

**STATE OF VERMONT
ENVIRONMENTAL COURT**

)	Docket No. 4-1-09 Vtec
)	
)	
LAND USE PANEL of the)	
NATURAL RESOURCES BOARD,)	
Petitioner,)	
)	<u>ASSURANCE OF DISCONTINUANCE</u>
v.)	
)	
RIVERSIDE HORSE FARM, LLC ,)	
and)	
JOSEPH DESENA,)	
Respondents.)	

VIOLATIONS

Noncompliance with Assurance of Discontinuance (AOD) entered as an Order of the Environmental Court on May 16, 2008, Docket No. 95-5-08 Vtec, for violation of condition No. 14 of Land Use Permit #3W0948, as amended (the Permit), by failing to allow the first 25 feet from the top of the banks of the Tweed River to grow unmanaged as an undisturbed, naturally vegetated, unmowed buffer strip. Respondents failed to comply with Conditions "A" and "B" of the AOD when Respondents did not remove a garden located within the buffer zone and implement a riparian restoration plan as required by the AOD. Respondents also failed to seek an administrative amendment to the Permit as required by Condition "C" of the AOD in order to conform the Permit to the AOD.

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 (Riverside) owns an approximately 172 acre tract of land on Tweed River Drive in Pittsfield and Stockbridge, Vermont known as Riverside Horse Farm. Joseph DeSena operates Riverside and Riverside Horse Farm.
2. On June 2, 2006, the District 3 Environmental Commission (Commission) issued Land Use Permit #3W0948 (Permit) 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.

3. Condition No. 14 of the Permit states:

The permittee shall establish a riparian management plan for the remainder of the streambank along the Tweed River which is currently mowed. The permittee shall allow the first 25 feet from the top of the streambank to grow "unmanaged." The permittee shall plant trees and shrubs in the remaining 25 feet of the stream buffer, and may mow this area. Prior to October 1, 2006, the permittee shall plant at least three trees and six shrubs in this area. The plantings shall all be native to Vermont, and not cultivars. Trees shall be at least 1-2 inch caliper and shall be planted 15 to 20 feet apart.

4. Respondents entered into an Assurance of Discontinuance (AOD) on May 6, 2008 for violations of Condition 14 of Land Use Permit #3W0948. The AOD was entered as an Order of the Environmental Court on May 16, 2008.
5. Respondents violated Conditions "A" and "B" of the AOD by: (1) failing or refusing to remove the flower garden located in the buffer zone on the eastern side of the Tweed River; (2) failing or refusing to implement the plan titled Riverside Horse Farm Riparian Restoration Plan (a true and complete copy of which is attached hereto as **Exhibit A** and made part hereof), and; (3) failing to implement the plan per the instructions and specifications described in the document titled Riverside Horse Farm Riparian Restoration Protocol (a true and complete copy of which is attached hereto as **Exhibit B** and made part hereof).
6. Respondents violated Condition "C" of the AOD by failing or refusing to immediately seek and diligently pursue an administrative amendment of LUP #3W0948, as amended, in order to conform Condition 14 thereof to the provisions of the AOD.

AGREEMENT

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

- A. After May 15, 2009 and prior to September 15, 2009, Respondents shall remove the flower garden (including, without limitation, all landscaping fabric and bordering boulders) located in the buffer zone on the eastern side (i.e., the shore where Riverside Horse Farm is located) of the Tweed River and

implement the Amended Riverside Horse Farm Riparian Restoration Plan (the Amended Plan), dated February 15, 2008, and amended by agreement of the parties on February 20, 2009, copy of which is attached hereto as **Exhibit C**, as the document titled February 20, 2009 Addendum to Riverside Horse Farm Riparian Restoration Plan and is incorporated herein and made part hereof, the amendment portion of which is further described as follows:

Eliminated from Riverside Horse Farm Riparian Restoration Plan:

