

State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION
111 West Street • Essex Junction • Vermont 05452

RE: City of Burlington
attn: Carol Weston
645 Pine Street
Burlington, VT 05401

Application #4C0438-17
**Findings of Fact,
Conclusions of Law and Order**
10 V.S.A. §§ 6001-6092 (Act 250)

and

State of Vermont Agency of Transportation
attn: Wayne Davis
One National Life Drive
Montpelier, VT 05633-5001

I. INTRODUCTION

On April 15, 2011, the City of Burlington ("City") and State of Vermont Agency of Transportation ("VTrans"), collectively referred to as "Applicants," filed an application for an Act 250 permit for a Project generally described as the completion and construction of the Champlain Parkway ("Parkway") connecting Interstate 189 to a new roadway extending to Lakeside Avenue, reconstruction and repaving of Lakeside Avenue, and resurfacing and certain other improvements to Pine Street between Lakeside Avenue and Main Street. The Project includes a new shared use path connecting Shelburne Street to Pine Street, along the new roadway and along portions of Lakeside Avenue and Pine Street. The City's legal interest is ownership in fee simple described in deeds recorded on January 7, 1992; May 29, 2002 and May 24, 2002 in the land records of the City of Burlington and on May 24, 2002 in the City of South Burlington, Vermont.

The application, submitted on April 15, 2011, was deemed complete.

Under Act 250, projects are reviewed based on the ten criteria of 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 is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file identified as Exhibits #1 through #227, and the evidence received at public hearings held on May 19, 2011 (Prehearing Conference); July 26, 2011; August 23, 2011; August 31, 2011 and November 16, 2011. The Commission also conducted a site visit that immediately preceded the Prehearing Conference. At the end of the final hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on April 9, 2012 upon receipt of the additional information and held deliberative sessions on June 15, 2011; July 27, 2011; August 10, 2011; September 7, 2011; November 16, 2011; February 14, 2012; March 7, 2012; April 9, 2012 and April 24, 2012.

II. JURISDICTION

Jurisdiction attaches because the Project involves the construction of improvements involving more than ten acres and thus constitutes "development" pursuant to 10 V.S.A. § 6001(3)(A)(v). Additionally, the Project is a material change to a development over which the Commission already has jurisdiction, through issuance of LUP #4C0438-N&S, and thus constitutes "development" pursuant to 10 V.S.A. § 6081. Accordingly, a land use permit amendment is required pursuant to Act 250 Rule 34.

III. PARTY STATUS

A. Preliminary Party Status Determinations

Statutory parties to this application who attended some or all of the hearings are:

1. The **Applicants**, by Carol Weston; Richard Haessler, Esq.; Larry Kupferman; Steve Goodkind (8/23/2011 Hearing only) of the City of Burlington; Jack Myers, P.E. of Stantec Engineering (8/23/2011 Hearing only); Brian Dunkiel, Esq. & Elizabeth Caitlin, Esq. of Dunkiel Saunders, LLC; Ken Kaliski, P.E. (8/23/2011 Hearing only); John Hinckley, P.E. (8/23/2011 Hearing only) & Joe Segale, P.E. of RSG (8/31/2011 & 11/16/11 Hearing); Chris Cole (11/16/2011 Hearing only) & Wayne Davis of VTrans; Jean Vissering (8/23/2011 Hearing only) and Dale Gozalkowski, P.E., David Kahlbaugh, P.E. (8/31/2011 Hearing only) & Jim Shields, P.E. of Clough Harbor & Associates.

Statutory parties to this application who did not attend the hearings are:

2. The **Agency of Natural Resources** ("ANR") but it maintains its statutory party status.
3. The **City of South Burlington** but it maintains its statutory party status.

The following were granted preliminary party status under one or more of the Criteria and have exercised their rights of preliminary party status. Others have failed to exercise their right and their preliminary status has been changed.

