

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
DOCKET NO. 94-3-17 Frcv

M&M VT MAPLE, LLC, and)
 MARK AND MARIANNE DUBIE)
)
 Plaintiffs,)
)
 v.)
)
 SWANTON WIND, LLC and)
TRAVIS BELISLE)
)
 Defendants.)

COMPLAINT

NOW COME M&M VT Maple, LLC and Mark and Marianne Dubie, by and through their undersigned counsel, and allege as follows:

1. Defendant Swanton Wind, LLC (“Swanton Wind”) is a Vermont limited liability company with a principal place of business in St. Albans, Vermont.
2. Travis Belisle is the Manager of Swanton Wind.
3. Swanton Wind proposes to build a 20 MW wind turbine facility on a ridgetop in Swanton, Vermont (the “Project”).
4. M&M VT Maple, LLC (“M&M”) is a Vermont limited liability company with a principal place of business in Swanton, Vermont.
5. Mark Dubie is the Manager of M&M.
6. M&M owns land adjoining the Project (the “M&M Property”).
7. M&M acquired title to the land adjoining the Project in December of 2016.
8. Prior to December of 2016, the M&M Property was owned by the Marcotte Charlotte Isham Revocable Trust (the “Trust”). The Trust leased the property to M&M from 2008 to 2016.

9. On February 20, 2017, the Trust assigned all claims it had or has against Swanton Wind related to the counts set forth below to M&M.
10. Marianne and Mark Dubie jointly own property that adjoins the Project (the “Dubie Property”).
11. On or before December of 2014, Defendants and/or their agents, entered onto the M&M Property for the purpose of delineating wetlands. The entry was without permission from either the Trust or M&M.
12. The Defendants knew they were trespassing when they entered the M&M Property to delineate the wetlands.
13. On or before September of 2015, Defendants and/or their agents, entered onto the M&M property and constructed approximately 1,000 feet of road leading to the top of a ridge (the “Ridge Road). The entry and work was done without permission from either the Trust or M&M.
14. The Defendants knew they were trespassing when they entered the M&M Property to build the Ridge Road.
15. In the construction of the Ridge Road, numerous trees were taken down or injured.
16. On October 23, 2015, the Trust notified Defendants in writing that they did not have permission to enter upon the M&M Property and advising them to stay off the property.
17. In November of 2015, Defendants and/or their agents again entered onto the M&M Property without permission for the purpose of delineating wetlands.
18. The Defendants knew they were trespassing when they entered the M&M Property to further delineate the wetlands and had been advised in writing to refrain from doing so.
19. The M&M Property supports a maple syrup operation.
20. The area of the M&M Property that adjoins the Project is regularly visited by M&M employees and M&M has a significant amount of maple operation infrastructure located in this area.

21. The maple sap is gathered by way of 200 miles of pipeline. One of the means of identifying a leak in the pipeline is to listen for noise made by vacuum leaks.
22. In the Petition it filed with the Public Service Board, Swanton Wind stated that the wind turbines proposed for inclusion in the Project will throw large chunks of ice, weighing as much as two pounds, onto the M&M Property. The ice may travel up to 1,000 feet.
23. Two of the proposed turbines are to be sited within 50 feet of the M&M Property.
24. The flying ice poses the risk of death or significant injury to M&M employees and the threat of damage to maple operation infrastructure.
25. The wind turbines proposed for the Project will generate sufficient noise to make the identification of pipeline leaks extremely difficult.
26. The noise generated by the proposed wind turbines will create a loud unpleasant noise in areas where M&M employees must work.
27. The solar shadow flicker generated by the proposed wind turbines will create an unpleasant and potentially disorienting visual effect in areas where M&M employees must work.
28. The installation of the turbines will require the construction of a road as wide as the interstate close to the boundary of the M&M Property running several thousand feet (the "Access Road") and the clear cutting of more than 40 acres.
29. The construction of the Access Road and the clear cutting will result in harm to trees on M&M Property caused by ice throw, windfall, die-back and loss of support.
30. Upon information and belief, some blasting may be required in the construction of the turbine pads. This blasting may throw rocks onto the M&M Property.
31. The development of the Project as proposed will reduce the values of the M&M and Dubie Properties by restricting their potential for development and recreational use.
32. This Court has jurisdiction pursuant to 4 V.S.A. § 31.
33. Venue for this action is proper pursuant to 12 V.S.A. § 402.

**COUNT I
Trespass**

34. Plaintiffs repeat and reallege Paragraphs 1-33.
35. Defendants trespassed on the M&M Property.
36. Defendant's trespass caused the Plaintiff's damages.

**COUNT II
Trespass 13 V.S.A. § 3606**

37. Plaintiffs repeat and reallege Paragraphs 1-36.
38. In building the Ridge Road, Defendants took down and damaged numerous trees on the M&M Property.
39. Plaintiffs are entitled to treble damages for all trees so took down or injured plus compensation for all other damages caused by the trespass.

**COUNT III
Injunction Against Future Trespass
Anticipatory Trespass**

40. Plaintiffs repeat and reallege Paragraphs 1-39.
41. Defendants have stated under oath their intention to engage in future trespasses on the M&M and Dubie Properties by throwing large chunks of ice onto the properties.
42. Plaintiffs seek an injunction enjoining any such future trespasses.

**COUNT IV
Injunction Against Future Nuisance-Noise
Anticipatory Nuisance**

43. Plaintiffs repeat and reallege Paragraphs 1-42.
44. Defendants have stated under oath their intention to engage in future activities that will give rise to nuisance claims for the owners and users of the M&M and Dubie Properties by generating constant loud noise.
45. Plaintiffs seek an injunction enjoining any such future nuisance causing activities.

**COUNT V
Injunction Against Future Nuisance-Harm to Forest
Anticipatory Nuisance**

46. Plaintiffs repeat and reallege Paragraphs 1-45.

47. Defendants propose to build the Access Road in a location that will cause substantial harm to the trees located on the M&M Property.

48. Plaintiffs seek an injunction enjoining any such future nuisance causing activities.

COUNT VI
Punitive Damages

49. Plaintiffs repeat and reallege Paragraphs 1-48.

50. Defendants knowingly and willfully trespassed on Plaintiffs' property.

51. Defendants have a significant history of non-compliance with land use laws and regulations.

52. Defendants' blatant disregard for the law and the property rights of others warrant the imposition of punitive damages and an award of attorneys' fees.

WHEREFORE, for the foregoing reasons, Plaintiffs ask that Defendants be held liable for all of Plaintiffs' damages plus costs and reasonable attorney's fees, along with any other such and further relief as the Court deems just and proper.

DATED at Burlington, Vermont this 3 day of March, 2017.

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