



LAND USE PERMIT

**STATE OF VERMONT
Natural Resources Board
DISTRICT #1 ENVIRONMENTAL COMMISSION**

CASE NO	Killington Village Master Plan #1R0980	LAWS/REGULATIONS INVOLVED
APPLICANT	SP Land Company, LLC	10 V.S.A., §§ 6001 - 6092 (Act 250)
ADDRESS	P.O. Box 290 Killington, VT 05751	

District #1 Environmental Commission (“Commission”) hereby issues Land Use Permit #1R0980, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6092. This permit applies to the lands identified in Book 254, Page 292; Book 306, Page 516; Book 306, Page 530; Book 254, Page 275; Book 254, Page 284; Book 306, Page 579; Book 306, Page 586; Book 254, Page 256; Book 307, Page 1; Book 307, Page 10; Book 254, Page 266; Book 307, Page 39; Book 254, Page 335; Book 306, Page 561; Book 254, Page 303; Book 254, Page 314; Book 307, Page 20; Book 307, Page 30; Book 254, Page 326; Book 306, Page 551; Book 306, Page 505; Book 307, Page 48; Book 307, Page 59; Book 306, Page 539; Book 268, Page 327; Book 306, Page 571; and Book 254, Page 363¹ of the land records of the Town of Killington, Vermont, as the subject of a deed to the SP Land Company, LLC , as Grantee (“Permittee” or “applicant”).

This permit specifically authorizes the Permittee to construct Phase I of the Village Master Plan (“Phase I”), including:

- 193 residential units in the Village Core;**
- 31,622 square feet of commercial/retail space;**
- 77,000 square foot replacement skier services building;**
- 32 lot Ramshead Brook Subdivision utilities (“the Ramshead Lots”);²**
- **Two potable water projects - Snowdon Well Field Project (“SW Project”) and the Valley Well Field Project (“VW Project”); and**

This permit further approves the subdivision of 15 Lots throughout the Killington Mountain area and reaffirms for administrative and consolidation purposes an additional 10 Lots as described in the Findings attached hereto (“the subdivided lots”).

¹ Book 254, Page 363 Grantee is Cherry Knoll Associates, LLC, a wholly owned subsidiary of SP Land Company, LLC.

² As noted in the Findings hereto attached, amendments will be required for the individual residential units as the construction details of those homes become finalized. At the present time, it is uncertain if the final plan will involve all single family homes (32) or a combination of single family homes and duplexes – which could involve up to a total of 55 housing units according to the application materials.

In addition to the construction approval for Phase I described above, this permit decision contains associated partial findings pursuant to Act 250 Rule 21 in connection with proposed development of subsequent phases of the Killington Village Master Plan (“Village Master Plan”) for the long-range development of an additional 2,107 housing units and 169,000 square feet of additional retail development.

The Killington Village Master Plan constitutes a material change to the permitted facilities and therefore constitutes “development” and requires a permit pursuant to 10 V.S.A. 6001(3) and Act 250 Rule 2(C)(6). While this proceeding constitutes a material change to previously-permitted development at Killington, the Commission has assigned a new permit series number for administrative clarity.

The Permittees, and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District Commission in accordance with the following conditions:

1. By acceptance of this permit, the Permittee agrees to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
2. Phase I construction and the subdivision of lots shall comply with: (a) Findings of Fact and Conclusions of Law #1R0980, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit. No changes shall be made without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules.
3. The Permittee shall control dust during construction by the application of water or calcium chloride as necessary to prevent dust from significantly impacting adjoining landowners.
4. The permittee shall at all times conform with the terms and conditions of the following Agency of Natural Resources Permits, which are incorporated by reference herein:
 - Potable Water Supply and Wastewater System Permit # WW-1-0334-19 issued on December 4, 2012 by the Wastewater Management Division;
 - Individual Construction Stormwater Discharge Permit #6774-INDC issued on May 23, 2013 by the Watershed Management Division; and
 - Stormwater Discharge Permit #6774-INDS issued on May 23, 2013 by the Watershed Management Division.
 - Stream Alteration Permit # SA-1-0829 issued by the Water Quality Division on August 20, 2012 and amended and restated on September 18, 2013

- Individual Wetland Permit #2012-077, DEC ID #: RU96-0364 issued on November 5, 2012 by the Watershed Management Division.
- Source Approval #S-2389-09.1 issued on November 16, 2011 by the Water Supply Division;
- Source Approval #S-1168-3.3 issued on December 1, 2011 by the Water Supply Division; and
- Public Water Permit to Construct Project #C-2810-12.0, WSID #VT0020376, PIN # RU12-0055, issued on November 28, 2012 by the Vermont Department of Environmental Conservation Drinking Water and Groundwater Protection Division.
- Public Water Permit to Construct Project #C-2809-12.0, WSID #VT0021010, PIN # RU12-0055, issued on November 16, 2012 by the Vermont Department of Environmental Conservation Drinking Water and Groundwater Protection Division.
- Individual Construction Stormwater Discharge Permit #6774-INDC issued on May 23, 2013 by the Watershed Management Division.

