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February 18, 2015

Anne Damone, Court Clerk
Windham Unit
P.O. Box 201
Newfane, VT 05345

Re: *State of Vermont v. Hermitage Inn Real Estate Holding Company, LLC; Rushing Creek, LLC*

Dear Ms. Damone:

Enclosed for Filing is the *Complaint* in the above captioned matter. Please do not hesitate to contact our office if you have any questions.

Sincerely,

Rebecca Ronga
Paralegal
Environmental Protection Division

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION
Docket No. _____

STATE OF VERMONT,	)
	)
Plaintiff,	)
	)
v.	)
	)
HERMITAGE INN REAL ESTATE HOLDING COMPANY, LLC; RUSHING CREEK, LLC,	)
	)
Defendants.	)

COMPLAINT

Plaintiff, State of Vermont, by and through the Office of the Attorney General, files this complaint pursuant to 10 V.S.A. § 8221 and 3 V.S.A. § 157. The State alleges that Defendants violated: (i) 10 V.S.A. § 6081(a) and Act 250 Rule 34(A) by performing construction activities without land use permits; (ii) 10 V.S.A. § 8002(9) by failing to comply with existing permit conditions; (iii) 10 V.S.A. Chapter 47 by performing construction activities without a stormwater permit; (iv) 10 V.S.A. § 1259 by discharging into state waters without a permit; (v) 10 V.S.A. § 1973 by constructing a building without a wastewater and potable water supply permit; (vi) 10 V.S.A. § 1673 by constructing a building without a public water supply permit; (vii) 10 V.S.A. § 1082 by altering a dam without authorization; and (viii) 10 V.S.A. § 913 and Wetland Rule 9.1 by

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disturbing a significant wetland without approval. The State seeks permanent injunctive relief and civil penalties.

THE PARTIES

1. Vermont Agency of Natural Resources (ANR) is a state agency with offices in Montpelier, Vermont. The Department of Environmental Conservation (DEC) is a department within ANR.
2. Vermont Natural Resources Board (NRB) is a state board with offices in Montpelier, Vermont.
3. Defendant Hermitage Inn Real Estate Holding Company, LLC (Hermitage Inn) is a foreign limited liability company incorporated in Connecticut and located at 10 Columbus Blvd 4th floor, Hartford, CT 06106.
4. Defendant Rushing Creek, LLC (Rushing Creek) is a Vermont Limited Liability Company located in Dover, Vermont.
5. Rushing Creek and Hermitage Inn are both owned by the same person.
6. Hermitage Inn is the named entity on the majority of the permits described in this complaint, and the majority landowner of the subject property. Hermitage Inn is the principal operator of the construction activities at issue in this complaint.
7. Venue is proper in Windham Superior Court.

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FACTUAL AND LEGAL BACKGROUND

The Property

8. Hermitage Inn and Rushing Creek own property in Wilmington and Dover, Vermont, including property associated with Haystack Mountain (the Property), with Hermitage Inn being the majority landowner. The Property has been developed, and continues to be developed, into an exclusive private ski resort known as "The Hermitage Club at Haystack Mountain" (the Hermitage Club), complete with alpine ski trails, ski lifts, snowmaking lines, snowmobile trails, cross-country ski trails, a clubhouse, a hotel, single-family homes, condos, and other associated buildings, trails, roads, utilities, and structures. The Hermitage Club is not open to the public; use of the ski mountain is through private club membership only.
9. The Property is approximately 1,014 acres, with approximately 881 acres affected by the development described herein.
10. Some of the major features and facilities of the Property and the Hermitage Club include the following:
    a. Haystack Mountain: an existing alpine ski mountain (elevation approx. 3,445 feet) located in Wilmington, VT, and purchased by Defendants in 2011. The Mountain is currently advertised as containing 38 ski trails with 6 ski lifts covering 194 skiable acres, and snowmaking for 90% of the trails.

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b. The Haystack Base Lodge and Club House: a new base lodge and club house (approx. 80,000 sq. ft.) recently constructed at the base of the main ski area of Haystack Mountain (ground broken in August 2012 and completed as of January 2015).

c. The Williams Scott Mobile Rescue Building and Lavatory Facility (Scott Rescue Facility): In November 2012, a double-wide trailer (24 x 60 feet) was installed at the base area of Haystack Mountain for the 2012-2013 ski season and was used for ski patrol, public bathrooms, and a warming hut. The Scott Rescue Facility was necessary for Hermitage Inn to operate the ski mountain for the winter season, by providing essential ski rescue services and bathrooms.

d. Summit Building: originally planned as a warming hut at the summit of Haystack Mountain; the building was later renovated to an administrative and sales office.

e. Mirror Lake: a pond located on the Property, approximately 3-4 acres in surface area, holding approximately 10-14 million gallons of water; it includes a dam and spillway.

f. Snowmobile Trail: a snowmobile trail of approximately 1.25 miles in length and up to fifteen (15) feet in width, crossing over a 27-acre parcel of property, constructed on the Property.

