

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

Re: Mt. Mansfield Co., Inc.  
d/b/a Stowe Mountain Resort and  
State of Vermont, Department of Forests, Parks  
and Recreation  
Land Use Permit Amendment #5L1125-10 and 10R-EB  
(Base Lodge)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
(ALTERED)

In this decision, the Vermont Environmental Board ("Board") concludes that certain proposed non-winter uses of a new base lodge and related improvements at the Stowe Mountain Resort, as conditioned herein, comply with Criteria 5 (traffic), 8 (aesthetics, scenic or natural beauty), 8(A) (wildlife habitat and endangered species) and/or 9(K) (public investments and facilities). The Board refers this matter back to the District #5 Environmental Commission ("District Commission") for further proceedings consistent with 10 V.S.A. § 6086(b), Environmental Board Rule ("EBR") 21 and this decision.

I. PROCEDURAL BACKGROUND

On November 5, 1993, the Mt. Mansfield Company, Inc., d/b/a Stowe Mountain Resort ("Appellant") and the State of Vermont ("State") filed Land Use Permit Amendment application #5L1125-10 for Phase II of the Stowe Mountain Resort's current master plan ("Phase II"). On July 7, 1994, the District Commission determined that findings of fact and conclusions of law under Criteria I(A) (headwaters) and I(B) (waste disposal) would be held in abeyance until the Appellant obtained certain permit approvals from the State. In its July 12, 1994 Partial Findings of Fact and Conclusions of Law #5L1125-10 ("Partial Findings"), the District Commission approved a new base lodge, new parking areas, a main access road and base area perimeter roadway, a new wastewater treatment facility, a new maintenance/snowmaking building and a tramway over

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<sup>1</sup> In reliance upon EBR 21, the District Commission did not complete its evidentiary review or issue findings of fact and conclusions of law with respect to 10 V.S.A. §6086(a) -- Criteria 1 (A) (headwaters) and 1(B) (waste disposal). As a result, the District Commission has not issued a land use permit for any aspect of Phase II, and as discussed further in these Findings of Fact, Conclusions of Law and Order, the Board shall refer this matter back to the District Commission so that, among other things, the District Commission can complete its review under Criteria I(A) and 1(B) and issue a decision thereafter.

Route 108 connecting the Spruce Peak and Mt. Mansfield recreation areas. However, the District Commission limited the seasons during which the approved improvements could be used.

The District Commission approved use of the new base lodge and tramway for recreation and related activities and for conference and meeting activities between approximately November 15 and April '15. However, the District Commission restricted the use of the new base lodge and the area immediately surrounding it as follows:

- (a) denied use during the spring, summer and fall for, or in connection with, conference and meeting activities, temporary retail sales, indoor retail sales, restaurant/fine or food service facilities and advertising of food and beverage service;
- (b) denied use during the summer for, or in connection with, weddings, private parties, etc. ("Special Events"); and
- (c) limited the number of Special Events to five in the fall and spring respectively.

In addition, the District Commission prohibited any use and/or operation of the tramway during the spring, summer and fall.

The Appellant moved to alter the Partial Findings and requested the opportunity to submit additional evidence. These motions were granted. On June 8, 1995, the District Commission revised the Partial Findings ("Revised Partial Findings") to also allow the following uses in the new base lodge during the spring, summer and fall:

- (a) **4,500** square feet of retail sales space; and
- (b) snack bar or deli type facilities **utilizing** no more than 2,900 square feet and serving no more than 160 seats so long as the Appellant ensures that the Midway Lodge facility is limited to certain winter-time uses.

In addition, the District Commission authorized an expansion of the size of the new base lodge from 45,630 square feet to 54,364 square feet.

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On July 10, 1995, the Appellant filed an appeal ("Appeal") with the Board from the Revised Partial Findings. The Appellant contends that the District Commission erred with respect to the following criteria of 10 V.S.A. § 6086(a) -- 5 (traffic), 8 (aesthetics, scenic or natural beauty), 8(A) (wildlife habitat and endangered species) and 9(K) (public investments and facilities).

On August 10, 1995, Board Chair John T. Ewing convened a prehearing conference in Montpelier.

