

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

**ASSURANCE OF
DISCONTINUANCE**

Michael Mallow and Pamela Mallow
Respondent

VIOLATIONS: *Violation of Conditions of Land Use Permit Amendment #4C0635-3R-1 and of Land Use Permit Amendment #4C0635-3R-1A.*

Failure to obtain permit amendment. 10 V.S.A. §6081; Act 250 Rule 34

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 Mallow and Pamela Mallow (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

I

1. On August 17, 1988, the District 4 Environmental Commission (Commission) issued Land Use Permit Amendment #4C0635-3R-1 (Permit) to Kittell and Associates.

2. The Permit authorizes the subdivision of a 100 acre parcel on Plains road in Jericho, Vermont into six residential lots.

3. Condition 17 of the Permit states:

17. The 33 acres of primary agricultural soils depicted on Exhibit #2 as "Agricultural Area" shall be maintained as open, cleared, uncluttered and unencumbered land. Activities which will reduce the potential of the soils for agricultural use, such as the construction of buildings or swimming pools, are prohibited. At a minimum, the owner

of Lot 5(A) or the lessee of the Agricultural Area on Lot 5(A) shall cut the hay from the Agricultural Area at least twice each year and shall fertilize this area at least once every three years.

4. Respondents own Lot 5(A).

5. On August 18, 2005, the Commission issued Land Use Permit Amendment #4C0635-3R-1A to Respondents. The amendment authorized the Respondent to reduce the size of the building envelope for Lot 5(A).

6. Condition 1 of Land Use Permit Amendment #4C0635-3R-1A states, "All conditions of Land Use Permit #4C0635 and amendments are in full force and effect except as amended herein.

7. Condition 6 of Land Use Permit Amendment #4C0635-3R-1A states:

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

8. Condition 17 of Land Use Permit Amendment #4C0635-3R-1A states:

17. In addition to conformance with all erosion control Condition, the Permittees shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this Condition does not absolve the Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.

9. Condition 18 of Land Use Permit Amendment #4C0635-3R-1A states:

18. The Permittees shall maintain a 50-foot undisturbed, naturally vegetated buffer strip between all watercourses on the project site and any disturbed areas.

10. Condition 19 of Land Use Permit Amendment #4C0635-3R-1A states:

19. The primary agricultural soils depicted on Exhibit #2 of Land Use Permit Amendment #4C0635-3R-1A as "Agricultural Area" and modified by the relocation of the building envelope, shall be maintained as open, cleared, uncluttered and unencumbered land. Activities which will reduce the potential of the soils for agricultural use, such as the construction of buildings or swimming pools, are prohibited. At a minimum, the owner of Lot 5(A) or the lessee of the

Agricultural Area on Lot 5(A) shall cut the hay from the Agricultural Area at least twice each year and shall fertilize this area at least once every three years.

11. Respondents have constructed a dirt bike track within the Agricultural Area referred to in Condition 17 of the Permit and Condition 19 of Land Use Permit Amendment #4C0635-3R-1A .

12. The construction of the said dirt bike track is a violation of Condition 17 of the Permit and Conditions 6 and 19 of Land Use Permit Amendment #4C0635-3R-1A.

13. The construction and/or use of the said dirt bike track is material change to the Permit and Land Use Permit Amendment #4C0635-3R-1A.

14. The Respondents violated Act 250 Rule 34 by constructing and/or using the said dirt bike track before obtaining a permit amendment.

II

15. The Respondents have constructed a pond within the Agricultural Area referred to in Condition 17 of the Permit and Condition 19 of Land Use Permit Amendment #4C0635-3R-1A.

16. The construction of the said pond is a violation of Conditions 6 and 19 of Land Use Permit Amendment #4C0635-3R-1A.

17. The construction of the said pond is material change to the Permit and Land Use Permit Amendment #4C0635-3R-1A.

18. The Respondents violated Act 250 Rule 34 by constructing the said pond before obtaining a permit amendment.

III

19. The Respondents have disturbed the small stream that crosses Lot 5(A).

20. The Respondents have violated Condition 18 of Land Use Permit Amendment #4C0635-3R-1A.

ORDER

- A. Respondents shall comply with Land Use Permit series #4C0635, and specifically Land Use Permit Amendment #4C0635-3R-1A.
- B. Respondents shall cease the use of dirt bikes on Lot 5(A), except that occasional personal use by immediate family members with no more than two bikes on Lot 5(A) at any time shall be allowed, provided that such use does not diminish the agricultural potential of Lot 5(A) or interfere with the conditions of Land Use Permit Amendments #4C0635-3R-1 and #4C0635-3R-1A.
- C. Respondents shall immediately remove the dirt bike track and return Lot 5(A) to the condition that it was in prior to the construction of the track.
- D. Respondents shall not increase the size or otherwise alter the constructed pond on Lot 5(A) without a permit amendment from the District 4 Environmental Commission or a Jurisdictional Opinion from the District 4 Coordinator that any such increase or alteration does not require a permit. Respondents shall not further disturb the small stream that crosses Lot 5(A).
- E. Within thirty days following receipt of this Administrative Order, Respondents shall pay the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Five Hundred (\$500.00) Dollars (U.S.)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **Thirty (\$30.00) Dollars (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action, by good check made payable to the "Treasurer, State of Vermont".
 3. the amount of **Ten (\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Jericho land records, by good check made payable to the "Town of Jericho, Vermont."

All payments pursuant to this paragraph shall be sent 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

- F. Any payment by the Respondents 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, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.
- G. 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.
- H. 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 Respondent.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.

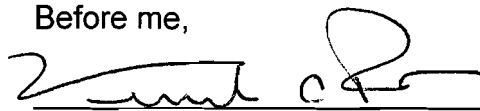
Dated at Essex, Vermont, this 17th day of November, 2010.


Michael Mallow

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 17th day of November, 2010, personally appeared Michael Mallow signer 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.

Before me,

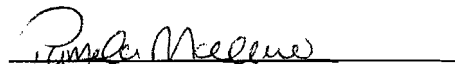


Notary Public

My Commission Expires: 2/10/2010

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

Dated at Essex, Vermont, this 17th day of November, 2010.


Pamela Mallow

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 17th day of November, 2010, personally appeared Pamela Mallow of the foregoing instrument who is known to me

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or who satisfactorily established her identity to me and acknowledged the same to be her free act and deed.

Before me,



Notary Public

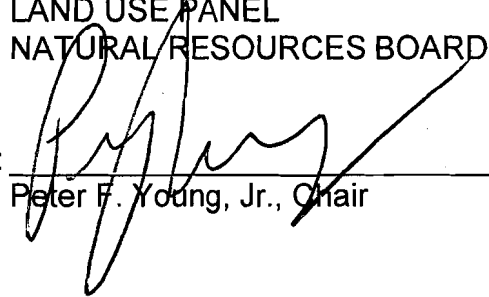
My Commission Expires: 2/10/2010

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

Dated in Montpelier, Vermont, this 30TH day of November, 2010.

LAND USE PANEL
NATURAL RESOURCES BOARD

By:



Peter F. Young, Jr., Chair