

**STATE OF VERMONT  
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

|                           |   |            |
|---------------------------|---|------------|
| Natural Resources Board,  | ) |            |
| PETITIONER                | ) |            |
|                           | ) | Docket No. |
| v.                        | ) |            |
|                           | ) |            |
| The Stratton Corporation, | ) |            |
| RESPONDENT                | ) |            |

**VIOLATIONS**

- I. Failure to comply with Conditions 1, 2, 8, 11, 22 and 35 of Land Use Permit #2W1142; and
- II. Failure to obtain an Act 250 Permit Amendment pursuant to Act 250 Rule 34(A).

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and The Stratton Corporation (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

- 1. On November 18, 2002, the District Environmental Commission issued Land Use Permit 2W1142 (the Permit) to the Respondent for the development of twenty-five 3-unit townhouse buildings (the Project).
- 2. The Permit applies to the lands identified in Book 23, Page 86, of the land records of the Town of Stratton, Vermont, as the subject of a deed to The Stratton Corporation, the permittee, as grantee, (the Project Tract).
- 3. Condition 1 of the Permit states:

The project shall be completed and maintained in accordance with: (a) Findings of Fact and Conclusions of Law and Order #2W1142 and Conclusions of Law and Order #2W0519-10 Revised and 2W0519-10-EB, (b) the plans and exhibits on file with the District 2 Environmental Commission, and (c) the conditions of this permit.
- 4. Condition 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 2

Environmental Commission, whichever is appropriate under the Environmental Board Rules.”

5. Condition 35 of the Permit states:

No further alteration and/or development shall be permitted without the written approval of the District 2 Environmental Commission.

6. As outlined below, the Respondent failed to construct the Project in accordance with the Permit and did not receive written approval from the District 2 Environmental Commission for the alterations outlined below.
7. On March 12, 2012, Respondents filed an Application for Amendment of the Permit advising of their intent to restore the site to the permitted conditions where practicable, and seeking an amendment of the Permit as to certain other conditions.
8. On October 21, 2013 the District 2 Environmental Commission issued Land Use Permit Amendment 2W1142-D to address remediation efforts required on the Project Tract.

### **Fire Truck Access**

9. The Respondents failed to pave the three-point turn configurations on the Project Tract and, in the following instances, the configurations were not constructed to the dimensions specified by the Permit:

Juniper Lane  
Basswood Road  
Dogwood Trail  
Winterberry Heights  
Balsam Circle  
Woodfern Run

10. The Commission’s Findings of Fact number 35 states, “The project includes ten driveways branching off from the Treetop Road. The driveways are designed to Town of Stratton road specifications and have been assigned street names and 911 addresses, and are equipped with paved, three-point turn configurations to facilitate fire truck egress.”
11. By not completing the three-point turn configurations in accordance with the Permit without written approval, the Respondent has violated Conditions 1, 2, and 35 of the Permit.
12. In the fall of 2012, Respondents paved all seven three-point turn configurations and re-shaped them in accordance with the Permit (and to facilitate the movement of the large ladder truck that had been acquired by the Stratton Mountain Volunteer Fire Department since the issuance of the Permit). The three-point turn configurations now conform to

the Permit, and no amendment has been sought or issued with respect to them.

### **Retaining Walls and Tree Clearing**

13. At certain locations on the Project site, retaining walls as shown on the Permit Plans were not constructed. Rather, ledge cuts, and slope gradient were used to achieve the elevation transitions. This resulted in an additional area of land clearing amounting to approximately 2 acres. Additionally, the slope above Winterberry Heights has been subject to surface erosion.
14. The development has also resulted in unauthorized impacts to an intermittent stream draining a small Class III wetland and to the wetland itself; and in serviceability issues including icy roads in winter and occasional rock fall from the ledge at the top of the project.
15. The Commission's Findings of Fact number 27 states, "Design and layout of the Treetop project has avoided sensitive areas wherever possible, including the avoidance of stream, wetland, and buffer impacts, avoidance of steep slopes, and maintaining forest cover to the maximum feasible extent."
16. The Commission's Findings of Fact number 47 states, "The Applicant will retain stands of deciduous trees on the property, as indicated on the site plans."
17. Condition 8 of the Permit states, "There shall be no additional cutting of vegetation on the site beyond those areas identified for construction on the plans without prior written approval from the District Environmental Commission."
18. By clearing an area of approximately 2 acres and failing to construct the retaining walls as represented on the site plans, Respondent has violated Conditions 1, 2, 8, and 35 of the Permit.
19. On October 21, 2013, the District 2 Environmental Commission issued Land Use Permit Amendment 2W1142-D amending the Permit to incorporate these changes, subject to remediation efforts proposed by Respondent in its Application for Amendment.

