

MEMORANDUM OF UNDERSTANDING
APRIL 2, 1998

THIS MEMORANDUM OF UNDERSTANDING ("Agreement"), dated this 2nd day of April, 1998, is entered into by Sugarbush Resort Holdings, Inc. ("Sugarbush"), its successors or assigns, the municipalities of Fayston, Waitsfield and Warren (the "Valley Towns"), through their respective Boards of Selectmen, and the Central Vermont Regional Planning Commission ("CVRPC"), its successors or assigns:

WITNESSETH:

WHEREAS, on July 28, 1983 an agreement was signed between Sugarbush Valley, Inc., the Valley Towns, the Central Vermont Regional Planning Commission, and the State of Vermont establishing a Memorandum of Understanding between the aforementioned parties, and

WHEREAS, the 1983 Memorandum of Understanding ("MOU") was based on and intended to implement the recommended alternative of the July, 1983 Final Environmental Impact Statement ("FEIS") for the Sugarbush Valley, Inc. Winter Sports Area, and

WHEREAS, the 1983 MOU established a process to identify, communicate, and coordinate actions on issues of concern occasioned by the implementation of the alternative recommended in the FEIS and subsequent actions taken by SVI and the Valley Towns to insure that (1) the mitigating actions set forth in the FEIS and other permits were carried out; (2) the environmental safeguards cited in the FEIS and other permits were executed according to plan; and (3) initial mitigating actions were revised or eliminated, or new mitigating actions adopted in order to achieve desired social, economic or environmental effects, and

WHEREAS, in accord with the goals of the National Environmental Policy Act ("NEPA"), the parties desired to establish procedures which allow them to coordinate their efforts and minimize duplication in complying with NEPA, state and local requirements, and to provide one forum in which permit decisions reached will apply to and satisfy the same or similar requirements or purposes at all levels of governmental review and approval, whether federal, state or local; and

WHEREAS, the parties desired to establish a cooperative working relationship with common aims and defined responsibilities regarding the environmental impacts, and

WHEREAS, subsequent to the signing of the MOU, the Mad River Valley Planning District ("MRVPD") was established as the primary forum for communication, impact review, mitigation development, and coordinated action among the parties, and

WHEREAS, the Steering Committee, the governing body of the MRVPD, is comprised of members of the legislative and planning bodies of each of the Valley Towns, a representative of the Valley business community, and CVRPC, with formal but non-voting participation by Sugarbush, and

WHEREAS, while the parties believe that the MOU and MRVPD have established an appropriate system for communication, coordinated action, and identification of impacts and mitigation measures, the parties believe that past actions by Sugarbush and the Valley Towns, changes in development planning for Sugarbush, changing economic conditions, and changes to state and local review processes require the parties to prepare a comprehensive revision to the 1983 MOU:

NOW, THEREFORE, with the above aims in mind, the parties do hereby memorialize this Agreement as follows:

1. The Steering Committee of the MRVPD shall be the primary forum for communication among parties, for the review of impacts of development and actions taken by Sugarbush that may affect the Valley Towns, for determination of appropriate mitigation measures, and for the collection and analysis of relevant economic, social and environmental data and conditions. However, nothing contained herein shall be construed to limit the authority of the Valley Towns to exercise their jurisdiction over any project application in accordance with duly adopted municipal ordinances and bylaws.
2. In accordance with the MRVPD Articles of Agreement, parties shall participate in the MRVPD by appointing representatives, in the case of the Valley Towns one representative from the Select Board and one representative from the Planning Commission. The CVRPC shall have an ex-officio, non-voting seat on the Steering Committee. Sugarbush shall have formal, non-voting representation on the Steering Committee. Sugarbush and the Valley Towns shall fund the operation of the MRVPD in four equal shares.
3. At the discretion of the Steering Committee, MRVPD staff and resources shall be available to the Valley Towns and Sugarbush for mediation related to any project or proposed action involving the parties.
4. Although the United States Forest Service ("USFS") is not a party to this Agreement the parties recognize that the provisions of this Agreement will assist the USFS in discharging its duties under NEPA, and, to the extent that the USFS desires, the parties agree that it may fully participate in any proceedings established hereunder.
5. The provisions of 10 VSA Chapter 151 ("Act 250") shall be the statutory mechanism by which all issues between or among the parties shall be finally resolved, it being understood that the issuance of a permit, and the conditions attached thereto, or denial thereof, unless appealed, shall conclusively establish that the mitigating actions and environmental safeguards required by NEPA, if any, and the conditions imposed under Act 250, fully and fairly protect all parties' interests with regard to the impacts anticipated or projected at the time the permit is issued; provided, however, that subsequent to the meetings of the parties required by paragraphs 10, 11, 14 and 15 hereof, the parties retain their rights under law, if any, to petition District Commission 5 or the Environmental Board, in light of actual data and impacts generated by Sugarbush's activities, to revise, adjust or reduce existing conditions of any permit or to revoke any permit.

