in this misleading information and a party to the gross negligence, which results in further manipulation of facts and activities in the field.

If, in calculating an extraction volume of the Danby Pit in 2018, the Natural Resources Board used this flawed Stantec map, along with Frank Parent’s erroneous statement and mapping of facts in the field, its calculation is inaccurate.

During the summer of 2017, I notified Act 250 several times, that the reclamation of the Danby Pit was **not** in accordance with the Stantec C-203 Final Reclamation Plans submitted by RLF. On November 27, 2017, I received an email from Aaron Brondyke stating:

“According to Roblee’s attorney, reclamation of the majority of the Danby Pit is complete and the overall grading meets the approved plans.”

If this is what was represented by RLF attorney Sue Ceglowski to ACT 250, that the field conditions at that time met the requirements of the Stantec C-203 Reclamation Plan, it is an egregious act of misrepresentation.

In a 2016 NOAV, Compliance Directives were issued to RLF, to be implemented by May 15, 2017:

Page 6, #4, item e: “Regrade all impacted areas located outside of the permitted Limits of Disturbance to restore those areas to their original ground contours.”

Page 7, #4, item o: “construct infiltration basin” as depicted on exhibits 23, 31, and 32.

Stantec C-203 Final Reclamation Plan is exhibit 23 mentioned above and shows there should be benches at each 40 foot vertical change, contours associated with the benches and contours depicting the retention basin.

(The above mentioned exhibits (23, 31 & 32) are from the RLF 2008 application #1R0932-2 exhibit list.)

It is shown by VSC mapping (Exhibits 2, 3 & 4) that none of the above items were present in 2017 and should have been duly noted by Frank Parent, Mark Mason, RLF and John Thrasher in 2018 after their field visits, on the ground surveying, and production of Frank Parent’s mapping (Exhibit 12). This should have been reported to Act 250 as being misrepresented by Attorney Ceglowski.

Using imagery dates of Google Earth Pro, 8/2008 (Exhibit 14) and 9/2009 (Exhibit 15) images of the Danby Pit area show extensive excavation more than 200 feet west of the Limit of Disturbance. The excavation begins near the farm road entrance from Kelly Hill Road and continues along the length of the farm road, along the silo structure, and heads east towards the authorized pit area. Considering this, along with the VSC survey and mapping, the North,

East & West Limits of Disturbance have been exceeded, while the entire Southern Wet Land Buffers have been violated, thus leaving **not one area** of the Danby Pit Limits in compliance and undisturbed [Emphasis Added].

III. RLF Sheldon Pit Excavation Site

A. Winter Conditions

Cited in the June 12, 2009 Natural Resources Board Assurance of Discontinuance of RLF are:

4. Violation of Condition V(G) of VT NPEDS Construction General Permit 3-9001 and 10 VSA Section 1263 and 33 USC 1342(p), for failing to comply with conditions of construction general permit for stormwater regarding authorization for winter work.

5. Violation of Condition 3 of Land Use Permit #1R0932 as amended by failing to comply with construction general permit for stormwater regarding authorization for winter work.

In Statement of Facts and Description of Violations #s 16,17, and 18 all involve winter construction failure of authorization violations and conditions.

Cited in the December 16, 2016 Natural Resources Board NOAV are a list of compliance directives.

Compliance Directive 1d (p. 5) states:

*Stabilize all disturbed areas of the Sheldon Phase 1 & 2 and Danby Phase 1 Quarries in accordance with Note 9 of the General Notes and Specifications for Erosion Control on the **Erosion Prevention and Sediment Control Details** (Exhibit 31), and the Requirements for Winter Construction outlined in Section 9 of **The Low Risk Site Handbook** (Vermont DEC, August 2006).*

AND

Specifically, Attachment 1 "Excerpts from Relevant Act 250 Land Use Permit Exhibits" (p.10) **Exhibit 31, LUP 1R0932-2 Erosion and Sediment Control Detail, Sheet C-501** depicts the following:

"All disturbed areas of the site shall be seeded and mulched from October 15 to May 1 regardless of whether final grading has been finished. Work may continue through this period if the following winter erosion controls are implemented. (1) Oat seeds shall be substituted for any other temporary grass seeds. (2) All exposed earth shall be mulched with 6 inches of hay or straw. Slopes over 5% shall have an additional covering of staked jute mat or its equivalent."

"SILT FENCE DETAIL"

"GRASS CHANNEL DETAIL"

"STABILIZE CONSTRUCTION ENTRANCE"

"TEMPORARY DIVERSION SWALE"

"EROSION CONTROL BLANKET DETAIL"

Sheldon Pit Phases 1 & 2 have not met either the 2016 Directives or the 2009 AOD for Winters 2018/19 and 2019/20, as depicted in Sheldon Pit photos (Exhibits 16 & 17), taken from Kelly Hill Road.

