

## **VIII. EQUESTRIAN OPERATIONS**

### **A. Proposed Findings of Fact Regarding Equestrian Operations**

599. Michael Mauss of 581 Old Stage Road, Williston, Vermont testified before the court.
600. Mauss and his wife Tina own and operate Windswept Farm, an equestrian facility that boards up to 35 horses, trains horses and offers riding lessons.
601. The services that are provided to the owners of the horses that board at Windswept Farm range from boarding, feeding, cleaning, pasturing, training and lessons. Mr. and Mrs. Mauss work closely work with veterinarians as well to ensure the health of the horses.
602. Windswept Farm has been an equestrian facility for 30 years.
603. Mr. Mauss has more than 30 years experience teaching beginner through Grand Prix level dressage. He trained at the Spanish Riding School in Vienna, Austria and has studied at the US Combined Training Association Center in Middleburg, Virginia. Additionally, he has trained and sent students to regional eventing championships where they have competed successfully and has been the Director of the dressage performances at the Vermont Mozart Festival for 31 years.
604. Mr. Mauss has a PhD in History from the University of Connecticut.
605. Mr. Mauss has also taught history at the University of Connecticut at Torrington.
606. Mr. Mauss describes the general temperament of horses as animals with varying personalities, but all horses are prey animals and are very aware of their surroundings. They are easily startled and can react unpredictably to startling stimuli, such as sudden noises or vibrations, including explosions, loud vehicle noise, gun shots and the like, especially with inexperienced riders.

607. Horses sense vibrations both through their ears, as humans do, and through their hooves. A rumble in the ground that would be imperceptible to humans can be clearly felt by horses and can startle them.
608. Horses react to sudden noises and stimuli without warning by bolting, spinning or bucking. Horses, like deer, have an instinctual flight response to startling stimuli.
609. When a horse bolts, it can reach speeds of 25–30 miles per hour very quickly. Bolting is an uncontrolled forward movement. Horses have tremendous thrust coming out of the gate and can throw even an experienced rider when they bolt.
610. Horses, when startled, may bolt, rear, move quickly to the side, or spin. The main danger for a rider is from being thrown from the horse. A rider thrown from a horse, either immediately or after the horse has gotten up to speed, can suffer serious injuries. A rearing horse can fall over backwards, perhaps crushing the rider or injuring the horse. A person walking the horse, or standing nearby, may be knocked down and trampled by a startled horse. Also, aside from the risks posed to people, startled horses can easily injure themselves.
611. The average weight of a horse is between 1,000 to 1,200 pounds.
612. In order to minimize the risk of dangerous startle responses, people should keep and ride the horse in an area where sudden stimuli are rare or non-existent. Experienced riders try to prepare for startle responses, but if there's no notice, you can get unseated or unmounted and perhaps run over.
613. A friend of Mr. Mauss that works with him at the Mozart Festival is a local professional named Lisa Kulski. Her father is Terry Boyle, the landscape architect. Ms. Kulski was

training her horse when a truck noise, probably a “jake brake,” startled the horse. The horse bucked her off, severing her spine. Lisa is in a wheelchair to this day.

614. When looking for riding lessons or places to train or board their horses, people take many factors into account. Generally they look for good facilities where they can concentrate on riding and training with a minimum of distraction. Potential customers will consider the safety of the facility, particularly when they are looking for riding lessons for their children. Customers have choices in deciding where to ride, train and board horses. Customers should and will avoid equine operations where there is relatively higher risk of accidents due to sudden stimuli such as loud noises.
615. Horse riding is an aesthetically enjoyable experience, harkening back to a simpler time. People ride horses to relax and get away from the modern world and the stress of their lives. The beauty and serenity of the setting, and calm, quiet, aesthetically pleasing surroundings, play a major role in a person’s choice of where to ride, train and board their horses. The calm environment is important even when riders are training hard and intensely, because it is important that the horse not be agitated. If the horse is stressed, it increases the possibility of a bolt or something unfortunate happening.
616. Vermonters and visitors have a broad array of equestrian facilities to choose from. One such facility is the McMullin horse farm, which is located on a very nice piece of land fronting on the Mad River. The McMullin horse farm is a nice, well-established facility located in a scenic and serene setting. Bob and Beverly McMullin have owned the McMullin horse farm for many years, and currently lease the facility to Barbara Ferris, who operates it as Mad River Stables.

617. Mr. Mauss has knowledge of the quarry that is proposed to be located uphill from Mad River Stables, which would mean blasting, crushing rocks, lots of trucks going in and out and, in general, lots of noisy activity close to the stables.
618. If a quarry was put into operation near Mauss' horse farm, it would have a terrible impact on business and he would have to try and relocate his business, as an active quarry would be incompatible with an equestrian operation. There would be a high level of risk and that would possibly mean spending time wasted in court defending lawsuits instead of spending time riding and training. Mauss also recognizes that it would be wrong to put a customer or their child at risk when he knows that risk could be avoided by riding elsewhere.
619. Liability would be increased with a nearby quarry, as defined in Vermont Statute 12. V.S.A. § 1039, governing liability for injuries or death from equine activities. The explosions, blast horns, and other industrial noises from the quarry would increase the risk of a startle response that could injure customers. That risk would not be obvious to the person injured and the statute would not protect Mauss from lawsuits.
620. In order to make the risks posed by the nearby quarry obvious, Mauss would have to disclose to potential customers the presence of the quarry and the fact that sudden noises from the quarry could result in unpredictable consequences, including injury or death, which would affect business because potential customers would obviously take their business elsewhere. Even aside from the risk of injury, some of Mauss' customers come to relax and "get away from it all," enjoying the countryside in peace and quiet. Others come to focus intensely on their training, and their horse's training. That requires a good deal of concentration. An industrial operation nearby would detract from the experience

and the customers would likely take their business elsewhere. Finally horses are easily stressed and sensitive to changes in their environment. Regular sudden noises could impact the horses' emotional and physical well-being, causing the people who board their horses at the facility to look for more quiet environs.

