

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

LAND USE PANEL of the)	
NATURAL RESOURCES BOARD,)	
Petitioner)	
)	
v.)	Docket No.
)	
VERMONT COUNTRY INN, ROUTE)	
100 PITTSFIELD, LLC,)	
Respondent)	

VIOLATIONS

- I. Failure to comply with Condition 1 of Land Use Permit 3W1024.
- II. Failure to comply with Condition 20 of Land Use Permit 3W1024.
- III. Failure to comply with Condition 22 of Land Use Permit 3W1024.
- IV. Failure to comply with Condition 24 of Land Use Permit 3W1024.
- V. Failure to comply with Condition 29 of Land Use Permit 3W1024.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Vermont Country Inn, Route 100 Pittsfield, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD); and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- 1. Vermont Country Inn, Route 100 Pittsfield, LLC, (VCI), is a Vermont limited liability company formed in 2006.
- 2. On May 4, 2010 the District 3 Environmental Commission issued Land Use Permit 3W1024 to VCI, approving the prior conversion of a single-family residence to whole-house rental and second home use, completion of reconstruction of existing barn and partial conversion to agritourism use and permitting six outside special events per year, on a 26.48-acre parcel off Route 100 in Pittsfield, Vermont (the Project).
- 3. Condition 1 of Land Use Permit 3W1024 reads as follows:
 - 1. The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #3W1024, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit.

4. Condition 20 of Land Use Permit 3W1024 reads as follows:

20. This permit incorporates all of the conditions of the access permit to be issued by the Agency of Transportation [Pittsfield, VT100, L.S. 224+40 ~ 227+00 LT & RT].

5. On June 2, 2010 The Vermont Agency of Transportation (VTrans) issued an Access Permit (VTrans Permit) pursuant to 19 V.S.A. § 1111 for the Project.

6. The VTrans Permit contains the following requirement:

a. The Permit Holder shall be responsible for ensuring that the access at L.S. 224+40 RT be used for one-way, exiting traffic only.

7. The VTrans Permit contains several requirements, including the following, for special event activities at the Project site:

- Prior to each special event activity the Permit Holder and/or their assignees shall contact VTrans District Office #3, (802) 786-5826, at least two weeks in advance of the scheduled event to notify them of event taking place, its date(s) and time and any other information deemed necessary by the District Transportation Administrator.
- The Permit Holder shall implement the traffic control plan dated May 28, 2010, entitled "Pittsfield Inn, Proposed Access Improvements Traffic Control for Special Event", for each scheduled special event.

8. Condition 22 of Land Use Permit 3W1024 reads as follows:

22. Advertising materials for any events expected to exceed the on-site parking capacity of 203 spaces will include identification of off-site, overflow parking location(s) and directions to the same and the permittee shall provide shuttle service to the event.

9. Condition 24 of Land Use Permit 3W1024 reads as follows:

24. The permittee shall maintain sight distances at all access and exit points by keeping the brush cut back, removing snow, and prohibiting vehicles to park in such a manner to obstruct sight distances in either direction.

10. Condition 29 of Land Use Permit 3W1024 reads as follows:

29. The permittees shall be responsible for ensuring that guests at the facilities, as well as participants and spectators at any event, are aware of approved parking and quiet hours.
11. The District Commission made several findings regarding parking in Findings of Fact and Conclusions of Law 3W1024, including:
58. There are approximately 203 parking spaces available on-site for the large events. Parking will be made available for 75 vehicles on the pasture between the cow barn and Route 100. Access to this parking will be through the eastern-most Barn access and then circle around the Barn and over an existing field road over a culvert.
62. Parking during the special events will be monitored. When on-site parking is full, a sign stating "parking Lot Full, Park in Overflow Area," will be posted. Overflow parking will be directed to alternate parking areas and will be shuttled to and from the event. Gramp's Shuttle service indicates that it can provide this service in the area.
63. Large event promotions will include directions for off-site parking for shuttle service to the starting gate at the Barn.
12. The parking plan Respondent submitted to the District Commission shows approximately 17 parking spaces at the house (Amee Lodge), 62 spaces in a lot on that side of Route 100, 49 spaces around the Amee Barn, and another 75 spaces in an unimproved parking area by the Amee Barn. Based upon Respondent's representations, the Commission found that there were 203 parking spaces available on site.
13. In requesting a Jurisdictional Opinion on whether a permit amendment was needed for the 2011 Death Race, Respondent represented to the District Coordinator that "Parking will be in accordance with the overflow parking plan," and that "If additional parking is available we plan to use Gramps shuttle service and shuttle athletes to Killington access road."
14. From approximately June 24, 2011 to June 26, 2011 Respondent held a special event called the Death Race at the Project site.
15. Respondent expected 200 participants and approximately 300 spectators for this event. Two hundred twenty (220) participants

registered for the event and 166 actually participated.