4. **Alan Hunt**, 89 Maple Street, Burlington, represented by Franklin Kochman, Esq. and Roger Dickinson, P.E. of Lamoureux & Dickinson Consulting Engineers, who provided expert testimony under Criteria 8 and 5 at the second and third Hearing, respectively. Mr. Hunt and Mr. Kochman attended all hearings and there are no changes to Mr. Hunt's party status designations under Criteria 5 (traffic), 8 (aesthetics), 9(K) (public investments) and 10 (local and regional plans).

The Applicants have contested Mr. Hunt's party status designation under Criteria 8, 9(K) and 10. The Commission has reviewed the testimony by Mr. Hunt and has concluded that his interests under these criteria are well established and particularized so there are no reasons to change his party status designations.

5. **Richard Gamache**, 15 Lyman Ave., Burlington, attended the second hearing and there are no changes to his party status designations under Criteria 1 (air pollution) and 8 (aesthetics).
6. **Vermont Railway, Inc.** (“VTR”) was represented at the hearings by Eric Benson, Esq. Mr. Benson has attended all Hearings. David Wulfson; Fikret Kuckovic; Ed Fitzgerald; Perry Martel and Brian Muzzy, all employees of VTR, attended the fourth Hearing. There are no changes to VTR's party status designations under Criteria 1(B) (wastewater); 5 (traffic) and 8 (aesthetics).

The Applicants have contested the VTR party status designation under Criteria 1(E) (streams), 8, 9(A) (impact on growth) and 10 (local and regional plans). The Commission has reviewed the testimony and other evidence and has determined that the interests expressed by VTR under Criterion 1(E) relate to its 1981 agreement with the City. We find that VTR has failed to make a sufficient showing that its property will be directly and adversely impacted by the proposed Project's impact on the natural condition of Englesby Brook. VTR has also failed to sufficiently articulate its concerns under Criterion 9(A) that the proposed Project will significantly affect the City's existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth which would result from the Project, and also has failed, under Criterion 10, to adequately indicate the specific components of the City Plan or Regional Plan with which the proposed Project is not in conformance. Therefore, the Commission denies VTR party status under Criteria 1(E), 9(A) and 10.

The Applicants also objected to the Commission's preliminary grant of party status to VTR under Criterion 9(K) (public investments). VTR also submitted testimony that rebutted the objection. However, the Commission never granted preliminary party status to VTR under Criterion 9(K) because VTR never requested it. The list of party status designations was itemized in the Pre-Hearing Conference Report and Order dated May 27, 2011, the Notice of June 24, 2011 and the Hearing Recess Orders dated August 11, 2011 and September 12, 2011. VTR has had adequate opportunity to contest these designations if it found them incorrect. Testimony under 9(K) - traffic related issues, was heard concurrently with testimony given under Criterion 5. That fact does not automatically grant party status under Criterion 9(K). Accordingly, the Commission does not grant VTR party status under Criterion 9 (K).

7. **South Meadow Housing Associates** was represented at the Prehearing Conference and the first hearing by Jeffrey Kirschner, P.E. and William W. Schroeder, Esq. Through an entry (Exhibit #132) they notified the Commission that they would not be attending other Hearings. There are no changes to South Meadow Housing Associates' party status designations under Criteria 1(B) (wastewater); 4 (erosion control) and 9(A) (impact on growth).

South Meadow Housing Associates did not present any testimony or cross examine witnesses under Criteria 5 (traffic), 8 (aesthetics) and 9(K) (effects on public investments). Therefore, the Commission now denied its party status designation under Criteria 5, 8 and 9(K).

8. **Howard Space Partnership** owns property at the corner of Howard and Pine Streets and was represented at the Prehearing Conference by Kevin Chamberlin and at the third hearing by Karen Unsworth. There are no changes to Howard Space Partnership's party status designations under Criteria 5 (traffic) and 9(K) (effects on public investments).

The Applicants have contested this party status designation under Criterion 9(K). The Commission has reviewed the testimony and other evidence and determined that Howard Space had presented credible evidence that it has a particularized interest under Criterion 9(K) and the Commission concludes that there is no reason to change its party status designation.