6. The Steering Committee may at its discretion request party status and participation under any and all Act 250 criteria for any and all Act 250 proceedings involving Sugarbush or the Valley Towns. However, nothing contained herein shall be construed to limit the right of any parties to this Agreement to participate in any and all Act 250 proceedings on their own behalf.

7. Notwithstanding any provision of this Agreement, any party to this memorandum may provide information when requested by the District 5 Environmental Commission and the Environmental Board on any matter raised in an Act 250 proceeding involving Sugarbush developments.

8. Nothing in this Agreement alters the Environmental Board and District 5 Environmental Commission's statutory obligation to perform the quasi-judicial functions under Act 250 and the Environmental Board rules.

9. Upon making an application to the District 5 Environmental Commission for an Act 250 permit or to a town board for any action that will subsequently require an Act 250 permit, whichever application is made first, Sugarbush shall furnish the MRVPD with a copy of its permit application.

10. As soon as possible thereafter the parties shall in good faith meet, through the MRVPD Steering Committee, to review, examine, analyze and discuss the application, and to determine the scope of MRVPD review and the need for special studies, if any.

11. The Steering Committee may determine that no MRVPD review is required for an individual application. Such a determination shall not preclude the MRVPD from considering in its future reviews such applications, their impacts, and any mitigation measures or conditions attached to such applications in local or state review processes.

12. If CVRPC determines that it will formally review a project or proposal for which Sugarbush is the applicant or co-applicant, CVRPC shall send the MRVPD written notice of its intent to conduct such a review, a statement of its conclusions from the review, and any recommendations made to the District Environmental Commission.

13. For any project for which it seeks party status, the MRVPD shall send the CVRPC written notice of its intent to seek party status and a written statement of mitigation measures to which the parties have agreed, if any.

14. If during the Steering Committee review all of the parties agree that a special study should be made to analyze a specific issue related to the Act 250 process and propose solutions thereto, the parties shall agree on the scope of any special studies done, and all the parties shall jointly attempt to select an independent and recognized expert to proceed with the study, if deemed appropriate. Expenses for any special study agreed to by the parties shall be paid for by Sugarbush, but if the scope of the special study exceeds that which is necessary to evaluate the impacts of the application, then the cost will be shared by the parties and any other party benefiting from the special study, as determined by the Steering Committee.

15. Upon completion of analysis and any special studies, the parties shall in good faith meet to attempt to forecast jointly from collected data any projected impacts and identify any unanticipated adverse social, economic or environmental impacts which have arisen or will arise on account of Sugarbush's development activities, and attempt to seek mutually agreeable solutions to any problems that the review, examination, analysis and discussions reveal.

16. Upon completion of its review, the Steering Committee of the MRVPD shall submit to the District 5 Environmental Commission and the Valley town with controlling authority, if any, a detailed description of the scope of its review, any impacts identified, and the mitigating actions to which the parties have agreed. The Steering Committee shall also submit a detailed description of any additional mitigating actions to which Sugarbush has not agreed, but which the Steering Committee believes are required for Sugarbush to satisfactorily meet its burden of proof on each Act 250 criterion which the mitigating actions address. The Steering Committee will support the position that by implementing all of the recommended mitigating actions the applicant satisfactorily meets its burden of proof on each Act 250 criterion that the mitigating actions address.

17. Commencing on the date this Agreement is formally signed, the parties shall fully and faithfully participate in the collection and analysis of data under the terms of Sections 18 through 36 of this Agreement.

18. On an annual basis the parties shall meet through the Steering Committee to review and assess in good faith the data collected by the parties in the context of all cumulative impacts occasioned by Sugarbush's development activities and impacts from development, growth, and change in the Valley Towns and surrounding region. The purpose of this meeting shall be to:

- (1) ensure that the mitigating actions and safeguards required by Act 250 and local permits have been and are being carried out;
- (2) measure the accuracy of the parties' projections and predictions against the actual data collected;
- (3) in light of actual data, forecast jointly any new or materially different adverse impacts and/or any impacts that were anticipated but that have not occurred; and
- (4) attempt to arrive at mutually agreeable solutions, including revisions, adjustments and reductions to existing mitigating actions or safeguards and new mitigating actions or safeguards.

19. Data collection shall be the responsibility of the MRVPD, Sugarbush, and CVRPC, as set forth in Paragraphs 23 through 36 below. The MRVPD shall obtain periodic summaries from CVRPC and Sugarbush and perform its own research in order to provide the Steering Committee with an annual data report for use in Act 250 and annual reviews.

