

LAND USE APPEAL SETTLEMENT AGREEMENT

LAND USE PERMIT #3W0405-5 (REVISED) – EB
RAY G. & LYNDA J. COLTON

This LAND USE APPEAL SETTLEMENT AGREEMENT is entered into by the following parties in reference to Act 250 Appeal of Ray G. & Lynda Colton, Land Use Permit 3W0405-5:

Ray G. Colton, Permittee
Lynda J. Colton, Permittee
Sarah Gray, Neighbor
Gordon Gray, Neighbor
Dorothy Gray, Neighbor
Donald Gray, Neighbor

Whereas, we have participated in Mediation with Robert J. O'Donnell of the Woodstock Institute for Negotiation;

And Whereas, we have reached agreements on our differences which would negate the necessity of further contested hearings in this matter if such agreements are approved and incorporated into a revised permit;

And Whereas, we believe that our agreements are within the spirit and intent of the provisions of Chapter 151 (State Land Use And Development Plans) of Title 10 (Conservation and Development) of the Vermont Statutes Annotated;

We do agree as follows:

1. Noise Issues.

A. Grinder for Making Mulch. The Coltons agree to the following in reference to their grinder used for grinding bark into mulch:

a. The Coltons agree to install a new more effective muffler on the existing tub grinder used for grinding bark into mulch. The Coltons agree to install this muffler before the beginning of the next mulch season in March, 2003. In the event the Coltons, in the future, replace the existing tub grinder, they shall install a similar muffler of similar effectiveness on said new grinder.

b. The grinder, when on site, will be permanently moved to a location behind the existing wood storage shed before the beginning of the next mulch season in March, 2003.

c. The Colton's agree to not operate the tub grinder on the premises after 3:00 P.M. from June 1 through September 1.

B. Loaders. The Coltons agree to the following in reference to their Loaders:

a. The Coltons will install new more effective mufflers on their Fiat Loader and their Cat Loader. The Coltons agree to use their best efforts to install these mufflers within 30 days of the approval by the State of Vermont of this Land Use Settlement Agreement.

b. The Loaders will not be operated after 4:00 P.M. between June 1 and August 15, except for the loading of pickup trucks which will be permitted up until 4:30 P.M. The Coltons agree to use their best efforts to load all trailer trucks before 4:00 P.M. each day from June 1 to August 15, but in the event of a late arrival of a trailer truck and as long as the loading begins before 4:00 P.M., the Coltons will be able to continue to load such trailer truck up until 4:30 P.M., but in any event such late loadings shall be limited to 10 trailer trucks during each time period of June 1 to August 15.

c. In any event, the loaders will not be used to load trailer trucks between 6:30 P.M. and 7:00 A.M. year round.

C. New Truck Access Driveway and Entrance. The Coltons agree to apply for all necessary permits and approvals and if permitted and approved, construct a new access driveway leading from their yard in a northerly direction, with an entrance on Vermont Route 100 opposite the road to Kim Fifield's, for use by all tractor trailer trucks entering or leaving the Coltons' yard after 6:30 P.M. and prior to 7:00 A.M. All tractor trailer trucks exiting from the yard of the Coltons between said hours shall be restricted from making a right hand turn out of the driveway and driving south on Route 100 and shall only proceed north on Route 100. In the event the tractor trailer trucks desire to travel south on Route 100 during these hours, they shall first exit the Coltons' yard driving north on Vermont Route 100 and find a suitable place to turn around and then proceed south on Vermont Route 100 so that they will pass the Coltons' yard and the residence of Gordon and Sarah Gray at the normal highway speed to reduce the noise level.

D. Noise Barrier. The Coltons agree to apply for all necessary permits and approvals and if permitted and approved, construct a noise barrier along the common property line of the Coltons and Gordon and Sarah Gray to reduce the impact of noise on the property of Gordon and Sarah Gray. The noise barrier will be approximately fifty (50) feet in length and ten (10) feet high and will be an earth berm, sound fence, or other material of sufficient design to assist in reducing noise transmission from the Coltons' yard to the property of Gordon and Sarah Gray. The Colton's agree that construction of the sound barrier will not take place after 4:00 P.M.

