

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION

Docket No. 72-1-18 Rdcw

STATE OF VERMONT, )  
VERMONT DEPARTMENT OF )  
ENVIRONMENTAL CONSERVATION )  
) )  
and ) )  
) )  
VERMONT NATURAL RESOURCES BOARD )  
Plaintiffs, )  
) )  
v. ) )  
) )  
CHITTENDEN RESORTS, LLC )  
) )  
and ) )  
) )  
RMT ASSOCIATES, LLC )  
Defendants. )

FILED  
SEP 13 2018  
VERMONT SUPERIOR COURT  
RUTLAND

**CONSENT AGREEMENT AND FINAL ORDER**

The above-named Plaintiffs and Defendants (collectively, the "Parties"), having filed Pleadings by Agreement pursuant to Rule 8(g) of the Vermont Rules of Civil Procedure; and the Parties having agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("Consent Order") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law and without the admission or denial of liability, based upon the Pleadings by Agreement and pursuant to 10 V.S.A.

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§ 8221 and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

**PRELIMINARY STATEMENT**

1. By and through the Attorney General, Plaintiffs initiated this proceeding for the assessment of a civil penalty pursuant to 10 V.S.A. § 8221. 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.
2. The Pleadings by Agreement allege that Defendants violated various provisions relating to their Act 250 permit(s), wastewater permit(s), and/or stormwater permit(s) that were previously issued pursuant to Vermont statute.
3. The Parties subsequently entered into negotiations to settle the allegations contained in the Pleadings by Agreement. This Consent Order is the result of such negotiations and resolves the liability of the Defendants for matters alleged in the Pleadings by Agreement.
4. 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. In arriving at the proposed penalty amount, the State has considered the criteria in 10 V.S.A. § 8010(b)-(c), including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the

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violations, the length of time the violations existed and that Defendants knew or had reason to know the violations existed.

5. The Parties stipulate that the Rutland Civil Division of the Vermont Superior Court has jurisdiction over the subject matter alleged in the Pleadings by Agreement, and that the Pleadings by Agreement state a claim upon which relief can be granted.

#### **RECITATION OF PERMIT VIOLATIONS**

6. The Parties have stipulated and agreed that certain claimed permit violations will not be contested by Defendants.
7. Plaintiffs have alleged the following violations of Vermont's land use and environmental laws and regulations at The Mountain Top Inn and Resort in Chittenden, Vermont by Defendants:
  - a. violating 10 V.S.A. § 6081(a), 10 V.S.A. § 1264(e)(1) and Act 250 Rule 34(A) in 2011 for expanding the graveled portion of their parking area by approximately 11,000 feet without the necessary stormwater permits, Act 250 permits, and/or permit amendments;
  - b. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) in the Fall of 2014 for installing a rope tow system without the necessary Act 250 permit and/or amendment;
  - c. violating 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) around 2011 for undertaking the construction and development associated with the

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Marquee Events tent near the Mountain Aire guest house without the required Act 250 permits and/or amendments;

- d. violating 10 V.S.A. § 1973 and 10 V.S.A. § 8003(a)(10) for exceeding the maximum occupancy allowed under their wastewater permits and for exceeding the maximum permitted occupancy allowed under their Act 250 permits at Trailside Cottages Trillium, Grand Vista, Dewberry, and Campion;
- e. violating 10 V.S.A. § 1973 and 10 V.S.A. § 8003(a)(10) for exceeding the maximum occupancy allowed under the wastewater permit and for exceeding the permit occupancy allowed under the Act 250 permit at the Mountain Aire Lodge and Treehouse;
- f. violating 10 V.S.A. § 1973 and 10 V.S.A. § 8003(a)(10) for exceeding the permitted maximum capacity under their Act 250 and wastewater permits at the Wedding Barn and Main Inn, further developing the Wedding Barn beyond the scope of the Act 250 and wastewater permits, and expanding the sleeping and dining capacity at the Main Inn beyond what was permitted under their Act 250 and wastewater permits; and
- g. violating 10 V.S.A. § 1973 and 10 V.S.A. § 8003(a)(10) for exceeding the maximum occupancy allowed under their Act 250 and wastewater permits at the Resort's Beach House Pavilion.

8. Defendants agree that the above violations are deemed proved and established as a "prior violation" in any future state proceeding that

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requires consideration of Defendants' past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.

### PENALTY

9. For the violations described above, Defendants shall pay a civil penalty of ninety thousand U.S. dollars (\$90,000.00).
10. Payment shall be paid within fifteen (15) days after <sup>become final</sup> entry of this Consent Agreement and Final Order by check payable to the "State of Vermont" and sent to: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. In the event that payment is received by the State before the Court has approved the Consent Agreement and Final Order, the State shall hold the check in trust until approval. Should the Court reject the Consent Order and Final Judgment Order, the State will return the check(s) to Defendants.
11. In the event that Defendants fail to pay the amount as described in paragraphs 9-10, such failure shall constitute a breach of this Consent Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. Defendants shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

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## INJUNCTIVE RELIEF

12. Defendants agree to hereby designate Craig Jewett, P.E. of Otter Creek Engineering, or some other qualified professional designated by Defendants, as a compliance officer and as primary contact with respect to all state environmental permits for The Mountain Top Inn and Resort.

## OTHER PROVISIONS

13. Defendants waive: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendants under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.

14. This Consent Order is binding upon the parties and all their successors and assigns.

15. Nothing in this Consent Order shall be construed to create or deny any rights in, grant or deny any cause of action to, or release any claim from, any person not a party to this Consent Order, including any third party or any other government or sovereign.

16. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, the Consent Order shall be final.

17. Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or

penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.

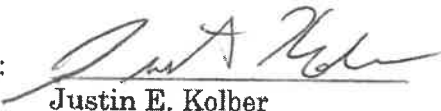
18. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendants.
19. This Consent Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this Court. Any representations not set forth in this Consent Order and Final Judgment Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.
20. The Rutland Civil Division of the Vermont Superior Court shall have jurisdiction over this Consent Order and the Parties for the purpose of enabling any of the Parties to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe the Consent Order, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions. The laws of the State of Vermont shall govern the Orders.

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DATED at Montpelier, Vermont this 30<sup>th</sup> day of January, 2018.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By:   
Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
(802) 828-3186

DATED at Chittenden, Vermont this 26 day of January, 2018.

CHITTENDEN RESORTS, LLC


By:   
[name/title]: Managing Member

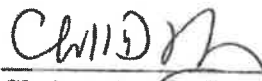
DATED at Chittenden, Vermont this 26 day of January, 2018.

RMT ASSOCIATES, LLC

By:   
[name/title]: Managing Member

APPROVED AS TO FORM:

  
Justin E. Kolber  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, VT 05609

  
Christopher D. Roy  
Downs Rachlin Martin PLLC  
199 Main Street, PO Box 190  
Burlington, VT 05402  
Attorneys for Defendants

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**ORDER AND FINAL JUDGMENT**

Based on the Pleadings by Agreement and the terms of the Consent Agreement of the Parties, the Court enters this ORDER and FINAL JUDGMENT.

SO ORDERED, and ENTERED as FINAL JUDGMENT:

DATED at Rutland, Vermont this 11<sup>th</sup> ~~day of January~~ <sup>September</sup>, 2018.



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Hon. Samuel Hoar, Jr.  
Rutland Superior Court Judge

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