

State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #4 ENVIRONMENTAL COMMISSION
111 West Street Essex Jct., VT 05452

RE: Bernard A. Giroux Trust; June T. Giroux
Trust; Victor T. Giroux Trust; Ramona
Giroux Trust
9318 Route 116
Hinesburg, VT 05461

Application #4C0654-14
Findings of Fact
Conclusions of Law, and Order
10 V.S.A. §§ 6001-6093 (Act 250)

and

Martin's Foods of South Burlington, LLC
Attn: Tyler Sterling
Portland, ME 04104

I. INTRODUCTION

On March 26, 2013, Bernard A. Giroux Trust; June T. Giroux Trust; Victor T. Giroux Trust; Ramona Giroux Trust and Martin's Foods of South Burlington filed an application for an Act 250 permit for a project generally described as the construction of a new 36,000 sf supermarket & pharmacy store, new driveway, parking lot, sidewalks with municipal water and wastewater disposal services on Lot #15 of Commerce Park. In addition the Project will merge a 0.32 acre parcel from an abutting property along with Commerce Street Extension, consisting of 0.30 acres, with Lot #15; a 0.13 acre boundary adjustment between two parcels of land fronting on Route 116 owned by one of the Applicants; and includes a space for a farmer's market and an offer to the Town of Hinesburg for an easement for a public park. The tract of land consists of 5.18 acres. The Applicants' legal interest is ownership in fee simple described in deeds in Book 131, Pages 552 & 555 recorded on July 18, 2001; and Book 129, Pages 252, 261 & 264 recorded on April 24, 2001 in the land records of the Town of Hinesburg, Vermont. Applicants Bernard A. Giroux Trust; June T. Giroux Trust; Victor T. Giroux Trust; and Ramona Giroux Trust are the landowners and have conveyed an option to purchase the Project land to Applicant Martin's Foods of South Burlington.

The application, first submitted on March 26, 2013 was deemed complete.

The Commission held Prehearings on May 15, 2013 and July 9, 2013 and held hearings on this application on August 14, 2013; August 21, 2014; and October 14, 2013. The Commission also conducted site visits on May 15, 2013 and October 14, 2013, and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on April 24, 2014 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project does not comply with 10 V.S.A. § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the Vermont Administrative Procedure Act ("APA"), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A. § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, "[t]he rules of evidence as applied in civil cases...shall be followed" in contested cases. Under the Vermont Rules of Evidence, "(a) judicially noticed fact must be one not subject to reasonable dispute in that it is...(2) capable of accurate and ready determination by resort to

sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b); *See In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e).

Official notice is hereby taken of the observations from the May 15, 2013 and October 14, 2013 site visits by the Commission as stated at the Hearings; the Town of Hinesburg Municipal Plan (2005); the Vermont Agency of Transportation (“VTrans”) website; and Land Use permits on file in the Essex District office.

IV. AMENDMENT APPLICATION – RULE 34(E)

The threshold question on an amendment application is “whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1).

On May 13, 2013, the opponents to the application jointly represented by Mr. James Dumont, Esq. (Parties #7 through #32, below hereinafter referred to as “Hay, et al.”) filed a motion asserting that this statement in the original application for the Giroux Commercial Park triggers a Rule 34(E) analysis: “The project shall be completed, maintained and operated as set forth in Findings of Fact and Conclusions of Law #4C0654, in accordance with the plans and exhibits stamped “Approved” and on file with the District Commission...”

On September 18, 2013, Hay, et al. claimed that Condition #13 of LUP #4C0654: “The Permittees, and all assigns and successors in interest shall maintain undisturbed 75 foot wide buffer areas between any filling, construction or other disturbance and the centerlines of the streams. All buildings constructed on lots #1 through #8 shall be constructed without basements and with first floor elevations at or above the elevation of the subdivision road (18 inches above the subdivision access road);” would be violated with the current application.” Therefore, they claimed, a Rule 34(E) analysis should be completed.

The first question to be answered is whether these two statements are Critical Conditions (*In re: Mountainside Properties, Inc.* Dkt No. 117-6-05 Vtec (December 13, 2005)).

For the May 13, 2013 Motion we reviewed the original permit for the commercial park. Among those plans and exhibits stamped “Approved” is the Permittee’s General Description of the project, which stated: “The subdivision is designed as a ‘Commercial Industrial Park’ intended for primarily local small scale and start-up businesses which are appropriate to the local scale of development...” The Findings of Fact (#4C0654) pertaining to Criterion 8 found that “the character of this subdivision is important” because of its visibility from the north, and noted that the protective covenants submitted to the Commission called for all buildings within the subdivision to have “pitched roofs” and no signs. Among the other Permit conditions imposed was that by accepting the permit without appeal, the Permittees bound themselves “and all assigns and successors” to comply with these conditions.

In addition, Finding of Fact #21 of Findings of Fact, Conclusions of Law and Order #4C0654 states: “At the present time this property is an open meadow with frontage along Route 116 and Mechanicsville Road. The northern property line and portions of the south eastern property line contain existing

vegetation. The most significant vista of this property is enjoyed as one travels south along Route 116 with this field framed by the hills to the south and behind the Village. The character of this subdivision is important because this development will become the first view of the Town from the north.” Finding #21 simply articulates the value of this property as the “entrance” to the Town. It does not impose any condition on the development, and thus imposes no Critical Condition.

Finding of Fact #25: “No exterior street lighting will be installed and no signs will be installed;” is a statement of fact; no signs or exterior street lighting were proposed with the original application. This is a significant condition and the Commission will treat it for the purposes of the Motion as a Critical Condition.

The full text of Condition #1 of LUP #4C0654 says: “The project shall be completed, maintained, and operated as set forth in Findings of Fact and Conclusions of Law #4C0654, in accordance with the plans and exhibits stamped ‘Approved’ and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.” This states fundamental conditions for the development, and thus rises to the level of a Critical Condition under Rule 34(E).

Regarding the September 18, 2013 Motion, in finding that the original commercial park complies with Criterion 1(E), the original permit had Condition #13:

The Permittees, and all assigns and successors in interest shall maintain an undisturbed 75 foot wide buffer area between any filling, construction or other disturbance and the centerlines of the streams.”

In the Conclusion of Law and Order under Criterion 1(E), the Commission stated:

The Commission finds that the subdivision has been designed to maintain the natural condition of the stream and will not endanger the health, safety or welfare of the public or adjoining landowners because the Applicants have agreed to maintain a 75 foot buffer between the construction and the stream centerlines (Exhibit #22[of LUP #4C0864]). The Commission will review amendment applications for the development of lots #1 through #8 and lot #15 for conformance to this standard.

This states fundamental conditions for the development, without which the Commission could not find compliance under Criterion 1(E) and thus rises to the level of a Critical Condition under Rule 34(E).

Therefore, the Commission must conduct the Rule 34(E) analysis, as set forth below.

The second factor that must be considered is whether the applicant “is merely seeking to relitigate the permit condition or to undermine its purpose and intent.” Act 250 Rule 34(E)(2). In this instance, the Applicants are not merely seeking to relitigate the permit condition or undermine its purpose and intent. Therefore, the Commission can review this permit amendment application.

Before the Commission can consider the merits of an amendment application, the application must meet the requirements of Act 250 Rule 34(E), known as the *Stowe Club Highlands* analysis. For the reasons set forth below, the Commission finds the applicant does not propose to amend a permit condition that was included to resolve an issue critical to the issuance of the original permit.

Under 10 V.S.A. § 6086(C), a permit may contain such requirements and conditions as are allowable within the police power and are appropriate with respect to the Act 250 criteria. “The purpose of permit conditions is to alleviate adverse effects that would otherwise be caused by a project. Those adverse effects would require a conclusion that a project does not comply with the criterion at issue unless the condition is followed.” *Re: Stowe Club Highlands, #5L0822-12-EB,*

Findings of Fact, Conclusions of Law, and Order at 10 (Vt. Envtl. Bd. June 20, 1995). On January 23, 2003, the Environmental Board promulgated Board Rule 34E, titled Balancing Flexibility and Finality of Permit Conditions (now Act 250 Rule 34E) to read:

(1) In reviewing any amendment application, the district commission shall first determine whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit. This determination shall be made on a case-by-case basis.

(a) If the applicant does not propose to amend a permit condition that was included to resolve an issue critical to the issuance of the permit, the district commission's inquiry under this rule shall end, and it shall not weigh finality and flexibility pursuant to this rule or prior case precedent.

(b) An application which seeks to amend project plans, exhibits, representations by the applicant for the applicable permit, findings, or conclusions which have been incorporated into the permit through a specific or general condition, may constitute an application to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.

(2) In reviewing an application for amendment, the district commission or the board should consider whether the permittee is merely seeking to relitigate the permit condition or to undermine its purpose and intent. It must also determine whether the need for flexibility arising from changes or policy considerations outweighs the need for finality in the permitting process.

(3) If the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of a permit and is not merely seeking to relitigate the permit condition, the district commission shall apply the balancing test set forth in subsection (4) below. If the district commission finds that the need for finality outweighs the need for flexibility, the district commission shall deny the permit amendment application. In the alternative, the district commission may rule in the favor of flexibility.

(4) In balancing flexibility and finality, the district commission or the board should consider the following, among other relevant factors:

(a) changes in facts, law or regulations beyond the permittee's control;

(b) changes in technology, construction, or operations which necessitate the need for the amendment;

(c) other factors including innovative or alternative design which provide for a more efficient or effective means to mitigate the impact addressed by the permit condition;

(d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;

(e) manifest error on the part of the district commission, the environmental board or the environmental court in the issuance of the permit condition; and

(f) the degree of reliance by the district commission, the board, or parties on prior permit conditions or material representations of the applicant in prior proceeding(s) by the district commission, the environmental board, the environmental court, parties, or any other person who has a particularized interest protected by 10 V.S.A. Ch. 151 that may be affected by the proposed amendment.

As stated above, we find that Finding #25 is a statement of fact; no signs or exterior street lighting were proposed with the original application. Since it is a Critical Condition we turn to the test of balancing flexibility and finality. In this case, we come down on the side of flexibility on Finding #25. It is quite

unlikely that the Commission that issued the original Permit contemplated that a large commercial park would have absolutely no signs or exterior lighting. Many if not all of the lots already developed in this commercial park have exterior lighting and signs, pursuant to Permit amendments issued over the 26 years since the Permit was originally issued. Considering the proliferation of signs and lighting, we conclude that it is highly unlikely that any person has a particularized interest protected by Act 250 (10 V.S.A. Ch. 151) that would be affected by the proposed amendment to Finding #25. The Commission believes that flexibility should prevail here and we can proceed with the permit amendment analysis.

Condition #1 states that: “No changes shall be made in the project without the written approval of the District Environmental Commission.” The permit amendment process is a written approval by the District Commission. This is what has happened for development of every lot in the commercial park and is the process we are following here. Therefore, we find that the Applicants are not seeking to modify this permit condition.

Condition #13 of LUP #4C0654 states “The Permittees, and all assigns and successors in interest shall maintain an undisturbed 75 foot wide buffer areas between any filling, construction or other disturbance and the centerlines of the streams.” The first issue here is whether the Commission then considered the Canal to be a stream in context of this Condition. There is only one other stream in the project vicinity, Patrick Brook. The word stream is used in its plural form; the only other watercourse is the Canal. Therefore, we determine that the Commission intended that the Canal also be treated as a stream in regards to Condition #13.

In reviewing past permit amendments for this commercial park we find multiple examples where the 75 foot buffer has been reduced, including the following: In a 1988 amendment for the Nestech project on Lots #7 and #8 the setback was reduced to 30 feet along Patrick Brook; in a 1999 amendment for the Self Storage Solutions project on Lots #4 and #5 the setback was also reduced to 30 feet along Patrick Brook; and in the 2005 amendment for the Tailhook Towing project on Lot #3 the setback was reduced to 50 feet along Patrick Brook. Furthermore, the sidewalk constructed by the Town of Hinesburg along the Canal which is located between the Canal and the Project site, constitutes an elevated berm that prevents any stormwater run-off or other impacts to the Canal from the Project.¹ Moreover, while a 75-foot buffer helps to clean runoff water before entering the streams and maintains the banks to prevent erosion, the construction of the Canal, essentially an elevated berm, helps to maintain the banks and prevents untreated runoff water from entering the Canal. In light of the multiple exceptions to the 75 foot buffer previously granted, the sidewalk constructed by the Town of Hinesburg which reduces stormwater impacts, and the presence of an elevated berm on the canal, the Commission believes that flexibility should prevail in this case.

Having found that flexibility should prevail in both cases we now proceed with the amendment review process of the proposed application.

V. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A. § 6085(c)(1)(A)-(D) and who attended the hearing are:

1. The **Applicants**, represented by David White, Gail Henderson-King and Paul Simon of White + Burke; Chris Roy, Esq. & Scott Jaunich, Esq. of Downs, Rachlin Martin, PLLC;

¹ As an aside we note that the Town apparently did not request, and thus did not receive, a permit amendment authorizing construction of the sidewalk in 1999 within 75 feet of the Canal.

and Bill McKenney, Esq. of Martin's Foods of South Burlington; Paul O'Leary, P.E. of O'Leary Burke Civil Associates, P.C.; Jeff Nelson, CPESC, CPSWQ and Adam Crary, PWS of Vanasse Hangen Brustlin, Inc.; Roger Dickinson, P.E., PTOE of Lamoureux & Dickenson Consulting Engineers, Inc.; and Robert Bast, AIA of Bast & Rood, Architects.

2. The **Agency of Natural Resources** ("ANR"), was represented at the May 15, 2013 Prehearing and the August 14, 2013 Hearing by Jennifer Mojo, Regulatory Review Analyst, ANR Office of Planning and Legal Affairs and by Elizabeth Lord, Esq. Land Use Attorney. ANR's concerns fall under Criteria 1(B) (wastewater) which requires that the proposed project, in addition to all applicable criteria will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes; and 1(E) (streams) which requires that the proposed project, on lands adjacent to the banks of a stream will, whenever feasible maintain the natural condition of the stream and will not endanger the health, safety, or welfare of the public or of adjoining landowners.
3. The **Town of Hinesburg Selectboard**, was represented at the Prehearings and Hearings by Alex Weinhagen, Town of Hinesburg Director of Planning and Zoning and Joe Colangelo, Town Administrator at the May 15, 2013 Prehearing. The Selectboard's concerns fall under Criteria 1(B); 1(D) (floodways) which requires that the proposed project will not divert the flow of flood waters and endanger the health, safety and welfare of the public or of riparian owners during flooding and will not significantly increase the peak discharge of the river or stream within or downstream from the area of development; 1(E); 4 (erosion control) which requires that the proposed project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; 5 (traffic) which requires that the proposed project will not cause unreasonable congestion or unsafe conditions with respect to use of highways, waterways, railways, airports, and other means of transportation existing or proposed; 7 (municipal services) which requires that the proposed project will not place an unreasonable burden on the ability of the municipality to provide educational services; 9(K) (effects on public investments) which requires that the proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investments in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency or safety of, or the public's use or enjoyment of or access to the facility, service or lands and 10 (local and regional plans) which requires that the proposed project is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24.
4. The **Town of Hinesburg Planning Commission** was represented at the Prehearing by Timothy Clancy; at the August 14, 2013 Hearing by Joe Iadanza and Johanna White; and at the August 21, 2013 Hearing by Maggie Gordon. Ms. Gordon also attended the August 14, 2013 Hearing but listed her representation as self. The Planning Commission's concerns fall under Criterion 10.
5. The **Vermont Agency of Transportation** ("VTrans") submitted an Entry of Appearance on May 8, 2013 by Beth McTear, Traffic Research and Utility & Permits Unit. They were represented at the August 14, 2013 and August 21, 2013 Hearings by Rajnish Gupta, P.E. PTOE and Bill Rice, Esq. VTrans' concerns fall under Criteria 5 and 9(K).
6. The **Chittenden County Regional Planning Commission** ("CCRPC"), was represented at the May 15, 2013 Prehearing by Regina Mahony, Senior Planner and at the August 14,

2013 Hearing by Michele Boomhower, Metropolitan Planning Organization Director. CCRPC's concerns fall under Criteria 5; 9(K); and 10.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A. § 6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A. § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

7. **Lindsay Hay**, 44 Mulberry St., Hinesburg. Ms. Hay was represented by James Dumont, Esq. and attended the August 21, 2013 Hearing. She requested party status under Criteria 1 (air & water pollution); 1(B); 1(E); 4; 5; 8 (aesthetics); 9(K) and 10.

Ms. Hay as a regular user of the area around the project site will experience an increase in particulate matter from idling vehicles. The Commission preliminarily granted party status under Criterion 1 (air).

Ms. Hay will experience an increase in traffic from vehicles exiting Commerce Street onto Mechanicsville Road, which is in the vicinity of her residence, thus the Commission preliminarily granted party status under Criterion 5.

As a nearby resident, approximately 1000 feet away, and a user of Canal Park, Ms. Hay will be able to see the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a regular user of Canal Park and the local roads in the area, the Commission preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Ms. Hay can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

It is difficult to understand how Ms. Hay's property could be affected by increased stormwater runoff from the project since her property is over 1,000 feet away, uphill from the project site and across two roads. Water cannot flow from the subject property to her property. Therefore, the Commission denied her request for party status under Criteria 1 (water), 1(B) and 4.

In addition, Ms. Hay had not articulated how she has a particularized interest under Criterion 1(E) different from the general public. The petition alleged that Ms. Hay has a right to enjoy the Patrick Brook as it passes through Hinesburg. This is not sufficient to allege a particularized interest under Criterion 1(E). Therefore, the Commission denied her request for party status under Criterion 1(E).

8. **Michael Sorce**, 102 Commerce Street, Hinesburg. Mr. Sorce was represented by James Dumont, Esq. and attended the May 15, 2013 Prehearing and August 21, 2013 Hearing. He requested party status under Criteria 1 (water), 1(B), 1(E), 4, 5, 8, 9(K), and 10.

As an adjacent landowner, water from the proposed project can enter upon Mr. Sorce's property, thus the Commission preliminarily granted party status under Criteria 1 (water), 1(B) and 4.

Mr. Sorce will experience an increase in traffic from vehicles entering and exiting from the project and crossing in front of his driveway, which is next door to the project. Thus, the Commission preliminarily granted party status under Criterion 5.

As an adjacent landowner, Mr. Sorce will observe the new building from his property. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

Mr. Sorce had articulated a particularized interest under Criterion 9(K) different from the general public inasmuch as his stated concerns are with the Town's investments in sidewalks, culverts and roads in the vicinity of his business and which that may become flooded due to stormwater from this Project. His interests are therefore different from the general public. Therefore, the Commission preliminarily granted his request for party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Mr. Sorce can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected), *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Mr. Sorce had not articulated how he has a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied his request for party status under Criterion 1(E).

9. **Dark Star Properties, LLC** ("Dark Star"), 102 Commerce Street, Hinesburg. Mr. Sorce of Dark Star attended the Prehearing and the August 21, 2013 Hearing. Dark Star was represented by James Dumont, Esq. Dark Star requested party status under Criteria 1 (water), 1(B), 1(E), 4, 5, 8, 9(K), and 10.

As an adjacent landowner, water from the proposed project can enter upon Dark Star's property, thus the Commission preliminarily granted party status under Criteria 1 (water), 1(B) and 4.

Dark Star will experience an increase in traffic from vehicles entering and exiting from the project and crossing in front of the driveway, which is next door to the project. Thus, the Commission preliminarily granted party status under Criterion 5.

As an adjacent landowner, Dark Star will easily be able to see the new building from its property. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

Dark Star has articulated a particularized interest under Criterion 9(K) different from the general public inasmuch as its stated concerns are with the town's investments in sidewalks, culverts and roads in the immediate vicinity of Dark Star's building and which that may become flooded due to stormwater from this Project. Dark Star's interests are therefore different from the general public. Therefore, the Commission preliminarily granted its request for party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Dark Star can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan -

an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Dark Star has not articulated how it has a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied its request for party status under Criterion 1(E).

10. **Catherine and James Goldsmith** (“Goldsmiths”), 10732 and 10736 Route 116, Hinesburg. The Goldsmiths attended the May 15, 2013 Prehearing and the August 14, 2013 and August 21, 2013 Hearings. They were represented by James Dumont, Esq. and requested party status under Criteria 1, 1(B), 1(E), 4, 5, 8, 9(K) and 10.

The Goldsmiths are regular users of the area around the project site and will experience an increase in particulate matter from idling vehicles. The Commission preliminarily granted party status under Criterion 1 (air).

The Goldsmiths will experience an increase in traffic from vehicles exiting Commerce Street onto either Hinesburg Road (Rt. 116) or Mechanicsville Road. They are directly affected by proposed traffic mitigation measures agreed to by the Applicants with the Town. Thus, the Commission preliminarily granted party status under Criterion 5.

As nearby residents (approximately 2000 feet away) and users of Canal Park, the Goldsmiths will observe the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

As users of Canal Park and the local roads, the Commission preliminarily granted party status under Criterion 9(K).

As residents of the Town of Hinesburg, the Goldsmiths can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

The Goldsmith property is over 2000 feet from the project. They have not demonstrated that water from increased stormwater runoff from the project will enter onto their property. Therefore, the Commission denied their request for party status under Criteria 1 (water), 1(B) and 4.

In addition, the Goldsmiths have not articulated how they have a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied their request for party status under Criterion 1(E).

11. **John Kiedaisch**, 887 Lewis Creek Road, Hinesburg. Mr. Kiedaisch attended the August 14, 2013 and August 21, 2013 Hearings. He represented at the Prehearing by James Dumont, Esq. Mr. Kiedaisch requested party status under Criteria 7 and 10.

Mr. Kiedaisch alleges that the project will cost more in Town services than the increase in tax revenue it will generate. Criterion 7 addresses whether the project will place an unreasonable burden on the ability of the municipality to provide services. Although Criterion 7 concerns the burden on the municipality and not general burdens on taxpayers, an individual who uses those municipal services may have a particularized

interest. Mr. Kiedaisch alleged potential impacts on the municipality's ability to provide government services such as fire and police service to town businesses and buildings. As a Hinesburg resident, this would include services to Mr. Kiedaisch.