- 2 Mixed Clusters of shrub ground cover species; Red stemmed dogwood (*Cornus sericea*), Nannyberry (*Viburnum lentago*), Cinnamon Fern (*Osmunda cinnamomea*)
 - 1 Shadblow Serviceberry (*Amelenciar Canadensis*)
 - 1 Quaking Aspen (*Populus tremuloides*)
 - 1 White Birch (*Betula papyrifera*)
 - Respondents shall notify the Land Use Panel in the event that it is determined that unforeseen site conditions render any of the required plantings impracticable. Personnel from the Land Use Panel will conduct a site visit and the Land Use Panel may amend the Riparian Restoration Plan to accommodate unforeseen site conditions.
 - Respondents shall notify the Land Use Panel in the event that it is determined that the cutting, pruning or limbing of any trees or other riparian vegetation is necessary to protect the covered bridge across the Tweed River immediately to the North of Tweed River Drive. Personnel from the Land Use Panel may conduct a site visit and may authorize in writing that the undisturbed buffer can be disturbed to the extent necessary to protect the covered bridge. Notwithstanding anything else in this Assurance, Respondents may remove vegetation and mow the buffer immediately adjacent to the covered bridge, but no further than five (5) feet measured from the covered bridge (not the pilings) itself.
- B. Pursuant to the Amended Plan, Respondents may omit the five (5) required plantings on the northernmost stretch of the eastern shore of the Tweed River as is indicated by the "X" marks over such plantings on the Amended Plan, provided that Respondents shall allow the first 25 feet from the top of the streambank to grow "unmanaged" in the area of the deleted plantings, so as to create a continuous riparian buffer along the eastern side of the Tweed River consisting of the plantings required by the Amended Plan and the unmanaged 25-foot strip from which the required plantings have been deleted.
- C. All work must be in place and fully stabilized by October 1, 2009. Erosion

control measures shall be in place while work is conducted to ensure that no sediments are discharged into the Tweed River.

- D. Respondent shall implement the plan per the instructions and specifications described in the document titled Riverside Horse Farm Riparian Restoration Protocol, a copy of which is attached hereto as **Exhibit B**, and is incorporated herein and made part hereof. Respondents shall allow the first 25 feet from the top of the western (i.e., the shore adjacent to Route 100) streambank to grow unmanaged, but may mow the remaining 25 feet of riparian buffer.
- E. Respondent shall stake the first twenty-five 25 feet of the buffer for the first sixty (60) days of the 2009 mowing season to ensure compliance herewith.
- F. Respondent hereby attaches as **Exhibit D** hereto a signed contract for the execution of the work required hereby, requiring that the same be completed by June 15, 2009.
- G. Not later than October 2, 2009, Respondent shall seek and diligently pursue an administrative amendment of the Permit, in order to conform the provisions thereof to the terms of this Assurance.
- H. Within thirty **(30) days** of the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)** (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
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- I. 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.
- J. 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.
- K. 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.

- L. 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.
- M. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable to the Land Use Panel 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.
- N. 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.
- O. 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.
- P. This Assurance is subject to the provisions of 10 V.S.A. § 8007.
- Q. The parties stipulate that this Assurance, when entered as an Order by signature of the Environmental Court, shall result in the dismissal of the pending Administrative Order in this matter.

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 Rutland, Vermont, this 15th day of March, 2009.

RIVERSIDE HORSE FARM, LLC

By: _____

Josep De Sena Owner
(Print Name and Title)

JOSPEH DESENA, INDIVIDUALLY

[Signature]

BE IT REMEMBERED that on the 25th day of March, 2009, personally appeared Joseph De Sena, 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,

Darcy K. Wolven
Notary Public
My Commission Expires: 2/10/11

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

Dated in Montpelier, Vermont, this 27th day of MARCH, 2009.

