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**Act 250 Land Use Permit #1R0980  
(Altered) - Killington Village Master Plan**



## State of Vermont

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# LAND USE PERMIT

## ADMINISTRATIVE AMENDMENT

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

District #1 Environmental Commission (“Commission”) hereby issues Land Use Permit #1R0980 (Altered), pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6092. The initial Land Use Permit issued by the Commission in this proceeding on October 7, 2013 was appealed to the Environmental Division of the Vermont Superior Court as Docket No. 147-10-13 Vtec (the “Appeal”). The Environmental Division issued its Decision on the Merits on June 21, 2016 and the associated Amended Judgment Order on August 29, 2016. The Environmental Division’s decision was then appealed to the Vermont Supreme Court as Docket No. 2016-342. On December 29, 2016, the Supreme Court approved a Stipulation and Order Withdrawing Appeal and Remanding Matter for Issuance of Revised Land Use Permit that was filed by the parties. Thus, pursuant to the Environmental Division’s Amended Judgment Order, this proceeding was remanded to the Commission “for the purpose of completing the ministerial act of issuing a permit that incorporates the provisions of this Amended Judgment Order and the October 7, 2013 Permit that were not appealed in these proceedings, along with [seven (7) numbered permit conditions listed by the Court] . . . .” The Findings of Fact and Conclusions of Law issued by the Commission on October 7, 2013 (“Findings”) remain in effect to the extent that they were not appealed to, and modified by, the Environmental Division.

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 363<sup>1</sup> 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”).

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<sup>1</sup> Book 254, Page 363 Grantee was formerly Cherry Knoll Associates, LLC, a wholly-owned subsidiary of Permittee. This parcel was subsequently conveyed to Moon Dance, LLC during the pendency of these permit proceedings.

**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;**
- **Demolition of the existing Snowshed Lodge and Ramshead Lodge;**
- **32 lot Ramshead Brook Subdivision utilities (the “Ramshead Lots”);**
- **Two potable water projects - Snowdon Well Field Project (“SW Project”) and the Valley Well Field Project (“VW Project”); and**

**As described in the Environmental Division’s Decision on the Merits (“Decision on the Merits”) and Amended Judgment Order (“Amended Judgment Order”), this permit further approves the subdivision of 15 Lots throughout the Killington Mountain area and reapproves for administrative and consolidation purposes an additional 10 Lots the prior approval of which had expired (the “Subdivided Lots”).**

**In addition to the construction approval for Phase I described above, Permittee also sought and received 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 approximately an additional 2,052 housing units and 91,500 square feet of additional commercial development.**

The Village Master Plan constitutes a material change to previously permitted facilities. Therefore, it constitutes “development” and requires a permit pursuant to 10 V.S.A. § 6001(3) and Act 250 Rule 2(C)(6). While this project constitutes a material change to previously-permitted development in the vicinity of the Killington Resort (the “Resort”), the Commission has assigned a new permit series number for administrative clarity going forward given the current state of separate ownership of the Resort property itself and the lands owned by Permittee which are the subject of this permit.

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

1. All conditions of Land Use Permit #1R0980 are in full force and effect except as further amended herein.
2. By acceptance of this permit, 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.
3. Phase I construction and the subdivision of lots shall comply with: (a) the Amended Judgment Order and Decision on the Merits, (b) the Commission’s Findings of Fact and Conclusions of Law to the extent that they were not

appealed to, and modified by, the Environmental Division (the "Commission's Findings and Conclusions"), (c) the plans and exhibits on file with the Commission, and (d) the conditions of this altered 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.

4. Permittee shall control dust during construction by the application of water or calcium chloride as necessary to prevent dust from significantly impacting adjoining landowners.
5. Permittee shall at all times conform with the terms and conditions of the following Agency of Natural Resources ("ANR") 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.
  - Operational 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.
  - 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.

Any subsequent nonmaterial changes to these permits shall be automatically incorporated herein upon issuance by ANR. 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.

6. 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.

7. Subsequent applications seeking approval of future phases of the Village Master Plan shall include an updated economic impact analysis including an evaluation of affordable housing.
8. 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 setback 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 ANR.
10. 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. 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 SW 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 VW 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. Permittee shall collect and document traffic counts along Killington Road and its various intersections, including its intersection with US Route 4, prior to occupancy of any of the Phase I developments.

Permittee shall also collect and document traffic counts for the same corridors within one year after completion of Phase I in order to evaluate the actual trip generation rates and traffic impacts of the Phase I project, and to analyze whether those impacts have caused highway congestion or unsafe traffic conditions or endangered the public investment in the highway networks beyond what was estimated by its experts in this permit application proceeding. The Permittee shall also conduct a similar traffic study five (5) years after substantial completion of Phase I.

Each traffic study shall be consistent with the Traffic Impact Study Guidelines [Vermont Agency of Transportation (“VTrans”) 2008 or as most recently amended]. The Permittee shall submit these traffic studies to the Commission within thirty (30) days of completion and shall make such traffic studies available to any party in any application proceeding concerning a future phase of the Village Master Plan who specifically requests copies of such traffic studies.