To obtain party status, Mr. Kiedaisch must show a causal connection between the project and any potential impact to his particularized interests. *In re Champlain Parkway*, No. 68-5-12 Vtec, Decision on Amended Motion for Party Status at 6 (October 12, 2012). This requires an offer of proof to demonstrate a reasonable possibility that the project may affect his particularized interests. *Id.* at 6-7 (citing *In re Bennington Wal-Mart*, No. 158-10-11 Vtec, slip op. at 9-10 (April 24, 2012)). The allegations in Mr. Kiedaisch's petition are sufficient to support a preliminary grant of party status. Therefore, the Commission preliminarily granted party status under Criterion 7.

As a resident of the Town of Hinesburg, Mr. Kiedaisch can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (9/19/03). Therefore, the Commission preliminarily granted party status under Criterion 10.

12. **Jean Kiedaisch**, 887 Lewis Creek Road, Hinesburg. Ms. Kiedaisch attended the May 15, 2013 Prehearing; the August 14, 2013 and August 21, 2013 Hearings. She was represented by James Dumont, Esq. Ms. Kiedaisch requested party status under Criteria 1 (air), 5, 8, 9(K) and 10.

Ms. Kiedaisch is a regular user of the area around the project site and will experience an increase in particulate matter from idling vehicles. The Commission preliminarily granted party status under Criterion 1 (air).

Ms. Kiedaisch will experience an increase in traffic while traveling on roads. Due to the frequency of her visits to this part of town, her interests are particularized. Thus, the Commission preliminarily granted party status under Criterion 5.

As a frequent user of businesses in the town core, Ms. Kiedaisch will frequently see the Project building. Therefore, her interests are particularized and the Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a resident of the Town of Hinesburg, Ms. Kiedaisch can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected, *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Ms. Kiedaisch has commented that the Town has investments in pedestrian paths that connect to Canal Park and has claimed that the proposed Project would make those paths less pleasant. These are interests that are not particularized but are experienced by the general public. Thus, the Commission denied party status under Criterion 9(K).

13. **Wendelin Patterson**, 35 Elderberry Lane, Hinesburg. Wendelin Patterson attended the August 14, 2013 and August 21, 2013 Hearings. She was represented by James Dumont, Esq., and requested party status under Criteria 5, 8, 9(K) and 10.

Ms. Patterson will experience an increase in traffic from vehicles exiting Commerce Street onto Mechanicsville Road, which is in the vicinity of her residence. Thus, the Commission preliminarily granted party status under Criterion 5.

As a nearby resident, less than 1,000 feet away and a user of Canal Park, Ms. Patterson will observe the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

Ms. Patterson is a regular user of Canal Park, and the Commission therefore preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Ms. Patterson can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

14. **Chuck & Sally Reiss** ("The Reisses"), 756 Buck Hill Road, Hinesburg. The Reisses attended the May 15, 2013 Prehearing; and the August 14, 2013 and August 21, 2013 Hearings. They were represented by James Dumont, Esq. and requested party status under Criteria 1 (air & water), 5, 8, 9(K) and 10.

As frequent user of businesses in the town core, the Reisses will frequently see the Project building. Therefore, their interests are particularized and the Commission preliminarily granted party status under Criterion 8 (aesthetics).

As residents of the Town of Hinesburg, the Reisses can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (9/19/03). Therefore, the Commission preliminarily granted party status under Criterion 10.

The Reisses have requested party status under Criterion 1 (air). They have commented that they are active in Town planning but have not said how they could be impacted by an increase in particulate matter. The Commission denied party status under Criteria 1 (air) as their interests are not particularized.

It is difficult to understand how the Reisses' property could be affected by increased stormwater runoff from the project since their property is a considerable distance from the project. Therefore, the Commission denied their request for party status under Criteria 1 (water), 1(B) and 4.

In addition, the Reisses have not articulated how they have a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied their request for party status under Criterion 1(E).

The Reisses have articulated that have been actively involved in planning for the Town but have not articulated that they will experience an increase in traffic while traveling on roads. In addition, their interests are not particularized as the impact will be experienced by all travelers on the public road. Thus, the Commission denied party status under Criterion 5.

The Reisses have commented that the Town has investments in pedestrian paths that connect to Canal Park and have claimed that the proposed Project would make those

paths less pleasant for them and the public. These are interests that are not particularized and are not different from the general public. Thus, the Commission denied party status under Criterion 9(K).

15. **Rachel Kring**, 1177 Pond Road, Hinesburg. Ms. Kring attended the May 15, 2013 Prehearing and was represented by James Dumont, Esq. Ms. Kring requested party status under Criteria 5, 9(K) and 10.

Ms. Kring will experience an increase in traffic while traveling on roads. She claims that she is a frequent user of the roads in this area her interests are particularized. Thus, the Commission preliminary granted party status under Criterion 5.

Ms. Kring is a frequent user of Canal Park. Thus her interests are particularized and the Commission preliminary granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Ms. Kring can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminary granted party status under Criterion 10.

16. **Rolf Kielman & Stephanie Spencer** ("Kielmans"), 166 Fox Meadow, Hinesburg. Mr. Kielman and Ms. Spencer attended the May 15, 2013 Prehearing and the August 21, 2013 Hearing. They were represented by James Dumont, Esq. and requested party status under Criteria 5, 8, 9(K) and 10.

The Kielmans will experience an increase in traffic while traveling on roads. As a regular user of the intersections of concern while on his way to work, the Kielmans' interests are particularized and the Commission preliminary granted party status under Criterion 5.

Since the Kielmans regularly commutes past the project site on his way to work, his interests are particularized. The Commission preliminary granted party status under Criterion 8 (aesthetics).

The Kielmans have commented that they feel that the project will severely degrade their and the public's use and enjoyment of Canal Park. They have articulated a particularized interest under Criterion 9(K). Thus, the Commission preliminary granted party status under Criterion 9(K).

As residents of the Town of Hinesburg, the Kielmans can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminary granted party status under Criterion 10.

17. **Ken Brown**, 87 Coyote Ridge Road, Hinesburg. Mr. Brown attended the May 15, 2013 Prehearing and the August 14, 2013 and August 21, 2013 Hearings. He was represented by James Dumont, Esq. and requested party status under Criteria 1 (water), 1(B), 1(E), 4, 5, 8, 9(K) and 10.

As a frequent driver in the area, Mr. Brown will experience an increase in traffic while traveling on roads. Since his interests are particularized, the Commission preliminarily granted party status under Criterion 5.

As a regular visitor to this area every day, Mr. Brown has a particularized interest. Thus, the Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a resident of the Town of Hinesburg, Mr. Brown can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Mr. Brown's property is located over one mile from the Project site. Water from the Project cannot enter onto his property. Therefore, Mr. Brown has not demonstrated a particularized interest, and the Commission denied him party status under Criteria 1 (water), 1(B) and 4.

In addition, Mr. Brown has not articulated how he has a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied his request for party status under Criterion 1(E).

Mr. Brown has commented that he feels that the Project will severely degrade the public's use and enjoyment of Canal Park. He has not articulated that he has a particularized interest under Criterion 9(K). His property is over a mile from Canal Park and therefore his interests are no different from the general public. Thus, the Commission denied party status under Criterion 9(K).

18. **Marian and Dennis Willmott** ("Willmotts"), 1617 Hayden Hill Road West, Hinesburg. The Willmotts attended the May 15, 2013 Prehearing and the August 21, 2013 Hearing. They were represented by James Dumont, Esq. and requested party status under Criteria 5 and 10.

The Willmotts will experience an increase in traffic while traveling on roads. However, their interests are not particularized. Their concerns are speculative that an increase in traffic at the town core will yield an increase in traffic on North Road as travelers seek alternate routes. Thus, the Commission denied party status under Criterion 5.

As residents of the Town of Hinesburg, the Willmotts can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

19. **Julie and Stewart Pierson** ("Piersons"), 232 High Rock Road, Hinesburg. The Piersons attended the May 15, 2013 Prehearing and were represented by James Dumont, Esq. They requested party status under Criterion 10.

As residents of the Town of Hinesburg, the Piersons can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

20. **Daniel Silverman**, 140 Aube Ridge Road, Hinesburg. Mr. Silverman attended the August 14, 2013 and August 21, 2013 Hearings. He was represented at the May 15, 2013

Prehearing by James Dumont, Esq. and requested party status under Criteria 8, 9(K) and 10.

As a user of Canal Park, Mr. Silverman has a particularized interest under Criterion 8 that is different from the general public. Thus, the Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a user of Canal Park, Mr. Silverman has a particularized interest under Criterion 9(K) that is different from the general public. Thus, the Commission preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Mr. Silverman can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

21. **Mary Beth Bowman**, 140 Aube Ridge Road, Hinesburg. Ms. Bowman attended the May 15, 2013 Prehearing and the August 14, 2013, August 21, 2013 and October 14, 2013 Hearings. She was represented by James Dumont, Esq. and requested party status under Criteria 5; 7; 8; 9(K); and 10.

Ms. Bowman frequently uses the streets and sidewalks in the area, thus her interests are particularized. The Commission preliminarily granted party status under Criterion 5.

Ms. Bowman alleges that the Project will cost more in Town services than the increase in tax revenue it will generate. Criterion 7 addresses whether the project will place an unreasonable burden on the ability of the municipality to provide services. Although Criterion 7 concerns the burden on the municipality and not general burdens on taxpayers, an individual who uses those municipal services may have a particularized interest. Ms. Bowman does allege potential impacts on the municipality's ability to provide government services such as fire and police service to town businesses and buildings. As a Hinesburg resident, this would include services to Ms. Bowman.

To obtain party status, Ms. Bowman must show a causal connection between the project and any potential impact to his particularized interests. *In re Champlain Parkway*, No. 68-5-12 Vtec, Decision on Amended Motion for Party Status at 6 (October 12, 2012). This requires an offer of proof to demonstrate a reasonable possibility that the project may affect his particularized interests. *Id.* at 6-7 (citing *In re Bennington Wal-Mart*, No. 158-10-11 Vtec, slip op. at 9-10 (April 24, 2012)). The allegations in Ms. Bowman's petition are sufficient to support a preliminary grant of party status. Therefore, the Commission preliminarily granted party status under Criterion 7.

As a frequent visitor to the area Ms. Bowman will see the building, and her interests are therefore particularized. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a resident of the Town of Hinesburg, Ms. Bowman can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Ms. Bowman has commented that she feels that the Project will severely degrade the public's use and enjoyment of Canal Park. In that paragraph she did not articulate that she has a particularized interest under Criterion 9(K). However, in her request for party status under Criterion 5 she stated that she frequently uses the sidewalks in the area. Thus, the Commission preliminarily granted party status under Criterion 9(K).

22. **Bethany Ladimer**, 2602 Silver Street, Hinesburg. Ms. Ladimer attended the May 15, 2013 Prehearing and the August 14, 2013 and August 21, 2013 Hearings. She was represented by James Dumont, Esq. and requested party status under Criteria 5, 8 and 10.

As a frequent user of the roads in the area on her way to work, Ms. Ladimer will experience an increase in traffic while traveling on roads. Therefore, her interests are particularized. The Commission preliminarily granted party status under Criterion 5.

Ms. Ladimer will see the proposed building on her daily commute to work; her interests are therefore particularized. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a resident of the Town of Hinesburg, Ms. Ladimer can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

23. **Heather Rice, DC**, 171 Hemlock Hill Road, Hinesburg. Ms. Rice was represented at the Prehearing by James Dumont, Esq. She requested party status under Criteria 1 (air & water), 1(B), 1(E), 4, 5, 9(K) and 10.

As a resident of the Town of Hinesburg, Ms. Rice can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminary granted party status under Criterion 10.

According to her testimony Ms. Rice's use of the area is only occasional when her child goes to visit a friend. This does not appear to be a particularized interest, and the Commission denied party status under Criterion 1 (air).

Ms. Rice's property is located almost two miles from the Project site. Water from the Project cannot enter onto her property. Therefore, Ms. Rice has not demonstrated a particularized interest and the Commission denied her party status under Criteria 1 (water), 1(B) and 4.

Ms. Rice has not articulated how she has a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied her request for party status under Criterion 1(E).

Ms. Rice will experience an increase in traffic while traveling on roads. However, according to her submittal her testimony, use of the area is only occasional and therefore her interests are not particularized. Thus the Commission denied party status under Criterion 5.

Ms. Rice has commented that she feels that the Project will severely degrade the public's use and enjoyment of Canal Park. She has not articulated that she has a particularized

interest under Criterion 9(K). Her property is almost two miles from Canal Park and therefore her interests are no different from the general public. Thus, the Commission denied party status under Criterion 9(K).

24. **Heidi Simkins**, 1519 Hayden Hill Road West, Hinesburg. Ms. Simkins attended the August 14, 2013 Hearing and was represented at the May 15, 2013 Prehearing by James Dumont, Esq. She requested party status under Criteria 1(air), 5 and 10.

Ms. Simkins is a frequent driver through town, thus her interests are particularized. The Commission preliminarily granted party status under Criterion 1 (air).

Ms. Simkins is a frequent driver through town, thus her interests are particularized. The Commission preliminarily granted party status under Criterion 5.

As a resident of the Town of Hinesburg, Ms. Simkins can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

25. **Gail Webb**, 26 Barberry Lane, Hinesburg. Ms. Webb attended the May 15, 2013 Prehearing and the August 21, 2013 Hearing and was represented by James Dumont, Esq. She requested party status under Criteria 5, 8, 9(K) and 10.

Ms. Webb will experience an increase in traffic from vehicles exiting Commerce Street onto Mechanicsville Road, which is in the vicinity of her residence. Thus, the Commission preliminarily granted party status under Criterion 5.

As a nearby resident, approximately 1000 feet away, and a user of Canal Park, Ms. Webb will be able to see the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

As a user of Canal Park, the Commission preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Ms. Webb can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

26. **Jedidiah & Heather Depres Burack** ("Buracks"), 1664 Texas Hill Road, Hinesburg. The Buracks attended the August 21, 2013 and October 14, 2013 Hearings and were represented at the Prehearing by James Dumont, Esq. They requested party status under Criteria 5 and 10.

The Buracks will experience an increase in traffic while traveling on roads. Since they frequently drive through the center of town, their interests are particularized. Thus, the Commission preliminarily granted party status under Criterion 5.

As residents of the Town of Hinesburg, the Buracks can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*,

#2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

27. **Jerrilyn Miller and Allan Nyhan** ("Millers"), 176 Thistle Hill Drive, Hinesburg. Ms. Miller and Mr. Nyhan attended the August 14, 2013 Hearing and were represented at the Prehearing by James Dumont, Esq. They requested party status under Criteria 1 (air), 5, 8, 9(K) and 10.

As frequent users of the area due to the location of their residence, the Millers have a particularized interest and the commission preliminarily granted party status under Criterion 1 (air).

The Millers will experience an increase in traffic from vehicles exiting Commerce Street onto Mechanicsville Road, which is in the vicinity of their residence. Thus, the Commission preliminarily granted party status under Criterion 5.

As nearby residents, approximately 1500 feet away, the Millers will be able to see the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

As residents of the Town of Hinesburg, the Millers can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

The Millers have commented that they feel that the Project will severely degrade the public's use and enjoyment of Canal Park. They have not articulated that they have a particularized interest under Criterion 9(K) and therefore their interests are no different from the general public. Thus, the Commission denied party status under Criterion 9(K).

28. **Aimee and Andrew Frost** ("Frosts"), 129 Richmond Road, Hinesburg. The Frosts were represented at the Prehearing by James Dumont, Esq. They requested party status under Criteria 5, 9(K) and 10.

The Frosts are frequent drivers to the Village core area, thus their interests are particularized. The Commission preliminarily granted party status under Criterion 5.

As residents of the Town of Hinesburg, the Frosts can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

The Frosts have commented that they feel that the Project will severely degrade the public's use and enjoyment of Canal Park. They have not articulated that they have a particularized interest under Criterion 9(K) and therefore their interests are no different from the general public. Thus, the Commission denied party status under Criterion 9(K).

29. **Brian Bock**, 10710 Route 116, Hinesburg. Mr. Bock attended the August 21, 2013 Hearing and was represented at the Prehearing by James Dumont, Esq. He requested party status under Criteria 1 (water), 1(B), 1(E), 5, 8, 9(K) and 10.

Mr. Bock will experience an increase in traffic from vehicles exiting Commerce Street onto Hinesburg Road (Rt. 116) and Mechanicsville Road. Although it is not that different from that experienced by the general public, he is directly affected by proposed traffic mitigation measures agreed to by the Applicants with the Town. Thus, the Commission preliminarily granted party status under Criterion 5.

As a nearby resident (approximately 2000 feet away) and a user of Canal Park, Mr. Bock will be able to see the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

Mr. Bock is a frequent user of Canal Park where he walks his dog. Therefore, he has a particularized interest and the Commission preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Mr. Bock can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Envtl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Mr. Bock's property is located almost 2000 feet from the Project site. Water from the Project cannot enter onto his property. Therefore, Mr. Bock has not demonstrated a particularized interest and the Commission denied him party status under Criteria 1 (water), 1(B) and 4.

Mr. Bock testified that he kayaks a portion of the LaPlatte River near its confluence with Patrick Brook once a year. He did not kayak the Patrick Brook. By the logic put forth by his attorney, Mr. Dumont, anyone who uses a water body that water from Patrick Brook eventually enters into would have status. By that argument, a kayaker of Lake Champlain should have status under Criterion 1(E). In the Bennington Wal-Mart case, the members of VNRC kayaked the river in question; therefore the Environmental Court ruled they should have party status. This is not the case here. Mr. Bock does not have a particularized interest under Criterion 1(E) that is different from the general public. Therefore, the Commission denied him request for party status under Criterion 1(E).

30. **Natacha Liuzzi**, 189 Lyman Meadows (and 90 Mechanicsville Road), Hinesburg. Ms. Liuzzi attended the May 15, 2013 Prehearing and was represented by James Dumont, Esq. She requested party status under Criteria 1 (water), 1(B), 1(E), 4, 5, 8, 9(K), and 10.

Ms. Liuzzi's nearest property is located across the road and within 400 feet from the Project site. Thus the Commission preliminarily granted party status under Criteria 1(B) and 4.

Ms. Liuzzi will experience an increase in traffic from vehicles exiting Commerce Street onto Hinesburg Road (Rt. 116) and Mechanicsville Road. Thus, the Commission preliminarily granted party status under Criterion 5.

As a nearby resident (her furthest property is approximately 2000 feet away), Ms. Liuzzi will observe the new building. The Commission preliminarily granted party status under Criterion 8 (aesthetics).

Ms. Liuzzi works across from Canal Park, thus she is a frequent user of the area. The Commission preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Ms. Liuzzi can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Ms. Liuzzi's nearest property is located across the road and within 400 feet from the Project site. However, Ms. Liuzzi did not articulate how the Project will decrease the water quality on her property. Therefore, the Commission denied her party status under Criterion 1 (water).

Ms. Liuzzi had not articulated how she has a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied her request for party status under Criterion 1(E).

31. **Gordon & Suzanne Glover** ("Glovers"), 106 Blackberry Hill Road, Hinesburg. The Glovers were represented at the Prehearing by James Dumont, Esq. They requested party status under Criteria 5 and 10.

As residents of the Town of Hinesburg, the Glovers can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

The Glovers will experience an increase in traffic while traveling on roads. However, their interests are that vehicles seeking alternate routes may start using their road which has inadequate visibility. This interest is speculative and not particularized. Thus, the Commission denied party status under Criterion 5.

32. **Richard Watts**, Leavenworth Road, Hinesburg. Mr. Watts was represented at the Prehearing by James Dumont, Esq. Mr. Watts requested party status under Criterion 5.

As a frequent traveler through Hinesburg on his way to work, Mr. Watts' interests are particularized. Thus, the Commission preliminarily granted party status under Criterion 5.

33. The **National Bank of Middlebury**, P.O. Box 189, Middlebury. The bank owns the adjacent property and shares the access drive with the Applicants. Through an Entry of Appearance submitted on April 15, 2013 by Caroline Carpenter, Executive Vice President, the bank requested party status under Criterion 5. The Bank was represented at the August 14, 2013 Hearing by Joel Bouvier.

The National Bank of Middlebury will experience an increase in traffic from vehicles entering and exiting the project. It also shares the same access drive. Thus, the Commission preliminarily granted party status under Criterion 5.

34. **John Roos**, 147 Haymeadow Lane, Hinesburg. Mr. Roos attended the May 15, 2013 Prehearing and the August 14, 2013 and August 21, 2013 Hearings. He requested party status under Criteria 1 (air & water), 1(B), 1(E), 4, 5, 8, 9(K) and 10.

As a frequent user of the roads in the Village core, Mr. Roos will experience an increase in particulate matter from idling vehicles and thus he has demonstrated a particularized interest. Therefore, the Commission preliminarily granted party status under Criterion 1 (air).

As a frequent user of the roads in the area on his way to work, Mr. Roos will experience an increase in traffic. Therefore, his interests are particularized and the Commission preliminarily granted party status under Criterion 5.

As a frequent visitor to the area on his way to work, Mr. Roos will see the building and he has thus demonstrated a particularized interest. The Commission preliminarily granted party status under Criterion 8.

Mr. Roos uses the sidewalks in the area to shop in the village. He claims that the proposed building would eviscerate the present function and efficiency of Canal Park. As a frequent user of the area, he has a particularized interest under Criterion 9(K). The Commission preliminarily granted party status under Criterion 9(K).

As a resident of the Town of Hinesburg, Mr. Roos can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

Mr. Roos' property is located over one half mile from the Project site. Water from the Project cannot enter onto his property. Therefore, Mr. Roos had not demonstrated a particularized interest and the Commission denied him party status under Criteria 1 (water), 1(B) and 4.

Mr. Roos had not articulated how he had a particularized interest under Criterion 1(E) different from the general public. Therefore, the Commission denied his request for party status under Criterion 1(E).