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g. Single Family Homes and Condos: around 20 homes have been built and sold between 2011-2014, with hundreds more planned (up to 450-500 combined condos and homes).

h. Club Members: 215 club memberships sold as of February 2014, at a membership fee of between $20,000-$65,000. The Hermitage Club first opened for the 2012-2013 ski season and continues to operate.

Act 250 Land Use Permits

11. 10 V.S.A. § 6081(a) states that "no person shall . . . commence construction on a . . . development, or commence development without a permit."

12. Act 250 Rule 34(A) states that "[a]n amendment shall be required for any material change to a permitted development or subdivision, or any administrative change in the terms and conditions of a land use permit."

13. Act 250 Rule 33(C)(3) states that "all permits shall run with the land." Rule 32(B)(2) also states that "[d]uring its term, a permit shall run with the land."

14. The Property is subject to several Land Use Permits (LUP) under Act 250. Specifically, LUP series 700002 has applied to the Property for over twenty years, and contains numerous Act 250 permits and permit amendments under that series number.

15. On November 23, 2010, LUP 2W0635-1 was issued to Rushing Creek, authorizing creation of seven (7) lots and construction of seven (7) single-family homes in Dover and Wilmington (off of Fannie Hill and Hermitage

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Hill roads). LUP 2W0635-1 was granted subject to compliance with 27 enumerated Conditions.

16. On September 17, 2012, LUP 700002-19 was issued to Hermitage Inn, authorizing construction of: a ski lift, a ski trail with snowmaking line, a Summit Warming Hut, a Base Area Warming Hut, a Base Lodge, stream bridges and crossings, if specifically approved by ANR, and allowing winter activities on existing trails. LUP 700002-19 was granted subject to compliance with 29 enumerated Conditions. LUP 700002-19 also stated: that "[s]pecifically not approved are . . . construction of any new trails."

ANR Discharge and Construction General Permits

17. 10 V.S.A. § 1259(a) prohibits a person from discharging any waste, substance or material into the waters of the state without first obtaining a permit for that discharge.

18. 10 V.S.A. § 1251 defines "waters" to include "all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the state or any portion of it."

19. Chapter 47 of Title 10 (water pollution control) requires a stormwater permit from ANR for all construction activities affecting state waters:

    a. 10 V.S.A. § 1258(b) states that "[t]he Secretary shall manage discharges to the waters of the State by administering a permit program."

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b. 10 V.S.A. § 1263(a) states that "[a]ny person who intends to discharge waste into the waters of the state . . . shall make application to the secretary for a discharge permit."

c. 10 V.S.A. § 1264(e)(1) states that "the Secretary shall, for new stormwater discharges, require a permit."

20. Vermont Construction General Permit (CGP) 3-9020 is a stormwater general permit issued by the Agency of Natural Resources pursuant to the Vermont Water Pollution Control statute, 10 V.S.A. Chapter 47, and other applicable law. CGP 3-9020 is for Low Risk or Moderate Risk construction activities. To determine whether a project qualifies as Low Risk or Moderate Risk and can therefore take advantage of CGP 3-9020, an applicant must complete a risk evaluation, including filling out a form located at Appendix A of the permit.

21. On June 13, 2012, the DEC issued a Low Risk authorization to Hermitage Inn to discharge stormwater under CGP 3-9020 (NOI #6839-9020) (authorization under CGP 3-9020), only for "the following construction activities: Construction of a ten-unit guest building, construction of a single family residence, construction of an extension to a potable water service line and sewer line and the clearing for a ski lift and associated ski trails."

22. On July 31, 2012, the DEC issued a second Low Risk authorization to Hermitage Inn to discharge stormwater under CGP 3-9020 (NOI #4245-9020) (authorization under CGP 3-9020), only for "the following construction activities: Construction of the [Haystack] Upper Base Lodge and access

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road." Hereafter, the June 13th and July 31st authorizations are referred to as the "Low Risk CGP Permits." As detailed below, these were "after-the-fact" permits, i.e., some of this construction work had already been performed in Fall 2011 (see ¶¶ 39-40).