LAND USE PANEL

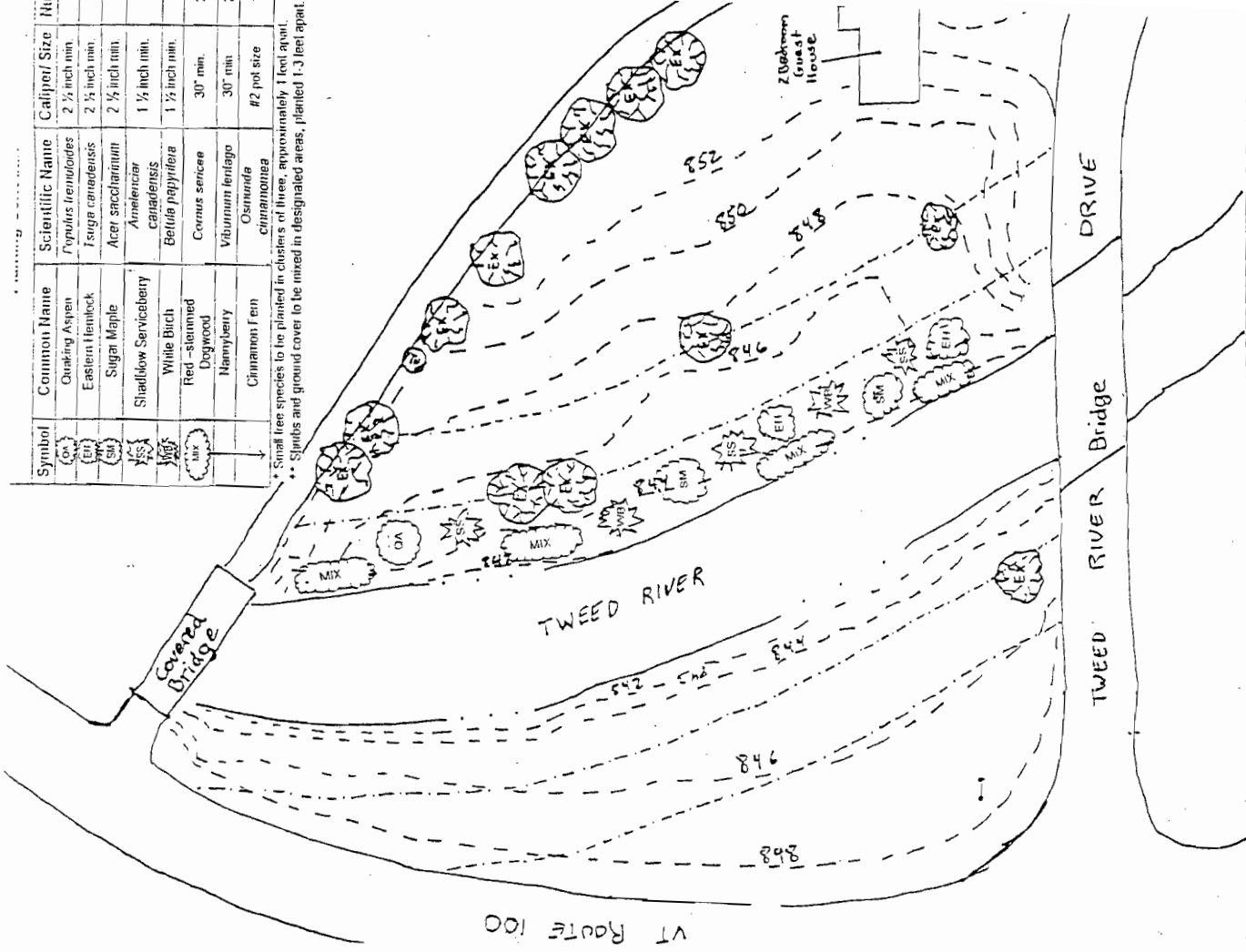
By: [Signature]
Peter F. Young, Jr., Esq., Chair