35. **Laurie Barnett**, 79 Mechanicsville Road, Hinesburg. Ms. Barnett attended the May 15, 2013 Prehearing and the August 14, 2013, August 21, 2013 and October 14, 2013 Hearings. She requested party status under Criteria 1, 4, 5 and 8.

Ms. Barnett is a frequent user of the roads in the area given her property's proximity to the Project site. The Commission preliminarily granted party status under Criterion 1 (air).

Ms. Barnett is an adjacent landowner and the Commission preliminarily granted party status under Criterion 4.

Ms. Barnett will experience an increase in traffic from vehicles exiting Commerce Street onto Mechanicsville Road and passing her residence. Thus, the Commission preliminarily granted party status under Criterion 5.

As an adjacent landowner, Ms. Barnett will be able to see the new building. The Commission preliminarily granted party status under Criterion 8.

36. **Barbara O. & David F. Lyman** ("Lyman's"), 357 Shelburne Falls Road, Hinesburg. The Lyman's own property on the west side of Route 116 (Hinesburg Road) across from the proposed Project. They could not attend the Prehearing but submitted a request prior to the start of the May 15, 2013 Prehearing. They requested party status under Criteria 5, 7, 8 and 10.

The Lymans own property across Rt. 116 from the Project site and will experience an increase in traffic from vehicles exiting Commerce Street onto Rt. 116. Thus, the Commission preliminarily granted party status under Criterion 5.

The Lymans allege that the project will cost more in Town services than the increase in tax revenue it will generate. Criterion 7 addresses whether the project will place an unreasonable burden on the ability of the municipality to provide services. Although Criterion 7 concerns the burden on the municipality and not general burdens on taxpayers, an individual who uses those municipal services may have a particularized interest. The Lymans do allege potential impacts on the municipality's ability to provide government services such as fire and police service to town businesses and buildings. As a Hinesburg resident, this would include services to the Lymans.

To obtain party status, the Lymans must show a causal connection between the project and any potential impact to their particularized interests. *In re Champlain Parkway*, No. 68-5-12 Vtec, Decision on Amended Motion for Party Status at 6 (October 12, 2012). This requires an offer of proof to demonstrate a reasonable possibility that the project may affect their particularized interests. *Id.* at 6-7 (citing *In re Bennington Wal-Mart*, No. 158-10-11 Vtec, slip op. at 9-10 (April 24, 2012)). The allegations in the Lymans' petition are sufficient to support a preliminary grant of party status. Therefore, the Commission preliminarily granted party status under Criterion 7.

As adjacent landowners, the Lymans will be able to see the new building. The Commission preliminarily granted party status under Criterion 8.

As residents of the Town of Hinesburg, the Lymans can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan - an interest in seeing that such town plan is respected. *McLean Enterprises Corp.*, #2S1147-1-EB, Memorandum of Decision at 7 and 29 (Vt. Env'tl. Bd. September 19, 2003). Therefore, the Commission preliminarily granted party status under Criterion 10.

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A. § 6086(c)(6) and Act 250 Rule 14(E) and except for the several changes noted below found no reason to change its preliminary determinations.

John Roos – although Mr. Roos demonstrated his particularized interests and participated in almost every hearing, he asked to withdraw as a party for all criteria. The Commission accepts his withdrawal. However, because Mr. Roos offered testimony and was available for cross examination at the hearings, the Commission will include his comments in its conclusions of law under the respective Criteria on which he was granted preliminary party status.

Rolf Kielman & Stephanie Spencer (“Kielmans”) – we note that a recent Environmental Division decision stated that although a party status requester made regular trips past the project site, this was not sufficient to establish that the person has a particularized interest in the aesthetic character of the project site since the drives by the project site were not in order to take advantage of the aesthetic beauty of the area but because the public highway connected his home and his destination. (*Zaremba Group* 36-3-13 Vtec at 25 2/14/2014). According to the Kielmans' they drive by the site on their regular commute to work not for purposes of viewing the aesthetic qualities of the proposed Project site. Therefore, in light of the recent court decision the

Commission reverses their earlier decision and **denies** party status to the Kielmans under Criterion 8.

Ken Brown – similar to the reason stated above, Mr. Brown stated that he was a frequent visitor to the area and not for purposes of viewing the aesthetic qualities of the proposed Project site. Therefore, in light of the recent court decision the Commission reverses their earlier decision and **denies** party status to Mr. Brown under Criterion 8.

Mary Beth Bowman – similar to the reason stated above, Ms. Bowman stated that she was a frequent visitor to the area and not for purposes of viewing the aesthetic qualities of the proposed Project site. Therefore, in light of the recent court decision the Commission reverses their earlier decision and **denies** party status to Ms. Bowman under Criterion 8.

Bethany Ladimer– similar to the reason stated above, Ms. Ladimer stated that she drives by the site on her commute to work and not for purposes of viewing aesthetic qualities of the proposed Project site. Therefore, in light of the recent court decision the Commission reverses their earlier decision and **denies** party status to Ms. Ladimer under Criterion 8.

C. Friends of the Commission

The District Commission allowed the following nonparties to participate as Friends of the Commission pursuant to 10 V.S.A. § 6085(c)(5). Unless otherwise noted below, each was granted the rights of full participation allowed under 10 V.S.A. § 6085(c)(5):

37. The **Chittenden County Transportation Agency** (“CCTA”) was represented at the Prehearing by Meredith Birkett and requested status as a Friend of the Commission to address concerns under Criterion 5. The Commission preliminarily granted that request.
38. The **Lewis Creek Association**, 442 Lewis Creek Road, Charlotte, was represented at the Hearing by Marty Illick and requested status as a Friend of the Commission to address concerns under Criterion 1(E). The Commission preliminarily granted that request.
39. **Jim Collins**, 373 Hayden Hill Road, Hinesburg. Mr. Collins attended the Prehearing and requested status as a Friend of the Commission for information under Criterion 5. The Commission preliminarily granted that request.
40. **Bill Moller**, 21 Fredric Way, Hinesburg. Mr. Moller did not attend the Prehearing and sent his request the next morning. He requested party status under Criterion 5 but stated that he will not be affected by the additional traffic. The Commission denied his request for party status because the requester must have a particularized interest that will be affected by the proposed project. Mr. Moller modified his request to Friend of the Commission to address concerns under Criterion 5. The Commission preliminarily granted that request.

The District Commission re-examined the preliminary Friend of the Commission determinations in accordance with 10 V.S.A. § 6086(c)(6) and Act 250 Rule 14(E) and found no reason to change its preliminary determinations.

VI. Motions

- On January 3, 2013, Hay, et al. filed a Motion to Dismiss Application or Require Supplemental Application/Memorandum by Applicants (Exhibit #80) – This issue was address above in Section IV. The Commission conducted a Rule 34(E) analysis (see above) and, based on that, denies the Motion as stated in their Prehearing Conference Report and Order of July 30, 2013.

- On January 13, 2013, the Applicants filed a Memorandum in Opposition to Motion to dismiss or to Require Supplemental Application (Exhibit #83). The Commission disagrees with the Applicants' claim that a Rule 34(E) analysis is not warranted and denies the Applicants' Motion as stated in their Prehearing Conference Report and Order of July 30, 2013.
- On July 11, 2013, the Applicants filed a Memorandum in Opposition to Commission's consideration of the Town of Hinesburg's Official Map (Exhibit #84). The Applicants object to a consideration of the Town of Hinesburg's Official Map in the Commission's review under Criterion 10. However, the Applicants have put the cart before the horse – they argue that we must first determine if the Town Plan has a potentially prohibitive policy that is resolved with reference to the Town Plan. Then we can utilize the Official Map to resolve that ambiguity. This is precisely what we do in a Criterion 10 analysis so until that analysis is undertaken we must accept all submitted evidence and give it the weight it deserves. We note that this objection was filed one month prior to the scheduled Hearing on Criterion 10. The Commission denies the Applicants' request to not consider - upfront – the Town of Hinesburg Official Map.
- On August 5, 2013 the Applicants filed Objections to Preliminary Party Status Determinations made by the District Commission (Exhibit #101). The Commission has reviewed the objections and subsequent filings and has made its determinations as discussed above in Section V.
- On August 8, 2013, Hay, et al. filed a "Motion to Strike Testimony and Dismiss the Act 250 Application because O'Leary Testimony Relies on "Involved Land" not included in Application and for which Landowner is not an Applicant in Violation of Rule 2(C)(5) and 10" (Exhibit #108) and then on August 14, 2013 the Applicants filed a Memorandum in Opposition to that Motion (Exhibit #110) – these will be addressed together. The concept of Involved Land is defined in Act 250 Rule 2(C)(5) and is defined as:
 - (a) The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, **all land involved in the entire project shall be included for the purpose of determining jurisdiction.** (Emphasis added)
 - (b) Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking, **all land involved in the entire project shall be included for the purposes of determining jurisdiction.** (Emphasis added)
 - (c) – not relevant to this discussion.

It is clear from the testimony that the work to be completed by the Applicants upon land owned and controlled by the Town of Hinesburg should be considered Involved Land. However, the concept of Involved Land is for purposes of determining jurisdiction only (see emphasized text above). What Hay, et al. were trying to establish is the jurisdictional land. Development is defined as “[t]he construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land...” 10 V.S.A. § 6001(3)(A)(i). The Tract of Land is defined in Rule 2(C)(12) as: “one or more physically contiguous parcels of land owned or controlled by the same person or persons.” The land owned or controlled by the municipality upon which construction needs to occur is not considered part of the Tract of Land, but is Involved Land. The definition of development in the statute clearly differentiates between the Tract of Land where the development is occurring and the Involved Land which is used for jurisdictional determination purposes. The municipal land is Involved Land but since it is not controlled or owned by the Applicants it is not part of the Project tract. The purpose of the co-applicancy rule is to ensure the enforceability of permit conditions by requiring the record owners of involved land to be co-applicants to any Act 250 application. *Re: Dr. Anthony Lapinsky and Dr. Colleen Smith, #5L1018-4/#5L0426-9-EB*, Findings of Fact, Conclusions of Law and Order at 11 (Vt. Envtl. Bd. October 3, 2003). Furthermore, the co-applicancy of the State and the local municipality is not required by the Act 250 statute, Board rules, or case precedent in connection with a proposed mixed use development. *Maple Tree Place Associates, #4C0775-EB* Memorandum of Decision at 12 (Vt. Envtl. Bd. March 25, 1998). Therefore, co-applicancy by the municipality is not required and the Commission denies this Motion.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicants have met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|--|---------------------------------------|
| 1(A) - Headwaters | 9(C) - Productive Forest Soils |
| 1(C) - Water Conservation | 9(D) - Earth Resources |
| 1(F) - Shorelines | 9(E) - Extraction of Earth Resources |
| 1(G) - Wetlands | 9(F) - Energy Conservation |
| 3 - Impact on Existing Water Supplies | 9(G) - Private Utility Services |
| 6 - Educational Services | 9(H) - Costs of Scattered Development |
| 8 - Natural Areas | 9(J) - Public Utility Services |
| 8 - Historic Sites | 9(L) - Rural Growth Areas |
| 8(A) - Wildlife Habitat & Endangered Species | |
| 9(A) - Impact of Growth | |
| 9(B) - Agricultural Soils | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits # 1 - #176, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A. § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The

burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. The current proposal includes merging a 0.32 acre parcel from an abutting property along with Commerce Street Extension, consisting of 0.30 acres, with Lot 15 of the Giroux Commerce Park in Hinesburg Village to create a 5.18 acre lot; the construction of a new 36,000 sf supermarket and pharmacy; 80 feet of new shared driveway known as Commerce Street Extension; 128 surface parking spaces; 1,100 linear feet of new and infill sidewalks; new landscaping; municipal water and wastewater, stormwater facilities; and associated improvements. Exhibits #1, #2 and #7.
2. In addition, this Project includes a space for a farmer's market and an offer to the Town for an easement for a public park. The tract of land consists of 5.18 acres that are all involved in the Project area. The Project also includes a 0.13 boundary adjustment between two parcels of land fronting on Route 116 owned by one of the Applicants. Exhibit #2.
3. The Applicants' original plans submitted on March 26, 2013 included offsite traffic improvements on Route 116 north of the Commerce Street intersection, which included the widening of the roadway and existing box culvert over Patrick Brook. Exhibits #38 - #57.
4. The Town of Hinesburg submitted a request to the VTrans Transportation Board and subsequently received approval on June 21, 2013 to relocate the 30 mile an hour speed limit sign north of its existing location to help slow traffic coming into the Village of Hinesburg from the north. The relocation of this speed limit sign altered the expected queuing from the transportation model and changed the dimensional requirements of the southbound left turn lane onto Commerce Street, thereby according to the transportation model, eliminating the need for pavement widening beyond the existing box culvert. Without a widening of Route 116 over the Patrick Brook, traffic improvements no longer include the widening of the existing box culvert over Patrick Brook. Exhibits #41, #43 and #103.

Criterion 1 - Air Pollution:

Findings of Fact

5. Previous relevant Findings of Fact are included herein.
6. The Project, a grocery store and pharmacy, does not involve the manufacturing or industrial processes that produce air emissions or odors. The Project will not use any fuel burning equipment with over 10 million BTUs/hour or coal burning equipment. Exhibit #7.
7. During construction the Applicants will control dust through the use of stabilized construction entrances and through the use of water and/or other agents approved by ANR. Exhibit #7.
8. All commercial or industrial buildings constructed as part of the Project will have high efficiency oil or gas furnaces in accordance with the recommendations of the Vermont Department of Public Service and the current version of the Vermont Guidelines for Energy Efficient Commercial Construction. Exhibit #7.
9. Hours for any construction related activities will be limited to 7 AM to 6 PM weekdays. Exhibit #7.

10. The Project proposes parking for 128 vehicles. An ANR Air Quality and Climate Division Permit to Construct or Operate is not required for the Project. Exhibit #7.
11. Mr. Roos provided testimony at the August 14, 2013 hearing regarding air pollution from traffic congestion. Mr. Roos stated that air pollution from the additional vehicles that would be shopping at the Project would have negative effects on the health of residents who walk within the VT 116 corridor, which is based on medical and other studies. However, no site specific quantitative information or research regarding this alleged air pollution impact was submitted. Exhibit #138.

Conclusions of Law

Noise, fumes, airborne contaminants, bioaerosols, and dust may be considered under Criterion 1. *Re: Pike Industries, Inc. and Inez M. Lemieux, #5R1415-EB, Findings of Fact, Conclusions of Law and Order at 31 (Vt. Env'tl. Bd. June 7, 2005).* No quantitative data was presented to show that an increase in particulate matter will result from an increase in traffic due to the proposed Project. A project will generate "undue" air pollution if it passes a threshold beyond mere annoyance. *In re: Rivers Dev. Act 250 Appeal, 68-3-07 Vtec, Decision on the Merits at 14-15 (March 25, 2010), citing Re: McLean Enters. Corp. #2S-1147-1-EB, Findings of Fact, Conclusions of Law and Order at 41 (Vt. Env'tl. Bd. November 24, 2004).* No evidence was presented to show that the area is listed as an EPA air quality hot spot, or that the Project will create a hot spot or that an Air Pollution Control permit is required, therefore the Commission cannot conclude that there will be an impact to air quality from the Project.

The Commission concludes that this Project complies with Criterion 1(air).

Criterion 1 - Water Pollution

Findings of Fact

12. Previous relevant Findings of Fact are included herein.
13. The Project will consist of one commercial retail store: a supermarket and pharmacy. Small quantities of typical household hazardous materials such as batteries, cleaning fluids, pesticides, etc., will be stored and sold on site and will be handled with proper removal and containment in case of leaks or spills. Exhibit #7.
14. The Project's stormwater discharge system has been designed to meet or exceed current State stormwater detention and treatment standards by using a combination of structural and nonstructural stormwater treatment practices. Exhibits #49 - #51, #105 - #107 and testimony of Paul O'Leary.
15. Temporary and permanent erosion prevention and sediment control measures to be used for the Project will prevent stormwater runoff from polluting nearby water sources: the Canal and Patrick Brook. Exhibits #52 - #57, #148 - #150.
16. The Project was designed to meet the 1- and 10-year storm events, as is required and in accordance with the 2002 Vermont Stormwater Management Manual. The existing stormwater system in the Giroux Commercial Park was originally designed to meet earlier standards and does not meet the 2002 standards. The 2000 ANR approved stormwater permit amendment for the Giroux Commercial Park incorporated changes to the design of the stormwater treatment system in the park that were considered the best fit scenario. See Criterion #1(B) and Exhibits #93, #104 - #107.
17. Mr. Dean Grover, P.E., expert witness for Hay, et al., stated that the storm data used by the Applicants' engineer is what the ANR relies on for issuing stormwater permits, but is outdated.

He argued that the 25-, 50- and 100-year storm event results that were modeled by the Applicants will affect the adjoining Dark Star property and the storm water will overtop the existing storm pond between Lots #2 and #3 of Commerce Park and will go directly into Patrick Brook. Exhibit #100.

18. Mr. Roos argued that because the underground storm-water tanks are a closed environment that will collect stormwater from the parking areas and this runoff could be held in these tanks for an extended period there could be anaerobic decomposition that he speculated could create awful smells and flammable gases. Exhibit #138.
19. The Applicants stated that the use of underground storage of stormwater has been used successfully in other project sites in Vermont. It is a supplemental pretreatment system that is being used to ensure a high level of water quality treatment that will exceed the State's requirements. Exhibits #93 and testimony of Paul O'Leary.
20. The Canal is separated from the Project by a Town sidewalk located on a berm. Stormwater runoff from the Project will not be able to flow into the Canal because of this separation. Exhibit #40.
21. The ANR Wetlands Division has determined the wetlands affected by this project are Class 3 wetlands as stipulated in a Petition determination dated April 2, 2013. An ANR Wetlands Permit is not required. Exhibit #170.

Conclusions of Law

In making a determination that a project will not result in undue water pollution, the Commission must consider applicable health and environmental conservation regulations. The Commission can consider water quality standards when determining whether a land use permit should be granted. ANR permits also create presumptions that the project complies with Criterion, applicable regulations governing waste disposal, and stormwater. *In re Hawk Mountain Corp.*, 149 Vt. 179, 182 (1988). The presumption of compliance created by issued ANR wastewater and stormwater permits may be rebutted: (1) by showing, by a preponderance of evidence, that a project is likely to result in undue water pollution; *or* (2) by showing that a project does not comply with applicable ANR regulations and that such noncompliance will result in, or substantially increase risk of, undue water pollution. *Herbert and Patricia Clark*, #1R0785-EB, Findings of Fact, Conclusions of Law and Order at 25 - 27 (Vt. Env'tl. Bd. April 3, 1997). No quantitative evidence was submitted to dispute the technical review completed by ANR on the issued state permits, such that water pollution will result. Hay, et al. did argue that the stormwater permits did not take into account recent changes to rainfall such that the expected flooding of neighboring properties could result more frequently. However, other than an alleged increased flooding, no decrease in water quality was proffered.

The Commission concludes that the Project will not result in undue water pollution.

Criterion 1(B) - Waste Disposal:

Findings of Fact

22. Previous relevant Findings of Fact are included herein.
23. Wastes generated by the Project will include sewage, stormwater runoff, and limited stumps generated by site clearing. Exhibit #7.
24. The estimated 2,440 gallons per day of sanitary wastes that the Project will generate will be disposed of through the Town of Hinesburg wastewater treatment facility. The Drinking Water

- and Groundwater Protection Division issued Wastewater System and Potable Water Supply Permit #WW-4-4018 on August 7, 2013. Exhibit #119.
25. The Project does not have any floor drains. Exhibit #7.
 26. The Applicants will use erosion prevention and sediment control measures contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control to control stormwater runoff during construction.
 27. The ANR Department of Environmental Conservation has issued coverage under General Permit #3-9020 (Construction General Permit #3034-9020) for the construction phase of the Project on April 21, 2014. Exhibit #172.
 28. The ANR Department of Environmental Conservation has issued coverage under General Permit #3-9015 (Stormwater Discharge General Permit #3034-9015) for the operational phase of the Project on April 10, 2014. ANR has also issued a Responsive Summary for concerns raised in objection to issuance of a Stormwater Discharge Permit. Exhibit #171.
 29. The stormwater design is intended to protect the water quality of Patrick Brook, the receiving water for the Project's stormwater discharge, in accordance with the Vermont Water Quality Standards (VWQS). The Applicants used the HydroCAD software model to analyze stormwater flows from the Project site under both the pre-development and post-development conditions. The HydroCAD model is the model used and accepted by ANR in issuance of its permits. Exhibit #93.
 30. The Project has been designed based on the applicable requirements of the current Vermont Stormwater Management Manual (VSMM), independently of additional treatment resulting from the previously permitted Giroux Commercial Park stormwater system which is operated under ANR discharge permit #3034-9010.R. Exhibits #93 and #104.
 31. The Project design complies with the water quality treatment (WQv) and groundwater recharge (RE) criteria of the VSMM, which is attained through the reconstruction of existing grassed channels, which will meet the VSMM criteria for velocity, travel time and depth. Exhibits #7, #93 and #104.
 32. The Project's stormwater system is comprised of the following components:
 - a. Collection: The Project site has been graded to collect all stormwater runoff using a network of catch basins. These catch basins will have a sump of 24" and be subject to routine maintenance.
 - b. Pretreatment: The network of catch basins will drain into ADS HDPE Water Quality Units where stormwater runoff will receive pretreatment. The ADS HDPE Water Quality Units are designed with two weir plates to trap oils and total suspended solids as the stormwater flows through surface drainage structures and into the water quality unit. This structure also incorporates the use of a bypass system to divert water flows greater than the 'first flush' to the underground storage chambers.
 - c. Storage / Detention: After receiving pretreatment, stormwater runoff from the site will flow to a series of Stormtech SC-310 storage chambers. These underground storage chambers have been sized to meet the storage requirements of the 1- and 10-year storm events. An outlet structure has been proposed to control the rate at which stormwater is released in accordance with the VWQS.