23. On August 27, 2012, Hermitage Inn submitted a Moderate Risk CGP application to replace the Low Risk CGP Permits and to allow additional construction not previously authorized by the Low Risk CGP Permits. The application was deemed complete on December 13, 2012.

24. On December 20, 2012, the DEC issued a Moderate Risk stormwater authorization to Hermitage Inn under CGP 3-9020 (NOI #4245.9020.1) (hereafter "Moderate Risk Permit"). This Moderate Risk Permit covered the majority of the construction at the Property associated with The Hermitage Club, including construction of a ski lift, a snowmaking line, construction of the Scott Rescue Facility, construction of underground sewer lines, and construction and authorization of roads, utilities, and other associated work. As detailed below, this was an "after-the-fact" permit in that much of the construction work had already been performed in Fall 2012 (see ¶¶ 48-55).

ANR Wastewater and Potable Water Supply Permits

25. 10 V.S.A. § 1973(a)(5) requires a person to obtain a wastewater and potable water supply permit "before . . . constructing a new building or structure."

26. On January 31, 2013, ANR issued a wastewater permit pursuant to 10 V.S.A. Chapter 64 (permit # WW-2-0100-7) to Hermitage Inn, allowing water

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and sewage connection for the temporary Scott Rescue Facility (which had already been installed and connected as of December 2012).

ANR Public Water Supply Permits

27. 10 V.S.A. § 1673(a)-(b) prohibits a person from "construct[ing] a new public water system or public water source," or altering, expanding, or otherwise changing "an existing water system or source . . . without a permit from the Secretary" of ANR.

28. On January 30, 2013, ANR issued a public water supply permit pursuant to 10 V.S.A. Chapter 56 (permit WSID # VT0005313) to Hermitage Inn, allowing a public water source for the temporary Scott Rescue Facility (which had already been installed and connected as of December 2012).

ANR Dam Authorization

29. 10 V.S.A. § 1082(a) requires a person to obtain authorization from ANR before constructing, remodeling, reconstructing, or otherwise altering "any dam, pond or impoundment or other structure which is or will be capable of impounding more than 500,000 cubic feet of water."

30. Mirror Lake, including its dam and spillway, impounds more than 500,000 cubic feet of water and therefore requires ANR authorization for any construction or alterations. Mirror Lake is a state water.

10 V.S.A. § 913 and the Vermont Wetland Rules

31. The Vermont Wetland Rules are part of the rules, permits, assurances, or orders related to 10 V.S.A. Chapter 37.

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32. 10 V.S.A. § 913 and Vermont Wetland Rule 9.1 prohibit a person from conducting an activity in a significant wetland or its buffer zone unless it is an allowed use or it is authorized by a permit, conditional use determination, or order issued by ANR.

33. 10 V.S.A. § 902(11) defines a "significant wetland" as "any Class I or Class II wetland."

34. Vermont Wetland Rule 2.07 defines a "Class II wetland" as a wetland other than a Class I or Class III wetland that is a wetland identified on the Vermont significant wetlands inventory maps or that ANR "determines merits protection" based on "an evaluation of the extent to which the wetland serves the functions and values set forth at . . . Section 5 of [the Vermont Wetland Rules], either taken alone or in conjunction with other wetlands."

35. In early 2012, ANR determined that a Class II wetland exists on the Property.

36. Defendants were aware of the wetland classification, as acknowledged in correspondence between Defendants' engineer and ANR in Feb.–June, 2012.

Construction Activities and Site Visits

37. Defendants engaged in extensive construction and development activities at the Property without necessary state approvals, and in violation of existing permit conditions, as described further below.

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Rushing Creek Development Project

38. Between 2011-2012, Rushing Creek created and constructed seven (7) single-family homes on separate lots off Fannie Hill road in the towns of Wilmington and Dover (hereafter "Rushing Creek Development project").

39. In Fall 2011, in the area between the entrance to Haystack Ski Resort and the entrance to the Hermitage Inn, along Fannie Hill Road, Defendants:

    a. relocated several existing snowmobile trails and created new snowmobile trails;

    b. constructed several bridges to cross over streams; and

    c. cut trees and cleared vegetation within 50 feet of state waters and within marked buffer zones.

40. Defendants were informed that the 2011 construction work required a stormwater construction permit under CGP 3-9020. Hermitage Inn obtained the Low Risk Permits (issued June-July 2012) after-the-fact for these activities.