621. Liability insurance, at the very least, is carried for Mauss' equine operation. If Mauss were no longer shielded from liability based on the non-obvious risks posed by a nearby quarry, it would affect him because, assuming he could even get liability insurance, the premiums would be much higher than they are now.
622. Although it is possible to train horses to ignore sudden noise and suppress their startle response, such as in the case of police horses that work in cities and military cavalry, even horses that are trained not to be startled into a flight response by sudden noises such as explosions, gun fire, truck noise and air brakes can react with a flight response. You cannot predict the response of a horse to sudden noises. Even with extensive training, there is an innate genetically hardwired flight response which cannot be eliminated. There is a huge variation of tolerance from horse to horse, and with the same horse from day to day, as to what level of stimulus will trigger that flight response.
623. Being a history professor, Mr. Mauss cited two historical events that point out the unpredictable response of horses to sudden stimuli. The first was the charge of the Scott's Grays at the Battle of Waterloo. Scott's Grays were sent against the French, as horses began to gallop, they went through the French line and could not reform because they were panicked; French lancers killed them all. The horses had received the normal cavalry training: weapons fired from their back, saber drill, sparring from horse back, artillery. The second historical event is the Battle of Balaclava in the Crimean War

“Charge of the Light Brigade” that Tennyson wrote about. Horses charged and could not reform in time to save their own lives. The training that these horses received was similar – with more modern weapons.

624. Another insight from history is the Palestine campaign in WWI, where the commander took soldiers off the horses and used them as infantry because the horses were too unpredictable. Once a horse gets panicked it's very difficult to predict what it will do. The commander could not risk losing both horses and men, so he used the horses merely for transport to the area of battle.
625. Instances of sudden stimuli at Mauss' farm include occasional thunderstorms, and during the winter the snow on the roof unloads with a “woosh-thump” sound. Either of those sounds, or any unexpected stimuli, can spook a horse and cause it to bolt, rear, or spin. When a horse spooks there is a serious danger that even an experienced rider will be thrown and injured.
626. The Vermont Air National Guard has an air base near the Mauss farm. Very rarely, maybe once every two years, a military jet makes a sonic boom in the area. Upon hearing the sonic boom, the horses tend to scoot much like a dog will scoot away if you sneak up on it and make a loud noise.
627. Another instance of sudden stimuli that occurred near the Mauss farm was one time a hot air balloon fired its burner and an experienced rider's horse bolted. Even after the rider got her horse under control, she could not get her horse to go back to the barn because the balloon appeared to be in between the horse and the barn.
628. Several years ago there was construction noise, as a developer built two houses behind the Mauss farm. The construction involved two blasts with a telephone warning before

each blast. The first blast was tiny, so when they called the second time, Mr. Mauss didn't worry about it so much. The second blast was loud, however, and it triggered a flight response in the horses.

629. Risks can be managed, but can never be eliminated. All that can be done is to disclose the risk and try to keep the risk at an acceptable level.
630. Complete safety cannot be guaranteed for the riders at the Mauss facility. Riding is inherently risky and the only thing that can be done is to limit the risk and disclose the danger to customers. The horse activity liability statute requires disclosure of risks that are not otherwise obvious to participants, so, for example, customers would be told about snow coming off the roofs. There have never been any accidents resulting in injuries at the Mauss farm.
631. Mr. Mauss directs the dressage performances at the Vermont Mozart Festival, and the criteria for participation in those performances are that both horses and riders need to be very well trained, at least in second level dressage. Second level dressage means expert riders on well-trained horses, at 6–7 years of training for the horse and 10–12 years of training for the rider. The horses must have a good temperament and be vetted. Neither the horse nor the rider is likely to do anything foolish.
632. Even though Mr. Mauss only accepts expert riders and extremely well-trained horses for the dressage performances at the Vermont Mozart Festival, and despite the extensive training and vetting to ensure that nothing unexpected happens, the Festival has had two incidents of startled horses panicking out of control.
633. Tina Mauss of 581 Old Stage Road, Williston, Vermont testified before the court.

634. Tina Mauss and her husband Michael own and operate Windswept Farm, an equestrian facility that boards up to 35 horses, trains horses and offers riding lessons.
635. Tina Mauss teaches beginner through advanced riding lessons and runs the kids riding camp during the summer.
636. The revenue stream varies over the course of the year, with significant increases in the summer months, as the weather is better for riding and kids are out of school, which makes it a better time to conduct riding camps and have more lessons. Camps are a big base of income for facilities that teach children.
637. When a parent considers sending their child to this camp, they are told that riding is an inherently dangerous activity, but that the operators of the facility strive to keep the risks at an acceptable, manageable level. The parents also sign a release from liability form.
638. There is no way to control everything, but some ways to manage the risk of riding involve avoiding putting someone in a situation when something will kick in the horse's flight instinct. Lessons are cancelled if snow is going to be coming off the roof or there's going to be a thunderstorm, but riders may ride through at their own risk. Horses are also put into their stalls in the barn, as the stall is the horse's home. They are safer under those circumstances. If the horses are out in the field and get spooked, they might run through the fence and get injured.
639. One instance of a close call at the farm was during kids summer riding camp when there was a thunderstorm. The kids dismounted and held their horses. When the storm got louder, with thunder, the horses were put back in their stalls, but one horse, according to Ms. Mauss, "completely flipped out" and had to be removed from the situation immediately.



