

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
Petitioner,)

Docket No. _____

v.)

**ASSURANCE OF
DISCONTINUANCE**

KILLOLEET ROCK, LLC)
Respondent.)

VIOLATION

Construction of improvements constituting a material change to a permitted development in violation of Act 250 Rule 34(a) and 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Killoleet Rock, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Killoleet Rock, LLC owns the former Birdseye Mountain Ski Resort, consisting of lands located in Ira and Castleton Vermont identified in Book 60, Pages 189-190 of the land record of Castleton, Vermont and Book 15, Page 99 of the land records of Ira, Vermont (the Subject Parcel).
2. On June 4, 1979, the District 1 Environmental Commission issued Land Use Permit (LUP) #1R0330 to Respondent's predecessor in interest for improvements to and operation of a ski area.

3. In 2009, Respondent and/or others acting with Respondent's consent made improvements to the Subject Parcel which resulted in a material change to the permitted project in violation of Act 250 Rule 34(A).

AGREEMENT

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

- A. Respondent shall file an application for an Act 250 Land Use Permit amendment for the unpermitted material changes no later than sixty (60) days following the entry of this Assurance as an Order of the Superior Court Environmental Division, and diligently pursue the same.
- B. No later than 30 days following the entry of this Assurance as an Order of the Superior Court Environmental Division, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **TWO THOUSAND DOLLARS (\$2,000.00)** for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont." Payment pursuant to this paragraph shall be sent to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- C. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- C. The State of Vermont and the Land Use Panel have continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- E. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply

with all other applicable state or local statutes, regulations or directives applicable to the Respondent.

- F. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Division of the Superior Court. When so entered by the Environmental Division of the Superior Court, 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.
- G. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- H. This Assurance sets forth the complete agreement of the parties, and it 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 Environmental Division of the Superior Court. 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.
- I. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- J. This Assurance is subject to the provisions of 10 V.S.A. § 8007.
- K. This Assurance or a notice thereof shall be filed within the land records of the town(s) in which the property is located.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Edward J. Davis, the undersigned, hereby state under oath that I Edward J. Davis of Killoleet Rock, LLC, that I have the authority to contract

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on behalf of Killoleet Rock, LLC and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Fair Haven Vermont, this 6th day of May, 2011

Killoleet Rock, LLC

By: [Signature]
Edward J. Davis

Title: Member/Manager
KILLOLEET ROCK, LLC

Dated at Fair Haven Vermont, this 6th day of May, 2011.

[Signature]
Notary Public

My Commission Expires: 2/10/13

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

Dated in Montpelier, Vermont, this 12th day of May, 2011.

LAND USE PANEL

By: [Signature]
Ronald A. Shems, Chair