During the months of September and October, the parties filed prefiled testimony, exhibits and proposed findings of fact and conclusions of law. There were no objections to any of the prefiled evidence.

On November 1, 1995, the Board held an **evidentiary** hearing in Stowe. The following parties participated:

Appellant by Stephen R. Crampton, Esq., and Rob Apple  
Agency of Natural Resources ("ANR") by Kurt Janson, Esq.  
Green Mountain Club ("GMC") by William Roper, Esq.  
University of Vermont ("UVM") by Austin D. Hart, Esq.

At the conclusion of the hearing, the Board deliberated. The Board deliberated again on November 29, 1995. On December 8, 1995, the parties filed a **Stipulation** by which they sought to supplement the evidentiary record with a fully executed copy of the Mount Mansfield Area Cooperative Agreement -- Exhibit M48 (Revised). The Board accepted into evidence Exhibit M48 (Revised) into evidence. On December 20, 1995, following a final review of the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing.

On December 28, 1995, the Board issued findings of fact., conclusions of law and an order in the Appeal. On January 29, 1996, the Appellant filed a Motion to Alter and for Clarification ("Motion"). There were no responses to the Motion.

On February 28, 1996, the Board deliberated on the Motion and decided to **grant** it. This matter is now ready for decision. To the extent any proposed **findings** of fact and conclusions of law are included below, they are granted; otherwise, they are deemed irrelevant, redundant and/or inaccurate and denied.

## II. ISSUES

1. Whether use and operation of the new base lodge and transfer lift during the spring, summer and fall will cause unreasonable congestion or unsafe conditions with respect to the use of highways (Criterion 5 (traffic)).

2. Whether use and operation of the new base lodge and adjacent areas during the spring, summer and fall for restaurant/fine dining facilities, certain food and beverage service and/or advertising, special events and for and/or in connection with conferences and meetings, will have an undue adverse effect on the scenic or natural beauty of the area, or on rare and irreplaceable natural areas (Criterion 8 (aesthetics)).

3. Whether use and operation of the new base lodge and adjacent areas during the spring, summer and fall for restaurant/fine dining facilities, certain food and beverage service and/or advertising, Special Events and for and/or in **connection** with conferences and meetings, will destroy or significantly imperil necessary wildlife habitat or any endangered species (Criterion 8(A) (wildlife and endangered species)).

4. Whether use and operation of the new base lodge and adjacent areas during the spring, summer and fall for restaurant/fine dining facilities, certain food and beverage service and/or advertising, Special Events and for and/or in connection with conferences and meetings, will unnecessarily or unreasonably endanger the public investment in the Mt. Mansfield State Forest hiking trails and forest lands, **particularly** the sensitive natural areas at portions of the **summit/ridgeline** areas of Mt. Mansfield, or materially jeopardize or interfere with the public's use or enjoyment of and access to such trails and lands (Criterion 9(K) (public investments)).

5. Whether use and operation of the transfer lift connecting the Mt. Mansfield base lodge area with the Spruce Peak base area during the spring, summer and fall will have an undue, adverse effect on the scenic or natural beauty or aesthetics of the area, or on any rare and irreplaceable natural areas (Criterion 8), will destroy or **significantly** imperil or destroy any wildlife habitat or endangered species (Criterion 8(A)), and/or will unnecessarily or unreasonably endanger the public investment in, or materially interfere with or jeopardize the public's use, enjoyment of or access to public lands or facilities, **particularly** the Smugglers Notch "Scenic Corridor" and/or "viewscape" from Route 108 to Mt. Mansfield and the State Forest (Criterion 9(K)).

### III. FINDINGS OF FACT

The following findings of fact supersede all such findings pertaining to Criteria 5,8,8(A) and 9(K) in the Partial Findings and the Revised Partial Findings. If the District Commission issues a permit relating to Phase II, it shall be made subject to the following findings. Such a permit shall not be subject to those findings of fact pertaining to Criteria 5, 8, 8(A) and 9(K) in the Partial Findings or the Revised Partial Findings.