EXHIBIT A

Exhibit
A

Symbol	Common Name	Scientific Name	Caliper/ Size	Number
CA	Quaking Aspen	<i>Populus tremuloides</i>	2 1/2 inch min.	1
EA	Eastern Hemlock	<i>Fuga canadensis</i>	2 1/2 inch min.	2
MA	Sugar Maple	<i>Acer saccharinum</i>	2 1/2 inch min.	2
SA	Shadblow Serviceberry	<i>Amelanchier canadensis</i>	1 1/2 inch min.	9*
WB	White Birch	<i>Betula papyrifera</i>	1 1/2 inch min.	6*
RS	Red-stemmed Dogwood	<i>Cornus sericea</i>	30" min.	20*
NA	Nannyberry	<i>Viburnum lentago</i>	30" min.	20*
CI	Cinnamon Fern	<i>Osmunda cinnamomea</i>	#2 pot size	10*

* Small tree species to be planted in clusters of three, approximately 1 foot apart.
 ** Shrubs and ground cover to be mixed in designated areas, planted 1-3 feet apart.



Riverside Horse Farm
 Riparian Restoration Plan
 Pittsfield, VT

Scale: Approx. 1" = 30' (11' x 11')

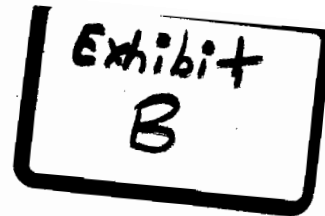
KEY

--- (dashed line)	50' Riparian Buffer
--- (dashed line)	25' Riparian Buffer
--- (dashed line)	Contour Line (2 foot interval)
--- (dashed line)	Top of Bank of Tweed River



EXHIBIT B

Riverside Horse Farm Riparian Restoration Protocol



Respondent shall restore the first 25 feet of the riparian buffer on the eastern bank of the Tweed River according to the plan titled *Riverside Horse Farm Riparian Restoration Plan*, dated February 15th, 2008 and prepared by the Permit Compliance Officer of the Natural Resources Board. Restoration shall be completed by September 15th, 2008. A detailed description of the plantings and planting procedures is as follows:

Large Trees

Respondent shall plant the following large trees in the locations specified on the restoration plan; one (1) *Populus tremuloides* (Quaking Aspen) shown on restoration plan as QA, two (2) *Tsuga Canadensis* (Eastern Hemlock) shown on the restoration plan as EH, and two (2) *Acer saccharinum* (Sugar Maple) shown on the restoration plan as SM. Large tree saplings shall be a minimum of 2 ½ inch caliper.

Respondent shall dig holes two to three times as wide as the root ball of the sapling, digging only to the depth of the root ball leaving the bottom of the space firm. Burlap, plastic, etc. shall be removed from the root ball and roots carefully freed. Respondent shall trim broken roots above the point of damage. Sapling shall be set in the hole such that the point where the stem emerged from the soil originally (which appears as a dark stain on the stem) is at soil level in its new location.

After ensuring that the sapling is at the proper depth, the original soil shall be used to fill in around the roots. The soil shall be firmed around the sapling to eliminate air holes but not compacted so much that root spread is inhibited. To ensure that air holes are eliminated and the soil is settled properly, the respondent shall use water intermittently while filling the hole with soil until the proper planting depth is reached.

In addition to watering during the planting to eliminate air holes, unless there is regular rainfall the respondent shall water the saplings weekly throughout the first growing season. Respondent shall also mulch the saplings with wood chips, bark mulch or leaves to a depth not exceeding 3 inches. Respondent shall **not** fertilize the saplings located within the buffer zone to avoid nutrients reaching the Tweed River.

Small Trees

Respondent shall plant the following small trees in the locations specified on the restoration plan; three (3) groups of *Amelenciar canadensis* (Shadblow Serviceberry) shown on the restoration plan as SS, each group containing 3 saplings planted approximately 1 foot apart for a total of 9 saplings, and two (2)

groups of *Betula papyrifera* (White Birch) shown on the restoration plan as WB, each group also containing 3 saplings planted approximately 1 foot apart for a total of 6 saplings. Small tree saplings shall be a minimum of 1 ½ inch caliper.

