

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

George Goodrich III,
Julie Goodrich,
Respondents

VIOLATIONS

Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A)

Failure to comply with Permit Conditions 2, 5, and 6 of Land Use Permit 5W1421-1

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and George Goodrich III and Julie Goodrich (collectively "Respondents") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. This Assurance applies to lands identified in Book 200, pages 795-798, of the land records of the Town of Northfield, Vermont, where the deed to the land or the permit is recorded.
2. Respondents own approximately 139 acres located off Honeysuckle Terrace, identified in the Town of Northfield, Vermont (the "Project Tract") which is subject to Act 250 Land Use Permit Series 5W1421. The Project Tract is identified by School Property Account Number (SPAN) 441-139-12218.

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3. On November 5, 2013, the District 5 Environmental Commission issued Land Use Permit 5W1421-1 to Thomas Goodrich, authorizing the subdivision of a 292 acre tract into four lots, with no development proposed on any of the lots. Included in that subdivision was the 139-acre Project Tract, consisting of Lots 7A (10 acres) and 7B (129 acres).
4. Condition 2 of Land Use Permit 5W1421-1 states, in part: *"The project shall be completed, operated and maintained in accordance with the conditions of this permit, the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations."*
5. Condition 5 of Land Use Permit 5W1421-1 states: *"No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required."*
6. Condition 6 of Land Use Permit 5W1421-1 states: *"No further subdivision, alteration, or development on any portion of the tract or land approved herein shall be permitted without a permit amendment issued by the District Commission."*
7. Condition 8 of Land Use Permit 5W1421-1 states: *"The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns."*
8. Act 250 Rule 34(A) states, in relevant part *"A permit amendment shall be required for any material change to a permitted development... Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited."*
9. *"Material change"* is defined in Act 250 Rule 2(C)(6) as: *"any cognizable change to a development or subdivision subject to a permit under Act 250 or findings and conclusions under 10 V.S.A. § 6086b, which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10)."*
10. On November 8, 2013, Respondents acquired the Project Tract from Thomas

Goodrich.

11. Sometime between May 2012 and May 2015 (as observed on Google Earth aerial imagery), construction commenced at the Project Tract on the southern portion of Lot 7A, as evidenced by an eastern extension of Honeysuckle Terrace, along with clearing for a building envelope. This construction occurred without Respondents first seeking and being issued an amendment to Land Use Permit Series 5W1421.
12. On August 7, 2015, Respondents filed Land Use Permit Amendment Application 5W1421-2 with the District 5 Environmental Commission for authorization to construct a 3-bedroom single family residence at the southern portion of Lot 7A. The filing of this application occurred after construction had already commenced at that area of Lot 7A.
13. On August 19, 2015, the Board District 5 Coordinator deemed Land Use Permit Amendment Application 5W1421-2 incomplete.
14. Sometime between May 2015 and June 2018 (as observed on Google Earth aerial imagery), a dwelling and accessory structure were constructed within the aforementioned cleared envelope at the southern portion of Lot 7A, coinciding with the 3-bedroom single family residence proposed in Land Use Permit Amendment Application 5W1421-2. This construction occurred without Respondents first being issued Land Use Permit 5W1421-2.
15. Sometime between June 2018 and September 2021 (as observed on Google Earth aerial imagery), a northerly trending driveway spur off Honeysuckle Terrace was constructed at the northern portion of Lot 7A. This construction occurred without Respondents first seeking and being issued an amendment to Land Use Permit Series 5W1421.
16. Sometime between September 2021 and September 2023 (as observed on Google Earth aerial imagery), clearing commenced at the northern portion of Lot 7A. This clearing occurred without Respondents first seeking and being issued an amendment to Land Use Permit Series 5W1421.
17. On December 5, 2023, Respondents filed Land Use Permit Amendment

Application 5W1421-3 with the District 5 Environmental Commission for authorization to adjust the property line between lots 7A (7.21 acres after adjustment) and 7B (131.9 acres after adjustment) and construct another single-family residence at the northern portion of Lot 7A, coinciding with the clearing and construction that had already occurred in that area and without Respondents first applying for and being issued Land Use Permit 5W1421-3.

