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

Re: Mount Snow Ltd.
Declaratory Ruling #329

CHAIR'S PROPOSED DISMISSAL ORDER

I. BACKGROUND

On June 6, 1996, the District #2 Assistant District Coordinator issued Jurisdictional Opinion #2-98 ("Jurisdictional Opinion"), stating that the use of ski lifts and ski trails for mountain biking and the creation of mountain biking trails ("Mountain Biking Program") at Mount Snow constitute material and substantial changes requiring a permit amendment application pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250").

On July 5, 1996, Mount Snow Ltd. ("Petitioner") filed a petition for a declaratory ruling ("Petition") with the Environmental Board, appealing the Jurisdictional Opinion.

On July 8, 1996, the Petitioner filed an permit amendment application ("Amendment Application") with the District #2 Environmental Commission ("District Commission") for the Mountain Biking Program.

On August 26, 1996, the Petitioner tiled a Motion for Continuance, requesting a continuance pending the outcome of the Amendment Application and stating that this declaratory ruling would become moot if the District Commission granted an acceptable Act 250 permit amendment for the Mountain Biking Program.

On August 27, 1996, the Environmental Board ("Board") issued a Continuance Order.

On June 1, 1998, the District Commission issued to the Petitioner Land Use Permit #2W0359-33 ("Commission Permit") pursuant to Re:Mount Snow Ltd., #2W0359-33, Findings of Fact, Conclusions of Law, and Order (June 1, 1998) ("Commission Decision").

There has been no appeal from the Commission Permit and Commission Decision.

II. PROPOSED DISMISSAL

The Jurisdictional Opinion pertained to whether there was Act 250 jurisdiction over the Petitioner's Mountain Biking Program. The Jurisdictional Opinion concluded that an Act 250 permit amendment was required.

The Commission Permit and Commission Decision state that there is jurisdiction over the Mountain Biking Program because such program is a substantial change to an existing permitted project. Environmental Board Rule ("EBR") 34. There has been no appeal from the Commission Permit and the Commission Decision. Therefore Act 250 jurisdiction exists over the Mountain Biking Program.

A case is moot if the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. In re Barlow, 160 Vt. 5 13, 5 18 (1993). Since jurisdiction has attached as provided in the Commission Permit and Commission Decision, the Petition is now moot and may be dismissed

III. ORDER

1. Act 250 jurisdiction exists over the lands identified in Book 40, Pages 1-38 and 45-84 of the land records of the Town of Dover, Vermont, and over the Petitioner's Mountain Biking Program pursuant to the Commission Permit and Commission Decision.

2. The Petition is moot and is dismissed with prejudice pursuant to EBR 18(D).

3. Pursuant to EBR 16, any party who objects to this Order, in whole or part, shall file an objection with supporting memorandum of law on or before **Wednesday, September 9, 1998**. If no objection is filed, then this Order shall become final.

Dated at Montpelier, Vermont this 25th day of August, 1998

VERMONT ENVIRONMENTAL BOARD

Marcy Harding

Marcy Harding, Chair

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