1. The Appellant currently leases 1,400 acres of the 37,000 acre Mt. Mansfield State Forest -("Forest") from the State ("Lease"). The Appellant, does not conduct any activity on lands subject to the Lease unless the Department of Forest and Parks has determined that such activities directly relate to recreation on Mt. Mansfield.
2. The Appellant owns land and operates facilities adjacent to lands subject to the Lease.
3. The public has an interest in the Mt. Mansfield/Smugglers Notch region, and its unique natural areas.
4. The "nose" on Mt. Mansfield (the Toll Road terminus) is approximately 1.2 miles from the "chin". Many sensitive natural areas occur along that part of the Long Trail which connects these two features.
5. Approximately 382 acres along the ridgeline of Mt. Mansfield are included within the UVM Mt. Mansfield natural area. WM intends to preserve this area in its natural state to the greatest extent possible and use it for educational and scientific purposes insofar as such uses are compatible with the preservation of its natural character.
6. The UVM Mt. Mansfield natural area harbors a unique and fragile arctic-alpine tundra environment -- the largest in Vermont and one of **only** a few in the Northeast. Many of the plants and animals which utilize it have evolved strategies to cope with the extremes of high elevation and are thus not found elsewhere.
7. The greatest concentration of rare, threatened, **and** endangered plant species and natural communities in the State occur on or near the Mt. Mansfield ridgeline. In addition to plant species, there are several known

and suspected animal species that are dependent on habitat found on the ridgeline.

8. Scientists from the Vermont Institute of Natural Science have identified the breeding presence of the Bicknell's Thrush within the high elevation spruce-fir forests on Mt. Mansfield and have determined that one of the greatest concentrations in the world of this declining songbird **occurs** on Mt. Mansfield. The Bicknell's Thrush habitat on Mt. Mansfield does not occur solely on the ridgeline, but disruption of the habitat at the ridgeline could have an effect on the entire Bicknell's Thrush population on Mt. Mansfield.
9. It is estimated that a majority of those persons who visit the Summit arrive via the Toll Road, but it is presently unknown precisely how many of those summit visitors actually hike any appreciable distance from the Toll Road parking lot.
10. The parties agree that the number of people who hike **from** the Toll Road to the Chin is significant. It is unknown how many persons actually hike the entire Cliff Trail from the Gondola to the summit.
11. Management and stewardship of the Mt. Mansfield trail system and areas which include rare arctic tundra and alpine bogs has been subject to the Mt. Mansfield Cooperative Management Program ("Program"). The GMC has served as trail administrator and curator. The Program has been funded and controlled under successive written agreements between the parties. It is now subject to a new agreement for the years 1996-2001 which was executed by the parties on November 7, 1995 ("Cooperative Agreement"). Compliance by the parties with the Cooperative Agreement will enhance the "summit caretaker" program through which the GMC hires and trains interns to work on the Summit trails and at the two overnight camping lodges on Mt. Mansfield.
12. The parties will engage in other activities **under** the Cooperative Agreement which are designed to achieve the preservation of the natural resources of the Mt. Mansfield area and enhance the enjoyment and appreciation of visitors to the area. Increased and redesigned **signage** at the **Summit** and along the entire Mt. Mansfield trail network will be implemented. Detailed hiker use and impact studies will be conducted.

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13. Under the Cooperative Agreement, the Appellant will implement new management procedures for the Toll Road to ensure that: (i) the capacity of the road and four upper parking areas is not exceeded; (ii) the boundaries of the existing parking areas are physically demarcated to prevent any traffic over adjacent vegetation; (iii) to eliminate parking along the Toll Road itself to reduce impact upon adjacent vegetation; and (iv) the use of the Toll Road is limited to only those periods of time when the expanded summit caretaker program is in operation.
14. Under the Cooperative Agreement, the Appellant will, with respect to both the Toll Road and the Gondola, perform the following: (a) install new and/or additional **signage** to more fully explain the necessity for protection of the rare natural areas at the Summit and create a new explanatory brochure to be given to all Toll Road and summer Gondola users; (b) verbally summarize the brochure for all Toll Road and summer Gondola users; and (c) continue and expand its surveys and collection of data from Toll Road and summer Gondola users to determine the extent, significance and impact, if any, of any Summit hiking actually undertaken by users of the Appellant's facilities.
15. Compliance by the parties with the terms and conditions of the Cooperative Agreement will help reduce threats to the rare natural areas, endangered plant species, and habitat at the Summit due to peak usage of the Mt. Mansfield trail system. Further, compliance with the Cooperative Agreement will help protect rare plants and natural areas and wildlife habitat areas and the ability of the public to use and enjoy the Mt. Mansfield trails or vistas and scenery.
16. Compliance with the Cooperative Agreement will result in sufficient monitoring and data collection to address and resolve any trail overcrowding problems which might arise.
17. Because of the Cooperative Agreement, no undue adverse impacts are likely to occur due to the Appellant's proposed uses of the new base lodge and transfer lift during the spring, summer and fall, with respect to: (a) the rare plant species and natural areas and habitat at the Summit; (b) the public's ability to use and its investment in the Mt. Mansfield trail network; and (c) the public's reasonable enjoyment of the scenic vistas now provided.

