

11

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, dated July 28, 1983, by, between and among Sugarbush Valley Inc. (hereinafter "SVI") its successors or assigns, the municipalities of Warren, Waitsfield and Fayston (hereinafter the "Valley Towns"), through their respective Boards of Selectmen, the Central Vermont Regional Planning Commission (hereinafter "CVRPC") its successors or assigns, and the State of Vermont (hereinafter "Vermont"),

WITNESSETH:

WHEREAS, the United States Department of Agriculture, through the United States Forest Service (hereinafter "USFS") is completing its Final Environmental Impact Statement ("FEIS") for SVI's Winter Sports Area; and

WHEREAS, the parties desire to establish a process to identify, communicate, and coordinate actions on issues of concern that may be occasioned by the implementation of the alternative recommended in the FEIS and to insure that (1) the mitigating actions set forth in the FEIS shall be carried out; (2) the environmental safeguards cited in the FEIS shall be executed according to plan; and (3) initial mitigating actions are revised or eliminated, or new mitigating actions are adopted in order to achieve desired social, economic or environmental effects in the event that unanticipated consequences result from the FEIS alternative, its projections prove inaccurate or it creates unreasonable or adverse impacts; and

1

WHEREAS, in accord with the goals of the National Environmental Policy Act ("NEPA"), the parties desire to establish procedures which will coordinate their efforts and minimize duplication in complying with NEPA and 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 desire to establish a cooperative working relationship with common aims and defined responsibilities regarding the environmental impacts occasioned by the alternative approved by USFS in the FEIS:

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

1. The Valley Towns, CVRPC and Vermont agree that upon the execution and incorporation of this Memorandum into the FEIS they will not contest or appeal the sufficiency, adequacy or validity of the FEIS; and in regard to, and as limited by, the matters covered in this agreement, the Valley Towns, CVRPC and Vermont shall, at SVI's request, appear as witnesses in opposition to any application for injunctive relief or stay in an action challenging the sufficiency, adequacy or validity of the FEIS and this Memorandum as incorporated therein.

2. The Valley Towns shall develop and adopt capital programs that recognize existing and anticipated tax revenues that SVI's development and associated resort activities will

generate in the mountain vicinity, and the Selectmen shall work diligently to gain voter approval thereof.

3. Except as provided in paragraph 4, and excluding certificates of compliance for water and sewage disposal and any other technical permits and approvals as agreed to by the parties, SVI agrees that it will not make formal application for any permit or certificate to local or state boards, departments, commissions or agencies prior to filing an application for a permit pursuant to the provisions of 10 VSA 6001 et seq. (Act 250).

4. (a) In the event that SVI applies for an Act 250 permit at Sugarbush South to install snowmaking equipment, make trail changes, improve, rehabilitate or replace existing lifts on USFS lands, the Valley Towns, CVRPC and Vermont agree that with respect to the snowmaking, trail changes and lift improvements described immediately hereinabove, they will limit their participation under Act 250 to those criteria of 6086(a)(1-10) to which the mitigating actions set forth in Appendix A (herein incorporated by this reference) are related, and will support the position that by implementing the mitigating actions the applicant satisfactorily meets its burden of proof on each Act 250 criterion which the mitigating actions address. The Valley Towns and CVRPC will exercise no jurisdiction and require no local permits with respect to installation of snowmaking equipment, trail changes, and the improvement, rehabilitation or replacement of lifts on USFS lands. Notwithstanding any provision of this Agreement, any

party to this Memorandum may provide information when requested by the District V Environmental Commission and the Environmental Board on any matter raised in an Act 250 proceeding involving SVI developments covered by this Agreement. Vermont may provide information on any criteria of Act 250 not addressed by the mitigating actions in this Agreement.

(b) In the event that it is finally adjudicated that SVI need not apply for an Act 250 permit for any one or more of the development activities referenced in (a) above, and subject to the provisions and limitations of Appendix A, SVI may at Sugarbush South install snowmaking equipment, make trail changes or improvements and rehabilitate or replace existing lifts on USFS lands without a State Act 250 permit or local permits.