41. In Fall 2012, Rushing Creek (and/or Hermitage Inn) removed additional trees and vegetation in the Rushing Creek development area.

42. The tree cutting that occurred at Rushing Creek Lot # 4 took place within a Class II forested wetland and buffer zone of an unnamed tributary to Cold Brook.

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43. Removal of trees and vegetation for the purpose of construction and development is not an authorized or allowed use of a wetland and therefore required authorization from ANR.

44. Defendants did not have a Vermont Wetland Permit authorizing activities or uses of the Class II wetland.

The Hermitage Club Project

45. Between 2011-2014, Hermitage Inn performed extensive construction in connection with developing its private Hermitage Club ski resort at Haystack Mountain.

46. Significant portions of the project were performed without authorization and without Act 250 land use and CGP permits, as described below.

47. In October 2012, Hermitage Inn began construction and electrical work for installation of a wind turbine on the summit of Haystack Mountain. Hermitage Inn did not obtain the required land use permit for this activity until September 24, 2013.

48. On or about October 26, 2012, DEC Environmental Analyst Ryan McCall visited the Property and observed unauthorized construction of the Hermitage Club project, including extensive amounts of disturbed and open earth. He specifically observed that work had begun on:

    a. Excavating for a beginner ski slope;

    b. Constructing the Summit Building;

    c. Constructing a snowmaking line; and

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d. Constructing a ski lift.

49. McCall advised Defendants' engineer that these activities were not authorized under the Low Risk CGP Permits, that Hermitage Inn must install erosion prevention sediment control (EPSC) practices, and that Hermitage Inn must cease construction activity until a moderate risk permit was authorized.

50. On or about November 13, 2012, McCall and DEC Stormwater Analyst Kevin Burke visited the Property, and observed that: EPSC practices were not installed, further construction had progressed at the same areas identified on October 26th, and there were unpermitted discharges to waters of the state. Specific problems observed included:

a. Unauthorized soil and earth disturbance associated with a beginner slope and ski lift;

b. Failure to mark construction limits;

c. Lack of orange plastic durable fencing around construction zones;

d. Lack of stable construction entrances;

e. Lack of required silt fences and failed silt fences;

f. Exposed soil without seeding or mulching;

g. Unauthorized use of hay bales as sediment traps or check dams;

h. Failure to implement winter construction practices such as temporary and daily stabilization; and

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i. Evidence of a turbid stormwater discharge at the construction site of the Haystack Base Lodge and Club House.

51. On or about November 26, 2012, McCall, Burke, and NRB Permit Compliance Officer John Wakefield visited the Property. Wakefield observed that unauthorized bridges were constructed over several stream crossings, and unauthorized tree cutting and vegetation clearing had occurred within a buffer zone of a marked stream/wetland area in the Rushing Creek development area. McCall and Burke observed that:

a. EPSC practices were still not followed;

b. Construction had progressed extensively -- nearly all of the work in the pending Moderate Risk Permit application was already nearly complete, including the beginner slope, snowmaking line, and Summit Building (with the exception of the ski lift at the base lodge site);

c. Clearing and grading had been done for foundations;

d. Foundations had begun to be installed for new ski lift towers; and

e. There was evidence of sediment-laden discharges below the first lift tower.

52. On or about December 6, 2012, Hermitage Inn applied for an Act 250 amendment to install the Scott Rescue Facility at the base of Haystack Mountain to be used as a rescue building for ski patrol, and a warming hut with public bathrooms for club members and guests. In the course of the

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NRB's Act 250 and ANR's wastewater and public water supply permitting processes, Defendants acknowledged that the Scott Rescue Facility had already been constructed on or around November 15, 2012, and by mid-December 2012, was connected to electric, water and sewage lines and was being used for the 2012-2013 winter ski season. The Scott Rescue Facility was a new building or structure requiring public water supply and wastewater permits. Hermitage Inn received its public water supply permit for the Scott Rescue Facility on January 30, 2013; its wastewater permit on January 31, 2013; and its Act 250 permit amendment on March 15, 2013.

53. On or about December 11, 2012, Wakefield visited the Property and observed that an unauthorized snowmobile trail of approximately 1.25 miles in length and up to fifteen (15) feet in width had been constructed, crossing over a 27-acre parcel of property that is conserved for critical wildlife habitat (American black bears) and onto National Forest Service property. In connection with the snowmobile trail, an unauthorized bridge crossing had also been constructed over a tributary of Haystack Brook.

