

STATE OF VERMONT

SUPERIOR COURT
ENVIRONMENTAL DIVISION

Docket No. 6-1-10 Vtec

RE: 4x4 Center Off Road Driver)
Training School CU Application)

STIPULATION OF DISMISSAL AND ORDER

NOW COME the parties, by and through their counsel of record, and hereby stipulate and agree that the Court may issue an Order dismissing the above-captioned appeal, with prejudice, subject to the following terms and conditions.

1. The application by Automotive Services International (a/k/a the "4x4 Center") ("the Applicant") and Mountain Operations and Development LLC (a/k/a "Bolton Valley Resort") ("the Landowner"), dated January 27, 2009 (and submitted to the Town of Bolton Development Review Board on February 6, 2009) for conditional use approval (the "Application") is hereby GRANTED, subject to all of the terms and conditions of the Development Review Board's December 8, 2009 written decision, approving the Application with conditions, except as herein provided. To the extent that any term or condition of the December 8, 2009 written decision is in direct conflict with this Stipulation of Dismissal and Order, this Stipulation of Dismissal and Order shall control.

CONDITIONS REGARDING USE, MONITORING & MAINTENANCE OF THE
CHUTE AND SOUTHERN DIP TRAILS

2. The Applicant may use the two trails, known as "Chute" and "Southern Dip," as shown on Exhibit A, attached hereto, as part of the 4x4 Center's "Off-Road Driver Training" program
3. The Applicant's use of the Chute and Southern Dip trails for the 4x4 Center's "Off-Road Driver

Training" program shall be, at all times, in accordance with all erosion control plans, standards and recommendations referenced in the Development Review Board's December 8, 2009 written decision and exhibit list, and the Bolton Land Use and Development Regulations. In addition, the Applicants use of the Chute and Southern Dip trails for the 4x4 Center's "Off-Road Driver Training" program shall comply with other conditions of the Development Review Board decision (except as provided herein) and the following additional measures intended to further reduce the risks of erosion associated with the use of the Chute and Southern Dip trails for the 4x4 Center's "Off-Road Driver Training" program:

- a. The Applicant shall maintain, at all times, a vegetative buffer at least 50 feet in width on both sides of Chute and Southern Dip, and at least 90 feet in width between any portion of the above-referenced trails and any surface waters, from whatever source as measured horizontally from the top of slope. No cutting or removal of vegetation, or disturbance of ground cover, shall be allowed in the buffer area.
- b. The Applicant shall construct and maintain such erosion prevention and sediment control (EPSC) measures/devices, including but not limited to stabilized ditches, swales, stone check dams, and water bars, as are necessary and appropriate to prevent stormwater runoff, sediment and debris from reaching Chute and Southern Dip, and adjacent trails and surface waters from the use for the 4x4 Center's "Off-Road Driver Training" program. In connection with the design, installation and maintenance of such erosion prevention and sediment control measures for the 4x4 Center's "Off-Road Driver Training" program, the Applicant shall regularly consult with, and implement the recommendations of, a qualified firm or individual having expertise (education, training and/or experience, such as Scott Moreau or similar staff at Greenleaf Consulting, Inc). The Applicant shall annually provide the name of such firm or individual to the Town, together

with evidence of regular consultation and any recommendations made by the firm or individual regarding erosion control.

- c. The Applicant shall insure that, at least once annually, at the conclusion of the summer season for the 4x4 Center's "Off-Road Driver Training" program ending October 31st of each year, the firm or individual referenced in Item b., above, conducts an inspection of the Southern Dip and Chute trails for compliance with the 4x4 Center's "Driver Training School Erosion Prevention and Sediment Control Plan" and the Vermont Department of Forest, Parks and Recreation's "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont (AMPs)." This annual inspection will be completed on or before November 15.
- d. A copy of all daily logs required by the School's Act 250 permit(s) will be provided to the Town at the same time the logs are provided to the State. The Applicant shall implement any recommended remediation measures in a timely manner as recommended by the EPSC or AMP Professional. The annual review and reporting requirements are not applicable should the 4x4 Center's "Off-Road Driver Training" program not be in operation.
- e. Within 30 day of the date of this Order, and prior to commencing winter use of the Chute and Southern Dip for the 4x4 Center's "Off-Road Driver Training" program, the Applicant shall install (bury) at least four rows of rubber conveyor belt "flaps" on the Chute trail, so that the "reveal" portion of the flaps extends at least 5 inches above the ground, to act as prominent water bars. The conveyor belt flaps shall be installed in accordance with a plan developed by an EPSC and/or AMP professional and shall be regularly maintained/cleaned out to avoid a buildup of material on the uphill side of the flaps.
- f. In the area at or near the lowest water bar on Southern Dip, the Applicant shall regularly