18. The existing character of the Smugglers Notch management block of the Forest, and the surrounding area, is one of mixed uses that range from the already heavily developed but compact base areas of the ski resort, to the semi-developed ski trail areas as well as the Smugglers Notch road with its small off-road parking areas, to the undeveloped and uncut areas of the surrounding Forest. Although the vistas and scenery both looking down from and looking up at Mt. Mansfield remain spectacular and must be protected from any substantial degradation, the area taken as whole is not and has not for some time been pristine. Rather, the context and character of the area that has now existed over many years is the blending and co-existence of limited development that is not shocking or unexpected given the mountainous setting, with the natural areas of the Forest itself and facilities necessary for the public to use and enjoy the entire Mt. Mansfield area (e.g., Route 108 through the Notch, the hiking trail network, and the State campground located next to the Spruce Peak base area).
19. Additional summertime fine dining, or traditional food service at the new base lodge will not generate substantial amounts of new **traffic** or activity on Route 108 or in the Smugglers Notch corridor and will not generate any significant additional usage of the Mt. Mansfield hiking trail network or accelerate any potential threats to the rare Summit plants and natural areas.
20. Expanded conference and meeting activity in the new base lodge in the spring, summer and fall will not generate any significant additional use of the Mt. Mansfield hiking trail network or accelerate potential threats to the rare summit natural areas.
21. Use of the new base lodge for additional conference and meeting business is also unlikely to have any adverse impact on the existing character and conditions of the area, including **traffic** conditions on the Mountain Road (Route 108) and in Stowe Village.
22. If there is some unpredicted increase in Summit access and usage due to additional uses in the new base lodge, compliance with the Cooperative Agreement **will** identify such trends and potential impacts and require the parties to respond to them in an appropriate manner.
23. From May through October 1995, approximately 7,090 conference attendees used the Appellant's present meeting facilities. By the third year after construction and with full utilization of the new base lodge, the Appellant



projects that it may have up to 18,000 total conference and meeting attendees, and other pre-booked "group business" using all of the available facilities during the six-month non-winter tourism season.

24. Any increases in Summit use which are the result of additional conference and meeting business can be effectively accommodated through the compliance with the Cooperative Agreement. Thus, no undue adverse impacts on rare plants and natural areas or wildlife habitat at the Summit and no adverse impact on the public's investment in or enjoyment of the area will occur because of increased use of the new base lodge during the spring, summer and fall.
25. The Appellant also proposes some kind of ongoing activity and/or other weekly event for the new base lodge or immediately surrounding area. The Appellant has not offered a definitive list of such events or attractions but points to examples such as mountain bike rentals as an ongoing activity and a "food fair" or Vermont products tasting session, a bike or running race, a cooking course, or a barbecue and fireworks on the Fourth of July, as examples of a weekly "attraction." The Appellant hopes to attract more of the existing summer tourism population (e.g., the 694,000 vehicles that pass through Smugglers Notch) to patronize its various base area facilities. Compliance with the Cooperative Agreement will eliminate potential for undue adverse impacts on endangered plant species and rare natural areas or habitat, and the public's investment in and enjoyment of the Mt. Mansfield area will be protected should the Appellant's proposed spring, summer and fall activities and weekly "attractions" in and around the new base lodge result in increased Summit visits. Moreover, traffic and the existing character and conditions of the Mt. Mansfield and/or Stowe area will not be adversely impacted by such spring, summer and fall usage of the new base lodge.
26. The Appellant proposes to pursue relocation of existing Stowe area Special Events such as the Stowe "Fall Foliage Craft Fair" and the "Cool Summer Nights Antique Car Show" to the new base lodge area and to host or create other such Special Events. The Appellant defines this type of usage as involving 3,000-4,000 transient visitors (or more) each day over two to three days, typically to booths and tents that will be set up in a new parking (or other suitable) areas adjacent to or near the new base lodge. The Appellant hopes to host one such Special Event per month during the spring, summer and fall. There will still be plenty of existing parking to accommodate such events, even with utilization of some parking areas for