(c) Construction of units at Sugarbush South to the extent of SVI's remaining excess sewage capacity (16,820 gpd) on private lands shall be subject to State and local permits, but shall not require "Major Segment" review.

5. SVI shall submit its remaining development plans, including activities on USFS lands, in two major segments by making applications to local and state boards, departments, commissions or agencies having jurisdiction thereof, for development of (1) Sugarbush North (comprising mountain improvements, up to 400 housing units and commercial space) in 1983 or thereafter and (2) the Intertie Area at or after 1987,

with operation, occupancy and use of any constructed improvements at the Intertie Area not to occur prior to 1990.

6. 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, 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 8 and 9 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 SVI's activities, to revise, adjust or reduce existing conditions of any permit or to revoke any permit.

7. Commencing on the date the FEIS becomes final, as defined by NEPA regulations, the parties shall fully and faithfully participate in the collection and analysis of data under the terms of Appendix B, incorporated herein by this reference.

8. At least sixty (60) days prior to SVI's application for an Act 250 permit to develop Sugarbush North or the Intertie Area SVI shall furnish the parties a copy of its proposed application for said permit. Within ten (10) days thereafter the parties shall in good faith meet to review,

examine, analyze and discuss the data collected by the parties in the context of all cumulative impacts occasioned by SVI's development activities from the date the FEIS is final in order to: (1) insure that the mitigating actions and environmental safeguards required in the FEIS are being carried out; (2) attempt to agree whether revisions or adjustments to these mitigating actions or safeguards are required; (3) 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 SVI's development activities; and (4) attempt to seek mutually agreeable solutions to any problems that the review, examination, analysis and discussions reveal.

9. In 1991, or two years after completion of lifts S and U and associated trails at the Intertie Area, whichever last occurs, the parties shall meet to review and assess in good faith the data collected by the parties to (1) insure that the mitigating actions and safeguards required by the FEIS or the Act 250 permit 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 attempt to forecast jointly any new or materially different adverse impacts and/or any impacts that were anticipated to be adverse 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.

10. 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.

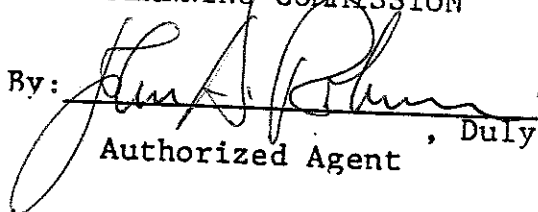
11. Nothing in this Agreement alters the Environmental Board and District V Environmental Commission's statutory obligation to perform the quasi-judicial functions under 10 V.S.A. Chapter 151 (Act 250), and to enforce the Board's rules.

12. Although USFS is not a party to this Agreement, the parties recognize that the provisions of this Agreement will afford USFS the opportunity to discharge its duties under NEPA, and, to the extent that USFS desires, the parties agree that it may fully participate in any proceedings established hereunder.

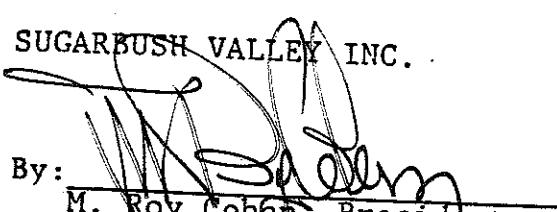
13. The failure of any party to perform faithfully the terms and conditions herein shall not prejudice the rights of the remaining parties.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year first above written.

CENTRAL VERMONT REGIONAL
PLANNING COMMISSION

By:  , Duly
Authorized Agent

SUGARBUSH VALLEY INC.