640. There was no prior indication that this horse had a lower tolerance to startling stimuli than the other horses. This was a 20+ year old horse that had never given any indication that it would react this way. He normally was a very calm horse but out of the blue he lost his mind. It was very scary and completely unpredictable.
641. A nearby quarry would have a devastating effect on the safety of the instructional programs at the farm. A quarry operation involving loud noises and vibrations would pose a serious safety hazard to the horses and riders, especially the young or inexperienced riders. The operation of Windswept farm would be in jeopardy as Mr. and Ms. Mauss would have to be considered whether operations could be continued in good conscience considering the increased risk of liability.
642. Alice Peal of 741 Spring Hill Road, Waitsfield, Vermont testified before the court.
643. Peal is the IT systems administrator for Distributed Energy Systems in Barre, VT.
644. Peal is aware that there is a proposed plan for a quarry in Moretown, next to Mad River Stables and just north of Scott Sainsbury's horse farm.
645. The operation of the proposed quarry will include blasting, crushing and removing millions of cubic yards of rock by truck. It will be a noisy, dusty, industrial business and will be in operation in the Mad River Valley for more than thirty years.
646. Peal is the Committee Chair for the Riding Clinic of the Vermont Icelandic Riding Club. The Club uses Scott Sainsbury's land and equine facilities for riding clinics. Peal and her husband also ride for pleasure on the Sainsbury's land.
647. "Icelandic" refers to Icelandic horses, which are a small, sturdy breed that was brought to Iceland by the Vikings many hundreds of years ago. They are not indigenous to Iceland, and there has been no mixing with other horse breeds since 1100 AD. Icelandic horses

are very rare in the United States. Icelandic horses have unique gaits, and are sometimes called “the last of the naturally gaited horses.”

648. “Tolt” and “Flying Pace” are unique gaits that require quite a bit of skill to ride them well. The lateral gaits move the rider in unusual ways, making it tricky to stay on.
649. An Icelandic horse is less than 1,000 pounds, pony-sized, but they are certainly not ponies.
650. Peal is the owner of three Icelandic Horses and rides them many places, including the Sainsbury facility, where she goes quite often.
651. Icelandic horses have a very strong herd instinct. They are more prone to flight than other breeds. Also, they tend to bolt forward instead of jumping or whirling. Icelandic horses are always on the lookout for potential danger, and have a tendency to make their own decisions when they sense danger. It is like they have their radar up all the time.
652. Peal’s personal experiences regarding tendency toward flight include a time when someone was shooting an air rifle and she had to get off and walk the horses because the unusual sound was spooking them. The mare was scared of the unexpected noise as it was new and different. New and different noises, or really anything new and different, can scare a horse. Horses are very sensitive to change. Horses are prey animals and constantly monitor their surroundings for anything that might signal danger. One never knows what might scare a horse.
653. One example given by Peal was that one of her Icelandic horses has a mailbox phobia and thinks mailboxes on posts are the “work of the devil.” The horse always gives them a wide berth and gets skittish around them. The horse got somewhat used to them, and

then one day a person opened a mailbox near her and it was like her worst fears were confirmed.

654. Some carefully selected horses can be trained to suppress their flight response, but that is specialized training, for example, for police horses. Even those horses are still sensitive to sudden noises and movements. A person would be in big trouble if they set off a firecracker near a police horse. Horses need to be sensitive. The horse's sensitivity to stimuli around them and their ability to make independent decisions is crucial to the horse's survival. A horse cannot be bred or trained to become desensitized to sudden noises and unexpected stimuli.
655. A personal scary experience that Peal had on the Sainsbury farm was when she took her mare out riding on the Sainsbury land and skidded a little near a metal door. The skid kicked up some pebbles which hit the door, making a noise, and the mare bolted while Peal was still on her. Peal was okay, but a less experienced rider might not have been.
656. Peal has been riding Icelandic horses for about eight years, but has been riding horses of different breeds ever since she was a little girl.
657. In order to manage the risk that the horse might bolt from a sudden stimulus, Peal always wears a helmet, makes sure her tack is in good repair and secure and pays close attention to the horse and her surroundings. Paying attention to the surroundings is important because one has to try and anticipate the stimuli that may frighten the horse and can prepare for its reaction.
658. In anticipating a horse's reaction, one can never be sure what will startle a horse, or how a horse will react to a startling stimulus, even if you have worked with your horse for many years. A horse's radar is always on, scanning its surroundings for danger, and the

horse is aware of things that we don't pick up on. Horses react in unexpected ways. There was some logging done on one of the roads Peal rides on and one of her horses got freaked out by the "scary woodpile of death."

659. When a horse encounters a sudden unexpected stimulus, it should be dealt with by running away first and figure it out later.
660. A ride is less enjoyable when there are a lot of stimuli to pay attention to, as it can be stressful for both horse and rider, especially when several delivery trucks pass by during the ride.
661. Peal's horses are very valuable, ranging in value from \$9,000 to \$20,000.
662. Peal, who is authorized to speak for the Vermont Icelandic Riding Club, states that the number of riding clinics may vary but they are held up to four times a year, generally beginning in early spring through fall. They have always been held at the Sainsbury farm.
663. The Sainsburys are compensated in the range of \$800 - \$1,000 per weekend for use of their facilities for riding clinics. The costs are broken down to \$100 a day for the arena rental and \$10 per horse per night for the stalls. Pat Sainsbury is also hired to provide food for people and horses.
664. When clinics are being conducted, the traffic on Route 100B is obvious and riders are very aware of it, especially when large trucks drive by. The horses, of course, are aware of every source of noise whether from the road or anywhere else.
665. When the riding clinics are conducted, riding instructors specific to Icelandic horse riding are invited to come to the Mad River Valley and the Vermont Icelandic Riding Club hosts the clinic. The Vermont Icelandic Riding Club advertises to attract people who pay

a fee to participate in the clinic. Participants generally bring their own horses. The clinic runs Friday through Sunday, with private lessons afterwards on Monday. Attendance is limited based on the instructor's wishes and ability. It has ranged from 10 – 16 people and there's always a waiting list.