54. On or about December 12, 2012, McCall visited the Property and observed more unauthorized work, including:

    a. An excavator located in a stream buffer at the base of a new ski lift tower (known as "The Tage" lift); and

    b. Evidence of two turbid sediment and stormwater discharges in the vicinity of the base lodge construction site.

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55. From December 10-14, 2012, Hermitage Inn (through its engineer) self-reported three (3) unpermitted discharges at the Property:

    a. On December 10, 2012, Defendants' engineer notified ANR that a turbid stormwater discharge had occurred at the Haystack Club and Base Lodge construction site and into Cold Brook, a state water, due to a leak in the pressure test of the snowmaking line.

    b. On December 11, 2012, Defendants' engineer notified ANR that another turbid stormwater discharge had occurred in the vicinity of the base lodge construction area into an unnamed tributary of Cold Brook known as Oak Brook, a state water, due to a construction vehicle running over the berm of a sediment pond.

    c. On December 14, 2012, Defendants' engineer notified ANR that a third turbid stormwater discharge had occurred in the vicinity of the townhomes to Oak Brook, a state water, due to water line construction and relocation.

56. On or about December 18, 2012, the Vermont Superior Court—Environmental Division issued an Emergency Order, addressing the unauthorized activities described above in paragraphs 48-55, and ordering Hermitage Inn to immediately cease all unauthorized construction activities and comply with all ANR permitting requirements.

57. After the Emergency Order (December 18, 2012) and the Moderate Risk Permit (December 20, 2012) were issued, ANR and NRB staff conducted

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additional site visits to ensure compliance with permitting conditions, and found that additional work had been done that was not in compliance with the Moderate Risk Permit, as described further below.

58. On or about December 26, 2012, Environmental Enforcement Officer (EEO) Tim McNamara and Burke visited the Property and observed the following activities that were not in compliance with the Moderate Risk Permit:

    a. Open areas of disturbed earth of around 3-4 acres for longer than 14 days (which is prohibited by both the low risk and moderate risk permit);

    b. Failure to stabilize the construction site;

    c. Lack of orange plastic durable fencing;

    d. Lack of vegetated buffer zones between sediment traps and tributaries;

    e. Lack of a snow management plan;

    f. Inspection records not being maintained properly;

    g. Lack of reinforced fences;

    h. Improper installation of silt fences; and

    i. Other EPSC practices not being followed.

59. On or about January 9, 2013, McCall returned to the Property and found nearly all of the same problems as the Dec. 26th visit, and that construction had occurred within 50 feet of a tributary to Cold Brook, in contravention of the Moderate Risk Permit conditions.

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60. On or about January 17, 2013, EEO McNamara returned to the Property and spoke with Defendants' engineer, who stated that in October/November 2012 underground sewer lines were constructed (approx. 5,000 feet) for the Summit Building, before the Moderate Risk Permit authorizing such construction was issued.

61. Since January 2013, most of the remediation associated with the above-described problems has been completed. Defendants have entered into remediation plans, and have replanted trees and vegetation, removed unauthorized bridges and stream crossings, relocated trails, etc. However, further inspection may reveal the need for additional remediation at the Property.

62. More recently, however, Hermitage Inn performed additional construction at the Property that was not authorized.

63. On or about June 20, 2014, Hermitage Inn converted Mirror Lake from a snowmaking pond into a recreation area by constructing the following: a 90-foot-long split-rail fence, a 176-square-foot dock along the shore, an 80-square-foot floating dock, a boat rack for kayaks and other watercraft, and a beach area of approximately 20-25 cubic yards of sand (some of which was dumped or raked directly into the pond and into the spillway). Hermitage Inn applied for the required land use permit for these activities on or around July 16, 2014, after performing the work. Hermitage Inn also failed to obtain ANR dam authorization for work done in the dam and spillway.

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64. From May-July 2014, work was performed around an area of land known as Cold Brook Fire District #1, Well No. 9, in Wilmington, which is property owned by Hermitage Inn. The work included clearing trees and vegetation, and constructing a parking lot, impervious road areas, a pump house, and adding poles for power lines. The required land use permit for these activities listed Hermitage Inn as the landowner and was submitted on or around August 25, 2014, after performing the work (no permit has issued yet).