tents. All such events, as well as any other non-routine activities which are projected to attract more than 300 people, will require individual "special event" permits from the Town. Under the Town's special events ordinance, adopted June 27, 1994 and effective January 1, 1995, the Town will assess each proposal in terms of traffic, noise and other potential impacts.

Accordingly, no new or additional adverse impacts on traffic or the overall character of the area are anticipated **from** Special Event occurring at the new base lodge area.

27. The State will not categorically approve or disapprove the Appellant's proposed usage of the new base lodge and immediate area for certain weekly "attractions" and multi-day Special Events. The State believes that under the Lease, it must evaluate each one on a case-by-case basis for consistency with the express terms and stated intent of the Lease.
28. The Appellant's proposals are intended primarily to draw existing visitors ~~to and keep them at the Appellant's facilities, rather than to the Smugglers Notch itself as an attraction.~~ Where new visitors are contemplated in connection with expanded conference and meeting business, the number of additional visitors with their own vehicles (something much less than the 4,100 additional conference attendees projected for June through August in the third year) will have no measurable impact given the 694,000 vehicles that traveled the Notch at last count. The Appellant's proposed function as part of an integrated "southern gateway" to the Notch will not be compromised.
29. The public investment in and ability to enjoy the scenic vistas of Mt. Mansfield as they now exist, both looking up from the Appellant's base area and/or Route 108, and looking down from the summit, **will** not be adversely affected by the additional usage of the new base lodge during non-winter months proposed by the Appellant. From Route 108, the entire base area complex is or will be screened by trees and vegetation; the facilities themselves, as well as any usage thereof, will ordinarily not be visible, or only marginally visible for fleeting periods. Views up to the summit from Route 108 will not be blocked by the additional summer uses proposed for the base lodge. Views down to the base lodge will also not be adversely impacted by the additional uses proposed.
30. Use and operation of the tramway during the spring, summer and fall will not have an undue adverse impact on the aesthetics and scenery of the Route 108 corridor or the Mt. Mansfield area generally. Existing utility

poles and associated wires which extend over Route 108 will be removed. The tramway towers and cables will be present but not overly visible during the non-winter periods, regardless of whether the tramway operates or not. In any event the towers and cables will be well-screened with existing and/or new trees and vegetation, especially during late spring and summer periods. As further mitigation, the Appellant will remove existing power lines and poles along and across the highway in the same location; the net result will be less visual clutter than presently exists.

31. The tramway cars themselves will be temporarily visible to any vehicles that are on Route 108 in certain locations within 300 feet of the lift, for no more than 5.3 seconds during each passage. Because of the design of the lift with only two cars that always move together in opposite directions (a "shuttle/jig-back" system), this 5.3 second visibility episode will occur only once every five to ten minutes (intervals will depend on demand, but will not be less than five minutes because of total time needed for travel and to load and unload the lift cars). During peak operation times, the cars will be visible to motorists on Route 108 only 64 seconds out every hour. The cars' visibility to motorists on Route 108 will actually be less during the summer due to foliage than during the winter when operation of the transfer lift has already been approved.
32. The cars will be painted dark green, with the Stowe logo on the ends rather than the sides of the cars. This will enhance the visual blending of the cars with the dark green conifers either existing or to be planted, as well as the primarily dark green mid-ground and background of the larger Mt. Mansfield vista during the summer. The cars themselves, even when moving, will not be visible during the summer **from** the Smugglers Notch State Campground.
33. On an aesthetics or visual basis, the use and operation of the tramway during the spring, summer and fall will not be shocking. Persons approaching the Appellant's base areas on Route 108 will generally be aware of and expect to see the Appellant's various facilities, including those that are already in use and operation during non-winter months. Non-winter use and operation of the tramway is not inconsistent with any generally accepted or prevailing community standards.
34. Use and operation of the tramway will not in itself result in any undue adverse impacts on the public's investment in, or jeopardize the public's enjoyment of the public amenities of the Mt. Mansfield area (e.g., the