20. The monitoring days on which specific data shall be collected by Sugarbush with respect to its operations, as set forth in Paragraphs 24, 25, 26, 32 and 33 below, shall be determined at the regular Steering Committee meeting in September of every year. The MRVPD and Sugarbush shall determine appropriate dates and recommend dates to the Steering Committee for approval.

21. Sugarbush shall pay costs related to monitoring day data collection as set forth in Paragraphs 24, 25, 26, 32 and 33,, its employee residence survey as set forth in Paragraph 29, and maintenance of the traffic counters at the intersection of Route 100 and Route 17, and at the Sugarbush Access Road west of Route 100. The need for additional funding specifically for data collection, if any, shall be determined annually by the Steering Committee.

22. A decision to delete, modify or add to the required data collection items may be made by the Steering Committee upon the joint recommendation of Sugarbush and the MRVPD, based on their review of monitoring day and other data.

23. The MRVPD, Sugarbush and CVRPC shall collect and store data and information as set forth in Paragraphs 24 through 36. The MRVPD shall be the repository for all summary information and reporting.

24. Traffic. CVRPC shall collect and store data from traffic counters at (1) Sugarbush Access Road above Sugarbush Inn; (2) Route 17 west of German Flats Road; (3) Route 17 and Route 100 intersection (3 legs); and (4) Sugarbush Access Road west of Route 100. CVRPC shall provide the MRVPD with a semi-annual summary of monthly Average Daily Trips (ADT) recorded at each station and an annual report on the Level of Service for the Route 17 and Route 100 intersection. Data shall be used to evaluate changes in level of service and ADTs. For monitoring days Sugarbush shall provide the MRVPD with counts of the number of parked cars in the parking lots at Sugarbush South/Lincoln Peak and Sugarbush North/Mt. Ellen.

25. Transit. Sugarbush shall gather and report to the MRVPD the number of buses arriving, total number of bus passengers, and average number of skiers per car on monitoring days. Sugarbush shall provide the MRVPD with data on ridership and utilization of any transit or bus service operated by Sugarbush. Data shall be used to evaluate changes in the average number of skiers per car, number of buses, transit ridership and transit services.

26. Energy. Sugarbush shall gather and report to the MRVPD its monthly peak demand and total utilization, as reported to Green Mountain Power Company. MRVPD shall maintain an annual record of the available capacity at Irasville & Madbush substations based on information from Green Mountain Power Company. Data shall be used to evaluate trends in monthly peak and average power demand

27. Municipal Finances and Services. The MRVPD shall collect and store the following information annually. The MRVPD shall provide an annual summary of the data and relevant trends to the Steering Committee and Sugarbush.

- K-5 and 6-12 enrollment for Warren, Waitsfield, Fayston, Moretown, Waterbury, Duxbury, Roxbury, Granville and Harwood Union.
- School capacity for Warren, Waitsfield, Fayston, Harwood Union
- Total number of fire calls in Warren, Waitsfield, Fayston
- Total number and type of police calls in Warren, Waitsfield, Fayston
- Total number of Valley Ambulance Service calls

- Building permits (number and type) in Warren, Waitsfield, Fayston, Moretown, Waterbury, Duxbury, Roxbury, Granville
- Tax rate(s) in Warren, Waitsfield, Fayston, Moretown, Waterbury, Duxbury, Roxbury, Granville
- Grand list in Warren, Waitsfield, Fayston, Moretown, Waterbury, Duxbury, Roxbury, Granville
- Town expenditures in Warren, Waitsfield, Fayston, Moretown, Waterbury, Duxbury, Roxbury, Granville from town reports
- Births and deaths in Warren, Waitsfield, Fayston

28. Community Services. Sugarbush shall provide to the MRVPD an annual report on its contributions to Valley and other service organizations.

29. Employee Residence and Housing. Sugarbush shall survey and report to the MRVPD the location of residences of its employees in summer and during peak winter employment. Sugarbush shall survey and report to the MRVPD, when available, information on the locations of schools in which employees' children are enrolled and the prior residence (move-in status) of new employees. Such data shall be considered confidential and shall not be released publicly except in summary form and with the prior approval of Sugarbush. The MRVPD shall complete an annual survey of the residence of employees of an appropriate sample of businesses within the Valley Towns. Data shall be used to evaluate secondary housing, traffic and fiscal impacts resulting from employment growth at Sugarbush and in the Valley towns.

30. Housing Markets and Costs. The MRVPD shall maintain current information on median housing values, median rents, and numbers of seasonal and year-round housing units from published sources. Data shall be used to evaluate trends in the Valley's housing stock, conditions and costs.

