

**State of Vermont  
WATER RESOURCES BOARD**

**RE: Links at Lang Farm, Essex, Vermont  
Docket No. WET-99-02DR  
(Petition filed by the Department of Environmental Conservation)**

**SECOND PREHEARING CONFERENCE REPORT AND ORDER**

On April 20, 2000, at 1: 15 p.m., Water Resources Board ("Board") Acting Chair David J. Blythe, Esq., convened a second prehearing conference in Montpelier, Vermont, in the above-captioned matters. Also present to assist the Acting Chair was the Board's Associate General Counsel, Kristina L. Bielenberg, Esq. The following parties participated in this prehearing conference:

Conrad W. Smith, Esq. for the Petitioner, Department of Environmental Conservation, Agency of Natural Resources ("ANR"); and  
Philip A. Kolvoord, Esq., Kolvoord, Overton & Wilson, for Links at Lang Farm, LLC, CUD Applicant ("CUD Applicant")

**II PURPOSE OF PREHEARING CONFERENCE**

The Vice-Chair described the purpose of a prehearing conference. He specifically noted that the purpose of this second prehearing conference was to: (1) make preliminary evidentiary rulings, if requested; (2) address any outstanding preliminary issues, procedural and substantive; and (3) set the schedule for the hearing day. See Prehearing Conference Report and Order at 9, Item 17 (Feb. 2, 2000). He further noted that any objections to preliminary rulings on evidentiary matters were subject to preservation and review by the full Board upon the specific request of a party at the second prehearing conference.

**III. DISCLOSURES**

Acting Chair Blythe noted that Chair Gossens had issued a memorandum to the parties on March 24, 2000, apprising them that he might not be available to preside as Chair at the second prehearing conference or at the hearing on April 25, 2000, due to travel plans. Pursuant to Board Procedural Rule 3(A), the Vice-Chair serves as the Board's Acting Chair and is authorized to perform all of the Chair's duties during the Chair's absence. Accordingly, Vice-Chair Blythe advised the parties that he would be serving as Acting Chair in the above-captioned matter for

both the second prehearing conference and hearing on April 25, 2000.

Acting Chair Blythe further advised that, in response to the disclosures made in the March 24, 2000, memorandum, no party had filed a written objection to the appointment of former Board member William Boyd Davies to hear and decide this matter. Therefore, the Chair Gossens appointed William Boyd Davies to participate in this declaratory ruling proceeding on April 4, 2000.

#### IV. PRELIMINARY RULINGS ON PREFILED EVIDENTIARY OBJECTIONS

On April 6, 2000, ANR filed Evidentiary Objections ("Objections") and a Motion *In Limine* ("Motion"). On April 7, 2000, Chair Gossens issued an Order denying ANR's Motion. On April 13, 2000, the CUD Applicant filed an Answer to DEC/ANR's Objections ("Answer")

Acting Chair Blythe inquired at the second prehearing conference concerning whether the parties requested any preliminary rulings on ANR's evidentiary objections, observing that the Chair's Order of April 7, 2000, summarily denied ANR's Motion, disposing of ANR's request for *in limine* relief and overruling ANR's general objection to the CUD Applicant's evidence on "direct influence." Counsel for the ANR indicated that it wished to preserve for Board review its general objection to the "direct influence" evidence.

Acting Chair Blythe indicated that the schedule for the hearing day would be amended to allow time at the beginning of the hearing, prior to the site visit, for oral argument by ANR and the CUD Applicant on the general evidentiary objection raised by ANR. Each party will have a total of ten minutes in which to present both direct and responsive argument and respond to Board questions. Furthermore, the Acting Chair indicated that the Board would deliberate and announce its ruling on the ANR's evidentiary objection prior to conducting the site visit.

Acting Chair Blythe reminded the parties that the evidentiary standard applicable in contested cases is found in 3 V.S.A. § 810, which provides for a relaxed standard for the admission of evidence that ordinarily would be excluded in civil court as hearsay. He noted, however, that the Board may exclude evidence that is "[i]rrelevant, immaterial, or unduly repetitious."

The Chair inquired whether there were other evidentiary matters that needed to be resolved. Counsel for the CUD Applicant indicated that he would like to be able to provide the Board with one enlarged copy of Exhibit LINKS-2 (Golf Course Rendering) during the course of the hearing. The ANR indicated that it had no objection to this request. Therefore, Acting Chair Blythe ruled that this oversized exhibit would be marked as Exhibit LINKS-2A and admitted.

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Counsel for the CUD Applicant provided ANR with a copy of oversized Exhibit LINKS-3 (Plan Showing Wetlands). He indicated that he would like to mark on the Board's copies, at the hearing, the location of the Lang Farm house on this exhibit. He noted that, in accordance with the proposed site visit itinerary, the Board would meet at the Lang Farm to begin its tour of the subject property. The ANR indicated that it had no objection to this request. Accordingly, Acting Chair Blythe will allow counsel for the CUD Applicant to amend Exhibit LINKS-3 to include a sticker indicating the location of the Lang Farm house.

#### V. CORRECTION TO PREHEARING CONFERENCE REPORT AND ORDER

Counsel for the parties indicated that there was an ambiguity concerning the intent of one of the Order items in the Prehearing Conference Report and Order at 9-10 (Feb. 2, 2000). Specifically, they sought clarification concerning whether, under the terms of Item 20, the parties would be allowed to file proposed CUD conditions on May 2, 2000, in conjunction with revised or supplemental proposed findings of fact, conclusions of law, and orders.

After consultation with the Board's counsel, Acting Chair Blythe advised the parties that the inclusion in Item 20 of the phrase, "... including any proposed CUD conditions," was a typographical error. He observed that the Board did not have jurisdiction in this proceeding to rule on what CUD conditions would be appropriate with respect to any CUD application pending before the ANR. Accordingly, Acting Chair Blythe ruled that Item 20 of the Prehearing Conference Report and Order should be amended by striking the above-referenced phrase.