- d. Treatment: After being detained, stormwater runoff will flow to Catch Basin #13, which has been designed as a water quality diversion structure. Stormwater runoff associated with the water quality storm event (WQv), or first flush, is conveyed through a lower 12" HDPE outlet pipe, at elevation 336.50', and outlets to a grassed treatment channel. Runoff from larger storm events is conveyed through a higher 18" HDPE outlet pipe, at elevation 336.75', and is then piped under Commerce Street Extension and Commerce Street before flowing into the detention area between Lots 2 (Mobil Station) and 3 (Tailhook Towing).
- e. Discharge: Both the grassed treatment channel designed to convey the water quality storm event (WQv), and the 18" outlet designed to transport the larger storm events, flow directly into the detention area between Lots 2 and 3, approved under the Giroux Commercial Park stormwater permit #3034-9010.R, before ultimately discharging into Patrick Brook.

Exhibits #7, #93 and #104.

- 33. During extreme rain storm events (25-year storm or larger), the Project's on-site stormwater system has been designed to allow some water to back up within the parking area. As the parking area fills with water it may eventually reach the top of the curb and a portion will overflow into the existing drainage swale between Lots #15 and #11. To ensure that this overflow does not erode the bank or damage the adjacent property, an emergency spillway has been designed at the low point in the parking area on the north side of the property. This stone spillway will provide a relief point allowing ponded water to overflow into the existing drainage swale in a controlled manner. The peak discharge from Lot #15 into the swale will still be less than the current conditions of an undeveloped Lot #15. Exhibit #93.
- 34. The existing drainage channels between Lots #2 and #3, and Lots #10 and #11 were built as part of the original stormwater design for the entire Giroux Commercial Park (Stormwater Permit #3034-9010). They are located within 30' wide drainage easements benefiting all users in the Giroux Commercial Park. Exhibits #7, #93 and #104.
- 35. As part of the Giroux Commercial Park stormwater permit renewal in 2000 (#3034-9010.R), a 'best fit' upgrade was designed and required to be constructed. Regulations in effect at the time of the original 1987 design, the 2000 upgrade design and current regulations do not require detention to accommodate stormwater volumes associated with the 25, 50 and 100-year rain storm events. Exhibits #7, #93 and #104.
- 36. Offsite stormwater runoff from upslope contributing areas will be diverted around the Project and there are proposed culverts and existing drainage channels that upslope runoff will continue to utilize. This includes stormwater runoff from Lots #14 (Brookside Family Health), #13 (National Bank of Middlebury), #11 and #12 (Dark Star Lighting), #10 (Route 116 Shopping Center), Giroux Automotion Quonset Hut, Giroux Auto Sales and the Hinesburg Post Office. Exhibits #7, #93 and #104.
- 37. Runoff from the Dark Star property (Lot #12) currently flows either into the existing drainage channel located between Lots #11 and #15 or directly into the drainage channel located between Lots #10 and #11. The swale between Lots #10 and #11 and existing culvert under Commerce Street are not providing much positive drainage to the approved detention area located between Lots #2 and #3 nor has the swale been properly maintained. Both of these conditions have affected the channels' ability to convey stormwater as designed, and as a result ponding occurs on the Dark Star property from time to time. Exhibits #7, #93 and #104.

38. In order to pipe flows from the larger rain storm events around the Dark Star property, approximately 640 linear feet of 18" storm pipe will be installed. This will allow stormwater from large storm events to bypass the Dark Star property and be piped directly to the detention area between Lots #2 and #3. As a result, the downstream property, Dark Star Lighting, will receive offsite runoff at a lower rate than it does today. Exhibits #7, #93 and #104.
39. To date, the 'best fit' upgrades which are the responsibility of the Commerce Park Association have not been constructed. ANR has indicated they intend to require Commerce Park Association to install these upgrades as required under the Association's existing stormwater permit. Exhibit #104.
40. On behalf of the Commerce Park Association, the Applicants have agreed to construct the previously required improvements between Lots #2 and #3 that are part of the Giroux Commercial Park amended Stormwater Permit #3034-9010.R. In addition, the drainage channel between Lots #11 and #15 will be reshaped and the existing culvert under Commerce Street will be replaced to provide improved drainage to convey stormwater to the approved detention area. With this 'best fit' upgrade and the proposed Project's stormwater system, the impacts on the Dark Star property during routine storms and during the 25-, 50- and 100-year storm events will be less than what occurs today. Exhibits #100 and #104.
41. Applicants' compliance with water quality treatment standards under the VSMM is achieved by sending the water quality volume through the treatment swale between Lots #15 and #11. The current VSMM does not recognize use of underground ADS HDPE water quality treatment units to meet the water quality standards. Applicants' proposed use of the ADS HDPE units will provide supplemental water quality treatment. Exhibits #7, #93 and #104.
42. As a result of the modifications to the grass swales to meet VSMM treatment criteria, improvements to the treatment of stormwater runoff from existing developed areas will also be realized. Existing stormwater runoff from approximately 1.7 acres of existing impervious area (including portions of Commerce Park Lots #10, #11, #13, and #14) will flow through improved grassed channels. This enhancement of stormwater treatment from existing developed areas is consistent with a suggested approach in a report prepared for the Town of Hinesburg. Exhibits #7, #64, #93, and #104.
43. Applicants stated that the receiving water for discharges of treated stormwater for the Project is Patrick Brook, with the point of discharge located east of the existing culvert under VT 116. Patrick Brook is designated as Class B waters pursuant to the VWQS (VT NRB, 2011). The brook is not designated as "impaired" based on the most recently EPA-approved (2012) "*303(d) List of Waters; Impaired Surface Waters in Need of TMDL; June 2012*" (VT DEC, 2012a). Additionally, the brook is not included in any of Vermont's "List of Priority Surface Waters" (VT DEC 2012b). Exhibit #94.
44. An increase in peak stormwater flow rate from the Project site during the 100-year storm event is projected. However, the timing of the peak discharges between the Project site discharge and peak stream flow in Patrick Brook differs considerably. The change in peak flow rate in Patrick Brook associated with the Project will be earlier than the peak flow in the brook and thus will not increase peak flows in the brook. Accordingly, the Project is not expected to have an impact downstream within Patrick Brook, including water quality, aquatic biota, or aquatic habitat or on the performance of existing infrastructure, such as the existing culvert under VT Route 116. Exhibit #94.

45. The proposed stormwater system will result in stormwater flow from up to 100-year storm events to have less flow through the existing swales than now occurs pre-development. This is achieved utilizing underground storage chambers to provide storage up to a 10-year storm event and for events larger than that an 18 inch pipe will carry the majority of the stormwater flow beyond the first flush directly to the Lot #2 and #3 (between the Mobile Station and Tailhook Towing) detention and treatment area. The Project's parking area within the curbing will provide further capacity for extreme events. The area between Lots #2 and #3 is the approved stormwater discharge area for Lot #15 as well as other portions of the Commerce Park Subdivision. Exhibit #23.
46. The Project will increase the impervious area on the Project lot by approximately 2.69 acres, bringing the site total to 2.88 acres of impervious coverage. This includes the existing driveway pavement at the beginning of Commerce Street Extension that currently accesses the National Bank of Middlebury property. Exhibit #7.
47. The Town of Hinesburg Selectboard is not convinced that the Applicants have adequately demonstrated that the Project will not result in undue water pollution with regard to stormwater disposal. The Selectboard believes that treatment capacity of the grass swale between the Dark Star and Aubuchon properties would remain suspect given the extremely shallow slope which results in ponding. The Applicants indicated this swale would function adequately, but only with regular maintenance, which the Selectboard feels is problematic given the previous track record of the Commerce Park development. The central stormwater detention area requires substantial improvements. The Selectboard requested that if the District Commission feels Criterion 1B has been satisfied, any approval should include conditions requiring that those portions of the Commerce Park stormwater treatment system proposed to be used by the proposed Project be improved prior to the commencement of any site work. Exhibit #160.
48. Hay, et al. do not believe the Stormwater Discharge Permit (#3-9015) is a sufficient evaluation to demonstrate the adequate handling of extreme stormwater flows from the Project site. They testified that the flooding that is occurring on the Dark Star property is not just a result of Lot #15 and that it includes stormwater runoff from Lots #12, #13, #14, the Post Office lot, the Giroux Automotion lot and Hinesburg Auto Sales lots. Exhibit #100.
49. The stormwater design did not intend to address the 25-, 50- or 100-year storm events. Hay, et al. stated that the 25-, 50- and 100-year storm events will cause flooding of the downstream Dark Star property. According to them, the existing stormwater pond between Lots #2 and #3 was never constructed properly; runoff from 25-, 50- and 100 year storms will overflow this structure and goes untreated into Patrick Brook. Total flows into the detention pond, wetland and Patrick Brook will approximately double during 25-, 50- and 100-year storm events, because of the Project. Exhibits #93 and #100.
50. Dark Star Properties owns Lot #11, immediately to the north of and down-gradient from, Lot #15 (the subject lot). Dark Star already experiences severe flooding, including flooding right up to the edge of the building. Exhibits #100 and testimonies of Dean Grover and Michael Sorce.
51. The Applicants will dispose of any extracted stumps on-site above the seasonal high water table or at a State approved landfill to prevent groundwater pollution. Exhibit #7.
52. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Exhibit #7.

Conclusions of Law

The ANR permits create a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of wastewater and waste collection, treatment and disposal systems authorized by the ANR permit(s) will not result in undue water pollution. Technical determinations made by ANR in issuing the permits are entitled to substantial deference. 10 V.S.A. § 6086(d).

ANR provided comments to the Applicants on the initial design stormwater application, and changes were made to the final stormwater management plan. In consideration of known existing flooding problems, ANR requested that the Applicants complete further analysis of this condition in both the existing condition and proposed condition to ensure that the proposed Project would not exacerbate current problems, but also as part of an effort to improve stormwater drainage conditions during larger storm events, as represented by the 100-year 24-hour storm model. The Commerce Park development is currently covered by authorization #3034-9010.R; the plans proposed by Commerce Park's engineers have not been completed. Based on a technical review by ANR; discussed in the Responsive Summary to the issued Project stormwater permit; the Applicants have addressed the applicable treatment standards set forth in the VSMM and have demonstrated that the 100-year 24-hour storm event (Type II distribution) can be conveyed to the receiving water without exacerbating existing conditions; and have further highlighted improvements to the current condition through stormwater design and infrastructure modifications within the Commerce Park. The Applicants have also provided information documenting that the increase in stormwater runoff volume from the Project would result in minimal change to the peak flows in downstream receiving waters. Lastly the opponents have questioned whether the storm event baseline data used by ANR is acceptable given their presentation on the state of climate change impacts. The opponents did not provide documentation that the increased frequency of baseline rain storm events (as now defined) results in a new baseline that will result in flooding beyond that assumed by the current model's baseline.

For these reasons and after careful weighing of the evidence, the Commission has determined that the opponents to this Project have not presented sufficient information to rebut the presumption afforded by the State issued stormwater permit. We conclude that the Project, with the requirement that the Commerce Park stormwater upgrades implemented prior to operation of the proposed Project, will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal, and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Therefore, we conclude that the Project will not cause undue water pollution.

The Project complies with Criterion 1(B).

Criterion 1(D) - Floodways:

Findings of Fact

53. Previous relevant Findings of Fact are included herein.
54. The *Town of Hinesburg Map 7: Wetlands and Flood Hazard Areas* map, effective May 5, 2011, includes a flood hazard area along Patrick Brook. It does not include any flood hazard area along the Canal. Exhibit #7.
55. No fluvial erosion hazard (FEH) zone has been mapped within the Project area by ANR. The ANR Rivers Program, confirmed that no additional FEH zone is associated with the canal at the Project location and that the DEC concurs with the FEH as presented on the *Town of Hinesburg Map 7: Wetlands and Flood Hazards Areas* map adopted by the Town of Hinesburg. Exhibit #13.

56. Since no construction is proposed in or near the floodways or floodway fringes of Patrick Brook, and stormwater runoff rates have been managed as described under Criterion 1(B), there will be no impacts to the Patrick Brook floodway. Exhibit #7.
57. Ms. Laurie Barnett's property abuts the Canal southeast of the Project site. Ms. Barnett, who has resided at her property for over 6 years, stated that the Canal has never flooded hers or other abutting properties. Testimony of Laurie Barnett.
58. Ms. Andrea Morgante stated that the Canal has two control valves located north and west of the Project site which the Town uses to adjust water flows during storm events. The Town also uses the water in the Canal for firefighting protection. The Canal dates back to the early 1800's.

Conclusions of Law

The Commission concludes that the Project will not involve the development or subdivision of lands within any floodway or floodway fringe.

The Project complies with Criterion 1(D).

Criterion 1(E) - Streams:

Findings of Fact

59. Previous relevant Findings of Fact are included herein.
60. There are no natural streams or riparian wetlands located on or adjacent to the Project site. Patrick Brook is the nearest natural stream to the Project, located approximately 650-feet to the north of the Project site. Exhibit #7.
61. Patrick Brook is classified by the State of Vermont as a cold-water fish habitat. Exhibit #7.
62. The Canal is an artificially constructed structure built in the early 1800's to serve industrial development downstream. It is entirely dependent for its continued presence on an existing sluice gate near VT Route 116 at the downstream end which impounds water adjacent to the site, and a deteriorating diversion structure, at its upstream end at Patrick Brook. As a result, natural fluvial processes are not present. The existing conditions associated with this diversion are described more fully in the MMI report titled "Growth Area Existing Conditions Hydrology Study". Exhibit #94.
63. The Canal runs along the southern property line between an existing sidewalk, berm and Mechanicsville Road. The berm and sidewalk area physically are separated from the proposed building and parking area by a swale and wetlands that are at a lower elevation. The banks of the Canal are at a higher elevation and physically separated from the Project site. No construction is proposed within the Canal or the areas immediately adjacent other than utilities that will be bored under the Canal and landscaping. All other work will occur north of the existing sidewalk that lies between the Project and the Canal. Exhibit #40.
64. Due to the artificial channel conditions of the Canal and presence of water level control structures upstream and downstream of the Project, in-stream habitat is minimal and natural fluvial geomorphic channel processes do not occur. Exhibit #94.
65. The western bank of the Canal is currently landscaped with natural shrub species and a sidewalk runs generally parallel to it along the eastern perimeter of the project area. Much of the eastern bank of the canal along the Mechanicsville Road embankment has been stabilized with rip rap. Exhibit #46.

66. In the original Act 250 Land Use Permit (LUP) #4C0654 for the creation of Giroux Commercial Park, Condition #13 requires a 75-foot setback from “streams,” which, as that term is used in LUP #4C064, the Commission determined above refers to both the Canal and Patrick Brook. This is based on Exhibit #22: the Project Narrative submitted by the applicants to the original LUP. The applicants proposed to maintain Patrick Brook and the Canal in their natural state and to have buildings setback 75-feet from both stream centerlines. Exhibit #142.
67. Subsequent to the issuance of the original LUP #4C0654, this Commission has granted waivers to Condition #13 in several of the permit amendments issued for development of lots within the Giroux Commercial Park. The requirement for a 75-foot setback between any disturbance and the centerline of streams has been reduced to as little as 30-feet several times for both the Canal and Patrick Brook. Exhibit #142.
68. Portions of the Project, namely a small strip of the parking area; sidewalks; a small corner of the building; and landscaping encroach into the 75 foot wide buffer from the centerline of the Canal. At its closest point the building will be approximately 65 feet from the Canal and the canopy of the building will be approximately 40 feet away. Exhibit #122a.
69. The Applicants have requested a waiver from Condition #13 of the original LUP #4C0654 to allow a 40-foot buffer from the centerline of the Canal to all proposed improvements with the exceptions of the following which will be closer:
 - a. The new sidewalk connections from the front walkway of the store to the existing sidewalk;
 - b. The proposed seating area off of the existing sidewalk; and
 - c. Additional landscaping as shown on the plans.

Exhibit #142.
70. Hay, et al, stated that untreated stormwater runoff will enter into Patrick Brook during 25, 50 and 100-year storm events. They agreed with the Applicants’ assessment that the existing stormwater drainage system provides treatment of stormwater runoff before entering into Patrick Brook. Exhibit #100.
71. The Project’s stormwater design is intended to protect water quality of Patrick Brook, the receiving water for the Project’s stormwater discharge, in accordance with VWQS, as described in Criterion 1(B) above. Exhibit #7.
72. LUP #4C0863 Condition #23 prohibits the discharge of any “waste” materials into any surface waters including but not limited to discharge of stormwater runoff into Patrick Brook. Stormwater runoff is considered waste.
73. The Applicants’ stormwater discharge plan depends on continued storage of floodwater on the lands of Dark Star Properties. Without continued use of Dark Star Properties lands, the proposed system will not function as designed. Exhibits #100 and testimony of Paul O’Leary.
74. The Town of Hinesburg Selectboard is concerned about the potential for future negative impacts under Criteria 1(D), 1(E), 4, 7 and 10 if culvert modifications are deemed necessary after post construction traffic monitoring. Simply extending the existing culvert will have adverse impacts related to downstream erosion, potential for increased flooding due to the greater likelihood of debris and ice jamming, and decreased aquatic organism passage in conflict with State design guidelines. The Selectboard recommends that the District Commission require that any culvert lengthening necessitated by post construction monitoring include replacement of the existing

- culvert, and be reviewed as a formal amendment to the Act 250 permit to ensure the aforementioned adverse impacts are addressed. Exhibits #88a and #160.
75. No construction is currently proposed in Patrick Brook and its riparian buffer. Exhibit #7.
 76. The Patrick Brook culvert under Route 116 is a concrete box 7-feet wide by 4-feet high and 30-feet long. An extension of the culvert, if necessary to accommodate a longer southbound queue lane, will increase the length by 5-feet on the upstream (eastern) side. Past studies of the culvert completed for the Town of Hinesburg indicated that the structure needs to be replaced because it is blocking fish passage; undersized for the channel size that can lead to increased flood and erosion risks; and is showing signs of structural deterioration. The culvert is backwatered under normal flows and passes the 50-year design flow when just over full. Water backs up upstream of the culvert during flooding, yet ample floodplains exist to store the water and prevent road overtopping. There is three feet of fill between the top of the structure and the road surface. Limited capacity exists for sediment, debris, and ice in addition to design flow due to the narrow width of the structure relative to the channel bankfull width. Clogging is the main flood hazard at the project site. The proposed culvert extension will not change existing flood capacity. Exhibit #88.
 77. A longer structure with a one-foot width contraction inside the structure at the extension may be more prone to debris and ice jamming during floods. Past evaluation of how well the structure fits the stream channel indicates that the culvert is “partially compatible” with the Patrick Brook channel. This means that the “Structure [is] compatible with either current [channel] form or process, but not both. Compatibility likely [is] short term. There is a moderate risk of structure failure and replacement may be needed”². Exhibit #88.
 78. The culvert width is 70% of bankfull channel width, and the proposed state standard for culvert sizing is 120% bankfull channel width, or 100% bankfull channel width in low risk settings. The current measured bankfull width of 10 feet may be unnaturally narrow in the event all flow travels down Patrick Brook because water has been diverted to the Canal for many years. Exhibit #88.
 79. Sediment discontinuity exists at the structure due to it being undersized and may be leading to an increase in downstream erosion potential. Past studies indicate that the subject culvert likely limits aquatic organism passage for some species or life stages due to limited depth or high velocities.³ Good habitat potential exists upstream in the wooded area and the downstream channel has a narrow buffer and is exposed. The subject culvert is an important link for fish moving upstream from the LaPlatte River to reach habitat between the culvert and Canal, and possibly upstream should the diversion structure breach or the old channel to the north reconnect. The culvert extension, in the original design by the Applicants but not proposed since the Hinesburg Road speed limit was decreased, will decrease aquatic organism passage due to the length increase. This outcome is not desired, and in conflict with state design guidelines. Exhibit #88.

2 Schiff R., J.S. Clark, and S Jaquith 2008. The Vermont Culvert Geomorphic Compatibility Screening Tool. Prepared by Milone & MacBroom, Inc. with the VT Dec River Management Program, Waterbury Vt. (quoted in Exhibit #88).

3 Schiff R., J.S. Clark, and R. Kirn 2008. The Vermont Culvert Geomorphic Compatibility Screening Tool. Prepared by Milone & MacBroom, Inc. with the VT Dec River Management Program, Roxbury Vt. (quoted in Exhibit #88).

80. The Project is not expected to endanger the health, safety, or welfare of the public or of adjoining landowners.

Conclusions of Law

Although it is not clear that the Canal should be considered a stream we will continue to consider it a stream. The Commission has granted several waivers in the past of the required 75-foot setback from the centerline of any streams, pursuant to Condition #13 of LUP #4C0654. In addition, the construction of the Canal sidewalk prevents any flow of stormwater from the Project to the Canal, thus providing further protection of the Canal from stormwater runoff. Therefore, the Commission finds no reason to not grant a waiver from Condition #13 of LUP #4C0654 for the proposed Project.

The Patrick Brook culvert under Route 116 is inadequate for the purpose for which it was intended. It is blocking fish passage; undersized for the channel size that can lead to increased flood and erosion risks; and is showing signs of structural deterioration. That said, this Project does not propose any work to be performed in the Patrick Brook or to the Route 116 culvert. However, the Town of Hinesburg and VTrans have requested post-construction traffic monitoring as well as a clear obligation that the Applicants be fully responsible for the cost of any additional improvements deemed necessary by the Town of Hinesburg and VTrans based on that monitoring data. The Commission's policy is that post-construction monitoring only be required if monitoring results can lead to a potential mitigation that has a nexus to the proposed project. For example, the Commission could require post-construction monitoring for the purpose of determining whether alterations to the traffic impact model's proposed signal timing are required. The cost of this change is relatively minor and there is a nexus to the Project thus the mitigation could be required by the Commission in a permit decision. There is also the scenario if the post construction monitoring were to indicate that the length of the constructed left turn lane on Route 116 southbound, although predicted by the traffic impact model, is not adequate for the resultant queue. In this case, the lane would need to be extended and that would affect the Patrick Brook culvert. Lengthening the culvert with an extension would exacerbate the problems currently being caused by the existing culvert. The Commission will not require mitigation that will exacerbate a problematic situation. Therefore, in this hypothetical situation, a new culvert that meets the standards would need to be installed. The lengthening of the left turn lane and proposed changes to the Patrick Brook culvert will require a permit amendment and thus this issue will be addressed in that proceeding, should there be one.