Statutory Framework for Environmental Enforcement Actions

65. Under 10 V.S.A. § 8221, the Attorney General is authorized to bring enforcement actions for violations of any of the provisions of law specified in § 8003(a), including the following Vermont statutes under Title 10: Wetlands Protection (Chapter 37); Dams (Chapter 43); Water Pollution Control (Chapter 47); Public Water Supply (Chapter 56); Potable Water and Wastewater (Chapter 64); and Land Use – Act 250 (Chapter 151).

66. Under 10 V.S.A. § 8002(9), a "violation" is defined as "noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permit, assurances, or orders."

67. Under 10 V.S.A. § 8221(b)(6), each violation that occurred is subject to civil penalties of up to $85,000 for each initial violation and up to $42,500 for each day a violation continued.

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VIOLATIONS

68. Paragraphs ¶¶ 1–67 are re-alleged and incorporated by reference for each of the below Counts.

COUNT ONE (as to Defendant Hermitage Inn):
Construction of Snowmobile Trail and Bridge without Act 250 Permit

69. In Fall 2012, Hermitage Inn built an approximate 1.25 mile snowmobile trail through a conserved habitat area on the Property, including a bridge crossing over a tributary of Haystack Brook.

70. Construction of the snowmobile trail and the bridge crossing required an Act 250 permit.

71. Defendant Hermitage Inn did not have an Act 250 permit for constructing the snowmobile trail, or the bridge crossing, in violation of 10 V.S.A. § 6081(a).

72. Defendant Hermitage Inn also failed to get an amendment to its preexisting LUP 700002-19 (Sept. 17, 2012) prior to constructing the snowmobile trail and bridge crossing, in violation of Act 250 Rule 34(A).

73. Construction of the snowmobile trail and the bridge crossing is a violation of 10 V.S.A. § 6081(a) and/or Rule 34A. Each day that a violation continued is a separate continuing violation.

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COUNT TWO (as to Defendant Hermitage Inn): Failing to Maintain 50-foot Buffer Zone in Violation of Act 250 Permit

74. Condition 21 of LUP 700002-19 (Sept. 17, 2012) required Hermitage Inn to maintain "a 50-foot undisturbed, naturally vegetated, unmowed buffer strip" from all watercourses and wetlands on the Property.

75. In Fall 2012, in connection with constructing the 1.25 mile snowmobile trail, Hermitage Inn constructed a bridge crossing within the marked 50-foot buffer zone of a tributary of Haystack Brook. Hermitage Inn also cut trees and cleared vegetation within 50 feet of marked buffer zones and waterways.

76. Each of the above activities is a violation of Condition 21 of LUP 700002-19. Each day that a violation continued is a separate continuing violation.

COUNT THREE (as to Defendant Hermitage Inn): Construction of Scott Rescue Facility without Act 250 Permit

77. In November 2012, Hermitage Inn constructed and installed the Scott Rescue Facility at the base area of Haystack Ski Resort and used the building for the 2012-2013 winter ski season.

78. Installation of the Scott Rescue Facility required an Act 250 permit.

79. Defendant Hermitage Inn did not have an Act 250 permit for constructing the Scott Rescue Facility, in violation of 10 V.S.A. § 6081(a).

80. Defendant Hermitage Inn also failed to get an amendment to its preexisting land use permit (LUP 700002-19, Sept. 17, 2012) prior to constructing the Scott Rescue Facility, in violation of Act 250 Rule 34(A). Defendant Hermitage Inn did not obtain its amended LUP (700002-19C) until March

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15, 2013, approximately four months after erecting and using the Scott Rescue Facility.

81. Construction of the Scott Rescue Facility is a violation of 10 V.S.A. § 6081(a) and/or Rule 34A. Each day that the violation continued is a separate continuing violation.

COUNT FOUR (as to Defendant Hermitage Inn):
Construction of Trails and Stream Crossings without Act 250 Permit

82. In Fall 2011, in the area between the entrance to Haystack Ski Mountain and the entrance to the Hermitage Inn, along Fannie Hill Road, Hermitage Inn: (i) relocated several existing snowmobile trails and created new trails; and (ii) constructed several stream crossings.

83. Construction of the relocated trails, new trails and stream crossings required an Act 250 permit.

84. Defendant Hermitage Inn did not have an Act 250 permit for construction of the relocated and new trails or the stream crossings, in violation of 10 V.S.A. § 6081(a).

85. Defendant Hermitage Inn also failed to get an amendment to its preexisting LUP series 700002, prior to constructing the trails and crossings, in violation of Act 250 Rule 34(A).

86. Each of the above activities is a separate violation of 10 V.S.A. § 6081(a) and/or Rule 34A. Each day that a violation continued is a separate continuing violation.