By: 
M. Roy Cohen, President
and Duly Authorized Agent

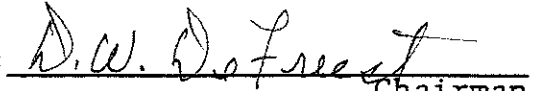
STATE OF VERMONT

By:


Richard Snelling, Governor

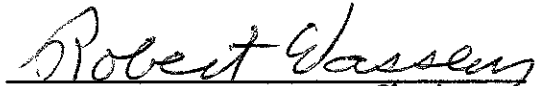
TOWN OF WARREN

By:


D.W. DeForest, Chairman
Warren Board of Selectmen


TOWN OF FAYSTON

By:


Robert Vassery, Chairman
Fayston Board of Selectmen

TOWN OF WAITSFIELD

By:


Hugh D. Campbell, Chairman
Waitsfield Board of Selectmen

[Memorandum - PS24P]

APPENDIX A

In conjunction with the mountain improvements at Sugarbush South, as referenced in paragraph 4(a & b) of the Agreement, SVI agrees to continue or institute the following services:

- (1) To continue to supply medical doctors and facilities at the mountain to provide medical care to skiers under the present intern training program in orthopedics, or, should said program be discontinued for any reason, to provide for an alternative method of providing for medical care;
- (2) To continue maintenance and repair of its private roads at the mountain;
- (3) To continue to supply water and sewage disposal facilities in compliance with state regulation;
- (4) To continue to operate a post office;
- (5) To make contributions to Valley Service Organizations as in the past;
- (6) To continue to offer recreational programs presently used by the local and regional school systems in Warren, Waitsfield, Fayston and at Harwood Union;
- (7) With respect to fire protection: SVI (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, and (c) will include in its plans for Sugarbush North a fire station and equipment sufficient to serve its properties at Sugarbush Valley and any other developments in the Village area or mountain

vicinity that contractually agree; unless a fire protection study for the Valley towns indicates a more appropriate alternative.

- (8) With respect to mitigation of traffic until other means of mitigating traffic impacts are arrived at through the process of the presubmittal meeting(s) and subsequent Act 250 proceedings with respect to Sugarbush North: SVI will (a) commencing with the '83-'84 ski season, provide at its cost, police or other law enforcement officials to direct traffic between December 15 and March 15 of each ski season on each weekend and during the Christmas and Washington's Birthday week holidays during peak hours each morning and afternoon at (i) the intersection of Routes 17 and 100, and (ii) the intersection of Route 100 and the Sugarbush Access Road; (b) commencing with the '83-'84 ski season, provide Valley-wide bus service within the network approved by the existing Certificate of Public Good on a schedule determined by SVI, and thereafter, commencing with the '84-'85 ski season, provide said bus service on a schedule recommended in the traffic study referred to in 10(e) in this Appendix; and (c) provide satellite parking at a location(s) agreed upon by the parties subsequent to analysis of the recommendations derived from the traffic study referred to in 10(e) of this Appendix;
- (9) To continue to provide its own security for its buildings and lands, and offer, on a contractual basis, to coordinate and to provide security for the buildings and lands of other mountain developments and developments in the vicinity.
- (10) Contribute funds as follows: (a) \$15,000 for Valley-wide planning efforts for the year July 1, 1983 through June 30, 1984

to be paid in three equal installments (the first installment paid 30 days after publication of the FEIS, the second installment paid 4 months thereafter, and the third installment paid 8 months thereafter), (b) an amount matching the average annual contribution from the three Valley towns for Valley-wide planning efforts up to a maximum of \$10,000 per year commencing the year July 1, 1984 through June 30, 1985 and thereafter until the year of review called for in Paragraph 9 of the Memorandum of Understanding, (c) commencing the year July 1, 1984 through June 30, 1985, \$1,000 annually for data management until the year of the review called for in Paragraph 9 of the Memorandum of Understanding -- to be offset by fees collected from third parties for the use of the data file, (d) a contribution of \$2,000 towards an analysis of firefighting needs in the Valley at a time agreed upon by the parties, and (e) a contribution up to a maximum of \$5,000 towards a study to develop specific solutions to Valley traffic problems, the study to be commenced following the 1983-84 ski season.