9. **David Lansky, PhD** owns Precision Bioassay, Inc. located at 431 Pine Street, Burlington. Dr. Lansky attended and testified at the third hearing. There are no changes to his party status designation under Criteria 5 (traffic).

Dr. Lansky did not attend the first hearing, present any testimony or cross examine witnesses. Therefore, the Commission now denies his party status designation under Criteria 9(A) (impact on growth) and 10 (local and regional plans).

The Applicants have contested Dr. Lansky's party status designation under Criterion 5. The Commission has reviewed the testimony and other evidence and determines that Dr. Lansky presented credible evidence that he has a particularized interest under Criterion 5 and accordingly the Commission concludes that there is no reason to change his party status designation.

10. **Carmen Bombardier**, 26 Lyman Ave, Burlington, attended the Prehearing Conference and testified at the second hearing; there are no changes to her party status designations (as an individual landowner) under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).

The Applicants have contested her party status designation under Criterion 1(B) and 1(E). Ms. Bombardier was not granted status under 1(E) so there is no reason to change that status. The Commission has reviewed the testimony and other evidence and determines that Ms. Bombardier presented credible evidence that she has a particularized interest under Criterion 1(B) and the Commission concludes that there is no reason to change her designation.

11. **Carmen Bombardier** owns business property located at 8 Home Ave., Burlington. As noted above, Ms. Bombardier attended the Prehearing Conference and testified at the second hearing. There are no changes to her party status designations (as a business owner of another parcel) under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).

The Applicants have contested her party status designation under Criterion 1(B) and 1(E). Ms. Bombardier was not granted party status under Criterion 1(E) so there is no reason to change that status. The Commission has reviewed the testimony and other evidence and now determines that Ms. Bombardier presented credible evidence that in respect of this property she has a particularized interest under Criterion 1(B) and the Commission concludes that there is no reason to change her designation.

12. **Dorothy Lewis**, 29 Home Ave., Burlington, attended the Prehearing Conference and testified at the second and third hearings. There are no changes to her party status designations under Criteria 1 (air pollution) and 8 (aesthetics).

The Applicants have contested the party status designation under Criterion 1(B) and 1(E), but Ms. Lewis was not granted party status under Criteria 1(B) or 1(E).

13. **Karen Spach**, 40 Batchelder Ave., Burlington, attended the Prehearing Conference, where the Chair preliminarily granted her party status under Criterion 5 (traffic). However, at the third hearing it was determined that some of her concerns more aptly fall under Criterion 1(B) and the Commission has changed her party status designation to Criterion 1(B).

The Applicants have contested the party status designation under Criteria 1(B), 1(E) and 5. Ms. Spach was not granted party status under Criterion 1(E) so there is no reason to change that status. The Commission has reviewed the testimony and other evidence and determines that Ms. Spach presented credible evidence that she has a particularized interest under Criteria 1(B) and 5. Therefore, the Commission concludes that there is no reason to change her party status designation.

14. **Fortieth Burlington, LLC** owns property at 128 Lakeside Ave., Burlington. It was represented at the Prehearing by Liam Murphy, Esq., who sent an entry (Exhibit #150) indicating that his client was working with the Applicants on design changes at the Project's intersection with Lakeside Avenue and testified at the fourth hearing. There are no changes to Fortieth Burlington, LLC's party status designation under Criterion 5 (traffic).

15. **GP Burlington South, LLC** owns property on Lakeside Ave., Burlington, and has a property interest in a parcel on Sears Lane as well. It was represented at the Prehearing by Liam Murphy, Esq., who sent an entry (Exhibit #150) indicating that his client was working with the Applicants on design changes at the Project's intersection with Lakeside Avenue and testified at the fourth hearing. There are no changes to GP Burlington South, LLC's party status designation under Criterion 5 (traffic).

16. **David Kestenbaum**, 103 South Crest Drive, Burlington, attended the Prehearing Conference. Mr. Kestenbaum attended and testified at the first and second hearings and there are no changes to his party status designations under Criteria 1 (air pollution); 1(B) (wastewater); 8 (aesthetics) and 10 (local and regional plans).