B. Limits of Disturbance

Citing Exhibit 1 of Stantec G-101, an area of interest is indicated in a red circle and clearly shows the Limit of Disturbance of Sheldon Phase 2 has been exceeded. Exhibit 1 shows an unnamed stream and its crossing of Kelly Hill Rd to be over 200 feet from the allowed excavation (by scale). Ortho photo (Exhibit 18) shows an area of current excavation as well as the stream crossing at Kelly Hill Rd. Photo Exhibit 19 shows the town culvert, stream, and heavy excavation up slope and parallel to the stream bed and channel. This area may be less than 50 feet from the stream bed. Photo Exhibit 20 shows an evergreen tree pushed up by the roots from within the pit and its top rests in the stream bed.

These photographs illustrate clearly the myriad violations of the terms and conditions of multiple permits and land use agreements. With the extreme weather patterns of freeze/thaw cycles and heavy winter rains experienced over the past several years, the erosion effects of the Sheldon Pit activities are evident from Kelly Hill Road, and are a contributing factor to an extreme degradation of the condition of Kelly Hill Road directly adjacent to this area of the pit this winter.

Having been presented with the threat of legal action (via an October 10, 2017 *Notice of Trespass*), I have not entered onto the properties and premises of RobLee Farms, therefore, observations of the Sheldon pit are limited to the view from Kelley Hill Road.

IV. Conclusion

It is apparent that RobLee Farm, Inc, its principals & share holders, legal representatives, engineers and pit operators have all contributed to the propagation of false and misleading information and conditions in the field. Since the issuance of an Act 250 permit in 2006, RobLee Farm, Inc. has continually disregarded state agencies - specifically Act 250 - with illegal blasting & winter operations violations in 2007, subsequent AOD in 2009 (and fines for those actions), and an NOAV in 2016 with 15 separate violations, in addition to detailed information already cited in this letter. They have demonstrated a clear lack of respect for the environment, adjoining landowners, and the community, while they continue to ignore their responsibility to both state and local governances and the agreements entered into with them.

Therefore pursuant to 10 VSA Section 6027. Powers

(g) The Natural Resources Board shall manage the process by which land use permits are issued under section 6086 of this title, may initiate enforcement on related matters, under the provisions of chapters 201 and 211 of this title, and may petition the Environmental Division for revocation of land use permits issued under this chapter. Grounds for revocation are:

- (1) noncompliance with this chapter, rules adopted under this chapter, or an order that is issued that relates to this chapter;
- (2) noncompliance with any permit or permit condition;
- (3) failure to disclose all relevant and material facts in the application or during the permitting process;
- (4) misrepresentation of any relevant and material fact at any time.

V. Final Request

I hereby request the Natural Resources Board to petition the Environmental Division for the revocation of RobLee Farm, Inc. Act 250 permit #1R0932, permit #1R0932-1, and permit #1R9032-2

Please notify me of your decision within fifteen (15) days of receiving this request.

Signed Michael J. Wesko

Date February 14, 2020

EXHIBIT LIST

1. STANTEC G101 OVERALL SITE AND PHASING MAP
 2. VSC PROPERTY LINE SURVEY MAP OF WESKO, EVANS & ROBLEE FARM, INC.
 3. VSC MAPPING OVERLAY ONTO STANTEC C-201, DANBY PRE-DEVELOPMENT PLAN
 4. VSC MAPPING OVERLAY ONTO STANTEC C-203, DANBY FINAL RECLAMATION PLAN
 5. SPRING - PHOTOGRAPH OF FENCE LINE AREA
 6. SPRING - PHOTOGRAPH OF SPRING SLOPED BANK
 7. SPRING - PHOTOGRAPH OF SPRING OUT FLOW
 8. VERMONT LAND TRUST - RIPARIAN LOCATION MAP
 - 9a. MASON TO ROBERTS - 1966 LAND DEED W/ SPRING IDENTIFIED (pg. 290)
 - 9b. MASON TO ROBERTS - 1966 LAND DEED W/ SPRING IDENTIFIED (pg. 291)
 10. 1966 WELCH SURVEY MAP OF ROBERTS PROPERTY W/ SPRING IDENTIFIED
 11. McCHESNEY REAL ESTATE LISTING
 12. FRANK PARENT / LONG TRAIL ENGINEERING MARKED UP MAP OF STANTEC C-203
 13. FRANK PARENT LETTER TO ACT 250 - AARON BRONDYKE
 14. GOOGLE EARTH PRO / 2008 DANBY PIT IMAGERY
 15. GOOGLE EARTH PRO / 2009 DANBY PIT IMAGERY
 16. SHELDON PIT PHOTOGRAPH / 2018-19 WINTER EXCAVATION
 17. SHELDON PIT PHOTOGRAPH / 2019-20 WINTER EXCAVATION
 18. SHELDON PIT - ORTHO PHOTO MARK UP OF CURRENT EXCAVATION & CULVERT
 19. SHELDON PIT - MARKED UP PHOTOGRAPH OF EXCAVATION & CULVERT LOCATIONS
 20. SHELDON PIT - MARKED UP PHOTOGRAPH OF UPROOTED TREES AND DEBRIS
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21. ORIGINAL/UNMARKED VSC PROPERTY LINE SURVEY MAP OF WESKO
 22. ORIGINAL/UNMARKED VSC MAPPING OVERLAY ONTO STANTEC C-201
 23. ORIGINAL/UNMARKED VSC MAPPING OVERLAY ONNTO STANTEC C-203