scenic vistas generally, or the summit trail network and rare natural areas at the summit). The tramway will be free to visitors at the Appellant's two base areas, **and** if anything should enhance movement between and therefore greater utilization of the existing or planned base area facilities. That is, visitors should stay for longer rather than shorter periods at the base areas themselves. The tramway will not be separately marketed or promoted as a "ride" or "attraction" in and of itself.

#### IV. BURDEN OF PROOF

ANR, GMC and UVM have the burden of proof under Criteria 5, 8 and 8(A) and the Appellants have it under Criterion 9(K). 10 V.S.A. §6088. To meet their respective burdens, **ANR, GMC and UVM** must persuade the Board that the Phase II non-winter uses at issue herein will cause unreasonable traffic congestion or unsafe traffic conditions under Criterion 5 or have an undue adverse effect on aesthetics, scenic or natural beauty or wildlife habitat and endangered species under Criteria 8 and/or 8(A) and the Appellant must persuade the Board that the Phase II non-winter uses at issue herein will not unnecessarily or unreasonably endanger public investments and facilities or the public's use and enjoyment thereof under Criterion 9(K). See In Re Denio, 158 Vt 230, 236 (1992); Re: Killington, Ltd. and International Paper Realty Corp., #1R0584-EB-1 Findings of Fact, Conclusions of Law and Order (Revised) at 21 (Sept. 21, 1990). If ANR, GMC and UVM meet their burden, or the Appellants do not meet theirs, this permit amendment must be **denied**.<sup>2</sup>

#### V. CONCLUSIONS OF LAW

The following conclusions of law shall supersede all such conclusions pertaining to Phase II non-winter uses under Criteria 5, 8, 8(A) and 9(K) in the Partial Findings and the Revised Partial Findings. If the District Commission issues a permit relating to Phase II non-winter uses, it shall be made subject to these conclusions. Such a permit shall not be subject to those conclusions of law **pertaining** to Phase II non-winter uses under Criteria 5, 8,8(A) and 9(K) in the Partial Findings and the Revised Partial Findings.

As conditioned by the Board's order, the Appellant's proposed non-winter uses of its new base lodge, and its use and operation during non-winter periods of

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<sup>2</sup> *A permit or permit amendment application may not be denied solely for the reasons set forth in Criterion 5. 10 V.S.A. § 6087.*

the tramway across Route 108, will not cause unreasonable congestion or unsafe traffic conditions with respect to the use of highways in the immediate vicinity of Route 108 or the Stowe area generally. Accordingly, the Board finds that Phase II, as conditioned complies with Criterion 5.

The Board uses a two-part test to determine whether a project meets Criterion 8. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. Re: Quechee Lakes Corp., #3W0411-EB and #3W0439-EB (January 13, 1986).

As conditioned by the Board's order, the Appellant's proposed non-winter uses of its new base lodge and its use and operation during non-winter periods of the tramway across Route 108 will not have any undue adverse effect on the scenic or natural beauty or aesthetics of the Mt. Mansfield area. Accordingly, the Board finds that Phase II, as conditioned, complies with Criterion 8.

As conditioned by the Board's order, the Appellant's proposed non-winter uses of its new base lodge and its use and operation during non-winter periods of the tramway across Route 108 will not have any undue adverse effect on any endangered species or rare and irreplaceable natural areas or wildlife habitat at the Summit. Accordingly, the Board finds that Phase II, as conditioned, complies with Criterion 8(A).<sup>3</sup>

As conditioned by the Board's order, the Appellant's proposed non-winter uses of its new base lodge and its use and operation during non-winter periods of the tramway across Route 108 will not unreasonably endanger the public's investment in the various public amenities of the Mt. Mansfield area (e.g., viewscapes, scenic vistas, Summit trails, arctic tundra, alpine bogs, natural areas and wildlife habitat and will not materially jeopardize or unreasonably interfere with the public's use and enjoyment of the various amenities of the Mt. Mansfield area. Accordingly, the Board finds that Phase II, as conditioned, complies with Criterion 9(K).