E. Air Conditioning Unit. The Coltons agree to reimburse Gordon and Sarah Gray up to \$150 toward the cost of an air conditioning unit for their bedroom to enable them to keep their windows closed in the evening hours during the summer to reduce any impacts of the noise from trucks and kiln smoke, if any, leaving the Colton's yard during the evening hours.

2. Tractor Trailer Trucks. It is agreed that after completion of both the new truck access driveway and entrance and the new sound barrier, Tractor Trailer Trucks may leave and enter the yard of the Coltons after normal business hours (7:00 A.M. to 6:30 P.M.) for the purpose of delivering product of the Coltons as follows:

A. Wood and Mulch Deliveries. From August 15 through April 30 the Coltons may have a maximum of fourteen trailer trucks per calendar month leaving their yard for deliveries during the hours of 6:30 P.M. to 7:00 A.M. From May 1 to August 14 the Coltons may have a maximum of three trailer trucks per week (Sunday through Saturday) leaving their yard for deliveries during the hours of 6:30 P.M. to 7:00 A.M. From May 1 through August 14 no trailer trucks shall be allowed to leave the premises from 4:30 P.M. Saturday through midnight on Sunday.

B. Late Arrival Back of Trucks. The Coltons shall have no more than one truck per calendar month arriving back into their yard between 6:30 P.M. and 7:00 A.M..

C. Idling of Trucks. The Coltons agree that the idling, including the time for warm up, of trucks being used for delivering product of the Coltons after 6:30 P.M. and prior to 7:00 A.M. will be limited to 15 minutes during the months when the temperature is below freezing and be limited to 10 minutes during the months when the temperature is above freezing. During the above hours said trucks shall idle behind the existing buildings so as to reduce the impacts, if any, of any idling noise on the property of Sarah and Gordon Gray.

D. Deliveries to Colton's Yard. The Coltons agree that there shall be no deliveries to them after 6:30 P.M. and prior to 7:00 A.M.

3. Operation of Kilns: The parties agree that the Colton's operation of the kilns shall be as follows:

A. The Colton's agree that from May 1 through August 14 they will not operate nor unload and refill the kilns on Sundays or holidays and will only operate the kilns a maximum of five sessions, with each session to be limited to a maximum of 96 hours. Holidays, in this case, include Memorial Day and Independence Day. The Colton's shall give Gordon and Sarah Gray at least 24 hours written notice before each of these sessions. If Sarah Gray plans on being away from her home place for a period of two days or more during May 1 through August 14 she agrees to notify the Colton's of this and the Colton's will be allowed to operate the kilns during her absence, exclusive of Sundays and holidays, in addition to the maximum number of sessions allowed.

B. The Colton's shall be allowed to operate the kilns from August 15 through April 30 as needed and shall be allowed to remove dry wood from and place green wood in the kilns between the hours of 7:00 A.M. and 4:00 P.M. on Sundays and holidays. Holidays, in this case, shall include Labor Day, Thanksgiving, Christmas Day and New Year's Day.

4. New Wood Storage Shed. The Coltons would like to construct a new wood storage shed approximately 100 feet by 60 feet in size with an approximate capacity of 500 processed cords of wood within the next three years. The parties agree to the following:

A. The Coltons agree to use their best efforts to make good faith applications for funding and permits for a new wood storage shed within three years of state approval of this Land Use Appeal Settlement Agreement. The Coltons will provide notice of such permit applications to the Grays. The Grays agree to not oppose the application of the Coltons to construct the new wood storage shed.