666. If the Vermont Icelandic Riding Club became aware that the quarry had been permitted and was going to begin operations at the proposed location, a meeting would be held to discuss options. Members of the club would be told about the quarry and a discussion would be held about how close the quarry is to the Sainsbury facility. Potentially, a new location would be sought. After the meeting, the presence and risk of the quarry would be disclosed to potential attendees.
667. The clinic attendees are comprised of about 75% beginners. Their ages have ranged from 5 – 60 years old. For any rider under the age of 18, the Vermont Icelandic Riding Club requires that a parental consent form be signed.
668. Clinic participants come from all over the Eastern United States and Canada. Attendees have also come from Iceland and Germany.
669. The quarry would likely drive potential attendees to look for a different clinic because riding is risky enough without uncontrollable outside factors adding to the risk. It also wouldn't be an enjoyable experience if a noisy operation was nearby.
670. If the clinics lost attendees, they would either have to give up holding the clinics or operate them at a loss. As it stands right now, they are just breaking even.
671. In order for the club to avoid the risks posed by the potential quarry, a different location would have to be found to hold the clinics at. This is because of liability issues and because the presence of the quarry would have to be disclosed to potential attendees and

that could cause attendance to drop. Furthermore, it would be putting potential attendees, many of whom are children, at an added risk, which is something the clinic owners do not want to do. Even if the risk is not actual, but perceived, it would hurt attendance and another location would have to be found for the clinic.

672. This would be unfortunate, because where the clinic is now is a perfect spot. It's beautiful; it's easy to get to and has everything the Vermont Icelandic Riding Club needs to run the clinics. It's like horse Eden. Also, the Sainsburys offer a better deal financially speaking than could be found elsewhere.
673. Barbara Ferris testified before the Court.
674. Barbara Ferris operates Mad River Stables in Moretown, which is located on Bob and Beverly McMullin's land on Old Route 100 in Moretown.
675. Mad River Stables provides boarding, riding and riding lessons, mostly to children as young as 4 years old and adults as old as 80 years old, who either own horses or want lessons. Ferris also specializes in teaching people who have physical disabilities or balance problems.
676. There are more children than adults in the summertime because the kids are out of school. Ferris is a teacher for the children's riding camps in the summer. Often there will be vacationers with families, sometimes out-of-staters, who want lessons for their children.
677. Ferris is aware that there is a plan for a proposed quarry next to her business in Moretown. Such a quarry will be noisy. It will be there for decades. Trucks will be coming and going and using their "jake brakes" all day during the summer. There will be drilling and blasting plus many other disturbances up there all summer.

678. Ferris gives lessons to 10 – 15 kids during the summer, charging a rate of \$25 per half hour. Lessons are conducted seven days a week from morning through early evening. There are 3 – 4 horses that board at the facility year round and the boarding fee is \$525 a month per horse.
679. People choose to board their horses with Ferris because of her good personal touch with the horses and the owners know that. A package of care is provided including feed, exercise and grooming.
680. The location is ideal for horses. It is quiet and peaceful and right on the river. Even with Route 100B nearby, one gets used to the noise of passing cars. They are higher up, so some of the sounds are missed. Cars aren't really a problem, but trucks can be a problem, especially if they use their "jake brakes."
681. On one occasion a lesson was being conducted with a child student and a truck on Route 100B used its "jake brake" and the noise spooked the horse the child was riding. The lesson was being conducted in the indoor arena with Ferris right there holding a "lunge-line" with a chain over the horse's nose. Ferris immediately grabbed the horse with one hand and the kid with the other hand, which frightened the child very much.
682. Another instance occurred when a 17 year old was riding outside with no lunge line and a deer ran through the horse's field of vision. The horse spooked and took off with the kid. This was handled by calling out to the rider to bring the horse around in a circle and when it got close enough to Ferris she was able to move in and grab the reins.
683. The horses have been spooked by canoes many times. Also when hunters' gunshots go off up on the hill the sound echoes back and forth across the valley. If a gunshot is heard

while a lesson is being conducted, the lesson has to stop immediately until the horse calms down.

684. Lessons have been called off in the past when horses were agitated because of thunder. Last month part of the indoor arena collapsed from the weight of snow. The horses were petrified for a month. The paddock closest to the site of the collapse is still not usable. A paddock is a fenced-in area outside, kind of a play-yard for horses.
685. Currently the existing risks are manageable. For instance, lessons are called off when conditions warrant it. Students and their parents are also told that riding is a dangerous activity, but that every effort is made to manage those risks. Parents have to sign a release form before their kids can ride.
686. If the quarry gets a permit and begins operation, it will essentially put Ferris out of business. The business cannot co-exist with the noise from the quarry because it will frighten the horses to the point that they will not be able to be used to teach riding. The horses are also really tuned into Ferris' state of mind, and if she is worried the horses will know it and they will get agitated.
687. The parents of students will also have to be told about the quarry and inform them that the risk has gone up. This would be detrimental to the business because people come to Mad River Stables to have a peaceful, fun time. They don't want to think about getting killed, or their kids getting killed. There are also students that are raw beginners, mostly young children, some as young as four years old. These kids can't control a horse if it gets startled and bucks, whirls, or bolts.
688. There are a lot of options for customers to send their children for riding lessons or horse boarding. They choose Mad River Stables because it's a beautiful place to ride, it's right



next to the Mad River, it's an enjoyable back-to-nature experience for people and because Ferris is a good instructor.