14. As part of the next application submitted by Permittee or any successor that concerns a phase of the Village Master Plan, Permittee is encouraged to use good faith best efforts to coordinate with one or more of the Regional Commissions, VTrans, and any other entity that contributes traffic to the various highway corridors impacted by the developments at the Killington Resort, the Okemo Mountain Ski Resort, and any other major developments along these corridors, which includes Killington Road, U.S. Route 4 west to Rutland and east to I-89, Vermont Route 100 south to Vermont Route 103, and Route 103 east to I-91.

This corridor study shall evaluate the traffic impacts in four distinct scenarios:

- a. Baseline conditions (i.e., pre-construction of Phase I);
- b. Estimated built conditions of any future phase of the Village Master Plan;
- c. Cumulative impacts; and,
- d. Village Master Plan in any later phases and at full build out.

This corridor traffic study shall be consistent with the Traffic Impact Study Guidelines (VTrans, 2008 or as most recently amended). The scope of this corridor traffic impact study shall be coordinated with and approved in advance by the VTrans.

If Permittee is successful in its efforts to coordinate this corridor traffic study, including the terms of how the corridor study could be overseen by one or more of the Regional Commissions, the Permittee shall contribute a sum equal to twenty percent (20%) of the total cost for such corridor traffic study, unless an alternate amount is agreed to by the participating parties.

If an agreed-upon corridor traffic study is completed, the permittee shall submit the corridor traffic study to the District Commission within thirty (30) days of completion and shall make such traffic study available to any party in any application proceeding concerning a future phase of its Master Plan who specifically requests a copy.

15. All dwellings in the Ramshead Brook Subdivision zone of the Village Master Plan must honor the spirit of the Design Guidelines for the Ramshead Brook Subdivision that were admitted at trial as Permittee's Exhibit 9. Those dwellings will not be required to install pressurized sprinkler decisions, as originally directed by the Commission.
16. 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 roads and 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 on the Ramshead Lots 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 Lots roadways into service, 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. Permittee must maintain a 25 MPH speed limit along Killington Road, from above the Village Core area to past the access point to Parking Lot G, thereby slowing traffic at the Road H/Killington Road intersection, and reducing intersection sight distances for that intersection.
22. Permittee must place warning signs on Killington Road, above and below the intersection with the proposed Road H, to announce the lowered speed limit.
23. Permittee must clear trees and brush from the southeastern corner at the intersection of Road H and Killington Road, so as to allow a vehicle driver on

Road H at that intersection to have an unobstructed view of traffic coming down Killington Road of at least 280 feet. For the same reason, Permittee must also clear snow from the intersection corner during the winter months to maintain the same minimum sight distance.

24. Permittee, in cooperation with the operator of the ski resort facilities (Killington/Pico Ski Resort Partners, LLC), must continue the practice of stationing a law enforcement officer at the intersection of Killington Road and U.S. Route 4 between 4:00 and 5:00 p.m. on Saturdays in December and January to assist in the flow of traffic. Permittee must also assist in arranging to have a law enforcement officer at this intersection during any special Resort activities where heavy traffic is anticipated.
25. 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.
26. By acceptance of the conditions of this permit without appeal, Permittee confirms 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 Permittee and all assigns and successors in interest.
27. 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.
28. No further subdivision, alteration, and/or development of any parcel of land approved herein shall be permitted without the written approval of the District Coordinator or the Commission, as may be required.
29. Permittee shall reference the requirements and conditions imposed by Land Use Permit #1R0980 Altered in all deeds of conveyance and leases.
30. The partial findings contained in the Environmental Division's Decision on the Merits shall remain in effect for a period of seven years from the date of issuance of this altered 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.
31. Pursuant to 10 V.S.A. § 6090(c) this altered permit 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).

32. All site work and construction shall be completed in accordance with the approved plans by October 7, 2023, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
33. 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. 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.
34. Failure to comply with all the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Rutland, Vermont, this 23<sup>rd</sup> day of January, 2017.

By /s/ William Burke  
William Burke, District #1 Coordinator  
440 Asa Bloomer State Office Bldg.  
Rutland, VT 05701  
Telephone: (802) 786-5923  
E-Mail: William.Burke@vermont.gov

This permit is issued pursuant to Act 250 Rule 34(D), Administrative Amendments, which authorizes a district coordinator, on behalf of the District Commission, to "amend a permit without notice or hearing when an amendment is necessary for record-keeping purposes or to provide authorization for minor revisions to permitted projects raising no likelihood of impacts under the criteria of the Act." The rule also provides that all parties of record and current adjoining landowners shall receive a copy of any administrative amendment.

Prior to any appeal of the Administrative Amendment to the Superior Court, Environmental Division, the applicant or a party must file a motion to alter with the District Commission within 15 days from the date of this Administrative Amendment, pursuant to Act 250 Rule 34(D)(2).