

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

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

ASSURANCE OF DISCONTINUANCE

v.

**MICHAEL JARVIS and
HEATHER COHEN,**
Respondents.

VIOLATIONS

- I. Changing the design of a permitted project by clearing and blasting in a protected deer wintering area without having first obtained the written approval of either the Vermont Department of Fish and Wildlife or the District Environmental Commission in violation of Condition Nos. 1, 2 and 27 of Land Use Permit #2W1144 and 10 V.S.A. § 6081(a).
- II. Failing to maintain a 50-foot undisturbed, naturally vegetated, unmowed buffer strip from the top of the bank of all watercourses and the wetland boundary on the project site in violation of Conditions Nos. 1 and 19 of Land Use Permit #2W1144.
- III. Failing to install silt fences downhill of the construction site at a minimum of 50 feet from the wetland boundary in violation of Condition No. 12 of Land Use Permit #2W1144.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Michael Jarvis and Heather Cohen (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On July 15, 2004, the District 2 Environmental Commission (Commission) issued Land Use Permit #2W1144 (Permit) to Bernard L. LaRock, Jr., Brenda K. LaRock, Bernard L. LaRock, Sr. and Bernice M. LaRock (Permittees). The Permit authorizes Permittees to reconfigure three lots on Butternut Hill in Guilford, Vermont to create Tract 1 with 10.1 acres and a proposed residence, Tract 2 with 10.1 acres and an existing residence and Tract 3 with 23 acres and a proposed residence and an existing gravel pit to continue extracting 5,000 cubic yards per year with the addition of crushing and

screening.

2. Respondent Heather Cohen purchased and currently owns Tract 1, which remains subject to Land Use Permit #2W1144.

3. Condition No. 1 of the Permit states:

The project shall be completed, operated and maintained in accordance with the plans and exhibits on file with the District Environmental Commission and the conditions of this permit.

4. Condition No. 2 of the Permit states:

No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Environmental Board Rules.

5. Condition No. 12 of the Permit states:

Prior to construction of a residence on Tract 1, the permittees or subsequent owner shall install silt fences downhill of the construction site a minimum of 50 feet from the wetland boundary.

6. Condition No. 19 of the Permit states:

The permittees shall maintain a 50-foot undisturbed, naturally vegetated, unmowed buffer strip from the top of the bank of all watercourses and the wetland boundary on the project site and any disturbed areas. Snowplowing or storage of any materials within the stream buffer shall not be permitted.

7. Condition No. 27 of the Permit states:

This development is in the immediate vicinity of a deer wintering area (DWA). The permittees shall protect 21.46 acres of the remaining critical DWA habitat (Exhibits #24 and 29). The permittees shall not cut any of the softwood trees within the protected portion of the DWA (Exhibit #29) without prior review and approval of the Department of Fish & Wildlife unless recommended in a habitat management plan approved by the Department of Fish & Wildlife. In either case, approval must be obtained from the District Environmental Commission.

8. All Act 250 (10 V.S.A. Ch 151) Land Use Permits run with the land. *In re Estate of Swininton*, 169 Vt. 583, 585 (1999).

9. After purchasing Tract 1, Respondents Michael Jarvis and Heather Cohen cleared and blasted an area for a house lot that was outside of the permitted building lot, including 0.8 acres of critical wildlife habitat in the form of Deer Wintering Area (DWA) that had

been set aside by previous owners of the property as mitigation for damage to other DWA acreage.

10. On July 25, 2006, Linda Matteson, former Assistant Coordinator for the Commission sent Respondents a Notice of Alleged Violation (NOAV) pursuant to 10 V.S.A. § 8006(b). The NOAV described Respondents' alleged violation as follows: "Respondents have violated Conditions #1 and #27 of LUP #2W1144 by clearing and blasting in the protected deer wintering area (DWA)."
11. Respondents violated Condition Nos. 1, 2, and 27 of the Permit by changing the design of a permitted project by clearing and blasting the 0.8 acres in a protected deer wintering area without having first obtained the written approval of either the Vermont Department of Fish and Wildlife or the District Environmental Commission.
12. On August 22, 2006, a District Wetlands Ecologist for the State of Vermont conducted a site visit of Respondents' property. He observed that the Respondents had manually dug a pond on the site that encroached upon a Class III wetland and had failed to install silt fences downhill of the house construction site.
13. Respondents violated Condition Nos. 1 and 19 of the Permit by failing to maintain a 50-foot undisturbed, naturally vegetated, unmowed buffer strip from the top of the bank of all watercourses and the wetland boundary on the project site as a result of digging a pond that encroaches upon a Class III wetland on the property.
14. Respondents violated Condition No. 12 of Land Use Permit #2W1144 by failing to install silt fences downhill of the construction site at a minimum of 50 feet from the wetland boundary.
15. Respondents immediately ceased all activity upon discovering they were in violation of the Permit.
16. Respondents have since filed a complete Stowe Club Highlands analysis pursuant to Act 250 Rule 34(E) and a permit amendment application with the Commission seeking permission to use the area that was cleared and blasted for a purpose other than critical wildlife habitat. The Commission has determined that the Respondents' application meets the Stowe Club Highlands test and Respondents may proceed with their proposed change in use if a permit amendment is obtained.
17. Respondents have obtained nine (9) acres of critical wildlife habitat suitable to be used as offsite mitigation for the damage to the DWA described herein. The Vermont Department of Fish and Wildlife recommends that the Commission require six (6) of those acres for mitigation purposes if the Commission approves Respondents' permit amendment application.