The Commission concludes that the Applicants propose no work to be performed in the Patrick Brook or Canal and will maintain the natural condition of any streams, and will not endanger the health, safety or welfare of the public or of adjoining landowners.

The Project complies with Criterion 1(E).

Criterion 2 – Water Availability:

Findings of Fact

81. Previous relevant Findings of Fact are included herein.
82. The estimated 2,745 gallons per day of water that the Project will require will be provided by the Town of Hinesburg municipal system. The Drinking Water and Groundwater Protection Division issued Wastewater System and Potable Water Supply Permit #WW-4-4018 on August 7, 2013. Exhibit #119.
83. The Town of Hinesburg issued a letter on February 7, 2013 stating that the Town has sufficient capacity to accommodate the request by the Applicants. Exhibit #15.

84. The Town of Hinesburg in a letter dated February 13, 2014 informed the applicant that the two municipal supply wells are at capacity and per a ruling by the State of Vermont, the town does not water capacity for this Project. Once the State is assured that capacity is adequate, the Project may hook up to the municipal system. Exhibit #173.

Conclusions of Law

The ANR Wastewater Management Division issued Permit #WW-4-4018, which creates a presumption pursuant to Act 250 Rule 19 that the Project has sufficient water available for its reasonably foreseeable needs and complies with Criterion 2.

However, subsequent to the last hearing, the Commission learned that the municipal water system is over allocated and the State has issued a moratorium on new hookups to the system, even if it has been issued allocation letters from the Town and a State issued permit. The Town of Hinesburg is working on correcting the system and is exploring new water sources. Therefore, currently there is no water available for the Project.

The Commission concludes that there is currently not sufficient water available to meet the reasonably foreseeable needs of this Project. The Project does not comply with Criterion 2. Once a new water supply is available, the Applicants can submit that allocation letter to get a determination of positive compliance under Criterion 2. In this latter case, the Commission will only require submittal of the allocation letter (and application fee) to determine positive compliance.

Criterion 4 - Soil Erosion:

Findings of Fact

85. The Project site, Lot #15 in Commerce Park with additional lands west of the lot, is approximately 5.18 acres. It is relatively flat with stormwater runoff from the adjacent lots currently draining across portions of the site. The site is mostly cleared with some minor existing vegetation along the property boundaries. Exhibits #7 and #39.
86. There is an existing driveway, constituting approximately 0.19 acres of impervious surface, which was built as part of Commerce Street Extension to serve the National Bank of Middlebury. It is covered under the existing discharge permit #3034-9010.R. Exhibits #7 and #39.
87. The proposed development of Lot #15 will increase the impervious area by approximately 2.69 acres, bringing the site total to 2.88 acres of impervious coverage. Exhibit #7.
88. There are no water bodies adjacent to the property other than the Canal, which is an artificially controlled water feature. The existing raised sidewalk is between the Canal and the construction zone and creates an effective barrier to prevent any erosion or run-off from the construction site reaching the Canal. Exhibit #7.
89. Clearing will be limited to the area to be disturbed, as shown on the Project plans. Erosion control fencing will be installed around the perimeter of the cleared area and surfaces constructed to finish graded will be seeded and mulched. Exhibits #7, #52 - #57, and #148 - #150.
90. The proposed roadway and parking areas shall be paved and other exposed surfaces will be grassed. The site has been graded so that all runoff will flow to permanent stormwater treatment areas, which have been sized to prevent run-off and ensure no sediment leaves the site. Exhibits #7, #52 - #57, and #148 - #150.

91. To minimize the area disturbed, construction has been broken down into five distinct phases, which are: Phase I-Pre-Construction Phase, Phase II-Soil Loading, Phase III-Construction of Site Infrastructure, Phase IV-Construction of Building, and Phase V-Final Site Stabilization. Exhibits #7, #52 - #57, and #148 – #150.
92. Temporary erosion control measures include installation of construction fencing to limit the area disturbed, installation of a stabilized construction entrance, installation of silt fencing on the downhill slopes of disturbed areas, and mulching and seeding requirements will protect against temporary erosion during construction. If wintertime construction is performed, mulching to be used and seed, fertilizer, and new mulch will be applied in the spring. Exhibits #7, #52 - #57, and #148 - #150.

Conclusions of Law

The ANR stormwater permits – individual construction discharge permit or approval under construction general permit – create a presumption under Rule 19(E)(6) that stormwater runoff during construction authorized by the permit will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. In addition, technical determinations entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that the construction of the Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The Project complies with Criterion 4.

Criteria 5 - Traffic & 9(K) - Effects on Public Investments (traffic):

Findings of Fact

93. Previous relevant Findings of Fact are included herein.
94. The Project is located on Commerce Street Extension in Hinesburg Village. Access to the Project is from Commerce Street, which intersects with Route 116 to the west and Mechanicsville Road to the east. Exhibits #38 and #104a.
95. Commerce Street Extension, a private driveway, is designed as a two lane unsignalized drive that currently accesses the existing National Bank of Middlebury. It will be extended to access the Project's building. The intersection of Commerce Street Extension with Commerce Street, a town road, is very flat and there are good sight distances. The radius will be increased on the western side of Commerce Street Extension in order to accommodate large vehicles that will access the new Hannaford building. Exhibits #38 - #39.
96. The Project provides 128 parking spaces on site to handle the Project's parking needs during the peak shopping times and holidays. Exhibit #39.
97. The study area for the Traffic Impact Assessment ("TIA") extended along VT Route 116 in the Town of Hinesburg from its intersections with CVU Road and Shelburne Falls Roads to the north of the Project and to Silver Street to the south of the Project. The TIA included the intersections along VT Route 116 with Commerce Street and Farmall Drive, Mechanicsville Road, Charlotte Road, as well as the segment of Commerce Street between VT Route 116 and Mechanicsville Road. Exhibit #17.
98. The TIA provides a conservative projection of future traffic congestion and safety impacts that would be expected to arise when the Project is completed. This includes future peak hour traffic volumes based upon the following: higher background traffic volumes from 2008 for VT Route

- 116; a 3% background traffic growth rate from 2010 to 2019 which is higher than the 0% VTrans currently projects for rural primary and secondary highways throughout Vermont; uses Lantman's existing peak hour trip generation even though it will be closed upon the opening of the Project; and uses higher trip generation rates from the 8th Edition of the Institute of Transportation Engineers ("ITE") Trip Generation Manual instead of lower rates from a Vermont study done by VTrans or lower rates from the recently released 9th Edition of the ITE Trip Generation Manual. Exhibit #17.
99. As stated above, the Applicants' original plans showed offsite improvements on Route 116 north of the Commerce Street intersection as a result of the relocated stop bar for the southbound left turn lane onto Commerce Street that VTrans installed in the summer of 2013 as part of a repaving project. This plan included the widening of the Route 116 roadway and existing box culvert over Patrick Brook. Exhibit #41.
100. The Project is expected to generate 386 PM peak hour trips, according to the ITE Trip Generation Manual (8th ed.) and 326 PM peak hour trips according to the Vermont Trip Generation Manual published by VTrans in 2010. The 9th edition of the ITE contained significantly more samples (62 vs 40) and estimates 366 PM peak hour trips for this Project. To be consistent with earlier TIAs and the local permitting, the ITE 8th ed. estimate was used for the Act 250 application. The existing Lantman's supermarket generates approximately 254 PM peak hour trips. Exhibit #17.
101. The Annual Average Daily Traffic (AADT) is estimated at approximately 8,400 vehicles and has been decreasing since 2002 as measured by a VTrans counter located north of the CVU/Shelburne Falls/CVU Rd. intersection. For the purpose of the TIA an AADT of 9,200 (2008 est.) was used. Exhibit #17.

Level of Service

102. The Applicants' transportation expert observed that the westbound traffic exiting Lantman's and eastbound traffic exiting Charlotte Road each had their own signal phase. This is known as split phasing as opposed to the more common concurrent phasing. Split phasing usually exists where there are special conditions, e.g. poor sight distance or overlapping turning paths. Accepted engineering practices do not warrant the existing split phasing. Exhibit #17.
103. According to modeling by the Highway Capacity Model (HCM) method, the Vt. Rt. 116/Commerce St. intersection has an overall Level of Service (LOS) of "B" for the PM peak hour in both the existing and 2019 Build conditions. No turning movement is expected to be worse than "C" with or without construction of the Project. The v/c ratio⁴ is 0.81 for the overall intersection. Exhibit #17.
104. Modeling using SimTraffic[®], the Vt. Rt. 116/Commerce St. intersection has an overall LOS of "B" for the PM peak hour but worsens to "C" with construction of the Project. No turning movement is expected to be worse than "D" with or without construction of the Project. The v/c ratio is 0.81 for the overall intersection. Exhibit #17.
105. According to the HCM method, the Vt. Rt. 116/Shelburne Falls/ CVU Road intersection has an overall LOS of "B" for the existing condition at the PM peak hour and worsens to "C" for the 2019 Build condition. The Commerce Street Left turn (LT)/Through (TH) turning movement is

4 Capacity of a roadway segment is typically referred to as the v/c ratio. The ratio compares the roadway's vehicle demand (volume) with the roadway's theoretical supply (carrying capacity) that can be serviced during a signal phase. A v/c ratio of less than one generally indicates that an intersection is cleared by a signal phase and is under capacity

- expected to worsen to “E” from “D” with construction of the Project. All other turning movements operate at LOS “C” or better. The v/c ratio is less than 0.8 for all turning movements and the overall intersection, except for the Commerce St. LT/TH movement which worsens to a v/c of 0.87. Exhibit #17.
106. Using the HCM model, the Vt. Rt. 116/Mechanicsville Rd. intersection’s Mechanicsville Rd westbound (WB) LT/right turn (RT) turning movement has a LOS of “F” with or without construction of the Project at the PM peak hour. Using SimTraffic[®], the LOS for the Mechanicsville Rd. WB LT/RT turning movement worsens to LOS “F” from “D” with construction of the Project. With implementation of the concurrent phasing there was no change in the LOS for the intersection or its turning movements. Exhibit #17.
 107. Using the HCM model, the Vt. Rt. 116/Charlotte Rd. intersection will operate at an overall LOS of “F” with construction of the Project at the PM peak hour. With implementation of the proposed eastbound/westbound concurrent phasing, the overall LOS improves to “D”. The Charlotte Rd. LT turn movement worsens to “E” from “D” with implementation of the eastbound/westbound concurrent phasing. The LOS for the Route 116 SB TH/RT turn movement improves from “F” to “D” with implementation of the eastbound/westbound concurrent phasing. Exhibit #17.
 108. Using SimTraffic[®], the Vt. Rt. 116/Charlotte Rd. intersection will operate at an overall LOS of “F” with construction of the Project at the PM peak hour. With implementation of the proposed eastbound/westbound concurrent phasing the overall LOS improves to “D”. The Route 116 SB TH/RT turn movement improves from “F” to “C” with implementation of the eastbound/westbound concurrent phasing; the Charlotte Rd. LT turn movement experiences no change in LOS; and the Route 116 NB LT/TH/RT turn movement is at LOS “F” with construction of the Project but improves to “C” with implementation of the concurrent phasing. Exhibit #17.
 109. Using the HCM model, the Vt. Rt. 116/Silver St. intersection’s Silver St. LT/RT turn movement with construction of the Project will operate at a LOS of “D” and worsens to “E” with implementation of the proposed eastbound/westbound concurrent phasing at the PM peak hour. The other turn movement at this intersection, Route 116 WB LT remains at LOS “A”. Exhibit #17.
 110. The overall LOS for the Commerce St./Hannaford intersection is expected to operate at a LOS of “A” with construction of the Project at the PM peak hour. The National Bank of Middlebury/Hannaford driveway LT/RT turn movement will worsen to LOS “B” with implementation of the concurrent phasing. Exhibit #17.
 111. All turning movements at the Vt. 116/Shelburne Falls/CVU Rd. and Vt. 116/Commerce St. intersections will operate at LOS “D” with construction of the Project and implementation of the concurrent phasing in the AM peak hour. Exhibit #17.
 112. The overall LOS for the Mechanicsville Rd./Commerce St. intersection is “B” with or without construction of the Project. Exhibit #17.
 113. Mr. Roos provided written comments regarding traffic impacts. Mr. Roos stated that there is much greater existing traffic queuing on Route 116 than the experts have suggested, questions the assumptions made in the Applicants’ TIA, and is concerned about pedestrian crossing safety. He is requesting additional analysis be performed. Exhibit #139.

Queuing

114. There is not a significant increase in the 95% queues⁵ for the Vt. 116/Shelburne Falls/CVU Rd. intersection's turn movements with construction of the Project at the PM peak hour. Exhibit #17.
115. At the Vt. Rt. 116/Commerce Street intersection at the PM peak hour with construction of the Project, 95% queues at the Commerce St. LT/TH turn movement increases from 122' to 326'; 95% queues at the Route 116 SB/LT increases from 97' to 188'; 95% queues at the Route 116 SB TH/RT turn movement decrease to 699' from 760'. All other turn movements remain essentially the same. Using SimTraffic[®], most 95% queues remain essentially the same and some decrease with construction of the Project except the Route 116 SB/LT turn movement which increase to 200' from 168'. Exhibit #17.
116. With the reduced speed limit (30 mph) on Route 116, the HCM model predicts that the queue associated with the Route 116 SB/LT turn movement will not extend onto the Patrick Brook culvert. Exhibit #17.
117. At the Vt. 116/Mechanicsville Rd. intersection with construction of the Project at the PM peak hour, the Mechanicsville Rd. WB LT/RT turn movement's 95% queue increases to 268' from 172'. Using SimTraffic[®], the max queue at the Route 116 SB LT/TH turn movement increases from 723' to 914' and the max queue at the Mechanicsville Rd. WB LT/RT turn movement increases to 323' from 234'. Exhibit #17.
118. At the Vt. 116/Charlotte Rd. intersection at the PM peak hour, implementation of the concurrent phasing decreases the 95% queues at all turn movements and is not appreciably increased or decreased by construction of the Project. Similar results were seen with the SimTraffic[®] model. Exhibit #17.
119. At the Mechanicsville Road/Commerce St. intersection, 95% queues are not expected to increase with construction of the Project. Exhibit #17.

Safety

120. Several High Crash Locations (HCL)⁶ are found in the area: the Route 116/Shelburne Falls Rd/CVU Rd intersection; a 0.3 mile long segment extending along Route 116 from the Silver St intersection north; a 0.3 mile long segment on Mechanicsville Rd bracketing the CVU Rd/Pond Rd intersection; and a second 0.3 mile long segment on Mechanicsville Rd. Exhibit #17.

Alternative Transportation Issues

121. The Project proposes internal sidewalks connecting to existing sidewalks and paths along Commerce St. and Mechanicsville Rd. It also includes extending the sidewalk on the southerly side of Commerce St. within the Town's existing sidewalk easement along the Dark Star parcel's frontage, to create a continuous sidewalk from the Project site to Route 116. Exhibit #17.

5 The 95th percentile queue length is the length of queue that will not be exceeded for 95% of a given time period. The analysis and queue lengths reported in the TIS were based on a weekday p.m. peak hour analysis. In the analysis these queues are only expected to occur or be exceeded for less than 5% of the time during the peak hour which is less than 3 minutes of the peak hour and less than 3 minutes of the entire day

6 To be considered a HCL, a road section (0.3 mile) must have had at least five crashes within a five-year period **and** the Actual Crash Rate must exceed the Critical Crash Rate (roughly equivalent to the average crash rate for a functional classification) for this functional classification.

122. There is an existing north-bound bus stop in front of the Telecom Office on Route 116 south of Mechanicsville Road. There are continuous sidewalks from this existing bus stop to Lot #15 and it is approximately 1,450 feet walking distance between the two. The proposed new bus stop location suggested by CCTA will be approximately 1,200 feet walking distance from Route 116 to Lot 15. Exhibit #118.
123. CCTA requested the addition of approximately 50 feet of sidewalk on the east side of Route 116 north of the Commerce Street intersection for the creation of a new bus stop to benefit the larger Project area. CCTA did not provide any evidence to show that the Project will cause a problem that needs to be mitigated by construction of a bus stop. Exhibit #91.
124. VTrans awarded the Town of Hinesburg a bike / pedestrian grant in October 2012 to construct a new sidewalk along the east side of Route 116 connecting Commerce Street to Riggs Road, in the same area as CCTA requesting a bus stop. Should a second bus stop be desired, the Town could incorporate the bus stop into their plans. There is a shallow road-side swale in the same area, but it would not be difficult to have the sidewalk start on the west side of the swale in order to provide a second bus stop. A culvert could be used to cross to the east side and continue as currently planned. This would help the bus serve employees at NRG Systems. Exhibits # 64 and #118.

Proposed Mitigation

125. The TIA recommends roadway and traffic improvements to mitigate the Project's traffic congestion and safety impacts, and to provide safe, efficient traffic flow on adjacent streets in the immediate vicinity. These improvements include the following:
 - a. Route 116 / Charlotte Road Intersection:
 - i. Modify the eastbound/westbound signal phasing from split phasing to concurrent phasing, accompanied by signal timing adjustments to increase the Route 116 green time.
 - ii. Relocate the sidewalk and the stop bar at Lantman's exit to improve sight distances and reduce signal lost time.
 - b. Route 116 / Commerce Street/Farmall Drive Intersection:
 - i. Increase the available storage length of the southbound Route 116 left-turn lane at Commerce Street from 75 feet to 175 feet.
 - ii. Increase the available storage length of the westbound Commerce St right-turn lane from 80 feet to 270 feet.
 - iii. Relocate Firehouse Plaza's (Aubuchon Hardware) existing western-most curb cut to increase the distance between it and Route 116.
 - iv. Install a "DO NOT BLOCK INTERSECTION" sign and pavement markings on Commerce Street at the Jolley Mobil's existing western curb cut.
 - c. New Pedestrian Connections:
 - i. Sidewalk extension along Commerce Street Extension;
 - ii. Infill sidewalk on Commerce Street along Lot 12; and
 - iii. New sidewalk from the Project to the Town canal sidewalk on the site bordering Mechanicsville Road.

d. Route 116 / Mechanicsville Road Intersection:

- i. Mitigate future traffic impacts at this intersection by the payment of a \$25,000 impact fee towards signaling this intersection, should traffic signals be installed within five years of the opening of the new Hannaford supermarket.

Exhibit #17.

126. The cost of all the transportation related improvements is \$265,000. Exhibit #103.
127. The Town of Hinesburg Selectboard Traffic Engineering Peer Review memorandum recommendations include: adjust the Route 116/Commerce Street southbound turn lane dimension to terminate before Patrick Brook; relocate the stop bar on Commerce Street westbound through lane; suggest large trucks arriving from the south use Mechanicsville Road to access Commerce Street; include additional signage at the Route 116/Charlotte Road intersection; suggest post construction traffic monitoring at the Route 116/Commerce Street intersection; and suggest the \$25,000 escrow for the Route 116/Mechanicsville Road intersection could be used for signalization or other improvements if deemed necessary. Exhibit #88A.
128. VTrans has requested that the Applicants perform traffic monitoring studies to ascertain whether excessive congestion, as determined by VTrans, has occurred at the intersections included in developer's traffic studies submitted in support of its Act 250 Application. The traffic monitoring studies shall be conducted six months to one year after the Hannaford is constructed and five years afterward. The monitoring study will include conducting, turning movement counts at these intersections and analyzing the results for Level of Service, delay and queue lengths; Applicants shall examine crash records during the same time intervals as outlined above to ascertain if highway safety in the study area is negatively impacted; and All results of the above studies are to be submitted to VTrans and the Act 250 District Commission for review. If, as a result of the above studies, VTrans identifies congestion or safety problems, then VTrans and the Applicants will determine the appropriate mitigation measures to ameliorate the adverse condition and the developer will be responsible for implementing such mitigation measures. If an agreement cannot be reached, the Act 250 District Commission will determine the appropriate mitigation or additional conditions. Exhibits #85 and #157.
129. Further VTrans requested that if traffic monitoring shows that the length of the left turn lane is not adequate, then the Applicant should be responsible for implementing appropriate mitigation including the extension of left-turn lane. Exhibit #157.
130. VTrans also requested that delivery vehicles WB-62 and larger between 3 PM and 6 PM be prohibited, and that the Commission restrict vehicles larger than WB-62 in size to specific off peak hour delivery times: 6 PM to 6 AM. Exhibit #157.
131. The Town of Hinesburg Selectboard encourages that any Act 250 approval require post construction traffic monitoring as well as a clear obligation that Hannaford be fully responsible for the cost of any additional improvements deemed necessary by the Commission based on recommendations from the Town of Hinesburg and VTrans based on that monitoring data. Since this project will impact both the State highway and Town roads, any positive finding on Criterion #5 should require that future monitoring and possible additional improvements are coordinated with both the Town of Hinesburg and VTrans. The Town of Hinesburg recommended that the District Commission also consider the relevant conditions from the Hinesburg Development Review Board's site plan approval for the project (dated 11/6/2012, portion of Exhibit #23). The

Town did not specify which conditions they feel are relevant but traffic related conditions are found on Pages 14-16 of the DRB's approval. Exhibit #160.

132. The Town of Hinesburg Selectboard recommends including restrictions on delivery times for larger trucks (WB-62 in size or larger) due to inadequate turn radii at the Route 116, Commerce Street intersection. Trucks should be excluded from the 3pm-6pm hours and from 7am-9am. Restricting the size of delivery vehicles and/or the timing of deliveries using larger vehicles is preferable to reconstruction of the entire intersection to accommodate WB-67 interstate semitrailer trucks. This intersection is within Hinesburg's Village Center designation area. Significant lane widening to accommodate interstate size delivery trucks would negatively impact pedestrian safety, which is of paramount importance in this location. Severe traffic congestion in the project area (and throughout Hinesburg's Village area) is currently a major issue during peak am and pm time periods. Exhibits #88a and #157.