Respondent shall dig holes two to three times as wide as the group of 3 sapling root balls, digging only to the depth of the root ball leaving the bottom of the space firm. Burlap, plastic, etc. shall be removed from the root balls and roots carefully freed. Respondent shall trim broken roots above the point of damage. Saplings shall be set in the hole such that the point where the stem emerged from the soil originally (which appears as a dark stain on the stem) is at soil level in its new location.

After ensuring that the saplings are at the proper depth, the original soil shall be used to fill in around the roots. The soil shall be firmed around the saplings to eliminate air holes but not compacted so much that root spread is inhibited. To ensure that air holes are eliminated and the soil is settled properly, the respondent shall use water intermittently while filling the hole until the proper planting depth is reached.

In addition to watering during the planting to eliminate air holes, unless there is regular rainfall the respondent shall water the saplings weekly throughout the first growing season. Respondent shall also mulch the saplings with wood chips, bark mulch or leaves to a depth not exceeding 3 inches. Respondent shall not fertilize the saplings located within the buffer zone to avoid nutrients reaching the Tweed River.

Shrubs and Ground Cover

Shrubs and ground cover in the stream buffer area shall include the following; twenty (20) *Cornus serica* (Red-stemmed Dogwood) at a minimum size of 30 inches, twenty (20) *Viburnum lentago* (Nannyberry) also at a minimum size of 30 inches, and ten (10) *Osmunda cinnamomea* (Cinnamon Fern) sized at a #2 pot size. Plantings shall be a combination of the 3 species in the areas designated as MIX on the restoration plan and shall be planted 1 to 3 feet apart.

Respondent shall dig planting beds in the areas specified as MIX on the restoration plan wide enough to ensure the individual shrubs are 1 to 3 feet apart, digging only to the depth of the root ball leaving the bottom of the space firm. Burlap, plastic, etc. shall be removed from the root balls and roots carefully freed. Respondent shall trim broken roots above the point of damage. Shrubs shall be set in the bed such that the point where the stem emerged from the soil originally (which appears as a dark stain on the stem) is at soil level in its new location.

After ensuring that the shrubs are at the proper depth, the original soil shall be used to fill in around the roots. The soil shall be firmed around the shrubs to eliminate air holes but not compacted so much that root spread is inhibited. To

ensure that air holes are eliminated and the soil is settled properly, the respondent shall use water intermittently while filling the bed until the proper planting depth is reached.

In addition to watering during the planting to eliminate air holes, unless there is regular rainfall the respondent shall water the shrub beds weekly throughout the first growing season. Respondent shall also mulch the beds with wood chips, bark mulch or leaves to a depth not exceeding 3 inches. Respondent shall **not** fertilize the shrubs located within the buffer zone, to avoid nutrients reaching the Tweed River.

EXHIBIT C

Exhibit
C

Symbol	Common Name	Scientific Name	Caliper/ Size	Number
DA	Quaking Aspen	<i>Populus tremuloides</i>	2 1/2 inch min.	1
EH	Eastern Hemlock	<i>Tsuga canadensis</i>	2 1/2 inch min.	2
SM	Sugar Maple	<i>Acer saccharinum</i>	2 1/2 inch min.	2
SS	Shadblow Serviceberry	<i>Amelanciar canadensis</i>	1 1/2 inch min.	9*
WB	White Birch	<i>Betula papyrifera</i>	1 1/2 inch min.	6*
MIX	Red-stemmed Dogwood	<i>Cornus sericea</i>	30" min.	20**
	Nannyberry	<i>Viburnum lentago</i>	30" min.	20**
	Cinnamon Fern	<i>Osmunda cinnamomea</i>	#2 pot size	10**

* Small tree species to be planted in clusters of three, approximately 1 foot apart.
 ** Shrubs and ground cover to be mixed in designated areas, planted 1-3 feet apart.

