

**State of Vermont
WATER RESOURCES BOARD**

**RE: Hannaford Bros. Co. and Lowes Home Center, Inc.
Docket No. WQ-01-01**

**ORDER
PARTY STATUS / AMICUS CURIAE REQUEST OF ACCD**

On August 3, 2001, the Agency of Commerce and Community Development (“ACCD”), a Vermont state agency, filed a motion with the Water Resources Board (“Board”) requesting intervention as of right in the above-captioned proceeding pursuant to Board Procedural Rule 25(B)(6) or, in the alternative, Amicus Curiae status pursuant to Board Procedural Rule 26. ACCD stated in its motion and accompanying memorandum of law that it supports the pending Motion to Alter filed by the Agency of Natural Resources (“ANR”) with respect to the Board’s Memorandum of Decision issued on June 29, 2001 (“MOD”). ACCD filed a certificate of service indicating that it had served copies of its motion and memorandum of law with the parties to this appeal.

On August 7, 2001, the Board’s Chair, David J. Blythe, Esq., considered ACCD’s motion. Pursuant to Board Procedural Rule 23, the Chair denies ACCD late intervention as a party of right pursuant to Board Procedural Rule 25(D) because the movant did not demonstrate good cause for failure to request party status in a timely fashion -- that is, at or prior to the initial prehearing conference in this proceeding -- and because ACCD’s late appearance as a party would unfairly delay the proceeding and place an unfair burden on the parties.

The Chair, however, concludes that ACCD identified in its motion an interest in the outcome of this proceeding distinct from that of the parties in this proceeding, even though with respect to the pending Motion to Alter ACCD supports ANR’s legal position. Further, the Chair concludes that ACCD, with its expertise in economic development and community affairs, can assist the Board through legal briefs and analysis in ways that the nominal parties might not be able to adequately address. See In re: Dean Leary, Docket No. MLP-94-08, Preliminary Order: VBMA Motion for Leave to Participate as Amicus Curiae (Oct. 16, 1995). Finally, the Chair concludes that ACCD’s limited participation as Amicus Curiae will not unduly delay this proceeding.

Accordingly, ACCD’s request for intervention pursuant to Board Procedural Rule 25(B)(6) is hereby denied, but ACCD’s request for leave to participate as amicus curiae pursuant to Board Procedural Rule 26 is granted, subject to the following conditions:

1. ACCD’s participation shall be limited to the filing of memoranda and the presentation of oral argument on the legal issues arising during the course of this proceeding.

2. In conformance with Board Procedural Rule 26, ANR is the party whose position as to affirmance or reversal ACCD is most closely allied. Therefore, ACCD shall file its legal memoranda within the times allowed and by the deadlines set for the ANR in any future orders of the Board or Board Chair.

3. With respect to the ANR's Motion to Alter, ACCD's August 3, 2001, filing shall be deemed its memorandum in support of the ANR's Motion to Alter the Board's MOD. ACCD may present up to five minutes of oral argument on this motion at Oral Argument scheduled for **1:30 p.m. on August 21, 2001**, at the **Board's Conference Room, National Life Records Center Building, National Life Drive, Montpelier, Vermont**. See Notice of Oral Argument (August 7, 2001).

4. Any party objecting to this Chair's Preliminary Ruling shall file its objection, supported by legal memorandum, no later than **4:30 p.m., Wednesday, August 15, 2001**. If no objection is filed by that deadline, this order shall become final and binding upon the parties to this proceeding. If an objection is timely filed, the Chair's Preliminary Ruling shall be considered by the Board as a preliminary matter at Oral Argument on August 21, 2001.

Dated at Montpelier, Vermont this 7th day of August, 2001.

WATER RESOURCES BOARD
By its Chair

/s/ David J. Blythe

David J. Blythe, Esq.

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