Any subsequent nonmaterial changes to these permits shall be automatically incorporated herein upon issuance by the Agency of Natural Resources. Subsequent amendments involving material changes to the Act 250 permit shall not be constructed prior to review and approval of the District Coordinator or the Commission under applicable Act 250 Rules.

5. The Permittee shall comply with the "Roaring Brook and East Branch of Roaring Brook, Water Quality Remediation Plan Update 2011" and Addendum marked as Exhibit VMP 191 and the "Riparian Buffer Management Plan – Killington Village Master Plan: Phase I" marked as Exhibit VMP 189.
6. Subsequent applications seeking approval of Phases II and III shall include an updated economic impact analysis including an evaluation of affordable housing.
7. The Permittee shall not occupy or operate any building prior to the completion of the repairs to the existing sewer line connection to the Alpine Pipeline, as referenced in the attached findings.
8. The Permittee and all subsequent owners shall install and maintain only low-flow plumbing fixtures in any buildings.
9. There are two areas of encroachment into the floodway of Roaring Brook: a) an area between Roaring Brook and the proposed transit drop off area just north of the Ramshead Lodge arch plate; and b) an area between Roaring Brook and the proposed roundabout on Killington Road near the Village Core. No future additional armoring of the Roaring Brook stream bank is permitted in these areas prior to the review and approval of the Agency of Natural Resources.

10. The Permittee shall use natural channel design principles to construct a step-pool structure at the downstream end of the Ramshead arch plate to remedy the perched condition at the arch plate outfall and restore aquatic organism passage at this location. This restoration work will be completed during the construction of the building captioned 1X-RH on the approved plans (the right hand of the two structures connected with the archway).
11. If construction activities within Phase I involving earth disturbance continue past October 15 or begin before April 15, Permittee shall comply with the Vermont Erosion Prevention and Sediment Control Field Guide standards for winter construction.
12. The permittee shall comply with the following requirements related to erosion controls:
 - Within the Village Core, roadways and parking lots shall be stabilized with either paved or gravel surfaces, and all disturbed areas will be landscaped, or planted and mulched. Grassed swales and stone reinforced slopes will be installed where required onsite to prevent erosion.
 - Within the Ramshead Brook Subdivision, permanent measures shall include seeding and matting/mulching of all disturbed soils and the use of stone lined swales to carry runoff to the stormwater collection system.
 - Within the Snowdon Well Project, all disturbed soils shall be permanently stabilized with seed and mulch/matting within 14 days of initial disturbance. Following construction, the roadway shall be permanently stabilized with roadway gravel. Disturbed areas beyond the limits of the access road, shall receive permanent stabilization of grass seed and mulch.
 - Within the Valley Wells Project, all disturbed soils shall be permanently stabilized with seed and mulch/matting within 14 days of initial disturbance. The drives and parking areas for both the well control building and pump house shall be constructed with reinforced grass rather than gravel.
13. The permittee shall conduct a traffic study six to twelve months following substantial completion and occupation of the Phase I project, and a second updated study five years following the date of the first study (in combination, "the updated local studies"). The methodology for the updated local studies shall be approved in advance by VTrans but shall, at a minimum, be designed to determine whether or not excessive congestion has occurred at the intersections included in the original TIS (Exhibit VMP 30) and shall be cumulative (accounting for the traffic created by prior phases). The studies shall also include turning movement counts at the US 4 and Killington Road

intersection and an analysis of the warrants or lack of warrants for signals, turn-lanes, levels-of-service, delay and queue lengths. In addition, the studies shall include accident records during the period that Phase I has been operational to determine whether or not roadway safety in the study area is negatively impacted. The results of the updated studies shall be submitted to VTrans and the Act 250 District Commission within 30 days of completion. If, as a result of the updated study(s) VTrans identifies congestion or safety problems, then VTrans and the permittee shall develop appropriate mitigation measures to mitigate the adverse condition(s) and the permittee shall implement, or cause to be implemented, the recommended mitigation measures. If an agreement cannot be reached, the Act 250 District Commission will retain jurisdiction and reserves the right to convene a hearing to evaluate the need for additional requirements, as noted below.