### **Stormwater System**

20. Permit Condition 22 states that "The Permittee shall comply with Stormwater Discharge Permit #1-1537," which is referenced as exhibit 122 of the Permit and incorporates by reference plans developed by Bruno Associates.
21. Respondent improperly installed the stormwater system on the Project Tract including the following elements:
  - a. the construction of the stormwater detention basin at the intersection of Treetop Road and Stratton Mountain Access Road, which included the unauthorized

burial of stumps, logs, and boulders, and otherwise was not constructed in accordance with the Permit;

- b. the construction of the stormwater collection system and piping in several locations does not conform to the Permit.
22. The improper installation of the stormwater system on the Project Tract results in the violation of conditions 1, 2, 22, and 35 of the Permit and Stormwater Discharge Permit #1-1537. Stormwater Discharge Permit #1-1537 was replaced by General Permit 3-9010 (Notice of Intent #5519-9010).
  23. On October 21, 2013 the District 2 Environmental Commission issued Land Use Permit Amendment 2W1142-D to address remediation efforts required on the Project Tract, and in particular approving Respondents' proposals to restore the conditions described above in paragraph 21 to compliance with the Permit.
  24. Finding 13 of #2W1142-D Findings of Fact and Conclusions of Law states that repairs to the stormwater detention basin "are necessary to repair existing leaks/seepage, and also to bring the system into compliance with the terms of General Permit 3-9010."
  25. Finding 18 of #2W1142-D Findings of Fact and Conclusions of Law states that the Vermont Agency of Natural Resources' Stormwater Program gave final approval on July 22, 2013 to Respondent's proposed modifications to the stormwater detention basin because the proposed modifications met the treatment standards for water quality and channel protection as required by the 2002 Vermont Stormwater Manual and therefore, complied with General Permit 3-9010.
  26. In September 2013 Respondents began construction to investigate the condition of the stormwater detention basin and to repair and reconstruct known defects. Their investigation revealed that non-compliant materials had been used in the original construction of the basin, and that further remedial work would be required in 2014.
  27. The Natural Resources Board developed this Assurance in consultation with the Agency of Natural Resources' Stormwater Program staff.

### **AGREEMENT**

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

- A. Respondent shall comply with permit series 2W1142 through 2W1142-D and shall comply with all permits referenced therein.
- B. The Stormwater Detention Basin and Stormwater Conveyance System.
  1. Within 30 days of the entry of this Assurance as an order by the Superior

Court, Environmental Division, Respondent shall submit to the Agency of Natural Resources' Stormwater Program a plan to bring the stormwater detention basin into full compliance with the plans incorporated into Land Use Permit 2W1142-D and all associated requirements. The Respondents shall concurrently submit a copy of the plan to the Treetop at Stratton Condominium Association, Inc. for informational purposes. The plan shall include the documentation of the existing conditions throughout the stormwater detention basin through direct observation of materials via representational borings or test pits, and a proposal to reconstruct the basin based on those direct observations in order to bring the basin into full compliance. The plan shall also include any modifications required to ensure that regulated stormwater generated from the Project Tract properly enters the stormwater detention basin per existing plans incorporated into Land Use Permit 2W1142-D. The plan need not include provisions to convert open-system conveyances into closed-system conveyances, because the open-system conveyances comply with the Vermont Stormwater Management Manual and ANR finds replacement of the as-built system would cause greater environmental impact than keeping the *status quo* and would not ultimately result in a greater environmental benefit.