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COUNT FIVE (as to Defendant Hermitage Inn): Construction of Wind Turbine without Act 250 Permit

87. Beginning in October 2012, Hermitage Inn began construction work on a wind turbine at the summit of Haystack Mountain, including blasting and electrical work.

88. Construction of the wind turbine required an Act 250 permit.

89. Defendant Hermitage Inn did not have an Act 250 permit for construction of the wind turbine, in violation of 10 V.S.A. § 6081(a).

90. Defendant Hermitage Inn also failed to get an amendment to its preexisting permit LUP 700002-19 (Sept. 17, 2012), in violation of Act 250 Rule 34(A). Defendant Hermitage Inn did not apply for a permit amendment until December 10, 2012 (nearly two months after starting work on the wind turbine). Hermitage Inn's application was deemed incomplete, and amended permit LUP 700002-19B (authorizing the wind turbine) was not issued until September 24, 2013.

91. Each of the above activities is a separate violation of 10 V.S.A. § 6081(a) and/or Rule 34A. Each day that a violation continued is a separate continuing violation.

COUNT SIX (as to Defendant Hermitage Inn): Construction at Mirror Lake without Act 250 Permit

92. In June 2014 at Mirror Lake (a snowmaking pond connected to Cold Brook), Hermitage Inn constructed several docks, a beach area using sand, a fence,

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and a boat rack for swimming and boating activities. This construction required an Act 250 permit.

93. Defendant Hermitage Inn did not have an Act 250 permit for construction at Mirror Lake, in violation of 10 V.S.A. § 6081(a).

94. Defendant Hermitage Inn also failed to get an amendment to its preexisting permit LUP 700002-19 (Sept. 17, 2012), in violation of Act 250 Rule 34(A). Defendant Hermitage Inn did not apply for a permit amendment until July 16, 2014.

95. Each of the above activities is a separate violation of 10 V.S.A. § 6081(a) and/or Rule 34A. Each day that a violation continued is a separate continuing violation.

COUNT SEVEN (as to Defendant Hermitage Inn):
Construction at Cold Brook Fire District without Act 250 Permit

96. In May-July 2014 at Cold Brook Fire District #1, Well No. 9, a parking lot, impervious road areas, a pump house, and poles for power lines were constructed. This construction required an Act 250 permit.

97. As the landowner, Defendant Hermitage Inn did not have an Act 250 permit for this construction, in violation of 10 V.S.A. § 6081(a). A permit application was not submitted until August 25, 2014, and no permit has yet been issued.

98. Each of the above activities is a separate violation of 10 V.S.A. § 6081(a). Each day that a violation continued is a separate continuing violation.

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COUNT EIGHT (as to Defendant Rushing Creek): Failing to Maintain 50-foot Buffer Zone in Violation of Act 250 Permit

99. Condition 12 of LUP 2W0635-1 (Nov. 23, 2010) required Rushing Creek to maintain "a 50-foot undisturbed, naturally vegetated, unmowed buffer strip" from all watercourses and wetlands on the Property.

100. In Fall 2012, in connection with the Rushing Creek Development project, Rushing Creek cut trees within the marked 50-foot buffer zone for wetlands and a stream on the Property in violation of LUP 2W0635-1, Condition 12.

101. Each of the above activities is a violation of Condition 12 of LUP 2W0635-1. Each day that a violation continued is a separate continuing violation.

COUNT NINE (as to All Defendants): Construction Activities without ANR Stormwater Permit

102. In Fall 2011, Defendant Rushing Creek performed construction activities in connection with the Rushing Creek Development project, including the activities described in paragraphs 38-39, without the required stormwater construction permit under CGP 3-9020, in violation of 10 V.S.A. Chapter 47.

103. In Fall 2012, Defendant Hermitage Inn engaged in extensive construction activities in connection with The Hermitage Club project, including the activities described in paragraphs 48-55 and 60, that were not authorized by then applicable Low Risk Permits, and which required a Moderate Risk stormwater permit, in violation of 10 V.S.A. Chapter 47.

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104. Each and every activity described above is a separate violation of CGP 3-9020 and the authorization under CGP 3-9020. Each day that a violation continued is a separate continuing violation.

COUNT TEN (as to Defendant Hermitage Inn):
Failure to Comply with ANR Stormwater (Moderate Risk) Permit

105. After the issuance of Hermitage Inn's Moderate Risk Permit on December 20, 2012, Hermitage Inn continued to perform construction activities that did not comply with the permit conditions, including those described in paragraphs 58-59.

