

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION
Docket No. 70-2-15

STATE OF VERMONT,)
)
Plaintiff,)
)
v.)
)
HERMITAGE INN REAL ESTATE)
HOLDING COMPANY, LLC;)
RUSHING CREEK, LLC,)
)
Defendants.)

**STIPULATION FOR THE ENTRY OF CONSENT ORDER AND
FINAL JUDGMENT ORDER**

In order to resolve the allegations of the Complaint filed in the above-captioned matter, the parties, Plaintiff, the State of Vermont, Natural Resources Board and Agency of Natural Resources ("the State") by and through Vermont Attorney General William H. Sorrell, and Defendants Hermitage Inn Real Estate Holding Company, LLC and Rushing Creek, LLC, hereby stipulate and agree as follows:

The Hermitage Club

1. Defendant Hermitage Inn Real Estate Holding Company, LLC is a Connecticut company and primary owner of Haystack Mountain and associated property in Wilmington and Dover, Vermont.
2. Defendant Rushing Creek, LLC is a Vermont company located in Dover, Vermont.

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3. Defendants own and operate The Hermitage Club at Haystack Mountain, a “members-only,” private ski resort with associated ski trails and lifts, snowmaking lines, snowmobile trails, recreational amenities, residential condos, a hotel and club house, and other buildings, trails, roads, and utilities.
4. From 2011 to 2014, Defendants performed various construction activities on approximately 881 acres of property to develop The Hermitage Club, including:
 - a. Fall 2011: relocating snowmobile trails, creating new trails, constructing stream crossings, and removing trees and vegetation within buffer zones of state waters.
 - b. Fall 2012: constructing a 1.25 mile snowmobile trail, removing trees and vegetation within buffer zones of state waters, blasting work for installation of a wind turbine, installing a building for ski patrol and bathroom services (including connecting the building to public water and sewer lines), constructing various ski trails, lifts and snowmaking lines, and removing trees and vegetation within a wetland. The construction activities resulted in several unpermitted discharges of sediment and runoff into state waters.
 - c. December 2012-January 2013: performing additional construction on ski trails and lifts.

d. June 2014: constructing a dock, raft, fence, and beach area at a pond and dam known as "Mirror Lake."

5. Under Vermont's land use laws (known as Act 250), 10 V.S.A. Chapter 151, The Hermitage Club is subject to several land use permits. The construction activities described in ¶ 4 required land use permits and compliance with permit conditions.
6. Under Vermont's environmental and water quality laws, Defendants are required to have various state permits for The Hermitage Club: a stormwater permit for construction activities, a wastewater and public water supply permit for facilities connected to public water and sewer lines, and authorization from the Agency of Natural Resources to perform construction in any wetland or dam under the Agency's jurisdiction.
7. During numerous site visits, staff from both the Agency of Natural Resources (ANR) and Natural Resources Board determined that Defendants did not have the appropriate permits described in ¶¶ 5-6 for the construction activities described in ¶ 4, and that Defendants also did not comply with then-applicable permit conditions for the construction activities described in ¶ 4. During the site visits in 2012, the agencies told Defendants to obtain all necessary permits, to comply with all applicable permit conditions, and to cease unauthorized construction work. Some of the unauthorized construction continued and ANR filed for and received an Emergency Order in December 2012 from the Environmental Division of

the Vermont Superior Court for Defendants to cease all unauthorized construction activities and comply with all ANR permitting requirements. Even after that time, Defendants continued some of the unpermitted activities, as described in paragraph 4 above.

8. Over time, in response to the agencies' site visits and communications, Defendants have performed remediation work at The Hermitage Club and have obtained the necessary permits.