APPENDIX B

I. DATA COLLECTION:

The parties acknowledge and agree that the following topics for data collection are not necessarily all inclusive, and any party may propose to collect or obtain data on other topics. Likewise, the inclusion of topics for collection of data in this Appendix B shall not prohibit a party from claiming that a particular topic is not germane or relevant to the development proposed in the major segments. All final issues of additional topics or deletion of existing topics, or the relevance of same shall be determined in the major segment Act 250 proceedings. Further, all data collected as required below shall be accumulated and stored by the CVRPC and shall be available to all parties hereto at no cost for purposes of use in conjunction with the major segment reviews. SVI shall contribute an initial Two Thousand Five Hundred Dollars (\$2,500.00) for establishing the data collection system in the first year.

A. Traffic Information

1. Traffic Counters shall be placed or continued at the following points:
 - (a) Sugarbush Access Road above Sugarbush Inn (existing - to be maintained by Vermont Agency of Transportation);
 - (b) Route 17 west of German Flats Road (existing - to be maintained by Vermont Agency of Transportation);
 - (c) Route 100B north of Route 100 in Moretown (existing seasonally - to be maintained by Vermont Agency of Transportation);

- (d) Route 17 and Route 100 intersection (3 legs) - (to be provided by SVI, reimbursed to extent possible by Vermont Agency of Transportation, and by collection by the municipalities on a prorata basis from other development projects whose traffic impact will be felt at this intersection);
 - (e) Sugarbush Access Road and Route 100 (to be provided by SVI, reimbursed, to extent possible, by Vermont Agency of Transportation, and by collection by the municipalities on a prorata basis from other development projects whose traffic impact will be felt at this intersection).
 - (f) Additional locations for traffic counters may be added in the future as determined by Vermont Agency of Transportation or by the agreement of the parties.
2. The data collected will be used to project level of Service C. The design hour will be established by subsequent agreement of the parties hereto, and thereafter Service Level C shall be maintained at the design hour by making use of all mitigating measures which contribute to maintaining the Service Level at C.
- B. Energy Information
- 1. SVI shall provide a copy of its monthly printout submitted to Green Mountain Power Corporation;
 - 2. CVRPC shall request monthly demand figures for the Madbush and Irasville substations;

3. SVI will obtain, to the extent GMP cooperates, information with respect to any new or changed equipment of the utility used in the distribution and transmission of energy;
4. SVI shall provide estimates and figures, on particular mid-week and weekend days and holidays, as to the number of skiers who arrive by public or private mass transportation, and the average number of skiers per car.

C. Community Services Information

To be collected by CVRPC on an annual basis.

1. Schools: Total and by class enrollment in schools in Warren, Waitsfield, Fayston, Moretown, Waterbury, Duxbury, Roxbury, Granville and Harwood Union.
2. Fire Calls: equipment inventory and manpower in Warren, Waitsfield and Fayston.
3. Police Calls: Warren, Waitsfield and Fayston.
4. Ambulance Calls: Valley Ambulance Service.
5. Building Permits: Warren, Waitsfield, Fayston, Moretown, Duxbury, Waterbury, Roxbury and Granville.
6. Tax Rate: Warren, Waitsfield, Fayston, Moretown, Duxbury, Waterbury, Roxbury and Granville.
7. Grand List: Warren, Waitsfield, Fayston, Moretown, Duxbury, Waterbury, Roxbury and Granville.
8. Expenditures of towns for schools, roads, police, fire, administration, ambulance service, solid waste collection, and recreation.

9. Population Growth Rate: Warren, Waitsfield, Fayston, Moretown, Duxbury, Waterbury, Roxbury and Granville.

10. Landfill Reserve Capacity

D. Employee Housing Information

1. SVI shall provide information as to location of residences of employees of SVI.
2. CVRPC shall provide information on location of other recreation related employees.
3. CVRPC shall provide data on housing costs.

E. Farm Land and Rural Character Information

1. CVRPC to collect data on acres of farm land in Agricultural Production in 1983 and every three years thereafter.
2. CVRPC to collect data on amount of open and agricultural land under protection through purchase, transfer, or donation or development right transfers, contracts, clustered housing, dedication, or other method.