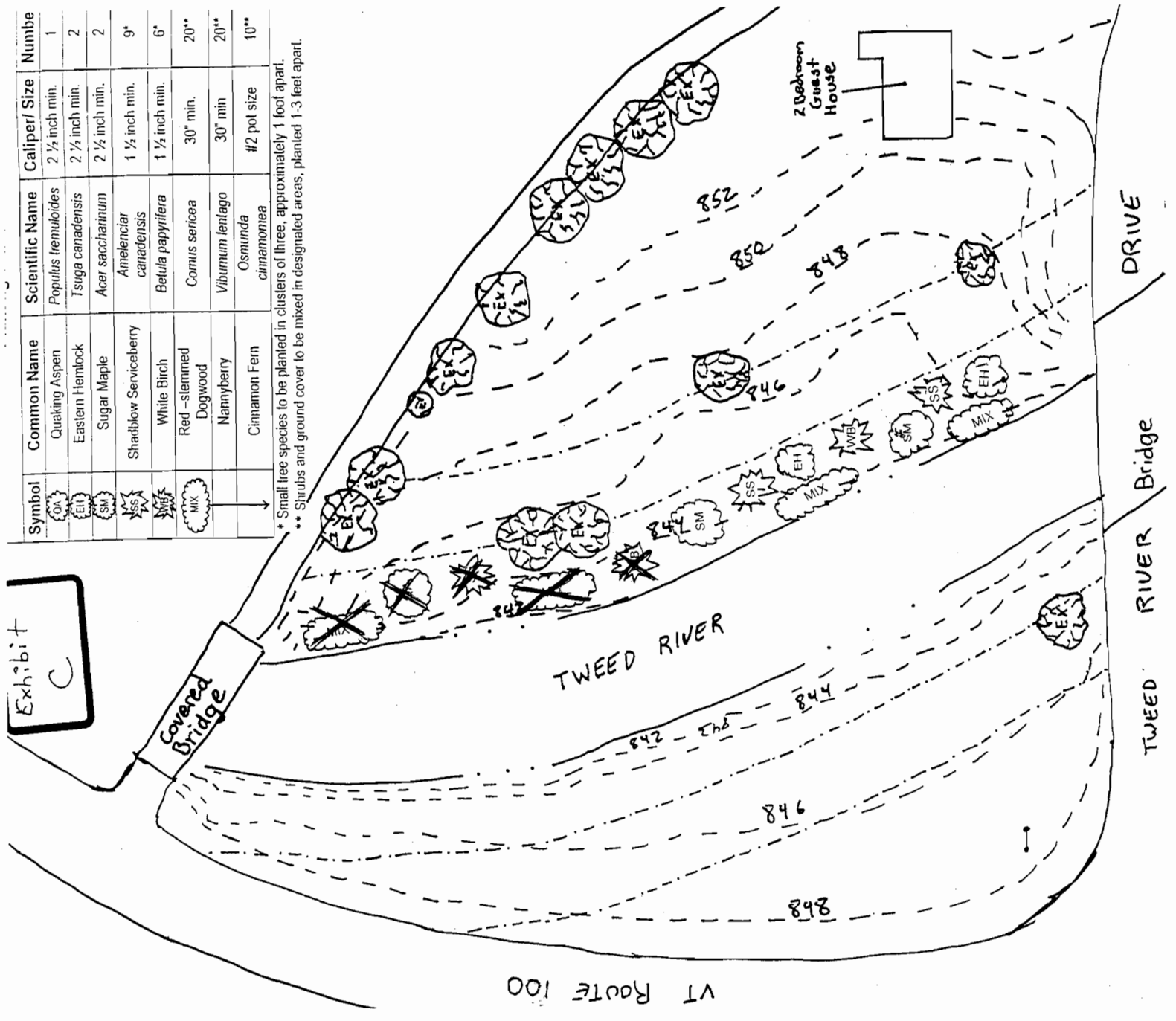


EXHIBIT D

Exhibit
D

LANDSCAPING CONTRACT

**RIVERSIDE HORSE FARM, LLC
and
CHARLES BOWEN EXCAVATING / LANDSCAPING**

THIS AGREEMENT is made as of the 20th day of February, 2009 by and between Riverside Horse Farm, LLC, a Vermont limited liability company with a place of business in Pittsfield, Vermont ("Riverside"), and Charles Bowen Landscaping / Excavating with a place of business in Whitehall, New York ("Bowen").