106. Hermitage Inn's noncompliance with its Moderate Risk Permit violated 10 V.S.A. § 8002(9).

107. Each and every activity described above is a separate violation of 10 V.S.A. § 8002(9). Each day that a violation continued is a separate continuing violation.

COUNT ELEVEN (as to Defendant Hermitage Inn):
Unpermitted Discharges into State Waters

108. Hermitage Inn's extensive construction activities at the Property (described in ¶¶ 48-55, 58-59, and 63) resulted in several unpermitted discharges into state waters, including three discharges reported by Defendant's own engineer (see ¶ 55), in violation of 10 V.S.A. § 1259.

109. Each and every discharge described above is a separate violation of 10 V.S.A. § 1259. Each day that a violation continued is a separate continuing violation.

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COUNT TWELVE (as to Defendant Hermitage Inn):
Construction without ANR Wastewater Permit

110. Construction of the Scott Rescue Facility required a wastewater and potable water supply permit under 10 V.S.A. § 1973 because the facility was connected to a sewer line.

111. Defendant Hermitage Inn constructed and used the Scott Rescue Facility at the Property before obtaining a wastewater and potable water supply permit, in violation of 10 V.S.A. § 1973.

112. Each day that the violation continued is a separate continuing violation.

COUNT THIRTEEN (as to Defendant Hermitage Inn):
Construction without ANR Public Water Supply Permit

113. Construction of the Scott Rescue Facility required a public water supply permit under 10 V.S.A. § 1673 because the facility provided a water supply for public consumption.

114. Defendant Hermitage Inn constructed and used the Scott Rescue Facility before obtaining a public water supply permit, in violation of 10 V.S.A. § 1673.

115. Each day that the violation continued is a separate continuing violation.

COUNT FOURTEEN (as to Defendant Hermitage Inn):
Dam Alteration without ANR Authorization

116. Construction of the beach and recreation area at Mirror Lake required ANR authorization under 10 V.S.A. § 1082 because Mirror Lake impounds more than 500,000 cubic feet of water.

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117. Defendant Hermitage Inn made alterations to Mirror Lake and its dam and spillway without obtaining ANR's authorization, in violation of 10 V.S.A. § 1082.

118. Each day that the violation continued is a separate continuing violation.

COUNT FIFTEEN (as to All Defendants):
Unauthorized Wetland Disturbance

119. On information and belief, in Fall 2012, Defendants Rushing Creek and/or Hermitage Inn, removed trees and vegetation at Rushing Creek Lot #4, which was within a significant wetland and buffer zone, as defined by the Vermont Wetland Rules, without a permit or authorization from ANR.

120. Defendants' construction activities in a significant wetland and its associated buffer zone without first obtaining ANR approval violated 10 V.S.A. § 913 and Vermont Wetland Rule 9.1. Each day that a violation continued is a separate continuing violation.

WHEREFORE, the State of Vermont seeks the following relief:

1. Civil penalties pursuant to 10 V.S.A. § 8221 of not more than $85,000 for each violation, and not more than $42,500 for each day a violation continued, under the following:

   (a) 10 V.S.A. § 6081(a) and Act 250 Rule 34(A);

   (b) 10 V.S.A. § 8002(9) (failing to comply with permit conditions);

   (c) 10 V.S.A. Chapter 47 (§§ 1258(b); 1263(a); and 1264(e));

   (d) 10 V.S.A. § 1259(a);

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(e) 10 V.S.A. § 1973;

(f) 10 V.S.A. § 1673;

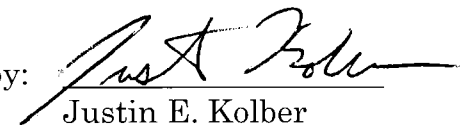
(g) 10 V.S.A. § 1082; and

(h) 10 V.S.A. § 913 and Vermont Wetland Rule 9.1.

2. Permanent injunctive relief requiring Defendants to: (i) comply with all NRB and ANR statutory and permit requirements; (ii) retain an environmental compliance officer, approved by ANR and the NRB, who will make periodic direct reports to ANR and the NRB on Defendants' compliance with all statutory and permit requirements; and (iii) provide written advance notice of future development and construction activities in the state by Defendants;
3. The award to the State of investigative costs of enforcement, court costs, and fees incurred in this litigation; and
4. Such other relief as this court deems just and appropriate.

Dated February 18, 2015 at Montpelier, Vermont.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 

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