Resolution of Claims

9. Defendants admit to liability for the following activities at The Hermitage Club:
 - a. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2012 for constructing a 1.25 mile snowmobile trail without an Act 250 permit (Count One of the Complaint);
 - b. violating 10 V.S.A. § 8002(9) in Fall 2012 for removing trees and vegetation within buffer zones in contravention of applicable Act 250 permit conditions (Count Two of the Complaint);
 - c. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2012 for installing a ski patrol and bathroom building without an Act 250 permit (Count Three of the Complaint);
 - d. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2011 for constructing trails and stream crossings without an Act 250 permit (Count Four of the Complaint);

- e. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in Fall 2012 for performing blasting work for a wind turbine without an Act 250 permit (Count Five of the Complaint);
- f. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in June 2014 for constructing a dock, raft, fence, and beach area at Mirror Lake without an Act 250 permit (Count Six of the Complaint);
- g. violating 10 V.S.A. § 8002(9) in Fall 2011 for removing trees and vegetation within buffer zones in contravention of applicable Act 250 permit conditions (Count Eight of the Complaint);
- h. violating 10 V.S.A. Chapter 47 in Fall 2012 for construction without a Moderate Risk stormwater general permit (Count Nine of the Complaint);
- i. violating 10 V.S.A. § 8002(9) in December 2012-January 2013 for construction activities in contravention of applicable stormwater permit conditions (Count Ten of the Complaint);
- j. violating 10 V.S.A. § 1259(a) in November-December 2012 for discharging sediment and runoff into state waters without a permit from the Secretary of the Agency of Natural Resources (Count Eleven of the Complaint);
- k. violating 10 V.S.A. § 1973 in Fall 2012 for connecting a ski patrol and bathroom building to sewer lines without a wastewater and potable water supply permit (Count Twelve of the Complaint);

- l. violating 10 V.S.A. § 1673 in Fall 2012 for connecting a ski patrol and bathroom building to public water lines without a public water supply permit (Count Thirteen of the Complaint);
- m. violating 10 V.S.A. § 1082 in June 2014 by constructing a beach area at Mirror Lake without authorization from the Secretary of the Agency of Natural Resources to alter a dam or spillway (Count Fourteen of the Complaint); and
- n. violating 10 V.S.A. § 913 and Vermont Wetland Rule 9.1 in Fall 2012 for removing trees and vegetation within a wetland without a permit or authorization from the Secretary of the Agency of Natural Resources (Count Fifteen of the Complaint).

10. This Stipulation and the Consent Order and Final Judgment Order resolve all claims in the State's Complaint in this matter. Any alleged violations listed in the Complaint not admitted above shall be dismissed with prejudice. This Stipulation and the Consent Order and Final Judgment Order do not affect any potential violations by Defendants at The Hermitage Club not alleged in the Complaint.

11. Under 10 V.S.A. § 8221, Defendants are potentially liable for civil penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation for each day the violation continued.

12. Pursuant to 3 V.S.A., Chapter 5, the Attorney General has the general supervision of matters and actions in favor of the State and may settle

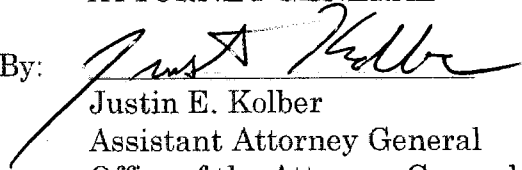
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such matters as the interests of the State require. The Attorney General believes that this settlement is in the State's interests as it upholds the statutory regime of Title 10 of the Vermont Statutes Annotated in which the violations occurred.

13. The State has considered the criteria in 10 V.S.A. § 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violations, the length of time the violations existed and that Defendants knew or had reason to know the violations existed.
14. This Stipulation for the Entry of Consent Order and Final Judgment Order has been negotiated by and among the State and Defendants in good faith.
15. The attached Consent Order and Final Judgment Order may be entered as a final judgment in this matter by the Court.

DATED at Montpelier, Vermont this 3rd day of April, 2015.

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 
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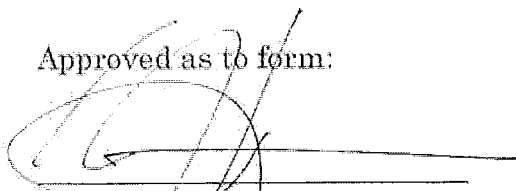
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DATED at Rutland, Vermont this 3rd day of APRIL, 2015.

HERMITAGE INN REAL ESTATE
HOLDING COMPANY, LLC, and
RUSHING CREEK, LLC,

By: James R. Barnes
James Barnes, President of The
Hermitage Club and authorized
agent for Defendants

Approved as to form:


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