

## SETTLEMENT AGREEMENT

This Settlement and Release Agreement (the "Agreement") is made and entered into by and between the **Vermont Association of Snow Travelers ("VAST")**, the State of Vermont (the "State"), the Vermont Agency of Transportation ("VTrans"), and the Natural Resources Board ("NRB") (collectively the "Parties").

### Background

WHEREAS, on September 30, 2009, a Jurisdictional Opinion was issued that concluded that the Lamoille Valley Rail Trail (the "Trail") required an Act 250 permit, Jurisdictional Opinion #5-06, #6-005 (2009) #7-267 (Reconsideration); and

WHEREAS, VAST applied for and obtained Act 250 permit for the Trail, LUP 7C1321; and

WHEREAS, VAST has filed a Petition for a Declaratory Order with the Surface Transportation Board arguing that Act 250 is preempted by federal law and that no Act 250 permit is needed for the Trail;

WHEREAS, the Parties desire to resolve and settle all disputes relating to the Trail with regard to Act 250 jurisdiction over the Trail;

WHEREAS, the Parties acknowledge the important role that the Trail plays for recreation, exercise, tourism and education in Vermont;

WHEREAS, the Parties are willing to work together to reach a settlement balance that will preserve the use of the Trail and the protections contained in LUP #7C1321; and

NOW COME the Parties, and in consideration of the mutual promises set forth herein, agree as follows:

1. Within two weeks of this Agreement being final, VAST and VTrans shall execute an amendment to the Trail Lease, *Amendment No. 6 to the October 2, 2006 Lease Agreement Between State of Vermont Agency of Transportation and Vermont Association of Snow Travelers, Inc. ("Amendment No. 6")*, that contains certain conditions set forth in LUP #7C1321, a copy of which is attached hereto as Exhibit A.
2. The certain conditions of LUP #7C1321, which have been incorporated to the Trail Lease as set forth in the preceding paragraph, shall be enforceable by VTrans as a term of the Lease.
3. In the event that VAST seeks an amendment of the Trail Lease from VTrans that affects or seeks to alter Amendment No. 6, notice shall be given by VTrans to the NRB of the request. The NRB shall have the opportunity to provide comments to VTrans on the amendment(s) sought.

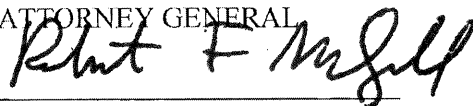
4. LUP #7C1321 shall not be enforced by the NRB absent a material breach of Amendment No. 6. This means that VAST shall not need to apply for an Act 250 Permit or Act 250 Permit amendment with respect to Phase II and III of the Trail and may proceed with the construction of the Trail without any further Act 250 approval. In addition VAST shall not need to apply for Act 250 Permit amendments for work done in the Trail right-of-way in completed sections of the Trail. VAST shall have the discretion to deviate from the sequencing of the Trail work contemplated by LUP #7C1321 and the NRB agrees that any change from the plans submitted with LUP #7C1321 mandated by a permit issued by another State entity shall not constitute a breach of Amendment No. 6.
5. In the event of a suspected material breach of Amendment No. 6, and before any enforcement of LUP #7C1321, VTrans shall provide written notice of the suspected material breach to VAST and afford VAST the opportunity to cure in a reasonable time. A copy of the written notice shall also be provided to the NRB. The NRB shall only seek to enforce LUP #7C1321 as described in paragraph 4 above if VAST fails to cure the material breach in a reasonable time. Enforcement by the NRB shall include the conduct that was determined to be a suspected material breach of Amendment No. 6 and any subsequent violations of LUP #7C1321, but shall not include purported violations of LUP #7C1321 that occurred before the suspected material breach of Amendment No. 6.
6. As provided in paragraph 2 of *Amendment No. 6*, and as amended by that document and herein, to the extent reasonably possible, the Trail shall be completed, operated and maintained in accordance with: (a) *Vermont Natural Resources Board, District Environmental Commission #7, Findings of Fact and Conclusions of Law #7C1321*, including but not limited to findings concerning noise, mitigation and potential trail reroutes ( *See*, e.g. Exhibit B at 54-55); (b) the plans and exhibits on file with the Commission; and (c) the conditions of this Amendment. Any material deviation therefrom shall be disclosed to VTrans.
7. The parties understand that by agreeing to this Settlement, VAST is committing to construct any future portion of the Trail in substantial compliance with the requirements of paragraph 6 above. VAST will make all good faith efforts to identify any deviation from the plans on file in advance with notice to VTrans as provided above.
8. This Settlement shall not be admissible as evidence in any future legal proceeding, including any proceeding brought under Act 250, other than an attempt to enforce LUP #7C1321 by a third party.
9. A notice to the parties to the previous Act 250 proceeding will be sent by e-mail or U.S. Mail by the NRB counsel detailing the terms of the settlement at the STB.
10. The State will notice the settlement for public comment on the NRB's website within two weeks of the execution of this Agreement. The public comment period shall be limited to 30 days. Following the close of the public comment period, the State shall have 20 days to withdraw from this Settlement for any reason.

11. If the State so withdraws, its responsive filing to the STB shall be due 20 days after said withdrawal. VAST will cooperate in obtaining further extensions of the deadline for the State's responsive filing as necessary.
12. If the State does not withdraw from this Settlement, VAST will move to dismiss its petition in STB Docket No. AB-444 (Sub-NO. IX) without prejudice and the State shall support said Motion.
13. The State may enforce LUP #7C1321 and/or Act 250 jurisdiction, in the event of a material breach of the Trail Lease as provided for in paragraphs 4 and 5 above.
14. If the State seeks to enforce LUP #7C1321 and/or Act 250 jurisdiction, the Parties shall be free to advance all arguments available to them relating to the imposition of Act 250 jurisdiction and no arguments shall be precluded on the grounds of *res judicata*, collateral estoppel, or similar doctrine of claim preclusion arising from the issuance of Jurisdictional Opinion #5-06, #6-005 (2009) #7-267 (Reconsideration) or VAST's filing of its Petition with the STB.
15. This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter, and there are no covenants, promises, agreements, conditions or understandings, written or oral, except as herein set forth. This Agreement may not be amended except by an instrument in writing executed by the party against whom such amendment is to be enforced.
16. The provisions of this Agreement shall extend and inure to the benefit of and be binding upon, in addition to the parties hereto, just as if they had executed this Agreement, the respective successors and assigns of each of the parties hereto and that party's administrators, directors, officers, partners, agents, servants, employees, representatives, affiliates, parents, subsidiaries, shareholders, predecessors, successors, and assigns, and each of the foregoing.
17. This Agreement may be executed in counterparts, each of which shall be original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this \_\_\_ day of \_\_\_, 2017.

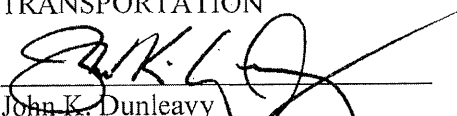
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