

**STATE OF VERMONT  
ENVIRONMENTAL COURT**

**LAND USE PANEL of the  
NATURAL RESOURCES BOARD,**  
Petitioner

**ASSURANCE OF DISCONTINUANCE**

v.

**CAMEL'S HUMP PROPERTIES, LLC**  
Respondent

**VIOLATION**

- I. Making material changes to a permitted development without first obtaining a permit amendment, in violation of Land Use Permit #5W1192, as amended, and Act 250 Rule 34(A).

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. ' 8007, the Land Use Panel of the Natural Resources Board (Panel) and Camel's Hump Properties, LCC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. On or about January 23, 2008, Respondent filed permit amendment application #5W1192-4 for the construction of three single-family homes on a permitted development in Duxbury, Vermont.
2. On or about February 22, 2008, the District 5 Environmental Commission (Commission) issued a draft permit and a Notice of Minor Application.
3. On or about March 10, 2008, a timely hearing request was filed by adjoining property owners Richard Avery and Lisa Avery.
4. The Commission determined that the Averys had raised substantive issues, and set the application for hearing.
5. On or about April 10, 2008, the Commission held a hearing on the application.

6. At the Commission's request, a site visit was conducted on or about May 22, 2008, with Department of Fish and Wildlife Fisheries Biologist Michael Humling, to identify whether a low-lying class 3 wetland area supported any surface water resources (a stream or a pond). Jim Cameron participated on behalf of Respondent. Mr. Humling's findings were reported to the District Commission by electronic mail dated May 27, 2008 and by memorandum dated June 27, 2008.
7. There is a mapped stream, also referred to by Mr. Humling as an unnamed perennial tributary to the Winooski River, on the Project site. The mapped stream is located northerly of former Town Highway 9 (now a Town Trail). TH 9 is located northerly of the three single family homes proposed under application 5W1192-4. The proposed homes are located along the northerly of the class 3 wetlands with a small encroachment on one of the wetlands. The area where the homes are proposed is located at a lower elevation than TH9.
8. There is a low-lying area near the class 3 wetland which may have, at one time, been an historic channel of the mapped stream. This low-lying area has long been abandoned for unknown geologic or anthropogenic reasons. In his May 27 electronic message and again in his June 27 memorandum, Mr. Humling reported that the Fisheries Division has no concerns related to proposed activity in this area.
9. During the May 2008 site visit, and also in his May 27 electronic message, Mr. Humling suggested that he would submit further recommendations pertaining to Criterion 1(E)(streams) for the mapped stream, which would likely include recommendations for typical 50' undisturbed, naturally vegetated riparian buffers along the mapped stream.
10. On or before June 16, 2008, Mr. Cameron installed silt fence on the site, removed several small trees, and leveled an area for the foundation for one of the three proposed homes on the site. The silt fence was installed along the southerly boundary of the proposed home locations in accordance with the plans pending under LUP 5W1192-4.
11. On or before June 16, 2008, Mr. Cameron notified the district coordinator by email that he had done this work.
12. This work had the potential for significant impacts under one or more Act 250 criteria, including Criterion 4 (soil erosion) and 8(aesthetics), but the actual environmental impacts were relatively minor.

13. The disturbed area is not within the stream buffer proposed by Mr. Humling and is on the other side of TH 9. In addition to being separated from the stream by TH 9, the disturbed area is lower in elevation than the road which is between it and the stream.
14. Land Use Permit #5W1192-1, which applies to the project site, authorized the subdivision of a 240-acre parcel into two lots: a 40-acre lot with one house and a barn previously permitted in #5W1192 for commercial use; and a 200-acre lot. The unnamed tributary is located on the 40-acre lot. The activity described above occurred on a one-acre parcel which was transferred from the 200 acre parcel to the 40 acre parcel as part of a boundary adjustment in 2007. No permit amendment was required prior to this boundary adjustment taking place.
15. Condition 5 of Land Use Permit #5W1192-1 provides:

No further development of either lot or change or increased use of either lot, including logging or road construction, shall commence prior to the issuance of an amendment to this permit upon successful completion of a full application review.
16. Land Use Permit 5W1192-3, which applies to the 40 acre lot (which contains the relevant portion of the mapped stream), authorized the creation of housing units (not material to this AOD), the upgrade of portions of TH 9 and the creation of a 23-lot parking area southerly of the unnamed tributary and northerly of the three proposed home sites.
17. Condition 11 of Land Use Permit #5W1192-3 provides:

In response to comments from the Agency of Natural Resources (Exhibit 12, 15 and 20), the applicant will maintain an undisturbed 25 foot wide naturally vegetated buffer along both banks of the stream except for the walkway from the parking lot to the bridge over the stream. (Exhibits 16 and 18).
18. The activity described in paragraph 16 was occurred outside of the buffer described in Condition 11 and outside of the buffer requested by Mr. Humling. With respect to the area where activity occurred, Mr. Humling opined that "the Fisheries Division has no concerns related to proposed activity in this area."
19. The draft permit, which the District Commission drafted would have imposed the following condition with respect to the area where the activity occurred:

The permittee shall install silt fencing as depicted on the site plans prior to the commencement of any construction in order to delineate the maximum limit of disturbance to be maintained adjacent to the Class III wetlands.

20. The aforescribed site work constitutes a material change to a permitted development made without a permit amendment, in violation of Act 250 Rule 34(A) and Land Use Permit #5W1192, as amended.

### **AGREEMENT**

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

- A. Within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$1,900.00** (U.S.) for the violations noted herein. Respondent shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded to:

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

- B. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- C. If the District 5 Environmental Commission denies the permit amendment application #5W1192-4, and said denial becomes final, Respondent shall remove the aforescribed improvements and restore the site to its natural, unimproved condition within ninety (90) days of the final denial.
- D. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- E. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives

applicable to the Respondents.

- F. 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 pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- G. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.
- H. 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 have no legal force or effect.
- I. 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.
- J. This Assurance is subject to the provisions of 10 V.S.A. ' 8007.

**SIGNATURES**

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

DATED at S. Burlington Vermont, this 5<sup>th</sup> day of January, 2009.

CAMEL'S HUMP PROPERTIES,  
LLC

By: 

James Cameron  
Name and Title

Manager

STATE OF VERMONT  
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 5<sup>th</sup> day of January, 2009,  
personally appeared Cameron, James, duly authorized  
agent of Camel's Hump Properties, LLC, signer of the foregoing written instrument  
who is known to me or who satisfactorily established his/her identity to me and  
acknowledged the same to be his/her free act and deed and the free act and deed  
of Camel's Hump Properties, LLC.

Before me,



Notary Public

My Commission Expires: 2-10-11

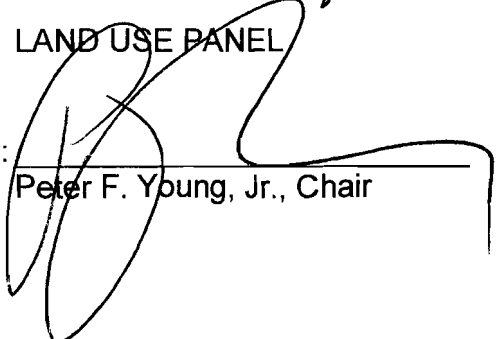
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to  
and accepted.

DATED in Montpelier, Vermont, this 15<sup>th</sup> day of January, 2009.

LAND USE PANEL

By:

  
Peter F. Young, Jr., Chair