Conclusions of Law

Criterion 5

Prior to granting a permit, the Commission must find that the project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways..." 10 V.S.A. § 6086(a)(5). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens and safety concerns. *Id.*

Criterion 5 concerns the impact a project may have on area highways and the traffic that flows over them, including whether a proposed project may exacerbate an already hazardous traffic situation. Even if a project is not the sole cause of that effect, it would be unsound to permit a hazardous condition to become more hazardous. *In re Pilgrim Partnership*, 153 Vt. 594, 596-97 (1990). A congested situation can become hazardous if new projects contribute additional vehicles to the traffic volume or the situation is allowed to continue without mitigation. Therefore, although the Commission cannot deny a project under Criterion 5, the Commission is within its authority to impose permit conditions that will alleviate congestion. *OMYA, Inc. v. Town of Middlebury*, 171 Vt. 532, 533 (2000); *Re: Times and Seasons, LLC and Hubert K. Benoit*, #3W0839-2-EB (Altered), Findings of Fact, Conclusions of Law and Order at 37 (Vt. Env'tl. Bd. November 4, 2005), *aff'd in part, rev'd in part, In re Appeal of Times & Seasons, LLC*, 2008 VT 7.

Levels of Service (congestion): Under Criterion 5, the Commission must first ask if the area's affected intersections are congested and then, if so, determine whether the Project exacerbates those conditions. The Commission believes that the Level of Service (LOS) analysis is a reasonable and fair approach to determining the answers to these questions. See, *Re: Okemo Limited Liability Company, et al.*, #2S0351-34-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env'tl. Bd. September 8, 2005) (Environmental Board considers LOS when evaluating congestion under Criterion 5); and see, *In Re Wal*Mart Stores, Inc.*, 167 Vt. 75, 86 (1997). It is undisputed that there are several intersections affected by this Project that experience congestion at peak hours. It is also not disputed that the trip generation projected from the proposed Project will be a significant number, albeit a small percentage, of the existing traffic.

There is no disagreement that congestion at this stretch of Route 116 is present with or without the Applicants' Project and that the expected trip generation from the Project will exacerbate that condition. Therefore, the imposition of permit conditions by the Commission of traffic mitigation measures to alleviate the traffic problems is appropriate.

Having determined that congestion is occurring and the proposed Project will exacerbate the existing condition, what is left is a determination by the Commission of what appropriate traffic mitigation will offset the exacerbation. Act 250 has always been a balance between competing interests. *In re Village Assocs.*, 2010 VT 42 ¶ 17. Act 250 often imposes a requirement for some construction (i.e. mitigation) that needs to be completed before an operation can begin or be occupied. *Maple Tree Place Associates*, #4C0775-EB, Findings of Fact, Conclusions of Law and Order at 46 (Vt. Env'tl. Bd. June 25, 1998) (if highway improvements (including pedestrian improvements) are in place at the time it opens, mixed use development project will not cause unreasonable congestion or unsafe conditions with respect to use of highways).

The Commission finds that with the proposed mitigation conditions (Findings of Fact #125, #128 - #130 and #132), the Project will not cause unreasonable congestion or unsafe conditions with respect to transportation and therefore complies with Criterion 5.

Criterion 9(K) (traffic)

An inquiry concerning traffic under Criterion 9(K) “involves a higher threshold of material jeopardy or material interference” than an inquiry under Criterion 5. *Re: Swain Development Corp. and Philip Mans*, #3W0445-2-EB, Findings of Fact, Conclusions of Law and Order (Vt. Env'tl. Bd. August 10, 1990). Unlike Criterion 5, the Commission may deny a permit solely under reasons set forth under Criterion 9(K).

The burden of proof under Criterion 9(K) is on the applicant. 10 V.S.A. § 6088(a); *Re: Times and Seasons, LLC and Hubert K. Benoit*, #3W0839-2-EB (Altered), Findings of Fact, Conclusions of Law and Order at 56 (Vt. Env'tl. Bd. November 4, 2005).

Under Criterion 9(K), the Commission must conclude that a proposed project does not unnecessarily or unreasonably endanger public investment in the adjacent public roadways, or materially jeopardize or interfere with the function, efficiency or safety of the roadways, or the public's use or enjoyment of access to the roadways.

Analyses under Criterion 9(K) call for two separate inquiries with respect to public facilities, e.g., public roads. First, the Commission examines whether a proposed project will unnecessarily or unreasonably endanger the public investment in such facilities. Second, the Commission examines whether a proposed project will materially jeopardize or interfere with (a) the function, efficiency or safety of such facilities or (b) the public's use or enjoyment of or access to such facilities. *Swain Development Corp. and Philip Mans*, #3W0445-2-EB, Findings of Fact, Conclusions of Law and Order at 33 (Vt. Env'tl. Bd. October 11, 1990).

A project will fail Criterion 9(K) where delays caused by the project will interfere with the function and efficiency of an adjacent highway. *Swain Development Corp. and Philip Mans*, #3W0445-2-EB, Findings of Fact, Conclusions of Law and Order at 35 (Vt. Env'tl. Bd. October 11, 1990).

The main concern under Criterion 9(K) in this case is the impact on the Project area's congested intersections. One criterion by which an intersection may be considered hazardous is if it is considered a High Crash Location (HCL). There are several state listed HCLs in the Project area. Since the Project is adding a significant number of vehicles to these intersections, the Commission finds that the increase in trip generation unnecessarily or unreasonably interferes with the function, efficiency or safety of the roadways. Therefore, the Commission finds that the imposition of traffic mitigation conditions is appropriate.

The Commission should not permit projects that jeopardize or interfere with the function, efficiency or safety of the road. Regarding safety, the area where the majority of the accidents occur is in the vicinity of

the Interstate ramps. The posted speed limit here is 30 mph. It is not unreasonable to assume that these accidents are of the “fender bender” type rather than high speed collisions that could endanger lives. Therefore, although the increase in traffic will exacerbate safety issues, we find that it is not an endangerment of lives. However, it is not disputed that the increase will affect the efficiency of the corridor through the Town.

For the reasons discussed above, the Commission concludes that the Project with the proposed mitigation conditions (Findings of Fact #125, #128 - #130 and #132), does not unnecessarily or unreasonably endanger public investment in the adjacent public roadways, and does not materially jeopardize or interfere with the function, efficiency or safety of the roadways, or the public’s use or enjoyment of access to the roadways. The Commission therefore concludes that the Project complies with Criterion 9(K).

Criteria 7 - Municipal Services:

Findings of Fact

133. Previous relevant Findings of Fact are included herein.
134. The Project will use the following municipal services: police, fire protection, water supply and wastewater disposal, roadways, and rescue services. Exhibit #62.
135. The Applicants provided a fiscal impact of the proposed project on the Town of Hinesburg’s municipal services. It documents that “...there is no town in the region, including the host Town of Hinesburg, where the proposed project will place an unreasonable burden on the ability of any local government to provide municipal services.” Exhibit #19.
136. The Town of Hinesburg submitted an Act 250 Municipal Impact Questionnaire and noted that they are not able to supply immediate fire protection services. This is due to the Town not owning a large ladder truck to reach upper stories/large buildings. The Town notes that this deficiency occurs without this Project and that it does not create a burden which is disproportionate to the taxes and user fees to be paid by the Project to the municipality. Exhibit #62.
137. The Town of Hinesburg participates in mutual aid with nearby fire departments that have aerial ladder trucks for meeting this need. This results in delays for an aerial ladder truck to arrive to a fire in the Town. Exhibit #97.
138. The Applicants submitted correspondence to the Hinesburg Fire Chief Al Barber stating that Lot #15 can be accessed with a large ladder truck that the Village of Essex Junction recently purchased, which the Town of Hinesburg has a cooperative arrangement to use in the case of emergencies. The Hinesburg Fire Chief stated that he concurs with the fire truck accessibility information. Exhibits #18 and #21.
139. The Town of Hinesburg has prepared a Capital Budget and Capital Program for Fiscal Year 2008 to 2014. In this document, the Fire Department has included the purchase of an aerial truck in fiscal year 2012-2013. The most recent adopted Town Capital Program dated January 28, 2013 plans for the purchase of an aerial truck in Fiscal Year 2015, which ends June 30, 2015. Exhibits #37 and #97.
140. The Town of Hinesburg Fire Department has a Strategic Plan dated 2011 that specifically calls for the purchase of an aerial truck no later than 2013. Exhibit #97.

141. The Town of Hinesburg Impact Fee Ordinance, dated October 5, 2009, includes the establishment of a Fire Protection Fee. This fee is identified for two projects: the expansion of the Fire Station and the acquisition of an aerial ladder truck. Exhibit #97.
142. The Town of Hinesburg will collect fire department impact fees from the Project estimated to be \$19,351.58, based on the fire impact fee formula. Exhibit #97.
143. Hay, et.al, provided a memorandum on the analysis of how the Town of Hinesburg is currently handling fires that require an aerial ladder truck. This memorandum states that there are four communities that have aerial ladder trucks that the Town of Hinesburg Fire Department can call for assistance: Williston, South Burlington, Essex Junction and Burlington (Station One). Each truck must use an “appropriately located and sized paved surface within the fire field.” Exhibit #153.

Conclusions of Law

Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 7. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate the burdens created. *Id.*

Under Criterion 7, the question is whether the Project places an unreasonable burden on the ability of the municipality to provide services. Relevant services include municipal fire, police, rescue, solid waste disposal, road maintenance, sewer and water service. *Re: Barre Granite Quarries, LLC, #7C1079 (Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 77 (Vt. Env'tl. Bd. December 8, 2000).*

The burden of proof is on the opponents under Criteria 6 and 7, but the burden of production is on the Applicants. Initially it was argued that the Town of Hinesburg Fire Department did not have an adequate ladder truck to access the building however, mutual aid between fire departments does and will continue to provide that facility. No other evidence was presented to contend that the proposed Project will cause an unreasonable burden on the municipality.

Therefore, the Commission concludes that this Project will not place an unreasonable burden on the ability of the municipality to provide municipal or governmental services. The Project complies with Criterion 7.

Criterion 8 - Aesthetics:

Findings of Fact

144. Previous relevant Findings of Fact are included herein.
145. The Project site is the last remaining undeveloped lot in a 15 lot commercial subdivision. It is an open meadow with some Class 3 wetlands. It is located in the Town's commercial core, surrounded by adjacent and nearby mixed uses. Immediately adjacent uses are largely commercial including Dark Star Lighting, National Bank of Middlebury and Commerce Street to the north; medical offices and the US Post Office to the east; Mechanicsville Road to the south with a shopping center directly across the road; and Giroux Auto Salvage and auto sales to the west. Exhibit #7.
146. The Project is proposed for Lot #15 within the village-zoned portion of Hinesburg. On its southern boundary, Lot #15 abuts the Hinesburg Canal Park (originally Cheese Factory Canal), a linear strip of canal side land that accommodates a widely used, paved pedestrian path with benches linking parts of the Village to commerce park and the Village Post Office. To the east Lot #15 abuts the Village Post Office; to the north one can find the National Bank of Middlebury

- and other lots that front on Commerce Street. To the west are various commercial properties that front on Route 116, the Village's Main Street. Exhibits #99 and testimony of Rolf Kielman. These other developments were easily viewed during the site walk.
147. Commerce Park is relatively flat to gently sloping with hillsides to the north, east and south providing a backdrop. Exhibit #7.
 148. There are no historic sites, or rare or irreplaceable natural areas on or near the Project. Exhibit #7.
 149. There are no identified or designated scenic areas in the Town Plan on or near the Project. There are extensive open lands, both fields and forested, in the vicinity. The site is not part of the foreground or background of any significant view. The site is located in a low area relative to much of the surround terrain and is largely surrounded by existing buildings and a hillside. This causes it to have little visibility until one is quite near to it. Exhibit #7.
 150. There are Class 3 wetlands present on the Project site. Some wetlands are being filled as part of this Project. The remaining Class 3 wetland will be undisturbed and protected with landscape plantings. Exhibits #7 and #171.
 151. The broader neighborhood includes some residential uses to the southwest, additional single-family and multi-family residences uphill from the site across Mechanicsville Road. Across Route 116 are other commercial uses as well as the town police and fire departments and the former Saputo cheese plant. To the north beyond Commerce Street are a mini-storage facility, towing business, a gas station and the NRG facility. Along the southern property line and Mechanicsville Road, there is a man-made Canal, a sidewalk and a few trees. Exhibits #7, #22 and #97.
 152. The Project's use: a supermarket and pharmacy, is consistent with the existing and proposed land uses in this area. The commercial park bordered by Mechanicsville Road, Route 116 and lands on both sides of Commerce Street is designed as part of Hinesburg Village center within the Commercial zoning district which is part of the Town's designated Village Growth Area. The proposed Hannaford Supermarket and Pharmacy is an infill project on a vacant parcel within the compact core of Hinesburg Village. It is designed to provide safe vehicular and pedestrian connections that fulfill the Zoning Ordinance's goal of interconnectivity within the existing transportation network. Exhibits #7, #22 and #97.
 153. The Project is located on a side road: Commerce Street Extension, and as a result, does not directly face onto a main road. The Project parking areas will not be visible from Route 116. They are set back about 300 feet from Commerce Street and about 80 feet from Mechanicsville Road. Exhibits #7, #22 and #97.
 154. The existing neighborhood character is comprised of a mix of building types and architectural styles. They include single and multi-story buildings with roof styles ranging from flat, domed to gabled and hipped. Siding materials also vary greatly from clapboard and masonry to metal. There is a wide range of structure sizes from fairly modest to large buildings. The largest structure within the Giroux Commercial Park is Firehouse Plaza, a 21,000 square foot, L-shaped shopping complex, one story in height with a flat roof and a linear porch entry. The adjacent Dark Star building is a 9,000 sf, two stories in height. Other smaller structures within the Park vicinity are the National bank of Middlebury, the Hinesburg Post Office (4,200 sf), a Moving Storage Facility and a Veterinary Hospital (6,000 sf). Exhibits #7, # 22, #97 and #100.

155. Nearby are the former Saputo cheese plant building at over 80,000 sf and the NRG Systems building at about 70,000 sf. Exhibits #7, # 22, #97 and #100.
156. The Hannaford Supermarket and Pharmacy store was designed specifically for the site in Hinesburg. In order to achieve a design that would meet the general standard of compatibility with the neighborhood and Village, the Applicants' architect Bast & Rood Architects of Hinesburg, led a public input process. This included a community design charrette to get direct feedback on what Hinesburg citizens wanted for the store. The public process resulted in many of the concepts employed in the final design. Exhibits #7, #58, #59 and #97.
157. Options from the community design charrette that were incorporated into the final design of the Hannaford Supermarket and Pharmacy store include: a mansard (hipped) roof to hide roof top mechanical units and tie into the design of the building; a covered walkway is included on three sides of the building; visually breaking up the vertical scale of the building with a mix of vertical building façade elements; second story windows to provide natural daylight into the store; and color selection borrows from local buildings to further blend the structure into its surroundings. Exhibits #7, #58, #59 and #97.
158. The proposed store on Lot #15 would sit at the geographic center of Hinesburg Village, more or less equidistant from the northern and southern boundaries of the more densely zoned Village District. The area is a traditional Vermont Village with a mix of different buildings from various historical periods. Exhibit #100.
159. The Hannaford 36,000 sf. structure is proposed to be topped with faux-sloped roofs that allude to a fictional second floor. All of the larger buildings visible from the street in Hinesburg, such as Nestech, NRG and Dark Star, are two-story structures. These large structures have traditional New England features, consisting of front doors that face the road, side-yard parking areas and multiple access points. Despite their varied architectural characters, none of these buildings exhibit any fictional decoration intended to deceive the user/viewer. Exhibit #100 and testimony of Rolf Kielman.
160. Almost all buildings in Hinesburg Village face a major street or right of way. The proposed Hannaford Store faces a parking lot. It is typical American suburban conventions to have the front door of a large store face a parking lot rather than a street. The Village's recently constructed drug store, Kinney's, uses on-street parking and a side and rear yard parking area combined with a street corner entry to accomplish a reasonable and customary entry sequence. Hinesburg's Town Hall, Community School and Lantman's grocery store all have front doors that face the street. Exhibit #100 and testimony of Rolf Kielman.
161. By Hinesburg Village standards the Hannaford's building is a large structure. In part that size is accentuated by its one story, box-like configuration. While Hinesburg has other large buildings, such as the Community School, NRG and even the Cheese Plant, these are all are broken into smaller pieces and are multiple stories. The existing large buildings have real windows and give a clear indication of human activity both within and outside of those buildings. The proposed Hannaford's building uses many windows and architectural elements that are faux. Exhibits #99, #100 and testimony of Rolf Kielman.
162. The Applicants' expert on visual impacts testified that he is aware of no structures that are a single building block, or rectangle, larger than 21,000 sf anywhere in Hinesburg. Testimony of Robert Bast.

163. Pedestrians utilizing the Canal Park will pass by a 160 foot long, 20-foot high building and then pass by a large parking lot housing up to 130 cars on their way from the Village to the Post Office. Exhibit #99.
164. In 2007 the Hinesburg Village Steering Committee identified Lot #15 as a site of significant public importance for use as a Town Green. The lot is centrally located within the newly expanded Village District. The Town Plan does not identify Lot #15 as a place for a Town Green. Exhibit #99.
165. The Project will have a wall mounted sign that will be internally lit by LED lighting. There will not be a freestanding Project sign. Exhibits #7, #25 and #97.
166. Exterior lighting for the Project site utilizes energy efficient LED lighting with “full cutoff” fixtures. The proposed fixtures are approved by the International Dark Sky Association as dark sky friendly fixtures. The lighting controls for the Project will utilize a combination of photo cells and timers to provide the ability to control when light fixtures will be illuminated. Minimal lighting will be on after business hours, which will be along the front of the building and near the rear loading dock. Exhibits #7, #26, #47 and #97.
167. An enclosed trash compactor is located at the northwest corner of the building. Electric distribution and gas lines will be underground. Exhibits #7 and #97.
168. Extensive landscaping is proposed on the Project site that includes Vermont native or adaptive trees, shrubs and perennials that will complement the character of the local community. The blended palette of plant material will offer seasonal interest throughout the year. The planting design focuses on enhanced landscaping within the parking lot, screening the main parking lot from Mechanicsville Road and screening views of the rear of the site from Route 116. The pedestrian/bike path abutting Mechanicsville Road has an existing row of trees which are being preserved. New trees are also being added. Trees are being planted around the southwest corner of the building to screen that area as well as around much of the perimeter of the main parking lot, and on the north side of the building. New street trees will be planted along the western side of the access drive. New trees are being planted within a 10 foot landscaping easement on the abutting properties to the west to infill gaps in the existing trees along the west side of the building. Collectively these trees screen and shade the parking, soften the building façade, screen the project from Route 116, define the street edge and create a sense of arrival. The use of native and adaptive plant material will also ensure the proposed landscaping will require minimal maintenance. Exhibits #7, #46, #48 and #97.
169. The Applicants prepared digital models showing the Project building and site in the surrounding context. These models show the building and site blending into the surrounding character of the neighborhood. Exhibits #7, #24, #97 and #147a.
170. The Project is not located in a design review district. No officially adopted municipal document was submitted by any party containing a clear written community standard intended to preserve the aesthetics or scenic beauty of the area. Exhibits #7 and #97.
171. In response to a Hearing Recess Order issued October 24, 2013, the Applicants submitted a determination letter from the Agency of Natural Resources dated April 2, 2014, in which the Agency determines that the wetlands on the Project site are Class III. Class III wetlands do not require wetland permits. Exhibit #171.
172. The wetlands on the site are periodically mowed and of a character similar to typical mowed fields. The vegetation on the site is dominated by an invasive species, Reed Canary Grass, which

out-competes native species and has resulted in a site lacking in diversity. The site is also bisected by an existing sewer main and surrounded by existing development which further degrades the character and aesthetic value of the wetland. The Applicants will pay an in-lieu mitigation fee (estimated at \$194,204.88) to the Army Corps of Engineers which will go to Ducks Unlimited for wetland restoration projects. Exhibits #7 and #95.

173. Goal 1 of the 2005 Town Plan: "To maintain and enhance the rural small town character and environment of Hinesburg." Objective 1.1: "To guide development into locations that reinforce the rural pattern of compact settlements surrounded by open lands." Hinesburg Town Plan 2005 at 2.
174. Goal 3 of the 2005 Town Plan. To provide and plan for efficient and adequate community facilities and services. Objective 3.4: "To strive for safe and well-designed transportation systems; to develop and expand a sidewalk network; and to encourage development of alternative systems such as trails, bikepaths and greenways." Hinesburg Town Plan 2005 at 3.
175. Goal 3.2.3 of the 2005 Town Plan: "To create a truly "walkable" community by working toward safe and convenient pedestrian access to all portions of the Village." Hinesburg Town Plan 2005 at 21.
176. Goal 3.3.1 of the 2005 Town Plan: "To provide suitable locations for commercial and industrial development... (b) Encourage commercial expansion in the core of economic activity within and surrounding the Village district." Hinesburg Town Plan 2005 at 24.
177. Goal 6.4 of the 2005 Town Plan: "To guide improvements to the Village transportation infrastructure which encourage a more pedestrian and business-friendly community while improving the efficiency of vehicular traffic flow." Hinesburg Town Plan 2005 at 26.
178. Top 10 Priority Goals and Recommendations #4 of the 2005 Town Plan." Create a truly walkable Village by improving crosswalks as well as adding and improving sidewalks." Hinesburg Town Plan 2005 at 62.

Conclusions of Law

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A. § 6086(a)(8). This Project involves concerns under Criterion 8 related to [aesthetics, noise, odors, historic sites, rare and irreplaceable natural areas].