#### VI. SETTLEMENT NEGOTIATIONS

Counsel for the parties advised Acting Chair Blythe that negotiations between the ANR and CUD Applicant were ongoing and they inquired whether the hearing scheduled for April 25, 2000, might be postponed to facilitate further settlement discussions between the parties.

Acting Chair Blythe advised counsel that he would grant a continuance of this proceeding provided that the parties filed no later than 12:00 noon, Friday, April 21, 2000, a jointly-sponsored written continuance request that addressed the three information requests identified in the fourth paragraph of the Chair Gossens' memorandum to the parties, dated March 30, 2000. He allowed the parties to FAX this request to the Board office with the understanding that they would also file an original and seven copies of the request by mail. He indicated that the parties would be required to either file a dismissal order or stipulation or advise the Board in writing that negotiations had broken down on or before July 15, 2000. (Since July 15, 2000, is a Saturday, the actual deadline for such filing would be Monday, July 17, 2000.)

If the parties timely file a joint continuance request, Acting Chair Blythe indicated that he would be inclined to grant the continuance and cancel the hearing scheduled for April 25, 2000. However, he emphasized that should negotiations break down, a hearing in this matter would not be able to rescheduled until August or September 2000.

#### VII. SITE VISIT ITINERARY AND HEARING DAY SCHEDULE

Acting Chair Blythe reviewed the parties proposed site visit itineraries filed on April 13, 2000. He and the parties agreed to a joint site visit itinerary which reflects the following order of site visit stations:

- (1) Assemble at the dwelling house of Jonathan Lang for a brief orientation by Steven Kolvoord to the project tract;
- (2) Drive east on Route 15, turn right onto Circumferential Highway, and right onto Essex Way, observing project tract and upgradient development; park cars at easterly boundary of project tract;
- (3) Walk along Sanitary Sewer Easement to pump station;
- (4) Observe Wetlands 98-4 and 98-7;
- (5) Walk easterly along farm road and observe Wetlands 98-3 and 98-7;
- (6) Walk southerly along Sanitary Sewer Easement and observe Wetlands 98-6 and 98-5;
- (7) And return to cars along proposed path.

Counsel for the parties agreed that the site visit could be completed within one hour.

Acting Chair Blythe reminded counsel for the parties that the site visit is designed to bring to the Board's attention those physical features that are the subject of prefiled evidence; it is not an opportunity for parties' witnesses to testify or lobby Board members. He asked counsel for the parties to each identify a lead guide/spokesperson for the site visit.

The parties and Acting Chair reviewed the Proposed Hearing Day Schedule for April 25, 2000. See Attachment to Prehearing Conference Report and Order (Feb. 2, 2000). They agreed to amend the schedule slightly to reflect the additions of a fifteen minute oral argument in another matter at 9:00 a.m. and time for oral argument on ANR's evidentiary objections. See Attachment for the Revised Hearing Day Schedule.

Acting Chair Blythe asked the parties representatives to arrive at the Town Manager's Office in Essex Junction promptly at 8:30 a.m. to discuss with Board's counsel any last minute details. He indicated that the hearing would start promptly at 9:15 a.m. Acting Chair Blythe noted that he would be vigilant in controlling the hearing in the interest of eliminating repetitive

argument and repetitive and irrelevant testimony elicited on cross-examination.

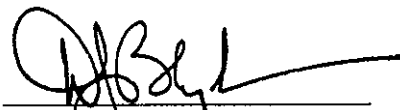
### VIII. REMINDERS

The Board's counsel reminded the parties of the filing requirements contained in the Board's Rules of Procedure and Prehearing Conference Report and Order (Feb. 2, 2000). Parties are responsible for filing an original and seven copies of each filing with the Board, with copies served on the parties listed on the Board's certificate of service. Rules of Procedure, Rule 9. She further advised the parties that if they wished to use a document not previously prefiled for impeachment purposes on cross-examination, they would need to be prepared to have enough copies at the hearing to provide opposing counsel with a copy as well as an original and seven copies for the Board.

### IX. ORDER

1. The preliminary evidentiary rulings on prefiled exhibits contained in Section IV. are binding in this proceeding. The ANR's general objection to the CUD Applicant's evidence on "direct influence" is preserved for oral argument before and review by the Board as a preliminary matter on the day of the hearing in this matter.
2. Item 20, XIV. Order, Prehearing Conference Report and Order at 9-10 (Feb. 2, 2000) is amended to read: "On or before **4:30 p.m., Tuesday, May 2, 2000**, any party may file any revised or supplemental proposed findings of fact, conclusions of law, and orders."
3. Should the parties wish to seek a continuance of this matter, they shall file a joint continuance request, conforming with the information requests identified in Section VI., on or before 12:00 noon, **Friday, April 21, 2000**. If no joint continuance request is received by this deadline, the hearing noticed for April 25, 2000, shall proceed as scheduled.
4. The Site Visit Itinerary and Hearing Day Schedule for this proceeding are those set forth in Section VII. and the Attachment.
5. This Order supplements the Prehearing Conference Report and Order (Feb. 2, 2000). Pursuant to Procedural Rules 28(B), this Order is binding on all parties, unless a written objection to the Order, in whole or part, is filed on or before 9:00 a.m., **Tuesday, April 25, 2000**, or a showing of cause for, or fairness requires, waiver of a requirement of this Order. The filing of an objection shall not automatically toll that portion of the order to which an objection is made.

Dated at Montpelier, Vermont, this 21st day of April, 2000.



David J. Blythe, Acting Chair  
Water Resources Board