B. Once the new wood storage shed is constructed, the Coltons agree that their operation of their kilns will be amended to the following:

a. The Colton's agree that from May 1 through August 14 they will not operate the kilns on Sundays and holidays and will only operate the kilns a maximum of three sessions, with each session to be limited to a maximum of 96 hours. Holidays, in this case, include Memorial Day and Independence Day. The Colton's shall give Gordon and Sarah Gray at least 24 hours written notice before each of these sessions. If Sarah Gray plans on being away from her home place for a period of two days or more during May 1 through August 14 she agrees to use her best efforts to notify the Colton's of this in writing and the Colton's will be allowed to operate the kilns during her absence, exclusive of Sundays and holidays, in addition to the maximum number of sessions allowed.

b. The Colton's shall be allowed to operate the kilns from August 15 through April 30 as needed and shall be allowed to empty and refill the kilns between the hours of 7:00 A.M. and 4:00 P.M. on Sundays and legal holidays. Holidays, in this case, shall include Labor Day, Thanksgiving, Christmas Day and New Year's Day.

C. If the Coltons fail to use their best efforts to make good faith applications for funding and permits for a new wood storage shed within three years of state approval of this Land Use Appeal Settlement Agreement, or to build the new wood storage shed if permits and funding are secured, then the amended operation of their kilns set forth above in section 4.B.a. will go into effect. Upon such a failure and upon request by the Grays, the Colton's agree to file at their sole expense for an amendment to their Land Use Permit to make this change.

5. Lighting. The Coltons agree to change the yard security lights to lower wattage shoebox luminaries to reduce the night time lighting. Except for emergencies, the Coltons further agree to turn off their exterior high wattage yard lights no later than 6:30 P.M.

6. Future Communications between Parties. The parties agree to work in good faith to improve their future communications so as to have a continuing dialogue which will allow them to discuss problems which may arise in the future and to work together to reach resolutions of those problems. The parties further agree to attempt to follow the following Collaborative WIN Agreements which were agreed to for our Mediation as the guidelines for all of our future interactions:

A. A commitment to keep an open mind, to be open and honest with each other, to speak in a normal tone and volume, to treat each other with respect and courtesy, to work on building trust to a higher level, and to speak with a positive frame and tone.

B. A commitment to listen to each other and to attempt to understand what is being said, felt and meant by the other person.

C. A commitment that each one of us will have the opportunity to be fully heard without interruption, with the knowledge that this should not be a rushed process.

D. A commitment to be respectful of, accepting of, and sensitive to the other person's values, history and individuality and to try to understand and consider the interests of the other person along with our own, with the understanding that interests and values relate to who a person is and are not negotiable.

E. A commitment to understand and express our own interests which need to be met, to propose and explore different alternative or possible solutions to meet the interests of each of us to an acceptable level, and to avoid taking positions.

F. A commitment to help each of us to make a free and informed decision on each of the issues we need to resolve, without threats or pressure to give in or to make a decision.

G. A commitment to attempt to reach a resolution which will be fair for each of us, which will meet each of our interests to the maximum extent possible, which will be satisfactory and constructive for each of us, and which can and will be followed in the future by each of us.

7. Future Communications about Parties. The parties agree that an important part of their future relationships is how they speak about each other to third parties. Accordingly, the parties agree to make a good faith effort to only speak positively or neutrally about each other with all third parties or not to say anything at all.

8. Future Amendments to Colton's Permit. The parties hereto agree and acknowledge that nothing herein shall preclude or prohibit the Coltons from seeking or applying for any future amendments to any prior Act 250 Permits or the Land Use Permit contemplated to be issued hereunder and that any said permit amendment shall be reviewed pursuant to the Board's then existing rules and regulations. Any said permit application may be challenged or questioned by the Grays or any one of them, if they so desire, but this provision shall not apply to the referenced amendment to construct a new wood storage shed on the premises or, if necessary, for the construction of the sound barrier, new access driveway or other site changes necessary to implement this agreement.