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010); see also, *Re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. November 4, 1985); *In re Halnon*, 174 Vt. 514 (mem.).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A. § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Env'tl. Ct. May 17, 2010)(citing *Re: Susan Dollenmaier*, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt Env'tl. Bd. February 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct. February 15, 2008), aff'd, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of

the parties or witnesses..." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553–54 (1990)).

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985) (cited in *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).

The Project is located in an area that has been approved as a commercial/industrial park. Compared to other buildings in the area it is not the largest but is larger than most buildings in the area. Given the array of building types and architectural styles in the area, the Project's architectural style is not in stark contrast to the other buildings. Therefore, the Commission concludes that the building construction is not an adverse impact. However, the public has been frequent users of the Canal Park sidewalk and accordingly changing an open space for a large building with a large parking lot is considered by many of these users to be an adverse impact to its enjoyment. Consequently the Commission will complete an undue adverse impact analysis.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. April 9, 2002). A clear, written community standard must be "intended to preserve the aesthetics or scenic beauty of the area" where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action*, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. December 21, 2000).

A plan which states "consideration should be made..." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott*, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Env'tl. Bd. December 8, 2000). Although the proposed Project does not meet the specific goals or objectives cited above there are no clear community standards relevant to the proposed Project's impacts on aesthetics.

The Commission has reviewed relevant portions of the Town of Hinesburg municipal plan. The Plan identified several goals, Findings of Fact #173-#178, above which are relevant to this Project.

However, while these goals may articulate some aspirational objectives, they do not set up a clear regulatory standard. Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc.* #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. December 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 11-12; *Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. August 21, 1992).

A project is shocking and offensive if it offends or shocks the sensibilities of the average person -- if it is so out of character with its surroundings that it significantly diminishes the aesthetic qualities of the area and therefore causes an adverse effect which is undue. *Re: Times and Seasons, LLC and Hubert K. Benoit*, #3W0839-2-EB (Altered), Findings of Fact, Conclusions of Law, and Order at 49 (Vt. Env'tl. Bd. November 4, 2005), *aff'd in part, rev'd in part, In re Appeal of Times & Seasons, LLC*, 2008 VT 7 (Vt. S. Ct.). The Legislature has directed the Commissions, composed of lay people from many different communities within the Environmental District, to determine what is acceptable in terms of new developments' impact on aesthetics and scenic and natural beauty. *Sherman Hollow*, #4C0422-5-EB (Revised) Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Env'tl. Bd. February 17, 1989). Of all the aesthetic considerations under the *Quechee* Test, the shocking and offensive test is, by far, the most subjective. *Re: EPE Realty Corporation and Fergessen Management, Ltd.*, #3W0865-EB, Findings of Fact, Conclusions of Law, and Order at 31 (Vt. Env'tl. Bd. November 24, 2004).

The Project is located within a mixed commercial/industrial area. The approvals of the park, both state and local, preceded construction of the Canal Park sidewalk. The current views from the Canal facing toward the Project site do not have any significant aesthetic value as it includes several commercial buildings. The sidewalk can still be used by anyone, although its aesthetic value may be lessened it does not rise to the level of offensive and shocking to the average person. Given all of these considerations and conditions, the Commission finds that the Project is not offensive or shocking.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicants have "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010). A generally available mitigating step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."

To mitigate the aesthetic impacts of the Project on the use of the sidewalk, the Applicants have developed a comprehensive landscape plan. The plan will lessen the aesthetic intrusion of the parking lot and building on the sidewalk users, although it will not completely screen it. Any use of Lot #15 will have an aesthetic impact on users of the sidewalk.

Given all of these considerations, we find that the Applicants have taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

(d) Conclusion

Based on the above, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

The Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

Criterion 9(K) - Public Investments (Except Roads)

Findings of Fact

179. Previous relevant Findings of Fact are included herein.
180. Public facilities that are located adjacent to the Project site include the Town highways Commerce Street and Mechanicsville Road which are addressed above jointly with Criterion 5. Exhibit #7.
181. Two existing public facilities are located on the Project site. The first is a wastewater main, as discussed in Criterion 9J: Public Utilities. There is also a Town sidewalk running generally along the Canal near the southern side of the property. The Project will not have an undue adverse effect on these public facilities. Exhibit #7.
182. The Canal is not publically owned. The Canal exists for the purposes of serving the former Saputo building. The Canal is used mainly by the Town for fire suppression backup within the Village. It will not be disturbed by the Project. Exhibit #97.
183. The current property owners deeded a 20 foot easement to the Town of Hinesburg on July 18, 1996 for the purpose of constructing a sidewalk and pedestrian bridge for public use. Exhibit #120.
184. The Town of Hinesburg received a federal Transportation Enhancement (TE) grant through the Vermont Agency of Transportation for constructing the sidewalk. The TE grant is awarded to projects that must "... demonstrate a relationship to transportation, and more specifically with surface transportation, and must clearly support this relationship in the project application." The Hinesburg TE funded project was for a "...sidewalk construction and landscaping project, or streetscape improvement, in the town of Hinesburg. The streetscape is located along a state highway and a major arterial, and connects the older area of Hinesburg village with a newer area zoned for commercial and industrial use." The project demonstrated that it met the requirements for enhancing the pedestrian connections to the Commerce Park area, including Lot 15, which is zoned for commercial and light industrial uses. Exhibit #132.
185. This existing sidewalk connects the Hinesburg Post Office and Commerce Park area with the historic Village area. The Project will provide a pedestrian sidewalk connection to this existing sidewalk, as well as a new sidewalk extension to Commerce Street. This will extend the pedestrian sidewalk network in Hinesburg Village and provide additional opportunities for residents to walk to commercial businesses and municipal buildings within the community and will greatly increase the walkability within Hinesburg Village. Exhibit #97.
186. The Project will enhance the use of the existing sidewalk in a manner consistent with the Town Plan which emphasizes the importance of pedestrian access to mixed uses within the Village Growth Area. Exhibits #7 and #97.
187. The Canal walk is the product of years of work, and tens of thousands of investment, by town residents, town government, local nonprofit organizations, state government and the federal

- government. All have contributed time and money in acquiring, improving and maintaining the Canal walk and its historic bridge, its benches, its trees and grass, and the walkway itself. Exhibits #132 and testimony of Goldsmith.
188. In 1998, a historic Warren pony truss bridge built c. 1925 and formerly located on Town Highway 29 (Turkey Lane) was relocated and rehabilitated as a pedestrian bridge in Canal Park. The cost of relocating the bridge alone was \$31,125. The bridge relocation was part of a larger project in which the public invested \$162,000 in creating the Canal path and related sidewalk connections, linking the post office to other parts of the Village. The federal government paid \$104,000; the state and local governments paid \$58,000. Exhibits #132 and testimony of Goldsmith.
189. The Canal path is widely used and deeply appreciated by the residents of Hinesburg. The Canal path does not function just as a means of foot transportation from one place to another. It is the focus of many residents' recreation and social gathering. It is where people jog and ride bicycles, where parents take their children to learn to ride their bikes, and where parents push strollers and greet each other. It is where children play, safely separated from any road. It is where people sit on the benches and watch the wind play through the grasses in the wetland. It is where residents watch fish and turtles in the canal. It is also the gathering place for much of the town on the 4th of July. Testimonies of Goldsmith, Bowman, Liuzzi, Hay, Patterson, Webb, and Bock.
190. Mr. John Roos provided prefiled testimony regarding public investments. Mr. Roos focused on the impact of the Project on the Town sidewalk along the Canal. He argues that the Project will degrade the public investment in the sidewalk as a public space and peaceful place that "...gives important moments to reflect, relax and appreciate the natural setting..." Other parties provided similar testimony as to the importance of the existing open field next to the sidewalk in their enjoyment of walking in the area. Exhibit #139a.
191. The Town's easement for the sidewalk explicitly contemplates development of Lot 15. It states in relevant part "...Grantee [the Town] acknowledges that the construction and maintenance of improvements, including curb cuts, necessary or desirable to provide access to and egress from Grantor's [Giroux] property [Lot 15], including access for and placement of utility services and other improvements including culvert and pipes, shall not be inconsistent with and shall be permitted in connection with the use of this easement by grantee." Applicants' proposal protects the Town's sidewalk to a greater degree than contemplated by the easement because it involves no curb cut or culvert crossing over or under the sidewalk as allowed by the explicit language of the Town's easement. Exhibit #120.
192. The Applicants propose a "pocket park" near the pedestrian bridge that crosses the Canal and enhancements to the landscaping along the existing sidewalk, including in-fill trees where there are existing gaps in the tree line along the sidewalk. Exhibits #7, #97 and #116.
193. The Applicants have offered the Town an easement for approximately one acre running the entire length of the site along Mechanicsville Road, generally between the road and the parking lot and building, which the Applicants informally refer to as "Canal Park". Exhibits #7, #97 and #116.
194. The Applicants have also offered the Town a space for use as a farmers' market once per week during the warmer months for public use. The farmers' market space would be located in the northern parking lot and green spaces adjacent to it. Exhibits #7, #97 and #116.

195. The Town of Hinesburg has not yet acted on the Applicants' offers for an easement for a one acre "Canal Park" or for the space for a farmers' market. The "Canal Park" can function as such regardless of the ownership. The farmers' market space, which also serves as a parking area, may not occur if the Town does not accept the easement. However, because it is uncertain as to whether the Town will accept one or both offers, the Applicants request that the creation of the public park and area for a farmers' market be allowed by the Act 250 permit, but not required. Exhibits #7 and #97.

Conclusions of Law

Analyses under Criterion 9(K) call for two separate inquiries with respect to public investments. First, we examine whether a proposed project will unnecessarily or unreasonably endanger the public investment in such facilities. Second, we examine whether a proposed project will materially jeopardize or interfere with (a) the function, efficiency or safety of such facilities or (b) the public's use or enjoyment of access to such facilities. *Swain Development Corp. and Philip Mans, #3W0445-2-EB*, Findings of Fact, Conclusions of Law and Order at 33 (Vt. Env'tl. Bd. October 11, 1990).

The burden of proof under Criterion 9(K) is on an applicant. 10 V.S.A. § 6088(a); *Re: Times and Seasons, LLC and Hubert K. Benoit, #3W0839-2-EB* (Altered), Findings of Fact, Conclusions of Law and Order at 56 (Vt. Env'tl. Bd. November 4, 2005).

The existing Town sidewalk along the Canal and Mechanicsville Road is part of a pedestrian network within the Hinesburg Village core. It is used as an alternative transportation link between the historic Village and the emerging and growing commercial and residential areas along Commerce Street, Mechanicsville Road and beyond. The walk is bordered by the Canal and Mechanicsville Road, which is heavily traveled by residents, commuters and visitors. The Commission concludes that the Project will not change the use of the sidewalk: people will still be able to use it as an alternative transportation connection as well as to enjoy the Canal.

The Commission finds that the Applicants' offer to the Town of an easement for creating a "Canal Park" along the western property line and a space for use as a farmers' market on the northern parking lot and abutting green space will create new public investment opportunities. The approximately one acre landscaped area "Canal Park" is considered to be part of the Project as submitted by the Applicant, and ownership will not affect this. The farmers' market space, which is multifunctional as a parking lot, is considered part of the Project as submitted by the Applicant. However, if the farmers' market does not occur here, it will not change the Project's considered use. Therefore, the Commission concludes that "Canal Park" and space for the farmers' market are allowed, but not required if the Town does not accept the Applicants' easements, as part of the Project.

The Commission concludes that the Project does not unnecessarily or unreasonably endanger public investment in the adjacent public facilities, services and lands, and does not materially jeopardize or interfere with the function, efficiency or safety of the public facilities, services and lands, or the public's use or enjoyment of access to the public facilities, services and lands.

Criterion 10 – Local and Regional Plans:

Findings of Fact

196. Previous relevant Findings of Fact are included herein.
197. The 2005 Hinesburg Town Plan applies to this Project. The Applicants' application for site plan approval to the Town was deemed complete on November 18, 2010. The newer 2011 Hinesburg Town Plan was adopted on May 16, 2011. For both local and Act 250 purposes, the Applicants

- are vested in the Town Plan that was in effect when it filed a complete application with the Town. Exhibits #7 and #35.
198. Goal 3.2.6 of the 2005 Town Plan states: “ensure that allowed uses within the Village are compatible with existing uses, and to encourage a mixture of commercial, institutional, and residential uses within the Village district.” Town Plan at 22.
199. Goal 3.2.8 of the 2005 Town Plan states: “To make available adequate community facilities and services to facilitate Village area goals.” Town Plan at 23.
200. Goal 3.3.1 of the 2005 Town Plan states: “To provide suitable locations for commercial and industrial development.” Town Plan at 24.
201. Goal 4.3.2(b) of the 2005 Town Plan states: “Study the current and future impacts of stormwater runoff on the town’s surface waters, and consider writing tighter provisions in the regulations. Consider innovative and “low impact development” techniques that help minimize stormwater runoff.” Town Plan at 34.
202. Goal 4.5.1(a) of the 2005 Town Plan states: “Abide by existing or develop regulations to protect town wetlands that are essential for treating storm water runoff and protecting surface water quality and providing habitat.” Town Plan at 37.
203. Goal 4.5.1 of the 2005 Town Plan states: “**To develop an open space plan for the Town.**”
- b) Develop an open space plan. This plan will include information on the location of significant agricultural and natural resources, high priority scenic areas, potential greenways, environmentally sensitive lands and water resources. The purpose of this plan will not be to exclude all development from these lands but to serve as a framework for prioritizing and developing a network of interconnected open space.
 - c) Develop a program for the protection of significant features identified in the open space plan. This program will include means of protecting priority areas and may include conservation easements, purchase of development rights or acquisition of priority sites. The open space plan and conservation program will identify sites that are most vulnerable and that are not adequately protected through other regulatory or voluntary means so that conservation efforts and funds may be focused where need is greatest.
- Town Plan at 41-42.
204. Goal 5.4.1(d) of the 2005 Town plan states: “Explore creation of an Official Map and/or Capital Program that includes present and desired future recreation areas and facilities.” Town Plan at 47.
205. The list of priorities for the Town Plan includes “Develop an open space plan to assist in the creation of a network of interconnected open space.” Town Plan at 62.
206. The Town of Hinesburg Development Review Board reviewed and approved the Project on November 6, 2012. Exhibit #23.
207. The 2005 Hinesburg Town Plan was adopted before the Official Map was established. Significantly, the 2005 Town Plan makes only three fleeting references to any prospective official map. In Section 3.2.3(b), the Town Plan recommends that the Town “[c]reate a plan and an official map for future sidewalks and paths to link all destinations in the Village as well as significant destinations outside the Village.” In Section 3.2.4(a), the Town Plan recommends that the Town “[c]reate a plan and an official map for future streets within the greater Village area.”

- Finally, in Section 5.4.1(d), the Town Plan recommends that the Town "[e]xplore creation of an Official Map and/or Capital Program that includes present and desired future recreation areas and facilities." None of these references are suggestive of any explicit policy that could prohibit the Project or cause it to run afoul of Criterion 10. Exhibits #35 and #82.
208. The Town of Hinesburg adopted an Official Map on May 4, 2009. The Official Map labels the Project site and four other areas in the Village as "Future Community Facilities." Note 3 on the Official Map states that "future community facilities for areas shown include, but are not limited to: Town Green, Community Center, Fire/Police Station expansion, Farmer's Market venue, Parks and Recreation areas, Library relocation." However, the Official Map does not establish that Lot 15 shall be used for a specific use such as a sizeable green or community gathering space. Exhibits #82 and #115.
209. Possible community facilities are mentioned in note 3 on the Official Map, which include, but are not limited to: Town Green, Community Center, Fire/Police Station expansion, Farmers Market venue, Parks & Recreation areas, and Library relocation. Although the types of facilities envisioned are listed, the Official Map does not limit the future community facility on the subject parcel to a particular facility. The Applicants have proposed to accommodate the Official Map in two ways: 1) creation of a Farmers Market venue, including an easement to the Town for use of a portion of the site on a limited basis for this use; 2) creation of a linear park area (termed "Canal Park") along the existing Canal path, including an easement to the Town for use of this portion of the site. Specifics on the areas involved and allowances for public use are detailed on the Easement Plan (sheet E1), draft easement deeds for the Farmers Market and for the Canal Park, and in the Applicants' testimony at the public hearings. Exhibits #23, #82, #84 and #115.
210. The Town of Hinesburg has a Town of Hinesburg Capital Budget and Capital Program FY 2008 – FY 2014. The Capital Budget and Capital Program, implemented in conjunction with the Official Map, demonstrates that the six future community facilities identified by the Official Map are intended for lands not including the Project site. The Capital Budget and Capital Program specify that the Town Green, the Fire/Police Station expansion, the Farmers' Market venue, and Parks and Recreation areas are to be located on other lots. Neither the Town Plan nor the Capital Program suggests that the library requires relocation. The sixth item, the community center, is listed in the Capital Program with a note: "No facility or plan yet. TBD." Exhibits #37 and #97.
211. The Project does accommodate two distinctly identified public facilities. The Applicants have offered the Town an easement for approximately one acre running the entire length of the site along Mechanicsville Road, generally between the road and the parking lot and building, which is informally referred to as "Canal Park". The Applicants have also offered the Town a space for use as a farmers' market once per week during the warmer months for public use. The farmers' market space would be located in the northern parking lot and green spaces adjacent to it. These two activities are identified on the Official Map for potential uses for Lot 15. Criterion 9(K) and Exhibit #82, #84 and #116.
212. The Town of Hinesburg Planning Commission provided written testimony regarding Criterion 10 - conformance with the Town Plan. The Planning Commission argues that the Project is not in conformance with the Hinesburg Town Plan because it "...does not accommodate future community facilities planned for the subject property as delineated on the Hinesburg Official Map." The Planning Commission's attorney, David W. Rugh of Stitzel, Page and Fletcher, P.C. provided written testimony arguing that the Official Map should be considered part of the Town Plan which identified the Project site for a future public facility and therefore is in conflict with it and should be prohibited. Exhibits #69 and #111.

213. Mr. Roos provided written information regarding Criterion 10. Mr. Roos asserts that the Project site is identified through the Official Map for a green or public gathering space, and that the scale and design would not conform to mixed use Vermont village character as described in the Hinesburg Town Plan and Regional Plan. Exhibit #139a.
214. As part of the Capital Budget and Capital Program, this project is required to pay a Fire and First Response impact fee that will go towards, among other things, a new or expanded fire station which is among the possible uses identified on the Official Map. Exhibits #7 and #97.
215. The CCRPC did not identify the Project as having substantial regional impacts. Exhibit #36.
216. The Chittenden County 2006 Regional Plan includes the project site in Hinesburg in the Village Planning Area. It recommends the types of land uses that includes commercial; be developed in a higher density, mixed use area; and is in accordance with Hinesburg Town Plan. Exhibit #7 and #36.
217. The Chittenden County Regional Planning Commission finds that the Project is in conformance with the Chittenden County 2006 Regional Plan. Exhibits #36 and #66

Conclusions of Law

Before issuing a permit the District Commission must find that the Project is in conformance with any duly adopted local or regional plan or capital program. 10 V.S.A. § 6086(a)(10). In Act 250 proceedings in which the provisions of a regional plan or a municipal plan are relevant to the determination of any issue:

- (1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;
- (2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact. 24 V.S.A. § 4348(h).

Maple Tree Place Associates, #4C0775-EB, Findings of Fact, Conclusions of Law, and Order at 53 (Vt. Env'tl. Bd. June 25, 1998).

There are several “key principles used to guide the determination of whether a project complies with a local plan: First, a determination of nonconformity must be based upon a ‘specific policy’ set forth in the plan.” (*In Re Green Peak Estates*, 154 Vt. 363, 369 (1990)); second, the specific policy must be stated “in language that ‘is clear and unqualified, and creates no ambiguity.’” (*John A. Russell Corp.*, 176 Vt. 520, 523 (2003) (quoting *In re MBL Assocs.*, 166 Vt. 606, 607 (1997))); third, while “broad policy statements phrased as ‘nonregulatory abstractions’” may not be given “the legal force of zoning laws,” (*John A. Russell Corp.*, 176 Vt. 520, 523 (2003) (quoting *In re Molgano*, 163 Vt. 25, 31 (1994))), zoning bylaws are “designed to implement the town plan, and may provide meaning where the plan is ambiguous.” (*In re Kisiel*, 172 Vt. 124, 130 (2000)). *In re Cetrangelo and DeFelice*, No. 66-3-06 Vtec, Decision at 7-8 (4/11/07).

There are two inquiries that the Commission must make in its evaluation of whether a project conforms to a Town Plan: Is the language in the town plan mandatory or does it merely provide guidance; and are the Town Plan's provisions specific or ambiguous? *Re: Times and Seasons, LLC and Hubert K. Benoit, #3W0839-2-EB (Altered), Findings of fact, Conclusions of Law and Order at 58 (Vt. Env'tl. Bd. November 4, 2005), aff'd in part, rev'd in part, In re Appeal of Times & Seasons, LLC, 2008 VT 7 (Vt. S. Ct.).*

A plan provision evinces a specific policy if it “(a) pertains to the area or district in which the project is located; (b) is intended to guide or proscribe conduct or land use within [that area or district]; and (c) is sufficiently clear to guide the conduct of an average person, using common sense and understanding.” *In re Cetrangelo and DeFelice*, No. 66-3-06 Vtec, Decision at 8 (4/11/07).

The Commission has reviewed the Town Plan and has determined that the Town Plan is sufficiently specific in that there are provisions which refer to this specific area of the town, the Village core and Commerce Street. *Re: The Mirkwood Group #1R0780-EB*, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Env'tl. Bd. August 19, 1996). The language in the Town Plan, however, is not mandatory but rather provides guidance in how this area should be developed.

The Project conforms to the 2005 Hinesburg Town Plan in several sections. It conforms to the Land Uses Chapter in the overall description, the Village Area goals and recommendations section, and the Commercial and Industrial uses goals. However, the Town Plan makes reference to and directs that an Open Space Map be developed within three years.