18. Exhibit 001 of Land Use Permit Application 5W1421-3 includes the following response to the project's impact to identified necessary wildlife habitat and the measures taken to mitigate¹: *"Wooded areas to the east of the proposed project tract are mapped deer wintering areas and adjacent forest areas are a mapped habit block (priority 8). The proposed development lies west of the 300' deer wintering area buffer (the approximate east line of Lot 7A prior to this adjustment) depicted on the site plan approved under the -2 LUP. See Exhibit 014."*
19. Exhibit 014 of Land Use Permit Application 5W1421-3 is a site plan of the project which depicts the boundary of the Deer Wintering Area buffer zone and the proposed limits of disturbance. The eastern extent of proposed disturbance is shown to be substantially outside the buffer zone boundary.
20. On December 6, 2023, the Board District 5 Coordinator deemed Land Use Permit Amendment Application 5W1421-3 incomplete.
21. On January 22, 2024, the Agency of Natural Resources Office of Planning filed an Entry of Appearance² with comments related to its review of Land Use Permit Application 5W1421-3 and discovery that construction on the project had commenced and impacted an estimated 0.42 acres of the Deer Wintering Area buffer zone, contrary to what had been proposed in Exhibits 001 and 014. The comments summarize the findings from a site visit conducted by District Wildlife Biologist, Noel Dodge, and include requested measures to restore the impacted Deer Wintering Area. The comments read, in part: *"Mr. Dodge performed a site visit on January 17, 2024, to view the project in relation to the mapped deer wintering area (DWA) and its 300' associated buffer. Mr. Dodge observed significant signs of deer use (deer beds, browse, and tracks) within the wintering area and buffer. He also noted that clearing and construction for the project already started. A*

¹ Schedule B: Criterion 8A – Wildlife and Endangered Species, Item b.

² Filed as Exhibit 018 to LUP Application #5W1421-3.

portion of the clearing occurred within the 300' buffer of the DWA and beyond what is identified on the site plans... As clearing for the project within the DWA buffer occurred, the Wildlife Program is most interested in ensuring there is adequate visual/noise screening between the project and wintering area. The Program requests that softwood plantings occur in the area identified on the attached GIS map (upslope of the trench along the tree line) to restore adequate screening between the house and DWA... The Program estimates the total number of trees is 250-300."

22. Land Use Permit Amendments 5W1421-2 and 5W1421-3 were issued on February 22, 2024 and February 27, 2024, respectively.
23. The Board alleges that Respondents Violated Conditions 2, 5, and 6 of Land Use Permit 5W1421-1 as well as Act 250 Rule 34(A) by commencing construction on material changes to the project without first receiving the requisite Land Use Permit amendments. Furthermore, clearing activities related to the northern of the two projects resulted in impact to a Deer Wintering Area buffer zone.
24. Respondents admit the factual findings described above, solely for purposes of resolving this case.
25. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed claims and is in the public interest.

AGREEMENT

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

- A. Respondents shall comply with Land Use Permit series 5W1421. Special attention must be given to Condition 24 of Land Use Permit 5W1421-3 to ensure appropriate restoration and maintenance of the impacted Deer Wintering Area buffer zone.³

³ Condition 24 of Land Use Permit 5W1421-3 states: "The Permittees shall install and maintain, in perpetuity, the softwood buffer plantings shown in Exhibit 024 and shall provide the Department of Fish and Wildlife photographs of the softwood plantings annually for 10 years following their installation."

- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall pay, by separate checks, the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$2,000** for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$287.60** to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 3. the amount of **\$15.00** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Northfield land records, by check made payable to the "Town of Northfield, Vermont ."
- C. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above to resolve all outstanding disputes.
- D. Respondents agree that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondents' past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- E. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
- F. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- G. Respondents are jointly and severally liable for all obligations under this Assurance.

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- H. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- J. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- K. 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.
- L. Pursuant to 10 V.S.A. § 8007(d), Respondents 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.
- M. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by Respondents, for good cause beyond either Respondent's control.
- N. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- O. 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.

- P. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- Q. 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 Norwich, Vermont, this 10 day of October, 2024



George Goodrich III

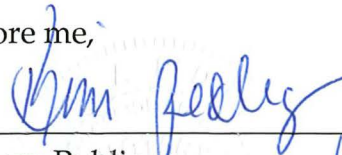


Julie Goodrich

STATE OF VERMONT
COUNTY OF Washington ss.

BE IT REMEMBERED that on the 10 day of October, 2024, personally appeared Julie + George Goodrich, 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.

Before me,



Notary Public

My Commission Expires: 1/31/25



Agent

STATE OF VERMONT

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

Dated in Montpelier, Vermont, this _____ day of _____, 20__.

Natural Resources Board

By:

Sabina Haskell, Chair