689. If the quarry goes in, Ferris will be forced to move her business, yet she has no place else to go. The McMullins are her friends and have been helping out with cheap rent. It would be more expensive elsewhere and she is not sure she could make a go of it anywhere else.
690. Gael Jacobson testified before the Court.
691. Gael Jacobson lives at 4517 Center Fayston Road in North Fayston, Vermont with her 13- year old daughter, Ahn. Gael is a former English teacher, having taught for 20 years at Harwood Union High School, south of Waterbury. She no longer works outside of the home.
692. The Jacobsons own goats, chickens, a 19- year old quarter horse mare named Siren and a Welsh-cross gelding pony named Rudi.
693. Both Gael and Ahn ride the horse and the pony. Ahn has been riding since she was 7 years old.
694. The Jacobson's have boarded both Siren and Rudy at Mad River Stables and both Gael and Ahn take riding lessons from Barbara Ferris. Ahn learned how to ride at Mad River Stables. Gael signed a liability release form when Ahn began lessons with Barbara Ferris.
695. Gael pays Barbara \$525 per month for boarding Siren, the mare, with one lesson per week for Ahn included in that price. Additional lessons are \$25 per half hour. Ahn takes lessons at MRS once or twice a week during the summertime.
696. Aside from lessons, Ahn rides at MRS two to three times per week during the summer.

697. The Jacobsons have a horse trailer and could go anywhere in the State for riding lessons. There are lots of choices. They choose Mad River Stables because they like Barbara Ferris. They think that she is an excellent instructor. It's also the most convenient location for them, as Ahn can ride to the stable by school bus. It therefore becomes an after school sport opportunity as well as a work opportunity. Last year Ahn and a classmate worked for Barbara in exchange for lessons and there were several Harwood students doing the same this year.
698. Gael knows that the proposal is to locate the quarry near Mad River Stables, just above the stables. It would be a noisy industrial operation with blasting, drilling, and lots of heavy trucks and equipment. It is proposed to be operating for more than 30 years.
699. Gael Jacobson feels that the proposed location would be heartbreaking for many people who live nearby because they wouldn't be able to get away from the noise and industrial activity of the quarry. The horses are prey animals and are easily startled by sudden noises. They can become uncontrollable and the sudden noises will definitely affect them.
700. The risks to the rider when a horse gets startled are that the rider can be thrown or the horse can bolt, unseating the rider. An unseated rider can easily get a foot caught in the stirrup and get dragged. A horse is a large animal; if it gets out of control, there are a number of ways a rider can be injured.
701. Jacobson believes that she cannot predict how the noises from the quarry will affect her horses and that, in and of itself, is a problem.

702. Jacobson has neighbors in Fayston who like to set off fireworks. They always warn her beforehand, but when the fireworks are set off, Jacobson's horses go nuts. They are terrified and race around the pasture.
703. The riskiest thing about riding is the unpredictability of the horse and a nearby quarry would increase Jacobson and her daughter's risk because it would mean the addition of new noises that could startle the horses.
704. If the quarry is permitted and goes into operation, Jacobson would be forced to manage the risk of injury to her and her daughter by finding somewhere else to board and train, which would be emotionally problematic for them.
705. The Jacobsons have a horse trailer now, so they are able to go to any of a number of equestrian facilities and would be forced to do so as Jacobson is not willing to put either her safety or the safety of her daughter at that kind of risk. She feels that, as a solo parent, if something happened to her, she would worry about the care of her daughter. Even the most excellent rider on the best trained horse is vulnerable when a sudden noise spooks the horse, and with the quarry nearby, the risk for injury would be increased considerably.

**B. Proposed Conclusions of Law Regarding Equestrian Operations**

The neighborhood surrounding the proposed quarry is made up of long-established residential and agricultural uses, including several horse farms. These existing uses enhance the character and fit with the purpose of the Ag-Res District, which is to "provide for medium density residential development, to permit the continuance of agricultural operations, to encourage clustered housing units, to preserve open space, and to preserve the significant resources of this District." MZR Table 2.3.

The proposed quarry is incompatible with the existing neighboring uses, including and in particular the long-established McMullin horse farm, which is currently operated as Mad River Stables and is located across Route 100B from the proposed quarry, and the Sainsbury horse farm, which is located a short distance southerly from the proposed Quarry.

Mr. Mauss provided highly credible testimony regarding the temperament of horses, the effects of startling stimuli on horses, and the impacts of noise on equestrian facilities. Horses have varying personalities, but all horses are prey animals and are very aware of their surroundings. They are easily startled and can react unpredictably to startling stimuli, such as sudden noises or vibrations, such as explosions, loud vehicle noise, gun shots and the like. Horses sense vibrations both through their ears, as humans do, and through their hooves. A rumble in the ground that would be imperceptible to humans can be clearly felt by horses and can startle them.

The average weight of a horse is between 1,000 to 1,200 pounds. Horses, like deer, have an instinctual flight response to startling stimuli. Horses react to sudden noises and stimuli without warning by bolting, spinning or bucking. The main danger for a rider is from being thrown from the horse. A rider thrown from a horse, either immediately or after the horse has gotten up to speed, can suffer serious injuries. A rearing horse can fall over backwards, perhaps crushing the rider or injuring the horse. A person walking the horse, or standing nearby, may be knocked down and trampled by a startled horse. Also, aside from the risks posed to people, startled horses can easily injure themselves.