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<sup>3</sup> *ANR, GMC and UVM did not meet their burden of proof under either Criteria 5, 8 or 8(A).*

V. ORDER

1. Jurisdiction over this matter will be referred back to the District Commission for further proceedings in accordance with 10 V.S.A. 96086(b) and EBR 21.
2. The findings of fact and conclusions of law contained herein shall supersede all such **findings** and conclusions pertaining to Phase II non-winter uses under Criteria 5, 8, 8(A) and 9(K) in the Partial Findings and the Revised Partial Findings.
3. The **findings** of fact and conclusions of law contained herein shall remain in effect, pending issuance or denial of a permit, until June 30, 1996.
4. The findings of fact and conclusions of law in the Partial Findings and the Revised Partial Findings which do not pertain to Phase II non-winter uses under Criteria 5, 8, 8(A) and 9(K) shall remain in effect, pending issuance or denial of a permit, until June 30, 1996.
5. If the District Commission issues a permit relating to Phase II, such permit shall be made subject to the findings of fact and conclusions of law contained herein. Such a permit shall not be subject to those findings of fact and/or conclusions of law pertaining to Phase II non-winter uses under Criteria 5, 8, 8(A) and 9(K) in the Partial Findings and/or the Revised Partial Findings.
6. If the District Commission issues a permit relating to Phase II, regarding Criteria 5, 8, 8(A) and 9(k), such permit shall be made subject to only the following conditions in conjunction with non-winter uses:
  - (a) The parties shall perform all of their respective duties, responsibilities and/or obligations under the Cooperative Agreement.
  - (b) The parties shall comply with any and all directives and decisions generated by the District Commission pursuant to paragraph A(10) of the Cooperative Agreement.
  - (c) The Appellant shall comply with the Special Events Ordinance and any decision or order of the Town thereunder. The District Commission shall retain jurisdiction to impose additional permit conditions to address any traffic problems identified by the District

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Commission to which the Town's ordinances are not applicable or which constitute a violation of any applicable provisions of the Town's ordinances.

- (d) On or before March 1st of each year, the parties to the Cooperative Agreement shall submit a report to the District Commission describing in detail the impacts of Phase II on the Mt. Mansfield **summit/ridgeline** ecology ("Report"). The Report shall include but need not be limited to information generated by GMC pursuant to paragraph B(7) of the Cooperative Agreement. The District Commission may impose additional permit conditions to prevent and/or remediate damage to the **summit/ridgeline** ecology caused by the Phase II improvements based upon its review of the Report.
- (e) Six months prior to the termination of the Cooperative Agreement or any renewal thereof, the parties shall submit to the District Commission for its review a proposed renewed Cooperative Agreement. The parties may not enter into a renewed Cooperative Agreement without the prior written approval of the District Commission.
- (f) If the Cooperative agreement or any renewal thereof terminates without renewal or the prior written approval of the District Commission, the District Commission shall impose suitable permit conditions to protect the Mt. Mansfield **summit/ridgeline** ecology.
- (g) The Appellant shall submit to the Agency of Natural Resources a detailed description of any use/activity the Appellant proposes and which ANR requires to be submitted under the Lease or which is not of the type described in the Appellant's **prefiled** testimony ("Description"). The Description shall be submitted to ANR prior to the date the Appellant proposes to undertake the use/activity. The Appellant shall comply with any determination or restriction imposed by ANR in connection with such use or activity.
- (h) The Appellant shall paint the tramway cabs green and may paint the Stowe logo in white on the front and/or back of each cab.

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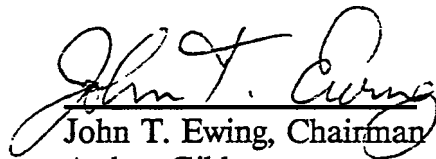
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Dated at Montpelier, Vermont this 27th day of March, 1996.

ENVIRONMENTAL BOARD



John T. Ewing, Chairman

Arthur Gibb

Samuel Lloyd

William Martinez

Robert G. Page, M.D.

Steve E. Wright

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