2. Upon ANR's approval of the Respondent's plan and Respondent's receipt of all necessary permits, Respondent shall promptly commence reconstruction of the stormwater detention basin and all other repairs in complete compliance with the ANR-approved plan (the Approved Plan).
3. Prior to commencing construction, Respondent shall provide notice to the Agency of Natural Resources' Stormwater Program and the Treetop at Stratton Condominium Association, Inc. of the date Respondent plans to commence construction as well as the expected completion date. The Respondents shall concurrently submit a copy of the Approved Plan to the representative of the Treetop at Stratton Condominium Association, Inc. for informational purposes.
4. Respondent shall hire and pay for a professional engineer to be on-site at all times during the reconstruction of the stormwater detention basin to ensure that the stormwater detention basin is reconstructed in accordance with the Approved Plan. The engineer shall document the reconstruction with notes and photographs. Such documentation shall be of a sufficient level of detail and quality to demonstrate compliance with the Approved Plan. During the construction period, the engineer shall provide weekly progress reports to the Agency of Natural Resources' Stormwater Program, the Natural Resources Board, the District 2 Environmental Commission, and the Treetop at Stratton Condominium Association, Inc.. The reports shall be in affidavit form, shall address compliance with the Approved Plan, and shall include relevant photo-documentation.

5. All construction shall be completed and the site fully stabilized with permanent or temporary stabilization by September 1, 2014, unless Entry of this Assurance as an Order occurs after August 1, 2014, in which case the deadline for construction and site stabilization shall be August 1, 2015.
- C. No later than 30 days following the entry of this Assurance as an order by the Superior Court, Environmental Division, the Respondent shall:
1. Pay a civil penalty pursuant to 10 V.S.A. Ch. 201 in the amount of **Forty-Two Thousand Three Hundred Seventy-Five (\$42,375.00) Dollars (U.S.)** for the violations noted herein, by check made payable to the "Treasurer, State of Vermont."
  2. Reimburse the Natural Resources Board for the costs of this enforcement action pursuant to 10 V.S.A. §8010(e)(2), the amount of **Five Hundred Twenty (\$520.00) Dollars (U.S.)**. Payment shall be by check made payable to the "State of Vermont Natural Resources Board."
  3. Reimburse the Agency of Natural Resources for the costs of this enforcement action pursuant to 10 V.S.A. §8010(e)(2), the amount of **Six Hundred Forty-Three Dollars and Forty Cents (U.S.) (\$643.40)**. Payment shall be by check made payable to the "State of Vermont Agency of Natural Resources."
  4. Pay the amount of **Ten (\$10.00) Dollars (U.S.)** to pay the fee for recording a notice of this Assurance in the Town of Stratton land records, by check made payable to the "Town of Stratton."
  5. Mail to the Natural Resources Board an executed Acceptance of Service, on a form approved by the Board, showing the Respondent had actual notice of the Judicial Order and Assurance of Discontinuance.
- D. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board  
Dewey Building  
1 National Life Drive  
Montpelier, Vermont 05620-3201
- E. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- F. The State of Vermont and the Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

**Assurance of Discontinuance**

*Natural Resources Board v. The Stratton Corporation*

Page 7 of 8

- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, 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 Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
- 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 Superior Court, Environmental Division. 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. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- L. This Assurance is subject to the provisions of 10 V.S.A. §8007 and §8020.

**SIGNATURES**

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

DATED at Stratton, Vermont, this 9<sup>th</sup> day of June, 2014.


STRATTON CORPORATION

  
By: Sky Foulkes, President

STATE OF VERMONT  
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 9<sup>th</sup> day of June, 2014, personally appeared **Sky Foulkes**, as the duly authorized agent of **Stratton Corporation** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of **Stratton Corporation** and that he has the authority to contract on behalf of **Stratton Corporation** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,


  
Notary Public  
My Commission Expires: 2/10/15

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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 July, 2014.

NATURAL RESOURCES BOARD

By:   
Ronald A. Shems, Chair