With respect to the mitigation measures cited above, the permittee shall be financially responsible for its proportional share of the cost to mitigate adverse traffic and safety conditions along the US Route 4 corridor in Killington to the extent that a proportional share can reasonably be attributed to the Phase I and subsequent developments constructed under the authority of this permit (see *In re Pilgrim Partnership*, 153 Vt. 594 (1990)). The Town of Killington in partnership with VTrans will develop a methodology to determine applicants' proportional share, subject to the review and approval of the commission.

14. In addition to the local traffic study updates required above, the permittee shall, prior to submittal of application(s) for approval of subsequent phases, coordinate with VTrans and with the effected Regional Planning Commissions (the Rutland Regional, Southern Windsor County and Two Rivers-Ottauquechee Regional Planning Commissions) to design, fund and perform a corridor traffic study ("the corridor study") which includes traffic impacts from the Phase I development upon the Killington Road/US4/ VT103 corridors from Killington to I-91 and I-89. The corridor study shall include the impact of traffic generated in each phase as well as the total (i.e. cumulative) traffic impact for all phases of the SP Lands development and shall include conclusions in the form of a transportation system improvement plan for areas in the corridor shown to require improvement to maintain safe conditions and avoid unreasonable congestion. The scope of the plan shall include:
 - a. Documentation of existing conditions, which will include traffic from Phase I development, to develop a baseline from which all future traffic can be measured;
 - b. Identification of the roadway, pedestrian, bicycle and transit projects (i.e. safety, mobility and access needs in the corridor; and
 - c. Specification of thresholds for when mitigation measures will be required by the applicant for all future phases of this project.

With respect to funding of the corridor study, the permittee shall contribute 50% of the cost of preparing the study and the plan with a cap of \$25,000, whichever is less. The balance of cost for this plan will be paid for through contributions from

VTrans and the effected Regional Planning Commissions. The Regional Planning Commissions will jointly manage the study and collaborate with the permittee in the development of the study and the issuance of the report and plan. The permittee, VTrans and the RPC's may invite the participation of such other experts or interested persons as they deem appropriate.

15. All buildings, including the subdivided 32 single family homes (or duplexes) shall be sprinklered for fire suppression.
16. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in the Exhibits by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
17. The installation of exterior light fixtures is limited to those described in VMP 7 and as shown on the approved plans. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
18. Construction of Phase I may occur between 7:00 A.M. and 7:00 P.M. on weekdays and between 8:00 A.M. and 4:00 P.M. on Saturdays. Work crew assembly and project meetings may begin at 6:00 A.M.
19. No construction other than utilities is approved on the Ramshead Lots prior to the review and approval of the Commission of an application to amend this permit. Construction of single family homes or duplexes in the Ramshead subdivision is prohibited prior to issuance of an Administrative Amendment or regular Act 250 permit amendment for conformance with criterion 8 or other such criteria as may be implicated by proposed design changes.
20. Prior to placing the new village and Ramshead roadways in service, the permittee shall forward to the Commission the executed Homeowner's and Resort Owner's agreements with regard to financial obligations for maintenance of the roads and associated utilities.
21. The Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holders file an affidavit certifying that the subdivisions are complying with the terms of the permit, as provided by 10 V.S.A., Chapter 151 and the rules of the Natural Resources Board.
22. By acceptance of the conditions of this permit without appeal, the Permittee confirm and agrees that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the Permittee and all assigns and successors in interest.
23. Each prospective purchaser of the properties described herein shall be shown a copy of the approved plot plans, any Potable Water Supply and Wastewater

System Permit, the Land Use Permit and Amendments and the Findings of Fact before any written contract of sale is entered into.

24. No further subdivision, alteration, and/or development of any parcel of land approved herein shall be permitted without the written approval of the Commission.
25. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #1R0980 in all deeds of conveyance and leases.
26. The partial findings contained in Section VIII of the Findings of Fact shall remain in effect for a period of seven years from the date of issuance of this permit. The findings are subject to a request for renewal by the permittee. The findings will be evaluated at that time for such changed circumstances, if any, that bear on the issue of conformance with the Act 250 criteria.
27. Pursuant to 10 V.S.A. § 6090(c) this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire five years from the date of issuance if the Permittee have not commenced construction and made substantial progress toward completion within the five year period in accordance with 10 V.S.A. § 6091(b).
28. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.
29. Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Rutland, Vermont, this 7th day of October, 2013.

By /s/ Herbert G. Ogden
Herbert G. Ogden, Acting Chair
District #1 Commission

Members participating in
This decision:

Amanda Beraldi
Edward Weissman

wtb

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.