31. Protected Lands. CVRPC shall maintain a GIS map and database of all protected lands within the Valley Towns and the towns of Roxbury, Duxbury, and Moretown. The MRVPD and Sugarbush shall support CVRPC's work by providing information on land acquisition or protection actions.

32. Ski Area Utilization. Sugarbush shall provide the MRVPD with annual report on the total number of skier days for the season and on MOU monitoring days, and its total comfortable carrying capacity (ccc) for the season. Data shall be used to evaluate changes and trends in skier days and changes in ccc against seasonal weather conditions and Sugarbush's development activities.

33. Wastewater. Sugarbush shall provide the MRVPD with a monthly summary of total wastewater flows from its operations. Data shall be used to evaluate growth in flows relative to Sugarbush's development activities.

34. River Flows/River Quality. Sugarbush shall provide the MRVPD with a copy of its monthly water withdrawal monitoring report to the Vermont Agency of Natural Resources.

35. Population and Demographics. The MRVPD shall maintain current population reports for the Valley Towns, Roxbury, Duxbury, Moretown, Waterbury, Granville, and Washington County, and current State population projection information for the above towns. The MRVPD shall maintain current information (annually at a minimum) on poverty indicators for the above towns from State data sources. Data shall be used to evaluate trends in population growth, demographic indicators, population projections, and poverty indicators.

36. Economic Indicators. The MRVPD shall request 1st and 3rd quarter employment and wage reports from the Vermont Department of Employment and Training. Such data shall be considered confidential and shall only be made publicly available in summary form and with prior approval of the Vermont Department of Employment and Training. The MRVPD shall obtain monthly sales tax and meals & rooms tax receipt reports from the Vermont Department of Taxation. Data shall be used to evaluate trends in tax receipts, employment and wages along with other relevant economic indicators for the Valley Towns, Vermont, Washington County, Roxbury, Duxbury, Moretown, Waterbury and Granville.

37. In conjunction with its operations Sugarbush agrees to continue or institute the services described in Paragraphs 38 through 45 of this Agreement.

38. Sugarbush agrees to continue to supply medical doctors and facilities at the mountain to provide medical care to skiers under the present intern training in orthopedics, or, should said program be discontinued for any reason, to provide for an alternative method of providing for medical care;

39. Sugarbush agrees to continue maintenance and repair of its private roads at the mountain.

40. Sugarbush agrees to continue to supply water and sewage disposal facilities in compliance with state regulation.

41. Sugarbush agrees to make contributions to Valley service organizations as in the past.

42. Sugarbush agrees to continue to offer recreational programs presently used by the local and regional school systems in Warren, Waitsfield, Fayston and Harwood Union.

43. With respect to fire protection: Sugarbush

- (a) Will provide appropriate wording in future deeds to require contributions to support expenses for private fire protection;
- (b) Will train a reasonable number of employees for firefighting duties.

44. With respect to mitigation of traffic, Sugarbush will comply with applicable mitigation measures and permit conditions.

45. Sugarbush agrees to continue to provide its own security for its buildings and lands.

46. Should the parties determine in the course of their actions that any or all provisions of this Memorandum of Understanding have become invalid or require revision in light of changing economic, development, or other conditions, any party may at any time propose an amendment or amendments to the MOU. Such amendments must be agreed to by all parties to this MOU, using the Steering Committee as the forum for discussion. All parties must agree to and sign the revised MOU for such an amendment to take effect.

47. If any provision or clause of this Agreement or the application thereof to any party or circumstance is held to be invalid, such holding shall not affect the validity of its remaining provisions or applications which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are severable.

48. The failure of any party to perform faithfully the terms and conditions herein shall not prejudice the rights of the remaining parties.

IN WITNESS HEREOF, the parties have signed this Agreement on this 2nd day of April, 1998:

By: Richard W. McGarry
Richard W. McGarry, Managing Director
and Duly Authorized Agent
Sugarbush Resort Holdings, Inc.

By: Robert Vasseur
Robert Vasseur, Chairman, Select Board
Town of Fayston

By: Robert Messner
Robert Messner, Chairman, Select Board
Town of Warren

By: Elwin Neill, Jr.
Elwin Neill, Jr., Chairman, Select Board
Town of Waitsfield

By: Gunner McCain
Gunner McCain, Chairman
Central Vermont Regional Planning Commission

The undersigned, Hon. Howard Dean, MD, Governor of the State of Vermont, hereby acknowledges the execution of this Memorandum of Understanding on this 2nd day of April, 1998.

Howard Dean
Howard Dean, MD, Governor
State of Vermont