Mr. Kestenbaum did not attend the third hearing and since he did not present any testimony or cross examine witnesses, the Commission now denies his party status under Criteria 5 (traffic).

The Applicants have contested the party status designation under Criterion 1(B) and 1(E). Mr. Kestenbaum was not granted status under Criterion 1(E) so there is no reason to change his status. The Commission has reviewed the testimony and other evidence and determines that Mr. Kestenbaum presented credible evidence that he has a particularized interest under Criteria 1(B). Therefore, the Commission concludes that there is no reason to change his party status designation under Criterion 1(B).

17. **Maltex Partnership** is located at 431 Pine Street, Burlington, and was represented at the Prehearing by Rick Davis. Mr. Davis attended and testified at the third hearing and there are no changes to the Maltex Partnership's party status designation under Criterion 5 (traffic).

18. **453 Pine, LLC** is located at 453 Pine Street, Burlington, and was represented at the Prehearing by Rick Davis. Mr. Davis attended and testified at the third hearing and there are no changes to 453 Pine, LLC's party status designation under Criterion 5 (traffic).
19. **Jackson Terrace Apartments** is located at 500 Pine Street, Burlington, and was represented at the Prehearing Conference by Jack B. DuBrul. Mr. DuBrul attended and testified at the third hearing and there are no changes to Jackson Terrace Apartments' party status designation under Criterion 5 (traffic).
20. **Harry Clark & Sharie Elrick**, 8 Conger Avenue, Burlington. Mr. Clark & Ms. Elrick did not attend the Prehearing Conference but filed a subsequent request for party status under Criterion 5 (traffic), which was preliminarily granted. Mr. Clark attended and testified at the third hearing and there are no changes to their party status designation under Criterion 5 (traffic).
21. **Evzen Holas**, 55 Lyman Ave., Burlington. Mr. Holas did not attend the Prehearing Conference but filed a subsequent request for party status under Criteria 7 (municipal services) and 8 (aesthetics), which was preliminarily granted. Mr. Holas attended and testified at the second hearing and there are no changes to his party status designations under Criteria 7 (municipal services) and 8 (aesthetics).

The Applicants have contested the party status designation under Criteria 7 and 8. The Commission has reviewed the testimony and other evidence and determines that Mr. Holas presented credible evidence that he has a particularized interest under Criteria 7 and 8. Therefore, the Commission concludes that there is no reason to change his party status designation.

22. **Rieley Properties, LLC** owns property at the intersection of Morse Place and Batchelder Street. Its notice for the Prehearing Conference was returned due to an incorrect address. The address was corrected and Rieley Properties, LLC was represented at the second hearing by Sheldon Rieley, who testified. The Commission granted Rieley Properties, LLC party status under Criterion 8 (aesthetics) and there is no reason to change its designation.

B. Final Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status following the Prehearing Conference. Prior to the completion of deliberations, the District Commission re-examined the preliminary party status determinations and revised the status of several parties as noted above and denied the party status requests of the parties listed below.

Lillian M. Beaudoin, 14 Lyman Ave., Burlington, attended the Prehearing Conference. Ms. Beaudoin attended no hearings and since she did not present any testimony or cross examine witnesses, the Commission now denies party status under Criteria 1(B) (wastewater); 5 (traffic) and 8 (aesthetics).

Kirstin McCracken, 349 Flynn Ave, Burlington, attended the Prehearing Conference. Ms. McCracken attended no hearings and since she did not present any testimony or cross examine witnesses, the Commission now denies party status under Criteria 5 (traffic) and 8 (aesthetics).

Nina Beaudoin, 85 Foster St., Burlington, attended the Prehearing Conference. Ms. Beaudoin attended no hearings and since she did not present any testimony or cross examine witnesses, the Commission now denies party status under Criteria 1(B) (wastewater); 5 (traffic) and 8 (aesthetics).

Independent Block, LLC, located at 255 South Champlain Street, Burlington, was represented at the Prehearing Conference by Jason Adams. Mr. Adams attended no hearings and since he did not present any testimony or cross examine witnesses, the Commission now denies party status to Independent Block, LLC's under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).