maintain and cleanout the existing sediment catches, install larger size angular stone (as recommended by an EPSC/AMP professional) in the lowest (stream side) tire track, and take such other steps (also as recommended by an EPSC/AMP professional) as are necessary and appropriate to prevent any and all runoff or erosion from the 4x4 Center's "Off-Road Driver Training" program from reaching the adjacent stream. :

- g. At the lower end of the Chute trail, where Chute intersects with "Middle Connector," the Applicant has constructed a small sediment trap. The Applicant may, if it chooses, fill this existing sediment trap with mid-size stone/boulders, and use this area as a feature to drive over the stones and adjacent ledge. In the event that the Applicant chooses to fill the existing trap, it shall also (1) increase the capacity (and life) of the existing trap by building up the dam on the southeast face of the trap; (2) construct a second trap below the first trap which will accept, via an appropriate conveyance, the overflow from the first trap in the event that the first trap becomes ineffective due to sediment build up. Both traps shall be regularly maintained to ensure that they function as intended to contain stormwater runoff, sediment and debris, and prevent the same from eroding the trail or discharging to any surface water.
- h. The maintenance requirements of subsections (d, (e) and (f) shall not apply to the Applicant should the 4x4 Center's "Off-Road Driver Training" program not continue in operation, unless it is replaced by a successor 4x4 driver training school or similar operation that also uses the Chute and Southern Dip trails, in which case the maintenance obligation shall continue in effect and shall be the responsibility of the successor. In the event that the 4x4 Center's "Off-Road Driver Training" program does not continue and is not replaced, and use of the Chute and Southern Dip trails also does not continue, then the Landowner shall, at its option, either (1) assume responsibility for

maintaining any erosion control infrastructure installed pursuant to subsections (e), (f) and (g), or (2) promptly "de-commission" and remove the same to avoid failure of such infrastructure over time. Failure to decommission within a reasonable time shall evidence intent to assume the maintenance obligation.

4. The Applicant shall provide the Town with copies of any and all correspondence to and from representatives of the Vermont Agency of Natural Resources and Act 250 related to the 4x4 Center's "Off-Road Driver Training" program's use of Chute and Southern Dip, and shall give the Town at least 30 days advance notice of any changes or modifications to State of Vermont environmental permits relative to or materially impacting the trails related to the 4x4 Center's "Off-Road Driver Training" program.
5. Upon reasonable notice, the Applicant shall provide the Town's zoning Administrator with periodic access to the expanded trails system, including the Southern Dip and Chute trails, so that he may ascertain compliance with any Town Development Review board imposed conditions and this Order related to the 4x4 Center's "Off-Road Driver Training" program. In the event that the use of Chute and Southern Dip by the Applicant results in on-going, undue erosion or other sustained, adverse environmental impacts, notwithstanding implementation by the Applicant of the erosion prevention and sediment control measures referenced above, nothing herein shall preclude the Town's zoning Administrator from ordering that the use of those trails cease unless and until appropriate remedial action is taking.

CONDITIONS REGARDING MASTER PLANNING

6. The Applicant shall, within one year of the date of this Order, file with the Town, a list of all areas on the Bolton Valley Resort property, which the Applicant reasonably expects that it may develop for the 4x4 Center's "Off-Road Driver Training" program within the next three years, and a list of

associated uses, trails, structures, facilities and features.

In addition, the Landowner may, within, one year of the date of this Order, file with the Town, a list of those areas on Bolton Valley Report property, which the Landowner reasonably expects that it (or one or more of its agents, affiliates or lessees) may develop within the next three years for outdoor recreational use not currently authorized by permit (i.e., new uses) as part of its current resort, and a list of all anticipated outdoor recreational uses and associated structures and facilities.

For those areas and uses identified, the Applicant and/or the Landowner shall develop and file for Town review a comprehensive Master Plan for Erosion Prevention, Sediment Control and Stormwater Management ("EPSC Master Plan"), prepared by a certified professional in erosion and sediment control and/or a stormwater management, that addresses all areas and uses identified on the list, and conforms to the current "Vermont Standards and Specifications for Erosion Prevention and Sediment Control".. The master plan for erosion control and stormwater management shall be submitted for review and approval by the Bolton Development Review Board (DRB), which may consult with other EPSC professionals and require modifications to the plan.