1. Description of Work: FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Riverside hereby retains Bowen to perform certain landscaping services at Riverside's property in Pittsfield, Vermont. Specifically, Riverside retains Bowen to implement the Riparian Restoration Protocol (the "Protocol") and Graphic Planting Plan (the "Plan") attached to this Agreement as **Exhibit A** (collectively, the "Work"). The Work shall include establishment of all the plantings depicted on the Plan in the manner recited in the Protocol. Bowen understands that certain of the plantings may be deleted from the Plan prior to commencement of the Work. Said deleted plantings are specifically noted on the marked Graphic Planting Plan attached hereto as **Exhibit B**. Bowen shall provide Riverside with 15 days' prior notice of commencement of the Work. At the time of said notification, Riverside shall confirm whether or not it wishes the deleted plantings depicted on Exhibit B included as part of the Work.

2. Payment for the Work/Guaranty: In the event the Work is performed without deletion of any plantings depicted on the Plan, Riverside agrees to pay Bowen the fixed price of \$ 1500 dollars for the Work, including all labor and materials. In the event the Work is performed with said deletions, then the fixed price for the Work shall be \$ 1500, including all labor and materials. Contemporaneously with execution of this Contract, Riverside shall pay unto Bowen the sum of \$1,000.00 as a deposit towards the Work. The balance of the sums due under this Contract shall be due and payable by Riverside to Bowen within 30 days following completion of the Work and inspection and acceptance of the same by Riverside. Bowen shall guaranty the Work and viability of all of the plantings installed in connection therewith for a period of one year from completion of the Work.

3. Time for Completion: Bowen covenants and agrees that it shall complete the Work on or before June 15, 2009. **TIME IS OF THE ESSENCE WITH RESPECT TO THIS COMPLETION DATE.**

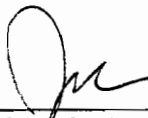
4. Bowen as Independent Contractor: Riverside and Bowen covenant and agree that Bowen is being retained as an independent contractor in connection with this Contract and is charged with using its own employees, equipment, materials and expertise in completing the Work. This Contract may not be assigned by Bowen without Riverside's prior written consent.

5. Assurance of Discontinuance: Bowen understands and agrees that the Work is an implementation of an Assurance of Discontinuance by and between Riverside and the State of Vermont which Bowen has previously been provided with and has reviewed. In connection therewith, and to the maximum extent possible, Bowen shall not cause undue disturbance in connection with performing the Work in the area within 25 feet of the top of the stream bank of the Tweed River, it being understood that Bowen should use its best efforts to avoid undue siltation or disturbance in said area beyond that necessary to properly perform the Work.

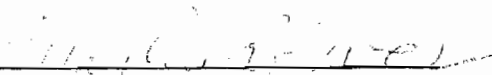
6. **Miscellaneous:** This Agreement represents the entire agreement by and between the parties and may only be modified by a writing signed by both of the parties hereto. This Agreement shall be deemed to be made and entered into in the State of Vermont. In the event that this Agreement is interpreted by a Court or other tribunal of competent jurisdiction, the rule which would require this instrument to be construed against the drafter shall not be applied.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date above written by their duly authorized agents.

RIVERSIDE HORSE FARM, LLC

By:  _____
its duly authorized manager

CHARLES BOWEN EXCAVATING /
LANDSCAPING

By:  _____
its duly authorized agent