The introduction to Title 24, Subchapter 7 – Bylaws is titled "Regulatory Implementation of the Municipal Plan". This introduction states in part "A municipality that has adopted a plan through its bylaws may regulate land development... In its bylaws, a municipality may utilize any or all of the tools provided in this subchapter..." Among other regulatory tools Subchapter 7 includes Zoning, Site Plan Review, PUDs, Subdivision Bylaws and Section 4421 - Official Map.

However, we do not agree that the Open Space Map qualifies as the “Official Map” referenced in Title 24. The Open Space Map is integral to the Town Plan but like the Town Plan, at least with respect to this area of the village, it cannot be used as a regulatory tool. The Official Map identified several parcels that *could* be used for future community facilities and can include, but are not limited to: Town Green, Community Center, Fire/Police Station expansion, Farmer's Market venue, Parks and Recreation areas, and Library relocation. The Project proposes a venue for a Farmer's Market on the lot. The Planning Commission argued that the Project is not in conformance with the Hinesburg Town Plan because it does not accommodate future community facilities planned for the subject property as delineated on the Hinesburg Official Map. However, a Farmer's Market is one such use; therefore we conclude that the Project is also in conformance with the Open Space Map.

Where there is ambiguity in the wording of a Town Plan, the Commission must look to the interpretation of the plan by the municipal bodies responsible for its implementation and enforcement. *In re Kisiel*, 172 Vt. 124, 133 (2000), superseded, 10 V.S.A. § 6096(a)(10) (2001). If the applicable municipal plan provisions are ambiguous, for interpretive purposes the Court or commission must consider zoning bylaws, but only to the extent that they implement and are consistent with those plan provisions, and it need not consider any other evidence. 10 V.S.A. § 6088(a). *In re Cetrangelo and DeFelice*, No. 66-3-06 Vtec, Decision at 7 (April 11, 2007). Because we found that the Town Plan was not ambiguous it is not necessary for us to review the zoning bylaws to resolve the ambiguity. *See In re Frank A. Molgano Jr.* 163 Vt. 25 (1994).

The Project complies with Criterion 10.

VIII. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project does not comply with Criterion 2. 10 V.S.A. § 6086(a). The Project does comply with all other Act 250 criteria and it is only because the Town of Hinesburg's municipal water system is over allocated that we could not find compliance under this Criterion. The Town is researching new wells, if new water sources are found and

the moratorium is lifted, the Applicants can submit that document with an application to this Commission for issuance of a permit for the proposed Project. These Findings of Fact are valid for five years.

IX. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C0654-14 is hereby denied.

DATED at Essex Junction, Vermont, this 13th day of June 2014.

By /s/Thomas A. Little, Chair
Thomas A. Little, Chair
District #4 Environmental Commission

Commissioners participating in this decision:
Parker Riehle
Thomas Getz

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.

E	DATE	E	A = Applicant
X	R	N	T = Town
H	E	T	O = Opponent, Supporter, Friend
I	C	E	RPC = Regional Planning Commission
B	E	R	ANR = Agency of Natural Resources
I	I	E	VTRANS = Vt. Agency of Transportation
T	V	D	DPS = Department of Public Services
	E		M = Municipality
	D		DHP = Division for Historic Preservation
			WMD = Wastewater Management Division
N		B	L = Landowner
O.		Y	
			Nature of Exhibit and Date Entered

1	3/26/13	A	Cover Memo by Gail Henderson-King, White + Burke (3/26/13)
2	"	"	Act 250 Land Use Permit Application Cover sheets
3	"	"	Schedule F – Certificate of Service
4	"	"	Schedule A – Fee Information
5	"	"	Schedule E – Adjoiner Information
6	"	"	Schedule G
7	"	"	Schedule B – Act 250 Narrative
8	"	"	Ability to Serve Letter / Wastewater Allocation by Town of Hinesburg (2/27/13)
9	"	"	Letter by Brian Bertsch, O’Leary-Burke re Wastewater System and Potable Water Supply Permit application (2/14/13)
10	"	"	Stormwater Calculations (2/13)
11	"	"	Letter by Brian Bertsch re Moderate Risk Construction General Permit application (2/14/13)
12	"	"	Construction Waste Management and Disposal Specs
13	"	"	Email by Gretchen Alexander, VT DEC Rivers Program re Fluvial Erosion Hazard Zone (1/13)
14	"	"	Letter by Patti Kallfelz-Werts, Vanasse Hangen Brustlin re Vt. State Wetland Determination Petition (2/13/13)
15	"	"	Ability to Serve Letter / Water Capacity by Town of Hinesburg (2/27/13)
16	"	"	Permit to Construct (Water Supply) Application (2/12/13)

17	“	“	Traffic Impact Assessment (2/4/13)
18	“	“	Memo by Paul O’Leary to Al Barber, Hinesburg Fire Chief re Ladder Truck Access (2/7/13)
19	“	“	Economic, Demographic and Fiscal Impact of Proposed Hinesburg Hannaford Supermarket Development (1/19/13)
20	“	“	School Impact Questionnaire
21	“	“	Memo by Brian Bertsch re Fire Flow Analysis (1/30/13)
22	“	“	Existing Conditions of Abutting Buildings and Character of Neighborhood
23	“	“	Town of Hinesburg Development Review Board Findings of Fact, Conclusions and Orders (Site Plan Approval 11/6/2012; Conditional Use for Hours of Operation 8/30/2011; Sign approval 8/30/2011))
24	“	“	Digital Models of Buildings and Site
25	“	“	Signage
26	“	“	Lighting Cut Sheets
27	“	“	Ability to Serve Letter by Vt. Gas (1/7/13)
28	“	“	Ability to Serve Letter by GMPC (1/14/13)
29	“	“	Letter by Historic Preservation (10/19/86)
30	“	“	ANR Map of Natural Resources (2/20/13)
31	“	“	Architectural Review and Proposed Improvements (6/4/12)
32	“	“	Vt. DEC Authorization to Discharge under General Permit 3-9010 (operational stormwater) Issued 12/22/11
33	“	“	Commerce Park Association Bylaws
34	“	“	Ability to Serve Letter re Water/Wastewater System Extension Permit (2/18/13)
35	8/9/13	“	Hinesburg Town Plan Adopted June 13, 2005
36	“	“	Chittenden County Regional Planning Commission 2006 Regional Plan
37	3/26/13	“	Town of Hinesburg Capital Budget and Capital Program FY 2008 – FY 2014 Adopted on July 14, 2008
38	“	“	Plan: Existing Conditions Sht. C1 (Rev. 3/11/13)
39	“	“	Plan: Overall Plan Sht. C2 (Rev. 3/11/13)
40	“	“	Plan: 30-Scale Site Plan Sht. C3 (Rev. 3/11/13)
41	“	“	Plan: Commerce Street Utility Plan Sht. C4 (Rev. 3/11/13)

42	"	"	Plan: Lot 15 Utility Plan Sht. C5 (Rev. 3/11/13)
43	8/6/13	"	Plan: Route 116/Commerce Street Intersection Improvements Sht. C6 (3/18/13, REV 7-30-13)
44	3/26/13	"	Plan: Water and Sewer Details Sht. C7 (Rev. 3/11/13)
45	"	"	Plan: Road and Erosion Details Sht. C8 (Rev. 3/11/13)
46	"	"	Plan: Planting Plan Sht. L1 (Rev. 2/22/13)
47	"	"	Plan: Lighting Plan Sht. L2 (Rev. 2/22/13)
48	"	"	Plan: Landscape Details Sht. L3 (Rev. 2/22/13)
49	8/20/13	"	Plan: Stormwater Management Plan Sht. S1 (Rev 8-13-13)
50	8/6/13	"	Plan: Stormwater Management Plan Sht. S2 (Rev. 6-20-13)
51	"	"	Plan: Stormwater Management Plan Sht. S3 (Rev. 6-20-13)
52	9/17/13	"	Plan: EPSC Pre-Construction Plan Sht. E1 (Rev. 8/21/13)
53	"	"	Plan: EPSC Construction Plan Phase I (Loading) Sht. E2 (Rev. 8/21/13)
54	"	"	Plan: EPSC Construction Plan Phase II (Infrastructure) Sht. E3 (Rev. 8/21/13)
55	"	"	Plan: EPSC Construction Plan Phase III (Building) Sht. E4 (Rev. 8/21/13)
56	"	"	Plan: EPSC Stabilization Plan Sht. E5 (Rev. 8/21/13)
57	"	"	Plan: EPSC Details & Specs. Sht. E6 (Rev. 8/21/13)
58	3/26/13	"	Plan: Building Plan View Drw. A-1 (4/26/12)
59	"	"	Plan: Elevations Drw. A-2 (5/24/12)
60	"	"	Plan: Sidewalk Relocation (9/11)
61	4/15/13	O	National Bank of Middlebury request for Party Status (4/12/13)
62	4/10/13	T	Municipal Impact Questionnaire and letter from Joe Colangelo Zoning Administrator, Town of Hinesburg re fire services impact fee and aerial fire truck (4/8/13)
63	5/8/13	VTrans	Entry of Appearance of VTrans Traffic Research and Utilities and Permits Unit (5/7/13)
64	5/9/13	T	Entry of Appearance for the Town of Hinesburg Selectboard by Alex Weinhagen, Director of Planning and Zoning Town of Hinesburg (5/8/13)

65	5/9/13	CCTA/ACTR	Request for party status as a Friend of the Commission for the Chittenden County Transportation Authority by Meredith Birkett Director of Planning & Marketing and The Addison County Transit Resources by Jim Moulton ACTR Executive Director
66	5/10/13	RPC	Entry of Appearance by Michele Boomhower, Assistant/MPO Director CCRPC (5/10/13)
66a	5/15/13	LCA	Memo by Mary Illick, Lewis Creek Watershed Association re Request for Party Status as Friend of the Commission (5/13/13)
67	"	O	Email Request for Party Status by David and Barbara Lyman Dated (5/15/13)
68	"	"	Party Status Request by John Roos
69	"	T	Letter by Hinesburg Planning Commission re Project (5/14/13)
70	"	O	Letter by James Dumont, Esq., re Party Status Request on Behalf of 29 Persons and Dark Star Properties (Hay et al) (5/14/13)
71	"	"	Email by Matt Kiedaisch Requesting Party Status (5/15/13)
72	"	"	Email by Bill Moller Requesting Party Status (5/16/13)
73	5/20/13	"	Email by Bill Moller re Party Status (5/20/13)
74	5/22/13	"	Memo by Marty Illick, Lewis Creek Association re Request to be Admitted as Friend of the Commission (5/13/13)
75	"	"	Email by Bill Moller re Request for Party Status (5/22/13)
76	5/24/13	"	Email by Heidi Simkins re Request for Party Status (5/24/13)
77	5/28/13	A	Applicant's Memorandum in Response to Applications for Party Status (5/24/13)
78	5/24/13	O	Bill Moller request for Friend of Commission Status (5/22/13)
79	5/31/13	"	Rebuttal to Martin's Foods re Party Status by John Roos (5/31/13)
80	6/3/13	"	Motion to Dismiss Application or Require Supplemental Application/Memorandum by James Dumont, Esq. for Hay et al. (5/31/13)
81	6/7/13	"	Hay et al.'s Corrected Response to Martin's Foods Objections to Party Status by J. Dumont (5/5/13)
82	6/12/13	A	Applicant's letter re Official Map (6/11/13)

83	6/13/13	“	Applicant’s Memorandum in Opposition to Motion to dismiss or to Require Supplemental Application (6/12/13)
84	7/11/13	“	Applicant’s Memorandum in Opposition to Commission’s consideration of the Town of Hinesburg’s Official Map (7/10/13)
85	7/18/13	VTrans	VTrans consolidated Review of Hannaford/Martins (7/18/13)
86	7/29/13	O	Bill Moller’s Memorandum in Support of Martin Foods (7/26/13)
87	“	“	David F. and Barbara O. Lyman’s Memorandum in Support of Martin Foods (7/26/13)
88	“	T	Town of Hinesburg Selectboard Prefiled Testimony of Roy Schiff, Milone & MacBroom, Inc. (7/22/13)
88a	“	“	Town of Hinesburg Selectboard Prefiled Testimony of David Saladino, RSG (7/2/13)
89	“	O	Lewis Creek Association withdrawal of Friend of the Commission Status (7/29/13)
90	“	ANR	ANR Entry of Appearance re: Criteria 1(B) stormwater and 1(E) streams submitted by Jennifer Mojo Regulatory Planning Analyst (7/29/13)
91	“	O	CCTA Memorandum to Request Public Transportation Infrastructure (7/29/13)
92	“	A	Hannaford Prefiled testimony – cover letter by Chris Roy Esq. (7/29/13)
93	“	“	Hannaford Prefiled testimony – Paul O’Leary, 1B, 4 & 9(K) (7/29/13)
94	“	“	Hannaford Prefiled testimony – Jeff Nelson, CPESC, CPSWQ re: Criteria 1(B), 1(D) & 1(E) (7/29/13)
95	“	“	Hannaford Prefiled testimony – Adam Crary re: Criteria 1(G) & 8 (7/29/13)
96	“	“	Hannaford Prefiled testimony – Roger Dickinson, P.E. PTOE re: Criterion 5 (7/29/13)
97	“	“	Hannaford Prefiled testimony – David G. White re: Criteria 7, 8, & 9(K) (7/29/13)
98	“	“	Hannaford Prefiled testimony – Robert Bast, AIA re; Criterion 8 (7/29/13)
99	“	O	Rolf Kielman Prefiled Testimony re Criteria 8 and 9(K) (7/22/13)

100	“	“	Dean Grover, P.E. Prefiled Testimony re Criteria 1(B) (7/29/13)
101	8/6/13	A	Applicant's Objections to Preliminary Party Status Determinations (8/5/13)
102	“	“	Cover letter re: Additional materials (8/6/13)
103	“	“	Revised Route 116 Southbound left-turn land design at commerce Str. (8/5/13)
104	“	“	Cover letter from Brian Bertsch re: Additional stormwater related materials (7/30/13)
104a	“	“	Commerce Park Subdivision Lot/Business Identification (July 20, 2013)
105	“	“	Plan: 20-Scale Grass Channel Plan and Profile Sht. S4 (8/21/12 REV 6-20-13)
106	8/8/13	“	Plan: 20-Scale Detention Basin Detail for Sin 001 Sht. S5 (Rev. 08-08-13)
107	8/6/13	“	Plan: 100-Scale Overall Stormwater Management Plan Sht. S6 (Rev. 6-20-13)
108	8/8/13	O	Hay et al.'s Motion to Strike Testimony and Dismiss Act 250 Application because O'Leary Testimony Relies on "Involved Land" not included in Application and for which Landowner is not an Applicant in Violation of Rule 2(C)(5) and 10 by J. Dumont (8/8/13)
109	8/9/13	A	Town of Hinesburg Zoning Regulations (Amended July 11, 2011)
110	8/13/13	“	Hannaford's Memorandum in Opposition to Motion to Strike O'Leary Testimony and Dismiss Act 250 Application (8/13/13)
111	“	T	Town of Hinesburg brief on the Official Map's review under Criterion 10 (8/13/13)
111a	“	“	Town of Hinesburg Official Map (adopted May 4, 2009)
112	“	VTrans	email from VTrans on revisions to proposed project extension of the southbound left-turn lane on Route 116 (8/13/13)
113	“	O	Hay et al. Response to Martin's Food Objection to Motion to Strike O'Leary Testimony and Dismiss Act 25 Application (8/13/13)
114	8/20/13	A	Post Development stormwater Peak Discharge (8/16/13)
115	“	“	Lot #15 and Town Green (8/18/13)

116	“	“	Farmer’s Market and Canal Park Easements (8/17/13)
117	“	“	Buried Utility Permit Application Materials and Status (8/16/13)
118	“	“	Hannaford’s objection to installation of a Bus Stop (8/19/13)
119	“	“	Wastewater System and Portable Water Supply Permit ww-4-4018 (8/7/13)
120	“	“	Easement Deed from Giroux to Town of Hinesburg for sidewalk along southern side of property (7/18/1996)
121	“	“	Hannaford’s supplemental Analysis of q100 Flow Rates (8/19/13)
122	“	“	Plan: Vt 116/Charlotte Road Intersection Improvements Sht. C9 (6/21/13)
122a	“	“	Plan: Planting Plan Sht. L1 [to show 75-foot buffer on streams]
123	8/21/13	“	Photograph of Lot #15 from Mechanicsville Road - DW1 (~2011)
124	“	“	Photograph of Lot #15 from Thistle Hill – DW2 (~2011)
125	“	“	Kielman sketches of Town of Hinesburg / Hannaford’s Charette- JK1
126	“	O	Plan: Giroux Commercial Subdivision (12/28/1987)
127	“	“	Warranty Deed Giroux to Commerce Park Associates for drainage easement (June 30, 1988)
128	“	“	Warranty Deed Giroux to the Town of Hinesburg for easement (June 30, 1988)
129	“	“	Easement Deed Giroux to the Town of Hinesburg for Sidewalk easement (June 30, 1988)
130	“	“	Plan: Hinesburg Streetscape Phase 2 Site Plan B (4/22/96)
131	“	“	Declaration of Protective Covenants and Restrictions for Giroux Commercial Subdivision (2/26/2001)
132	“	“	A Guide to Transportation Enhancements excerpts on Hinesburg Streetscape Project (~1990)
133	“	“	Aerial photograph of Hinesburg with Patrick Brook (~1986)
134	“	“	Lot #15 Committee Progress Report (6/16/2011)
135	“	“	Excerpts from Hinesburg Zoning Regulations (10/12/2009)
136	“	“	Photographs of area of Lot #15 – RGH 1 thru RGH -39
137	9/3/13	“	Complete Lot 15 Report (June 16, 2011)

137a	9/6/13	T	Resume of Roy Schiff (9/4/2013)
138	9/17/13	O	John Roos testimony on Criterion 1 (air)
139	"	"	John Roos testimony on Criterion 5
139a	"	"	John Roos testimony on Criterion 9K
140	"	A	Hannaford's Response to HRO of 8/29/2013 (9/16/13)
141	"	"	Lot 15 Committee Fiscal Analysis (2/7/13)
142	"	"	Hannaford's Act 250 Rule 34(E) Analysis
143	"	"	Hannaford's discussion on whether the Mechanicsville Canal is a stream under Criterion 1(E) (9/13/13)
144	"	"	Hannaford Traffic Information and proposed Traffic Improvement Costs (9/13/13)
145	"	"	Commerce Park Association Approval (9/16/13) – pending
146	"	"	Giroux Commercial Subdivision Signage (9/16/13)
147	"	"	Giroux Commercial Subdivision fill on Lots (9/16/13)
147a	"	"	Hannaford Pepperchrome Rendering Method
148	"	"	Plan: EPSC Construction Plan Phase IV (Building) Sht. 7 (Rev. 8/21/13)
149	"	"	Plan: EPSC Stabilization Plan Sht. 8 (Rev. 8/21/13)
150	"	"	Plan: EPSC Construction Plan Phase IV (Building) Sht. 9 (Rev. 8/21/13)
151	9/18/13	O	Hay et al. submittal re HRO 8/29/13 (9/16/13)
152	"	"	Hay et al. Memorandum re: 75-foot buffer protecting Canal
153	"	"	Hay et al. analysis of how Hinesburg handles fires that require an aerial ladder fire truck
154	"	"	Jedediah & Heather Burack statement on Criterion 10 & 5
155	10/02/13	"	Hay et al. Response to Martin's Foods Argument as to 75-Foot Setback from Streams (09/30/13)
156	11/01/13	T	Town of Hinesburg Response to Hearing Recess Order (10/31/13)
157	11/04/13	VTrans	VTrans Response to Hearing Recess Order (10/31/13)
158	11/18/12	A	Applicants proposed Findings of Fact, Conclusions of Law and Order (11/15/13)
159	"	O	Hay et al. proposed Findings of Fact, Conclusions of Law and Order (09/30/13 [sic])
160	"	T	Town of Hinesburg final comments (11/15/13)

161	12/31/13	“	Town of Hinesburg addenda to final comments (12/30/13)
162	1/17/14	A	Applicants supplemental information (1/17/14)
163	“	“	Plan: Boundary Line Adjustment Survey Sht. SH1 (Rev. 1/16/14)
164	3/24/14	ANR	Letter from ANR stormwater Program regarding need for co-applicancy by Giroux Commerce Park Association on stormwater application (3/21/14)
165	4/3/14	O	Email from James Dumont Esq. on State issued moratorium on new hookups to municipal water (4/3/14)
166	“	A	Hannaford supplemental information and COS (4/3/14)
167	“	“	Paul O' Leary, P.E. reply to letter from Alex Weinhausen on water quality in Patrick Brook (3/28/14)
168	“	“	Letter from Jessanne Wyman, ANR Regional Engineer that proposed Boundary line adjustment is exempt from the need for a wastewater permit (3/24/14)
169	“	“	Change in name of Applicant (4/3/14)
170	4/24/14	“	Hannaford's supplemental submission and COS (4/23/14)
171	“	“	Notice of Wetland Determination for Petition #2013-010 and Response Summary (4/2/14)
172	“	“	Authorization to Discharge Permit #3034-9015 (stormwater) and Response Summary (4/10/14)
173	“	“	Notice of Intent (Construction General Permit) # 3034-9020 and Response Summary (4/21/14)
174	“	“	Letter from Rocky Martin, Town of Hinesburg buildings and Facilities Manager re: water capacity in municipal system (2/13/14)
175	“	“	Hinesburg Selectboard Meeting March 10, 2014 Draft minutes (4/7/2014)
176	“	“	email from Rocky Martin, Town of Hinesburg buildings and Facilities Manager

CERTIFICATE OF SERVICE

I hereby certify on this 13th day of June, 2014, a copy of the foregoing **ACT 250 FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C0654-14**, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to nrb-act250essex@state.vt.us. Please note you can now fill out and submit the Act 250 survey online at: <http://permits.vermont.gov/act250-survey> instead of printing and mailing the attached pdf version.

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Dated at Essex Junction, Vermont, this 13th day of June, 2014.



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