During the Death Race event, Respondent chained off the parking areas at the Amee Farm Barn shown on the approved parking plan as having 49 and 75 parking spaces, respectively, and opened these areas only to occasional service vehicles. This reduced the number of parking spaces available on site from approximately 203 to approximately 79.

16. Respondent failed to notify the VTrans District office prior to the Death Race, and failed to implement the required traffic control plan, in violation of Condition 20 of Land Use Permit 3W1024.
17. Death Race spectators parked vehicles along both sides of Vermont Route 100 during this time period. Many of these vehicles were over the white edge line, narrowing the travelled way. Some of these vehicles caused obstruction of sight distances at the egress of the Project in violation of Condition 24 of Land Use Permit 3W1024.
18. The only advertising for the Death Race was on the event website. Regarding parking, the website stated only that: "Parking: Amee Farm – across the street from the General Store." This advertising did not identify off-site, overflow parking location(s) and directions to same," as required by Condition 22.
19. On or about June 21, 2011, Respondent sent Death Race participants an email that included the following statement:

Parking - Please park across the street from the Amee Farm in the designated parking area. There is no parking at the Amee Farm unless you are on the race staff or you are a farmer. All athletes and support crews must park at the Amee Lodge. Matt Baatz is in charge of parking and will assist with overflow parking. Overflow parking is at the Yoga Studio or behind the Yoga Studio.
20. Respondent failed to ensure that guests, participants and spectators who did not receive the June 21, 2011 email were aware of approved parking during the Death Race in violation of Condition 29 of Land Use Permit 3W1024.
21. On or about August 20, 2011 Respondent held a special event known as "The 30 Mile Challenge Endurance Race" (the Challenge) at the Project site.

22. During the Challenge event, Respondent again closed off both accesses to the approved parking areas by the Amee Barn, allowing only service vehicles to use this site, effectively reducing the amount of parking available on site.
23. During the Challenge event, spectators' cars were parked along both sides of Route 100.
24. Since Respondent has been notified of these violations, Respondent has taken steps to correct the parking problems and comply with the Permit.

AGREEMENT

- A. Respondent shall comply with Land Use Permit 3W1024.
- B. Respondent shall pay:
 1. A civil penalty for the violations set forth herein, pursuant to 10 V.S.A. Ch. 201, in the amount of **\$4,500.00** (U.S. dollars), by check made payable to: Treasurer, State of Vermont, in accordance with the following:
 - i. Respondent shall pay \$1,500.00 no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - ii. Respondent shall pay \$1,500.00 no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - iii. Respondent shall pay \$1,500.00 no later than 90 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - iv. Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty to become immediately due and owing.
 - v. Any late payment shall be subject to an annual interest rate of 12%.
 2. Within 10 days of executing this Assurance, Respondent shall send a

check in the amount of **\$10.00** (U.S. dollars), to pay the fee for recording a notice of this Assurance in the land records of the municipality where the Project is located, payable to: Town of Pittsfield.

- C. All payments required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- D. 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.
- E. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- F. 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.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- H. 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 described herein, provided that the Respondent fully complies with this Assurance.
- I. 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.
- J. Violation of any provision of this Assurance, as this Assurance is entered as a judicial order pursuant to 10 V.S.A. § 8007(c), 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 set forth in 10 V.S.A. chapters 201 and/or 211.
- K. 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.

VERMONT COUNTRY INN, ROUTE 100
PITTSFIELD, LLC

By: Courtney Desena
Authorized Agent
Courtney Desena
(Print Name)

BE IT REMEMBERED that on the 1st day of JUNE, 2012, personally appeared COURTNEY DESENA, signer of the foregoing written 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 Vermont Country Inn, Route 100 Pittsfield, LLC.

Before me: P. D.
Notary Public Commission Expires: 2/10/15

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

DATED in Montpelier, Vermont, this 7th day of June, 2012.

LAND USE PANEL

By: Ronald A. Shems
Ronald A. Shems, Chair