Once the EPSC Master Plan is approved by the DRB for proposed new outdoor recreational uses on the list, such uses shall be exempt from compliance with §3.16(B) of the Land Use and Development Regulations, provided that they are developed in full compliance with the EPSC Master Plan's requirements, including the EPSC measures and BMPs identified therein, and there is no other evidence of on-going undue erosion or stormwater runoff related to such new outdoor recreational activities on the list.. For the purposes of this stipulation, "undue erosion" shall include any erosion that fails to meet the criteria for turbidity in the Vermont Water Quality Standards. The Town shall have the right to enforce violations of the EPSC Master Plan

in the same manner and to the same extent as any other violation of the Zoning Regulations.

- a. The EPSC master plan required by this agreement for listed outdoor recreational uses shall be prepared in accordance with the current "Vermont Standards and Specifications for Erosion Prevention and Sediment Control," and at minimum shall include the following components:
 - i. A location map and site plan that identifies the type, location and extent of planned outdoor recreational facilities and uses in relation to steep ($\geq 15\%$) and very steep ($> 25\%$) slopes, mapped surface waters and wetlands, existing facilities, public roads and adjoining properties. Said map and plan shall be of sufficient scale and detail to allow reasonable analysis of slopes and drainage in relation to existing features and proposed improvements.
 - ii. A description of the level, intensity or frequency of proposed uses.
 - iii. Descriptions and schematics of the Best Management Practices (BMPs) to be employed in connection with a particular use or activity to ensure that erosion, sedimentation and stormwater impacts are minimized to the greatest extent possible. The BMP's shall comply with generally accepted state standards and specifications as certified by an EPSC professional.
- b. This master planning requirement for new outdoor recreational activities on the list applies only to §3.16(B) of the Bolton Land Use & Development Regulations. It does not exempt planned outdoor recreational facilities or uses identified in the master plan from any other applicable requirements of the regulations.
- c. This master planning requirement shall not prohibit an application for review and approval of additional activities that are not

identified within the master plan. Such activities will be subject to review under §3.16 if applicable, unless incorporated under an amended master plan approved by the Development Review Board.

- d. Should the Town request revision, supplementation, addition or modifications to the filed master plan, the request shall be supported by written recommendations and reasonable justification supplied by an independent ESPC professional.

7. Nothing in this Stipulation of Dismissal and Order shall constitute a waiver by the Town of its duty and obligation to enforce applicable provisions of local, state and federal law that it is charged with enforcing, including provisions of the Bolton Land Use and Development Regulations.

8. This Stipulation of Dismissal and Order is the result of a negotiated agreement between the parties and is based on the unique facts and circumstances of this case. Nothing in this Stipulation of Dismissal and Order shall be deemed to establish a legal precedent in any other case involving these parties (or any other person or party), or form the basis for any other legal or equitable claim whatsoever, except in the context of a proceeding involving enforcement of the terms and conditions set forth herein, including the right of the Landowner or Applicant to challenge the applicability of any provision of the Bolton Land Use and Development Regulations, including but not limited to, Section §3.16(B) to any existing or future use of or on the on the Bolton Valley Report property.

9. The terms and conditions of this Stipulation of Dismissal and Order shall run with the land and shall be binding on the parties and their heirs, successors and assigns. Nothing in this Stipulation would prevent future modification or revision to the terms and conditions herein by written agreement of the parties.

DATED at Bolton, Vermont, this 16th day of MAY, 2011.

TOWN OF BOLTON
By: Robert J. Volle, Chair
Its duly authorized agent

DATED at Bolton, Vermont, this 26 day of April, 2011.

AUTOMOTIVE SERVICES INTERNATIONAL, INC.
By: [Signature]
Its duly authorized agent

DATED at Bolton, Vermont, this ___ day of _____, 2011.

MOUNTAIN OPERATIONS AND DEVELOPEMNT LLC
By: [Signature]
Its duly authorized agent

APPROVED AS TO FORM:

Joseph S. McLean
Attorney for the Town of Bolton

[Signature]
Thomas G. Walsh
Attorney for Automotive Services
International, Inc.

[Signature]
Liam L. Murphy
Attorney for Mountain Operations
And Development, LLC

SO ORDERED:

Environmental Judge
Date: _____