

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Mount Snow Ltd. and Carinthia Ski Lodge LLC,
Respondents

VIOLATIONS

1. Violation of Conditions 1, 2, and 16 of Land Use Permit 2W0392-7C2 – Conducting unpermitted tree cutting.
2. Violation of Act 250 Rule 34 – Commencement of construction on a material change to a permitted development without a permit amendment.



ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (“Board”), Mount Snow Ltd. (“Mount Snow”), and Carinthia Ski Lodge LLC (“Carinthia”) hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows. Mount Snow and Carinthia are sometimes collectively referred to in this Assurance as “Respondents.”


STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Mount Snow is a domestic for-profit corporation that owns and operates the Mount Snow resort in Dover, VT. The Mount Snow resort includes lands identified in Book 40, Pages 1-38; Book 75, Pages 546-51; Book 299, Pages 209-11; Book 332, Pages 566-67; Book 333, Pages 220-21 and 236-37; and Book 152, Pages 34-37 of the Town of Dover Land Records. Collectively, these lands are referred to in this Assurance as the “Subject Property.”
2. The Subject Property is subject to multiple Act 250 Land Use Permits, including but not limited to Land Use Permits 2W0392-7C2 and 2W1281-1(Alt) Remand.
3. Land Use Permit 2W0392-7C2 was issued on May 25, 2005 to Mount Snow. It “authorize[d] the permittee to construct a base for a new ‘half-pipe’ made of dirt fill at the existing half-pipe location and six snowmaking hydrants on the existing line....”
4. Condition 1 of Land Use Permit 2W0392-7C2 states: “The project shall be completed,

operated and maintained in accordance with the plans and exhibits on file with the District Environmental Commission and the conditions of this permit.”

5. Condition 2 of Land Use Permit 2W0392-7C2 states: “No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Environmental Board Rules.”
6. Condition 16 of Land Use Permit 2W0392-7C2 states: “No further alteration and/or development shall be permitted without the written approval of the District Environmental Commission.”
7. The plans submitted in support of the application for and subsequently incorporated into Land Use Permit 2W0392-7C2 depict that some tree clearing will occur in the trees located to the west and the north of the half pipe immediately in front of the half pipe’s entrance. The plans do not depict and the Land Use Permit did not authorize the cutting of any trees adjacent to the northern half pipe berm below the entrance to the half pipe or the cutting of any additional trees to the west of the half pipe.
8. Land Use Permit 2W1281-1(Alt) Remand was issued on July 19, 2017 to Respondents. It “authorize[d] the Permittees to replace an existing ski lodge with a new 38,510 square-foot ski lodge; replace an existing snowmaking pump house with a new pump house totaling 3,960 square-feet; replace a double chairlift with a surface lift; reconfigure and pave an existing parking lot; and add a one-story parking deck (upper deck unlighted) and other associated infrastructure.”
9. Redacted per 10 VSA 5410

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11. Act 250 Rule 34 states, in pertinent part: “A permit amendment shall be required for any material change to a permitted development or subdivision, or administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.”
12. Act 250 Rule 2(C) defines “material change” as “any cognizable change to a development or subdivision subject to a permit under Act 250...which has a significant

impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).”

13. 10 V.S.A. § 6086(a)(8)(A) states, in part, that a “permit will not be granted if...a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species....”
14. On July 2, 2019, the Board's Compliance and Enforcement Officer conducted a site visit of the Subject Property in response to an anonymous complaint to the District 2 Coordinator that Respondents had conducted unpermitted tree cutting. Representatives from Mount Snow and the Vermont Department of Fish and Wildlife, as well as the District 2 Coordinator also attended the site visit.
15. During the site visit the Board's Compliance and Enforcement Officer observed that Respondents had cut approximately 0.75 acres of trees, including trees adjacent to the northern half pipe berm and trees to the west of the half pipe in addition to those authorized by Land Use Permit 2W0392-7C2.
16. Redacted per 10 VSA 5410

17. Respondents cut the trees to relocate two ski jumps so they would be contiguous to the northern berm of the half pipe. Respondents admit the factual findings described above, solely for purposes of resolving this case.
18. The Board alleges that the above conduct constitutes a violation of Land Use Permits 2W0392-7C2 and Act 250 Rule 34.

AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

- A. Respondents shall comply with Land Use Permits 2W0392-7C2 and 2W1281-1(Alt) Remand.
- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior

Court, Environmental Division, the Respondents shall pay, by separate checks, the following:

1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Nine Thousand Dollars (\$9,000.00)**, for the violations noted herein, by check made payable to the “State of Vermont.”
2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Thousand Six Hundred Eighty One Dollars and Forty Four Cents (\$1,681.44)**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the “Natural Resources Board.”
3. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Thousand One Hundred Forty Three Dollars and Sixty Eight Cents (\$1,143.68)**, to reimburse the Agency of Natural Resources for the costs of this enforcement action by check made payable to the “Agency of Natural Resources.”
4. The amount of **Ten Dollars (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Dover land records, by check made payable to the “Town of Dover, Vermont.”

Respondents shall be jointly and severally liable for the payment of these sums.

C. Respondents shall re-establish a forested buffer **Redacted per 10 VSA 5410** pursuant to the August 30, 2019 VHB Memorandum attached to this Assurance as Exhibit 1 and the following:

1. To comply with the prohibition in 10 V.S.A. § 5410 against disclosing information regarding the specific location of threatened or endangered species, the parties agree this memorandum shall remain confidential and that Respondents stipulate to any request by the Board for the Court to seal it pursuant to Access to Court Records Rule 6(b)(35).
2. To support root growth and transplanted tree survival, a 25-gallon slow release tree watering bag or irrigation tree ring shall be installed at the base of each replanted tree.
3. Respondents shall replace any damaged or diseased trees immediately for a 5-year period ending October 21, 2024.
4. After the buffer is replanted, Respondents shall contract with a consultant approved in advance by the Vermont Department of Fish and Wildlife to annually monitor and assess the effectiveness of the replanted buffer **Redacted per 10 VSA 5410**. Respondents shall provide an annual report of this monitoring and

assessing to the District 2 Commission and the Department. If requested by the Department, Respondents shall grant the Department access to the Subject Property to verify the contents of this report.

5. Prior to October 1, 2019, Respondents shall submit to the Vermont Department of Fish and Wildlife for its review and approval a plan to monitor [Redacted per 10 VSA 5410] the degree to which the artificial wind screen required by this Assurance of Discontinuance can effectively mitigate the impacts of unpermitted tree cutting. Any monitoring devices [Redacted per 10 VSA 5410] must be installed no later than October 15, 2019. With the Department's approval, this monitoring may be done in conjunction with the monitoring required by Paragraph C(4) of this Assurance.
- D. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above to resolve all outstanding disputes.
- E. Respondents agree that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondents' past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- F. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall mail the Board a notarized, written acknowledgement of receipt of the Court's Order.
- G. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- H. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- J. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.

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- K. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- L. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.
- M. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond Respondents' control.
- N. This Assurance sets forth the complete agreement of the parties, and except as provided herein, may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division.
- O. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- P. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- Q. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES (3 pages)

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at West Dover, Windham C., this 6th day of Sept, 2019.

Mount Snow Ltd.

By [Signature]

Duly Authorized Agent

STATE OF Vermont
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 6th day of Sept, 2019, personally appeared Erik Barnes, individually and as the duly authorized agent of **Mount Snow Ltd.** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of **Mount Snow Ltd.** and that (s)he has the authority to contract on behalf of **Mount Snow Ltd.** and that (s)he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]

Notary Public
My Commission Expires:



The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Montpelier, Vermont, this 6 day of September, 2019.

Carinthia Ski Lodge LLC


By Richard Deutsche

Duly Authorized Agent

STATE OF Vermont
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 6th day of September, 2019, personally appeared Richard Deutsche individually and as the duly authorized agent of **Carinthia Ski Lodge LLC** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of **Carinthia Ski Lodge LLC** and that (s)he has the authority to contract on behalf of **Carinthia Ski Lodge LLC** and that (s)he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Laurel Beth Cashman
Notary Public
My Commission Expires: _____


The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this _____ day of _____, 2019.

Natural Resources Board

By:

Diane B. Snelling, Chair