People ride horses to relax and get away from the modern world and the stress of their lives. The beauty and serenity of the setting, and calm, quiet, aesthetically pleasing surroundings play a major role in a person's choice of where to ride, train and board their horses. The calm

environment is important even when riders are training hard and intensely, because it is important that the horse not be agitated. If the horse is stressed, it increases the possibility of a bolt or something unfortunate happening.

Liability for injuries or death from equestrian activities is governed by 12 V.S.A. § 1039, which shields equestrian facility operators from liability for harm flowing from obvious risks. The explosions, blast horns, and other industrial noises from the proposed quarry would increase the risk of a startle response that could injure customers of the McMullin and Sainsbury horse farms. That risk would not be obvious to the person injured and the statute would not protect the owners and operators from lawsuits. In order to make the risks posed by the nearby quarry obvious, the nearby horse farms would have to disclose to potential customers the presence of the quarry and the fact that sudden noises from the quarry could result in unpredictable consequences, including injury or death. Such a disclosure would likely cause potential customers to take their business elsewhere.

Even aside from the risk of injury, many horse riders come to relax and “get away from it all,” enjoying the countryside in peace and quiet. Others come to focus intensely on their training, and their horse’s training. That requires a good deal of concentration. An industrial operation nearby would detract from the experience and the customers would likely take their business elsewhere. Finally, horses are easily stressed and sensitive to changes in their environment. Regular sudden noises could impact the horses’ emotional and physical well-being, causing the people who board their horses at the facility to look for more quiet environs.

When looking for riding lessons or places to train or board their horses, people take many factors into account. Generally they look for good facilities where they can concentrate on riding and training with a minimum of distraction. Potential customers will consider the safety of the

facility, particularly when they are looking for riding lessons for their children. Customers have choices in deciding where to ride, train and board horses. Customers should and will avoid equine operations where there is relatively higher risk of accidents due to sudden stimuli such as loud noises.

Several users of the McMullin and Sainsbury equestrian facilities testified that the proposed quarry, if permitted, would cause them to take their business elsewhere. Alice Peal owns, rides and trains Icelandic horses and is the Committee Chair for the Riding Clinic of the Vermont Icelandic Riding Club. The Club uses Scott Sainsbury's land and equine facilities for annual riding clinics. Peal and her husband also ride for pleasure on the Sainsbury's land. Ms. Peal testified that if the proposed quarry is permitted, a different location for the clinic would have to be found. This is because of liability issues and because the presence of the quarry would have to be disclosed to potential attendees and that could cause attendance to drop. Furthermore, it would be putting potential attendees, many of whom are children, at an added risk which is something the clinic owners do not want to do. Even if the risk is not actual, but perceived, it would hurt attendance and another location would have to be found for the clinic.

Barbara Ferris operates Mad River Stables on the McMullin land. Mad River Stables provides boarding, riding and riding lessons to children as young as 4 years old and adults as old as 80 years old that either own horses or want lessons. Ferris also specializes in teaching people who have physical disabilities or balance problems. Ferris gives lessons to 10-15 kids during the summer, charging a rate of \$25 per half hour. Lessons are conducted seven days a week from morning through early evening. There are 3-4 horses that board at the facility year round and the boarding fee is \$525 a month per horse.

If the quarry gets a permit and begins operation, it will likely put Ferris out of business. Mad River Stables cannot co-exist with the noise from the quarry because it will frighten the horses to the point that they cannot be used to teach riding. In order to make the risks from the quarry obvious and thereby shield herself from liability under 12 V.S.A. § 1039, Ferris would have to inform the parents of students about the quarry and inform them that the risk has gone up. This would be detrimental to her business because people come to Mad River Stables to have a peaceful, fun time. Mad River Stables teaches students that are raw beginners, mostly young children, some as young as four years old. These kids can't control a horse if it gets startled and bucks, whirls, or bolts. There are a lot of options for customers to send their children for riding lessons or horse boarding. They choose Mad River Stables because it's a beautiful place to ride, it's right next to the Mad River, it's an enjoyable back-to-nature experience for people and because Ferris is a good instructor. If the quarry is permitted, it will increase the risk, and the perceived risk, for the customers of Mad River Stables and cause those customers to take their business elsewhere.

Gael Jacobson and her 13 year old daughter, Ahn, are customers of Mad River Stables. The Jacobson's have boarded their 19 year old quarter horse mare named Siren and a Welsh-cross gelding pony named Rudi at Mad River Stables. Both Gael and Ahn take riding lessons from Barbara Ferris. Ahn learned how to ride at Mad River Stables. Gael signed a liability release form when Ahn began lessons with Barbara Ferris. Gael pays Barbara \$525 per month for boarding Siren, the mare, with one lesson per week for Ahn included in that price. Additional lessons are \$25 per half hour. Ahn takes lessons at Mad River Stables once or twice a week during the summer time.

The Jacobsons have a horse trailer and could go anywhere in Vermont for riding lessons. There are lots of choices. They choose Mad River Stables because they like Barbara Ferris. They think that she is an excellent instructor. It's also the most convenient location for them, as Ahn can ride to the stable by school bus. It therefore becomes an after school sport opportunity as well as a work opportunity. Last year Ahn and a classmate worked for Barbara in exchange for lessons and there were several Harwood students doing the same this year. If the quarry is permitted and goes into operation, Jacobson testified that she would be forced to manage the risk of injury to her and her daughter by finding somewhere else to board and train, which would be emotionally problematic for them. Other customers of Mad River Stables and the Sainsbury horse farm would likely also decide to board, ride and train at a facility that is not in close proximity to an active quarry, resulting in significant loss of business to, and likely destruction of, the existing equestrian facilities near to the proposed quarry.

