

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. §§ 6001-6092**

RE: Pico Peak Ski Resort, Inc.  
Land Use Permit #1R0265-12-EB  
Docket # 622

**MEMORANDUM OF DECISION**

This decision concerns Land Use Permit #1R0265-12-EB and specifically addresses the requirement of a Final Snowmaking Needs and Alternatives Analysis for the Pico Peak Ski Resort.

**I. PROCEDURAL SUMMARY**

On November 22, 1995, the Environmental Board issued *Re: Pico Peak Ski Resort, Inc.*, Land Use Permit #1R0265-12-EB (Permit), and *Re: Pico Peak Ski Resort, Inc.*, #1R0265-12-EB, Findings of Fact, Conclusions of Law, and Order (Nov. 22, 1995) (Decision). The Permit authorizes Pico to (i) extend the base of Glade Chair approximately 1,400 feet from elevation 2,650 feet down to 2,400 feet; (ii) build a new ski trail on Outpost between Wrangler and Pipeline approximately 1,200 feet long and 150 feet wide with associated snowmaking/fire protection; (iii) widen Pipeline ski trail 25 feet to 40 feet from elevation 2,350 feet to 2,800 feet with associated snowmaking/fire protection; and (iv) widen the east side of Lower Pike ski trail 25 feet to 40 feet from elevation 2,000 feet to 2,125 feet (Project).

Condition #2 of the Permit provides:

Pico shall submit an alternatives analysis to the board on or before the submission date of any future application by Pico for an Agency of Natural Resources or Act 250 permit to expand snowmaking and/or increase water withdrawals from Mendon Brook, or July 1, 1998, whichever occurs earlier.

Condition #3 of the Permit provides:

The Board retains jurisdiction to review any such alternatives analysis and modify this permit as the Board deems appropriate.

On February 23 and March 6, 1998, Killington Ltd. (Killington), the successor in interest to Pico, filed letters with the Board requesting that the date for the submission of the alternatives analysis required by condition #2 of the Permit be extended until July 1, 2000.

On May 8, 1998, following the receipt of a response from the Agency of Natural Resources (ANR), the Board issued a Memorandum of Decision with the following Order:

1. Condition #2 of Land Use Permit #1R0265-12-EB is superseded. Instead, Killington shall submit an alternatives analysis to the Board on or before the submission date of any future application by Killington for an Agency of Natural Resources or Act 250 permit to expand snowmaking and/or increase water withdrawals from Mendon Brook, or **July 1, 2000**, whichever occurs earlier.

2. In all other respects Land Use Permit #1R0265-12-EB remains unchanged including, but not limited to, the Board's retention of jurisdiction to review any such alternatives analysis and modify Land Use Permit #1R0265-12-EB as the Board deems appropriate.

On July 19, 2000, Killington filed a further Motion for Continuance, requesting the Board "to provide Killington until September 1, 2000 to submit its draft Snowmaking Needs and Alternatives Analysis for the Pico Resort (Pico NAA) and until July 1, 2001 to submit its final Pico NAA or in the alternative a status report on the final Pico NAA."

On August 7, 2000, Chair Harding issued a Continuance Order which ordered the following:

1. Condition #2 of Land Use Permit #1R0265-12-EB and ¶1 of the Board's May 8, 1998 Memorandum of Decision are superseded.

2. Killington shall submit a draft Snowmaking Needs and Alternatives Analysis for the Pico Resort (Pico NAA) on or before September 1, 2000. On or before July 1, 2001, Killington shall submit its final Pico NAA or in the alternative a status report on the final Pico NAA.

3. In all other respects Land Use Permit #1R0265-12-EB remains unchanged including, but not limited to, the Board's retention of jurisdiction to review any such alternatives analysis and modify Land Use Permit #1R0265-12-EB as the Board deems appropriate.

On September 1, 2000, Pioneer Environmental Associates, LLC., on behalf of Killington, filed the draft Pico Mountain Snowmaking Needs and Alternative Report.

On September 14, 2001, Killington filed a letter with the Board which, according to Killington constituted a status report as authorized by condition 2 of the August 7, 2000 Continuance Order relative to the final Pico NAA. This letter states that:

“The final Pico NAA report, to be productive and financially feasible, needs to be timed with investment plans for the Pico snowmaking system. These investment plans are contingent upon initial investments in the Killington Resort Village, followed by the Pico Interconnect. The current financial condition of the company has delayed initiation of Village investments for the short term, therefore, we anticipate a delay in Pico snowmaking investments of at least 3 years.”

Killington's letter further requests that this matter 'be closed,' meaning that Killington not be required to submit the final Pico NAA unless and until Killington proposes to undertake physical investments in the Pico snowmaking system. In essence, Killington is asking that the Board accept its status report and not require the final Pico NAA at this time.

On September 25, 2001, the Conservation Law Foundation (CLF) filed a response to Killington's status report letter asking that the Board not waive the requirements of a final Pico NAA and order that a final Pico NAA be filed to restore conservation flows of at least 0.8 csm to Mendon Brook. CLF argues that regardless of activities, Killington was required to file the final Pico NAA by July 1, 2001. CLF suggests alternatives are available to improve stream flows including lower intakes and new storage reservoirs.

On October 3, 2001, ANR filed a response to Killington's status report letter asking that the Board require the filing of the final Pico NAA, including 1) a feasibility analysis and 2) a potential alternative implementation schedule both of which were omitted from the draft NAA.

On March 6 and April 17, 2002, the Board deliberated on Killington's request for relief from filing a final Pico NAA.

## **II. DISCUSSION**

The Board's August 7, 2000 Continuance Order required Killington to file either the final Pico NAA or a status report on the final Pico NAA. In lieu of the final Pico NAA, Killington elected to file a status report. Although it was filed two and a half months late, the status report represents that Killington has no plans to undertake new or alternate snowmaking at the current time and also reports that it may be three years before such activities are undertaken.

The Board is charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 § 1 (Adj. Sess.). The Board concludes that the values protected by Act 250 are not compromised by postponing the requirement that Killington file the final Pico NAA. The Board will require the filing of a final Pico NAA at some future time. The Board believes that it is prudent to require a final Pico NAA at the time that new or alternate snowmaking activities are being planned or proposed rather than several years in advance of the new or different activities.

As set forth in more detail below in Section III. Order, the Board will require annual status reports commencing September 1, 2002 relating to snowmaking activities and a final Pico NAA. Furthermore, the Board continues to retain jurisdiction over snowmaking issues and may order that the final Pico NAA be filed at any time.

## **III. ORDER**

1. On or before September 1, 2002, and annually thereafter, Killington shall submit a status report on snowmaking and a status report on the final Pico NAA. The annual report shall include, but not be limited to, a description of any plans for new or altered snowmaking activities, the status of the final Pico NAA, and a

description of the work, amount of time and cost required to complete the final Pico NAA.

2. The Board retains jurisdiction to order the filing of the final Pico NAA at any time and to review any such alternatives analysis and modify Land Use Permit #1R0265-12-EB as the Board deems appropriate.

Dated at Montpelier, Vermont this 18th day of April, 2002.

ENVIRONMENTAL BOARD

/s/ Marcy Harding  
Marcy Harding, Chair  
John Drake  
Samuel Lloyd\*  
W. William Martinez\*  
Alice Olenick  
Jean Richardson  
Donald Sargent  
A. Gregory Rainville\*

\* Members Lloyd, Martinez and Rainville were absent for the April 17, 2002 Board deliberations, but have reviewed and concur with this decision.