9. Amendments to Permit. The Coltons agree to promptly apply for amendments to their permit for those items set forth in this Land Use Appeal Settlement Agreement, to wit: New Truck Access Driveway and Entrance, Noise Barrier. It is the intention of the parties that, if possible, these amendments be deemed ministerial in nature and be included as a part of the amended permit to be issued as a result of this Land Use Appeal Settlement Agreement.

10. Agreed upon Amendments to Land Use Permit #3W0405-5 (revised) – EB. The parties agree that the following amendments may be made to Land Use Permit #3W0405-5 (revised) – EB:

A. Condition 8 of Land Use Permit #3W0505-5 (revised) shall be altered to state:

Except as set forth in other conditions of this permit, the hours of operation shall be limited to Monday through Saturday, except holidays from 7:00 A.M. until 6:30 P.M. Notwithstanding any other provision contained herein, the permittees may conduct inspections, emergency maintenance, snowplowing, sanding, emergency services and refueling the boiler automatic loading system outside of these hours. Emptying and refilling the kiln outside the permitted hours and days shall be prohibited, except for Sundays and holidays falling between August 15 and May 31 when such operations may take place from 7:00 A.M. until 4:00 P.M. Holidays during which such emptying and refilling are prohibited include Memorial Day and Independence Day.

B. Condition 14 of Land Use Permit #3W0505-5 (revised) shall be altered to state:

The permittees shall prohibit all truck activity, including deliveries, shipments and idling, from 6:30 P.M. until 7:00 A.M., except as follows which will only take effect after completion of the new truck access driveway and entrance and the new noise barrier:

- a. From August 15 through April 30 the Coltons may have a maximum of fourteen trailer trucks per calendar month leaving their yard to make deliveries during the hours of 6:30 P.M. to 7:00 A.M. From May 1 to August 14 the Coltons may have a maximum of three trailer trucks per week (Sunday through Saturday) leaving their yard to make deliveries during the hours of 6:30 P.M. to 7:00 A.M. From May 1 through August 14 no trailer trucks shall be allowed to leave the premises from 4:30 P.M. Saturday through midnight on Sunday.
- b. No more than one truck per month will be allowed to return to their yard between the hours of 6:30 P.M. and 7:00 A.M.
- c. During the hours between 6:30 P.M. and 7:00 A.M. idling of trucks making these shipments shall be kept to a minimum with a maximum 15 minutes of idling during those months when the temperature is below freezing and with a maximum of 10 minutes during those months when the temperature is above freezing. All idling during these hours shall occur behind existing buildings so as to reduce any idling noise to the property of Sarah and Gordon Gray.

C. The following new Condition shall be added in reference to the grinder for grinding bark into mulch:

The permittees shall install a new more effective muffler on the grinder used for grinding bark into mulch before the beginning of the next mulch season beginning in March, 2003. Beginning with the next mulch season in March, 2003, the grinder, when on site, will be operated in a location behind the existing wood storage shed. The tub grinder shall not be operated on the premises after 3:00 P.M. from June 1 through September 1.

D. The following new Condition shall be added in reference to the operation of the permittees' loaders:

The permittees shall use their best efforts to install new more effective mufflers on the Fiat Loader and on the Cat Loader within 30 days of the date of this permit. Between

June 1 and August 15 the loaders are prohibited from operating after 4:00 P.M. except for the loading of pickup trucks and to load boilers and move split wood until 4:30 P.M. In the event of the late arrival of a trailer truck which needs to be loaded that day, a loader may be operated until 4:30 P.M. to load that trailer truck provided such loading commenced before 4:00 P.M. In any event, there shall not be more than 10 trailer trucks loaded after 4:00 P.M. between each June 1 and August 15. The loaders will not be used to load trailer trucks between 6:30 P.M. and 7:00 A.M. year round.