This Court has previously considered the impacts of earth extraction operations on horses and horse farms. In Appeal of Penmar Farm, Docket No. 113-7-03 Vtec 9Vt. Env'tl. ct., Oct. 17, 2005), the Court found that:

Horses are a herd animal with a strong flight instinct when faced with an unexpected and frightening stimulus, which may range from the bang of an empty truck or boat trailer going over a bump, to a flapping piece of cloth or roofing material. More competitive horses [...] tend to be more highly strung.

The Court in Penmar Farm was considering the impacts of a proposed expansion of an existing earth extraction operation on adjoining residential properties and the Penmar Farm horse riding, boarding and training facility. The Penmar horse farm was located more than a quarter of a mile away from the earth extraction operation. The Court imposed a maximum noise level of 50 dBA at areas of frequent use on neighboring properties and approved the proposed expansion,



noting that the earth extraction operation was preexisting, therefore the impacts of the expansion on nearby properties and uses must be measured against the impacts of existing operations:

Nor should the value of the Nelson property be adversely affected, as compared with its value as already affected by Appellee-Applicant's present operation. [...] The Nelson property is a beautiful residential property located adjacent to an existing earth extraction operation operating at a rate of 20,000 cubic yards a year, and it remains so.

In the case of Rivers' proposed quarry, by contrast, the quarry's negative impacts and adverse effects on neighboring properties and uses would be new. The Court in Penmar Farm specifically addressed the impact of the Applicant's trucks and customer trucks upon the Penmar horse farm, finding that:

There is no question that Appellants' horse farm and training establishment has been affected by existing traffic on Chandler Road, and in particular by empty trucks traveling to Appellee-Applicant's site, which may produce loud bangs when the road surface is irregular. The drivers of [Appellee-Applicants'] trucks are more familiar with the potential for problems and therefore tend to drive more slowly and more courteously than drivers of customers' trucks necessarily drive.

In Penmar Farm, "approximately 80% to 90% of the volume of the hauling is done by Appellee-Applicant's trucks." At Rivers' proposed quarry, by contrast, 100% of the hauling would be done by customers' trucks.

The equine facilities will be required to disclose the existence of the Quarry and the associated risks to any and all existing or prospective customers. No responsible parent or horse owner will expose their children or horses to this greater risk when there are other equine facilities that do not pose this risk. This would result in the closing of these horse farms which not only fit into the character of the Ag-Res District but also define it and maintain it.

Neighbors' Question #4 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: "Whether, under MZR table 2.3, the application for the proposed quarry fits the stated purpose of

the Agricultural – Residential District to provide for medium density residential development, to permit the continuance of agricultural operations, to encourage clustered housing units, to preserve open space, and to preserve the significant resources of this District?” We must conclude that the proposed quarry does not fit with the stated purposes of the Ag-Res District because it threatens the continuance of the existing nearby horse farms, fails to preserve open space, and instead of preserving the resources of the District would exploit, extract, and destroy those resources.

Neighbors’ Question #6 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: “Whether, under MZR Section 3.5(C), the application and proposed quarry will not cause a hazard to public health or safety?” We must conclude that the proposed quarry would cause a hazard to public health and safety by increasing the risk of serious injury to the customers of the nearby equestrian facilities, many of whom are young children.

Neighbors’ Question #7 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: “Whether, under MZR Section 3.5(C)(1)-(4), the application and proposed quarry will have an undue adverse effect on (1) neighboring properties and uses; (2) public facilities and services; (3) surface and ground water; or (4) the scenic or natural beauty of the area, other aesthetic values, historic sites or rare or irreplaceable natural resources or areas?” We must conclude that the proposed quarry would have an undue adverse effect the neighboring properties and uses and in particular on the neighboring equestrian uses. The proposed quarry would likely cause customers of the McMullin and Sainsbury horse farms to seek safer and more aesthetically pleasing facilities at which to ride, train and board their horses and ponies. This loss of business could cause the existing neighboring equestrian uses to go out of business, which is clearly an undue adverse effect on those uses.

Neighbors' Question #9 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: "Whether the application and proposed quarry will have an undue adverse effect on neighboring property values?" We must conclude that the proposed quarry would have an undue adverse effect on the value of neighboring properties, especially the McMullin and Sainsbury horse farms, the value of which is closely tied to their aesthetic surroundings and perceived safety of equestrian activities, both of which would be greatly damaged in the proposed quarry is permitted.

Neighbors' Question #12 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: "Whether, under MZR Section 4.10(A), the land or structure(s) for the application and proposed quarry will be used or occupied in any manner so as to create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties?" We must conclude that the proposed quarry would create a dangerous condition adversely affecting nearby properties because the sharp, sudden noises and vibrations of the quarry machinery, customer trucks, and blasting are the type of unexpected and frightening stimuli that cause even well-trained horses to bolt or buck, putting the rider, especially young and/or inexperienced riders, in danger of being thrown from the horse and seriously injured. Even very experienced riders on well-trained horses can be injured as a result of an unexpected noise evoking the horse's innate startle response, as in the tragic case of Lisa Kulski, a co-worker of Mr. Mauss at the Vermont Mozart Festival. Ms. Kulski was training her horse when a truck noise, probably a "jake brake," startled the horse. The horse bucked her off, severing her spine. Lisa is in a wheelchair to this day. We cannot allow Rivers to engage in activities that will significantly increase the risk of serious injury on the neighboring horse farms during the thirty-three year life of the proposed quarry.