F. Ski Area Usage

1. SVI shall provide estimates or figures on number of skiers on certain mid-week, weekend and holidays as obtained from data it submits to the U.S. Forest Service concerning daily ticket calculations (no financial data of any sort shall be required to be divulged or made public by SVI or the U.S. Forest Service).
2. SVI shall provide estimate as to total number of skiers for the season.

3. SVI shall provide data on the number of cars in its parking lot and in ski-on, ski-off development parking lots on particular mid-week, weekends and holidays.
4. SVI shall request figures from Sugarbush Village Real Estate and/or competing entities on commercial utilization of beds at Sugarbush at peak times.

G. Water Supply and Sewage Disposal

1. SVI will demonstrate capacity to support water supply and sewage disposal demand generated by development required to support its proposed uphill capacity.

II. SPECIAL STUDIES:

If at a presubmittal meeting all of the parties agree that a special study should be made to analyze a problem and propose solutions thereto, the parties shall agree on the scope of any special study done, and all the parties shall jointly attempt to select an independent and recognized expert to proceed with the study. Expenses for any special study agreed to by the parties shall be paid for by SVI, but if the scope of the special study exceeds that which is necessary to evaluate the impacts of the major segment, then the cost will be shared by the parties and any third party benefitting from said special study.

III. IDENTIFICATION OF POTENTIAL IMPACTS FROM MAJOR SEGMENT WHICH WOULD OR MIGHT CAUSE AN UNREASONABLE BURDEN OR SIGNIFICANT IMPACT UNDER 10 V.S.A. §6086(a)(1) - (10) OR LOCAL REGULATIONS OR ORDINANCES:

- A. The following are guidelines for determination of unreasonable burdens or significant impacts for purposes of discussion:

1. With respect to the issue of community facilities and services, the impacts of the projected development will be considered to be unreasonable or significant if: (a) study and review indicate that the only alternative is for existing facilities and services be upgraded or new facilities and services provided to accommodate the impacts from the proposals in the major segment review; and (b) the necessary improvements have not been included in a duly adopted capital program which has met the standards set forth in paragraph 2 of the Memorandum of Understanding and have not been affirmatively voted and included in the town's budget; or the necessary improvements have in fact been included in a duly adopted capital program which has met the standards set forth in paragraph 2 of the Memorandum of Understanding, but have not been affirmatively voted on in an appropriate town budget or have been voted on in an appropriate town budget but have not been partially or totally completed. If the necessary improvements have been included in a duly adopted capital program, SVI, at its option may enter into an agreement with the Town(s) to advance the cost or partial cost for the needed improvements and shall subsequently be reimbursed on a pro rata basis either by development fees collected by the municipality or by funds from the budget of the town as subsequently approved by the voters.
2. With respect to the issue of transportation, the impacts of projected development will be considered unreasonable or significant if: (a) the level of traffic at the design hour exceeds a highway's capacity at Level of Service C, (b) study and review indicate that the only alternative is for existing

highways to be upgraded or new highways be provided to accommodate the impacts from the proposals in the major segment review, and (c) the necessary improvements have not been included in a duly adopted capital program which has met the standards set forth in paragraph 2 of the Memorandum of Understanding, and have not been affirmatively voted and included in the town's budget; or the necessary improvements have in fact been included in a duly adopted capital program which has met the standards set forth in paragraph 2 of the Memorandum of Understanding, but have not been affirmatively voted on in an appropriate town budget or have been affirmatively voted on in an appropriate town budget but have not been partially or totally completed. If the necessary improvements have been included in a duly adopted capital program, SVI, at its option may enter into an agreement with the Town(s) to advance the cost or partial cost for the needed improvements and shall subsequently be reimbursed on a pro rata basis either by development fees collected by the municipality or by funds from the budget of the town as subsequently approved by the voters.