AGREEMENT

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

- A. Respondents shall obtain an amendment to Land Use Permit #2W1144 prior to any use or further development of the 0.8 acres described in paragraph 9 herein. If Respondents fail to obtain a permit amendment permitting use of said 0.8 acres by April 1, 2008, Respondents shall create and submit a planting and lifetime maintenance plan for that area to the Coordinator for the District 2 Environmental Commission (Coordinator) no later than that date. Respondents shall implement said plan no later than thirty (30) days from its approval by the Coordinator or the beginning of the 2008 planting season, whichever is later.
- B. If Respondents fail to obtain a permit amendment permitting use of said 0.8 acres by April 1, 2008, Respondents shall also pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Three Thousand Nine Hundred Thirty-Seven Dollars (\$3,937.00) (U.S.), for the violations noted herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded to:
- Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- C. Any payment by the Respondents pursuant to this paragraph 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.
- D. If the Commission grants the permit amendment described in Paragraph A herein, Respondents shall set aside all 9 acres of critical wildlife habitat described in paragraph 17 herein for mitigation of the impacted DWA and in lieu of the civil penalty set forth in Paragraph B herein.
- E. Respondents shall comply with all terms and conditions of Land Use Permit #2W1144 and any subsequent amendments to that permit, including, but not limited to restoring and maintaining all 50-foot undisturbed vegetated buffers from the top of the bank of all watercourses and wetland boundaries.
- F. 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.
- G. 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.

- H. 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.
- I. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for 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.
- J. 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.
- K. 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.
- L. 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 BRAITTON, Vermont, this 27th day of January, 2008.

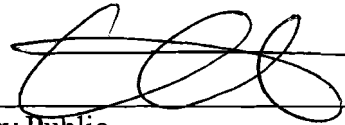


MICHAEL JARVIS

STATE OF VERMONT
COUNTY OF WINDHAM, ss.

BE IT REMEMBERED that on the 27th day of January, 2008, personally appeared MICHAEL JARVIS, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

Before me,



Notary Public
My Commission Expires: 02/10/2011

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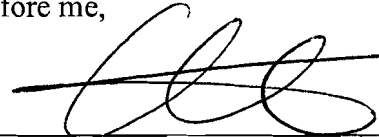
Dated at BRATTLEBORO, Vermont, this 27th day of January, 2008.


HEATHER COHEN

STATE OF VERMONT
COUNTY OF WINDHAM, ss.

BE IT REMEMBERED that on the 27th day of January, 2008, personally appeared HEATHER COHEN, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

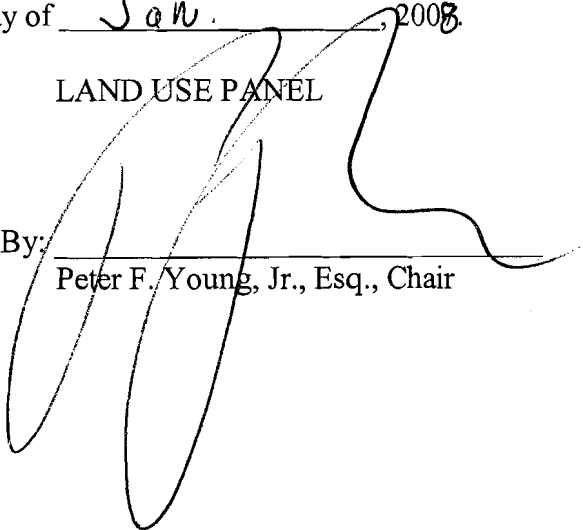
Before me,


Notary Public
My Commission Expires: 02/10/2011

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

Dated in Montpelier, Vermont, this 31st day of Jan., 2008.

LAND USE PANEL

By: 
Peter F. Young, Jr., Esq., Chair

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