Neighbors' Question #13 of their Statement of Questions in Docket No. 7-1-05 Vtec asks, in part: "Whether, under MZR Section 4.10(B)(1)-(5), the application and proposed quarry meets the following standards: (1) No noise shall be permitted which is excessive at the property line or is incompatible with the reasonable use of the surrounding area. Excessive noise shall be considered a sound pressure level that exceeds 70 decibels at the property line on a regular or reoccurring basis. [...] (3) No fire, explosive or safety hazard shall be permitted which significantly endangers other property owners or which results in a significantly increased burden on municipal facilities." We must conclude that the noise and explosions (which generate noise, ground vibrations, and the risk of flyrock) of the proposed quarry are incompatible with the reasonable equestrian use of the surrounding area. Furthermore, we must conclude that the noise and explosions of the proposed quarry significantly endanger the owners, operators, and customers of the McMullin and Sainsbury horse farms.

Neighbors' Question #14 of their Statement of Questions in Docket No. 7-1-05 Vtec asks, in part: "Whether, under MZR Section 5.2(C), the application and proposed quarry will not adversely affect [the conditional use criteria, including the character of the area and the bylaws in effect]?" We must conclude that Rivers' proposed quarry would have an undue, substantial and material adverse effect on the character of the area by introducing loud, frequent and recurring industrial noise into this bucolic neighborhood characterized by single family homes, horse farms, and quiet recreational pursuits. In addition, the proposed quarry would adversely affect the bylaws in effect, including MZR §§ 3.5(C)(1), 3.5(C)(4) and 4.10(B)(1).

Neighbors' Question #16 of their Statement of Questions in Docket No. 7-1-05 Vtec asks: "Whether, under Moretown Town Plan dated August 27, 2002 page 35 #8, the [Court] shall, through the conditional use review process, ensure that the extraction of gravel and other

mineral resources does not permanently scar the landscape, adversely impact ground or surface waters, or unreasonably impact adjacent neighbors?" We must conclude that the only way for this Court to ensure, through the conditional use process, that the proposed quarry will not unreasonably impact adjacent neighbors is to deny conditional use approval for the proposed quarry.

Neighbors' Question #8 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec asks: "Does the proposed quarry fail to comply with 10 V.S.A. § 6086(a)(8) because it will have an undue adverse effect on aesthetics, including the scenic or natural beauty of the area, due to noise, trucks, blasting, crushing, drilling, dust, and an industrial scar on the landscape, a scenic landscape that currently supports residential and recreational uses and several horse farms?" Rivers failed to model the noise from customer trucks on the proposed haul road. When the Neighbors' noise expert modeled two customer trucks operating near the entrance to the site, and no other equipment in the quarry operating, sound levels at Byrne/Farley Residence reach 65 dBA and at McMullin Residence reach 62 dBA. These sound levels violate the maximum sound levels established by the former Environmental Board and this Court. See Penmar Farm, *supra* (requiring a 50 dBA maximum sound level at nearby areas of frequent use). Moreover, elevated noise levels, particularly when they consist of sharp, sudden noises like blasts, bangs, and engine compression brakes, pose a special risk here because they greatly increase the risk of serious harm to the riders and horses at the neighboring equestrian facilities. The McMullins' riding arena and barn are adjacent to their home and much of the pasture land for the horses is between their home and the proposed quarry entrance, therefore the projected sound level of more than 60 dBA at the McMullin home would also be experienced by horses and riders in the areas adjacent to the McMullin home.

Neighbors' Question #9 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec asks: "Does the proposed quarry fail to comply with 10 V.S.A. § 6086(a)(9)(E) because Rivers has failed to prove that the proposed quarry will not have an unduly harmful impact upon the surrounding environment or surrounding uses and development, and/or because Rivers will not leave the site in a condition suited for alternative use or development?" We must conclude that the proposed quarry will have an unduly harmful impact upon surrounding land uses under Criterion 9(E)(i), because the noise generated by the proposed quarry would disrupt existing land uses, including the boarding, training and riding of horses on the McMullin and Sainsbury horse farms, peaceful enjoyment of adjoining residential properties, and recreational use of the surrounding woods, roads and river.

Neighbors' Question #10 of their Clarified Statement of Questions in Docket No. 68-3-07 Vtec asks: "Does the proposed quarry fail to comply with 10 V.S.A. § 6086(a)(10) because Rivers has failed to prove that the proposed quarry conforms to Moretown's Town Plan and the specific policies<sup>12</sup> therein, including but not limited to [...] the command at page 35 that the DRB 'shall, through the conditional use review process, ensure that the extraction of gravel and other mineral resources does not permanently scar the landscape, adversely impact ground or surface waters, or unreasonably impact adjacent neighbors.?'?" We must conclude that the only way for this Court to ensure, through the conditional use process, that the proposed quarry will not unreasonably impact adjacent neighbors is to deny conditional use approval for the proposed quarry. Because the proposed quarry cannot be permitted and yet comply with the conditional

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<sup>12</sup> See Moretown Town Plan at 2 ("The policies set forth in this plan . . . are design to serve as the town's unambiguous position during the Act 250 and other review processes."); *id.* at 72 ("conformance [with the Town Plan under Criterion 10 of Act 250] should be determined by whether the proposed development is consistent with specific policies listed at the end of chapters 2-7. If a project is not consistent with a specific policy, it should be determined to be not in conformance with the plan.").

use criteria, it fails to conform to the Town Plan (p. 35) and therefore fails to comply with Criterion 10.