- E. The following new Condition shall be added in reference to the new truck access driveway and entrance:

The permittees shall require all tractor trailer trucks entering or leaving their premises after 6:30 P.M. and prior to 7:00 A.M. to use the new truck access driveway and entrance. The permittees shall prohibit all tractor trailer trucks leaving their premises during said hours from turning south on Vermont Route 100 and shall require them to only proceed north on Vermont Route 100 upon leaving the premises of the permittees. In the event the tractor trailer trucks desire to travel south on Route 100, they shall first exit the Coltons' yard driving north on Vermont 100 and find a suitable place to turn around and then proceed south on Route 100 so that they will pass the residence of Gordon and Sarah Gray at normal highway speed.

- F. The following new Condition shall be added in reference to the operation of the kilns:

Between August 15 and April 30 the permittees will be allowed to operate the kilns as needed and shall be allowed to empty and refill the kilns on Sundays and holidays between the hours of 7:00 A.M. and 4:00 P.M. during this period of time. Holidays, in this case, include Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.

Between May 1 and August 14 the permittees will not operate nor unload and refill the kilns on Sundays or holidays and may only operate the kilns a maximum of five sessions, with each session to be limited to a maximum of 96 hours. Holidays, in this case, include Memorial Day and Independence Day. The permittees shall give Gordon and Sarah Gray at least 24 hours written notice before each of these sessions. If Sarah Gray plans on being away from her home place for a period of two days or more during May 1 through August 15 she agrees to notify the Colton's of this and the Colton's will be allowed to operate the kilns during her absence, exclusive of Sundays and holidays, in addition to the maximum number of sessions allowed.

- G. The following new Condition shall be added in reference to the lighting of the yard:

The permittees shall, except in the case of emergencies, turn off their exterior high wattage yard lights, exclusive of security lights, no later than 6:30 P.M.

- H. The following new Condition shall be added in reference to a new wood storage shed:

The Coltons will use their best efforts to make good faith applications for funding and permits for a new wood storage shed within three years of the date of this Land Use Permit. Such new wood storage shed is planned to be approximately 100 feet by 60 feet

in size with an approximate capacity of 500 processed cords of wood. Once the new wood storage shed is constructed, the operation of the kilns will be amended to the following:

- a. From from May 1 through August 14 they will not operate the kilns on Sundays and holidays and will only operate the kilns a maximum of three sessions, with each session to be limited to a maximum of 96 hours. Holidays, in this case, include Memorial Day and Independence Day. The Colton's shall give Gordon and Sarah Gray at least 24 hours written notice before each of these sessions. If Sarah Gray is away from her home place for a period of two days or more during May 1 through August 14 the Colton's will be allowed to operate the kilns during her absence, exclusive of Sundays and holidays, in addition to the maximum number of sessions allowed.
- b. The Colton's shall be allowed to operate the kilns from August 15 through April 30 as needed and shall be allowed to empty and refill the kilns between the hours of 7:00 A.M. and 4:00 P.M. on Sundays and legal holidays . Holidays, in this case, shall include Labor Day, Thanksgiving, Christmas Day and New Year's Day.

If the Coltons fail to use their best efforts to make good faith applications for funding and permits for a new wood storage shed within three years of state approval of this Land Use Appeal Settlement Agreement, or to build the new wood storage shed if permits and funding are secured, then the amended operation of their kilns set forth above in paragraph a. will go into effect. Upon such a failure and upon request by the Grays, the Colton's shall file at their sole expense for an amendment to their Land Use Permit to make this change.

11. Conditions of this Land Use Appeal Settlement Agreement: The parties agree that this Land Use Appeal Settlement Agreement is **conditioned upon** the State of Vermont making the amendments to Land Use Permit #3W0405-5 (revised) – EB as set forth in Paragraph 9 and/or as may be required to implement the agreements set forth herein. If the State of Vermont does not make all of the said amendments as has been agreed then the parties shall each have the following option:

If a party is not satisfied with all of the provisions of the amended Land Use Permit(s) #3W0405-5 (revised) – EB or other amendments thereto, such party shall have the right within ten (10) days from the issuance of the amended permit(s) to notify in writing each of the parties to this Land Use Appeal Settlement Agreement and the Vermont Environmental Board that they desire to rescind this Land Use Appeal Settlement Agreement. If a party does so elect to rescind this Land Use Appeal Settlement Agreement within the said ten (10) days, this Land Use Appeal Settlement Agreement shall become null and void and of no force or effect and any party may request the Vermont Environmental Board to reconsider its decision and to have further hearings on this matter. If a party does not so elect to rescind this Land Use Appeal Settlement Agreement within the said ten (10) days, this Land Use Appeal Settlement Agreement shall be fully and unconditionally binding upon the parties as will the amended Land Use Permit #3W0405-5 (revised), with the amended Land Use Permit #3W0405-5 (revised) to take precedence and be controlling in the event of any conflicting terms (with the

exception of provision 4.C of this Land Use Appeal Settlement Agreement which shall be controlling).

12. **Acknowledgments by Parties.** Each of the parties to this Land Use Appeal Settlement Agreement acknowledges the following:

A. Each of the parties acknowledges that although the Mediator is an attorney that the Mediator has not given any legal advice to them and they are not relying upon the Mediator in any manner in regard to their understanding of their legal rights and responsibilities nor in regard to the effects, legality, legal meaning, legal implications and legal ramifications of this Land Use Appeal Settlement Agreement.

B. Each of the parties acknowledges that they have been advised by the Mediator to seek legal counsel before executing this Land Use Appeal Settlement Agreement in order to understand their legal rights and responsibilities and the effects, legality, legal meanings, legal implications and legal ramifications of this Land Use Appeal Settlement Agreement in relation to the laws and regulations of the State of Vermont and the powers of the Vermont Environmental Board and the Vermont District Environmental Commissions.

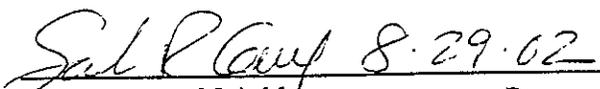
C. Each of the parties acknowledges that they understand the facts and that they are signing this Land Use Appeal Settlement Agreement freely, voluntarily and without coercion.

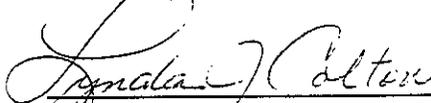
D. Each of the parties hereto agrees that this Agreement shall be binding upon and enure to the benefit of their respective heirs, successors and assigns.

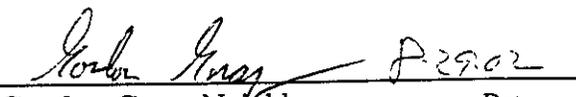
E. Each of the parties understand and agrees that this Land Use Appeal Settlement Agreement constitutes the entire agreement of the parties and that it supersedes any prior understandings and agreements between them upon the subjects covered herein.

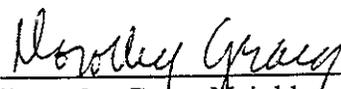
The parties do execute this Land Use Appeal Settlement Agreement, approving its terms and conditions.

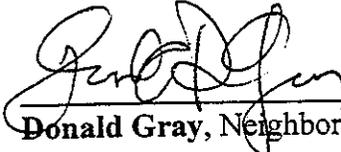

Ray G. Colton, Permittee 8-29-02 Date


Sarah Gray, Neighbor 8-29-02 Date


Lynda J. Colton, Permittee 8/29/02 Date


Gordon Gray, Neighbor 8-29-02 Date

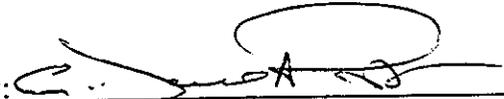

Dorothy Gray, Neighbor 9-1-02 Date


Donald Gray, Neighbor

9/1/02
Date

APPROVED AS TO FORM:

HERSHENSON, CARTER, SCOTT and McGEE, P.C.
Attorneys for Ray G. and Lynda J. Colton

By: 
C. Daniel Hershenson, Esquire