

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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|-----------------------------|---|---|
| |) | Docket No. _____ |
| |) | |
| |) | |
| LAND USE PANEL of the |) | |
| NATURAL RESOURCES BOARD, |) | |
| Petitioner, |) | |
| |) | <u>ASSURANCE OF DISCONTINUANCE</u> |
| v. |) | |
| |) | |
| RIVERSIDE HORSE FARM, LLC , |) | |
| and |) | |
| JOSEPH DESENA, |) | |
| Respondents. |) | |

VIOLATION

10 V.S.A. Chapter 151, 10 V.S.A. § 6081(a); noncompliance with Condition No. 17 of Land Use Permit #3W0948 (Altered) (the Permit), by operating a wedding after the hours of 10:00 p.m.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Riverside Horse Farm and Joseph DeSena (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Riverside Horse Farm, LLC (Respondent Riverside) owns an approximately 172 acre tract of land on Tweed River Drive in Pittsfield and Stockbridge, Vermont known as Riverside Horse Farm (the Project), being the land identified in Book 48, Pages 463-465 of the land records of the Town of Pittsfield, Vermont and Book 59, Pages 609-611 of the land records of the Town of Stockbridge, Vermont (the Project Tract).

2. Joseph DeSena (Respondent DeSena) operates Riverside and Riverside Horse Farm (the Project). Riverside Horse Farm is not a farm, but is a type of luxury function facility/resort which provides facilities, lodging, and catering and other services for weddings. Respondents represent that some agricultural activities, such as the boarding of four or more equines, do take place at Riverside.

3. On June 2, 2006, the District 3 Environmental Commission (Commission) issued Land Use Permit #3W0948 to Respondent Riverside Horse Farm, LLC, c/o Joseph DeSena authorizing the construction of a 5,000 square foot storage/function barn, a 2,000 square foot shelter barn, and two (2) 1,000 square foot shelter/barns. Land Use Permit #3W0948 applied to the Project Tract, required that the Project be operated in accordance with the conditions of the Permit, and prohibited the operation of weddings after 10 p.m.
4. On April 19, 2007, the Commission granted in part Respondents' motion to alter Land Use Permit #3W0948 by issuing Land Use Permit #3W0948 (Altered) (the Permit), which applied to the entire Project Tract, obligated Respondents to operate the Project in accordance with the provisions contained therein, and prohibited the operation of weddings after 10 p.m.
5. Respondents operated a wedding at the Project on February 20, 2010 which lasted until at least 1 a.m.
6. Respondent DeSena represents that, based on prior representations which he claims were made to him by the District 3 Coordinator, he did not understand that the Permit applied to the entire Project Tract, and that after 10 p.m. the subject wedding had been moved to a building on the Project Tract which Respondent DeSena represents he understood to be exempt from Act 250 jurisdiction.
7. Respondents have violated Condition 17 of the Permit and 10 V.S.A. 6081(a).

AGREEMENT

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

- A. Within thirty days (30) of the date on which this Assurance is signed by the Environmental Court, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **One Thousand Dollars (U.S.) (\$1,000.00)** for the violation 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
Land Use Panel of the Natural Resources Board
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 violation set forth herein and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.

- C. A notice of this Assurance shall be filed in the land records of the municipality where this project is located within thirty days of the date on which this Assurance is signed by the Environmental Court. Within fifteen days of the date on which this Assurance is signed by the Court, the Respondent shall forward **two** payments in the amount of Ten Dollars (\$10.00), by check made payable to each municipality in question, to the Land Use Panel at the address listed above for the purpose of paying the recording fee.
- 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 violation set forth herein above.
- E. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- 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 Respondent fully complies 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. Further, I, JOSEPH DESENA, the undersigned, hereby state under oath that I am a Member of Riverside Horse Farm, LLC, and I have the authority to contract on behalf of Riverside Horse Farm, LLC, and further that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

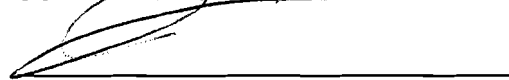
Dated at PITTSFIELD, Vermont, this 30TH day of APRIL, 2010.

RIVERSIDE HORSE FARM, LLC

By: JOSEPH DESENA

MEMBER
(Print Name and Title)

JOSEPH DESENA, INDIVIDUALLY



BE IT REMEMBERED that on the 30TH day of APRIL, 2010, personally appeared JOSEPH DESENA, 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 and the free act and deed of Riverside Horse Farm, LLC.

Before me,



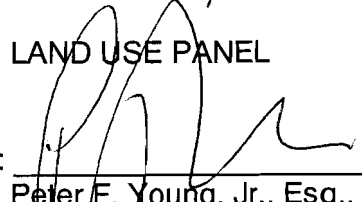
Notary Public

My Commission Expires: 2/10/2011

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

Dated in Montpelier, Vermont, this 4TH day of MAY, 2010.

LAND USE PANEL

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