3. With respect to the issue of housing, the impacts of the projected development will be considered unreasonable if: (a) new ski industry employee households, distributed at a rate higher than existing as estimated by RKG Associates in An Economic Impact Analysis of the Proposed Expansion of the Sugarbush Ski Area, 1981, in towns outside Warren and Fayston, generate direct service demands not offset by ski-related commercial development revenues; and (b) ski-on, ski-off vacation

housing has not been or will not continue to be provided immediately adjacent to the ski area at a ratio of at least .8 beds to 1.0ccc or a more accurate ratio agreed to by December 1, 1984.

IV. MITIGATION OF UNREASONABLE OR SIGNIFICANT ADVERSE IMPACTS:

- A. To resolve or correct "unreasonable" or "significant" impacts, the following is a set of principles or guidelines for mitigation:
1. A balance between uphill capacity at ski facilities and related housing and commercial development shall be achieved within each phase of the expansion.
 2. Adequate municipal facilities and services shall be in place to accommodate needs when they are demanded so that the needs will not create unreasonable demands.
 3. Private facilities and services to relieve burdens on municipal facilities and services will be accepted and encouraged to mitigate impacts. Assurances will be provided to protect municipalities from assuming responsibility for such facilities and services.
 4. Cost sharing should be worked out between the municipalities with respect to a service or facility where the provision of the service or facility in one town is the result of development in another town.
 5. SVI's portion of any cost sharing for improvements necessitated by activities during a phase should be based on the percentage of total demand for the improvements for which they are responsible.

6. Where efficiencies in the provision of a traffic improvement or municipal facility or service can be gained through intermunicipal contracts or other cooperative municipal efforts, these agreements and the mitigating actions should have been done as a prerequisite to any developer contribution to the facility or service.
7. The Towns of Warren and Fayston should cooperate with developers in the provision of employee housing through financial and regulatory incentives.
8. Developers should participate in programs developed to protect the rural character of the Valley.
9. Development should be consistent with town planning objectives and policies.

July 27, 1983

The Honorable John J. Easton, Jr.
Attorney General
109 State Street
Montpelier, Vermont 05602

Dear Mr. Easton:

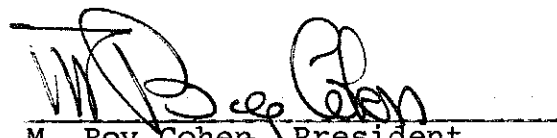
This letter is intended to resolve an ambiguity which the Vermont Attorney General's Office feels may exist in paragraph 6 of the Memorandum of Understanding between and among Sugarbush Valley, Inc., the municipalities of Warren, Waitsfield, and Fayston, the Central Vermont Regional Planning Commission, and the State of Vermont.


For clarification, the undersigned parties agree that the pre-submittal procedure established by the Memorandum of Understanding demands that the parties raise at those pre-submittal meetings all issues regarding federal, state or local permits. If no resolution or agreement is reached regarding applicable permits, then any party can proceed to the appropriate regulatory forum to resolve any differences.

Paragraph 6 does not mean that Act 250 preempts or replaces other state and local permit processes. Nor does it preclude the state and local governments from enforcing those permits. However, it does impose the mandatory obligation on all parties to raise any necessary state and local permit processes in the course of any pre-submittal meetings.


Sincerely yours,

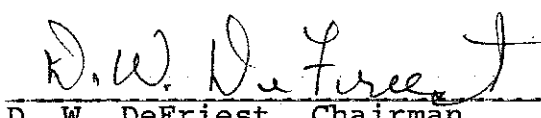
Dated: 7/28/1983 
Richard Snelling, Governor
State of Vermont

Dated: July 28, 1983 
M. Roy Cohen, President
Sugarbush Valley, Inc.

Dated: 7/20/83 
John A. Robinson
for the Central Vermont
Regional Planning Commission

Dated: 11/9/83 
Robert Vasseur, Chairman
Fayston Board of Selectmen

Dated: July 28, 1983 
Hugh Campbell, Chairman
Waitsfield Board of Selectmen

Dated: 10/19/83 
D. W. DeFriest, Chairman
Warren Board of Selectmen