Katherine O'Neil, 16 Ferguson Ave., Burlington, attended the Prehearing Conference. Ms. O'Neil attended no hearings and since she did not present any testimony or cross examine witnesses, the Commission now denies her party status under Criteria 1 (air pollution); 1(B) (wastewater); 5 (traffic) and 8 (aesthetics).

Kilburn & Gates, located at 316 Pine Street, Burlington, was represented at the Prehearing Conference by Graham Goldsmith, Jr. He attended no hearings and since he did not present any testimony or cross examine witnesses, the Commission now denies party status to Kilburn & Gates under Criteria 5 (traffic); 8 (aesthetics) and 9(A) (impact on growth).

Annie Dwight, 42 Central Ave., Burlington, attended the Prehearing Conference. Ms. Dwight attended no hearings and since she did not present any testimony or cross examine witnesses, the Commission now denies her party status under Criteria 5 (traffic) and 8 (aesthetics).

Ken Grillo, 41 Central Avenue, Burlington. Mr. Grillo did not attend the Prehearing Conference but filed a subsequent request for party status under Criteria 5 (traffic) and 8 (aesthetics), which was preliminarily granted. However, Mr. Grillo attended no hearings and since he did not present any testimony or cross examine witnesses, the Commission now denies his party status under Criteria 5 (traffic) and 8 (aesthetics).

C. Friends of the Commission

The District Commission allowed the following persons or entities to participate as a "friend of the Commission" pursuant to 10 V.S.A. § 6085(c)(5):

Local Motion was represented at the Prehearing Conference by Jason Van Driesche. Mr. Van Driesche attended and testified at the first, third and fourth hearings. There are no changes to Local Motion's designations under Criteria 5 (traffic) and 10 (local and regional plans) as a Friend of the Commission.

IV. 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 19, 2011 site visit by the District Commission, digital versions of the City Plan from the City’s website, documents from the Chittenden County Regional Planning Commission’s website (Regional Plan), and documents on the VTrans website (LOS Policy, Road classification, list of High Crash Locations) and the Highway Capacity Manual from the American Association of State Highway and Transportation Officials (AASHTO) website, all subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

V. MOTIONS

- On April 17, 2011, the Applicants filed a *Motion to Strike pre-filed testimony of Roger Dickinson re historic sites* (Exhibit #135). In the Motion, the Applicants contend that Mr. Hunt was only granted preliminary party status under the aesthetics component of Criterion 8, not the historic component. It appears that this contention was based on the Prehearing Conference Report and Order (May 27, 2011) that listed the grant of party status to Mr. Hunt as “8 (aesthetics)”. The Commission typically adds a word or phrase after each criterion granted as a means to explain to parties who are lay persons what the criterion addresses. In this instance, the Commission did not intend to limit Mr. Hunt’s preliminary party status designation to aesthetics only. To obtain party status, a person must first show a specified interest protected by Act 250 that is particular to the person, not a general policy concern shared with the general public and a person must demonstrate a causal connection between the proposed project’s potential adverse impacts and the person’s particularized interests. See, e.g., *In re Pion Sand & Gravel Pit*, #245-12-09 Vtec, Decision on Motion for Party Status at 7 (July 2, 2010); *In re Big Spruce Road Act 250 Subdivision*, No. 95-5-09 Vtec, Decision on Multiple Motions at 6 (4/21/10). Mr. Hunt owns several structures in the Battery Street Historic District that may be eligible for listing as historic structures. His interest is particularized, that is, different from the general public’s. The designation of preliminary party status allowed Mr. Hunt to present testimony under Criterion 8’s historic component. The Commission concludes that Mr. Hunt has valid party status under Criterion 8’s historic component.

Mr. Dickinson’s expert testimony was as a traffic engineer. At the August 23, 2011 hearing, his testimony was allowed for cross-examination only as it related to possible potential impacts under Criterion 8. The Commission allowed him to give his testimony on Criterion 5 but held in abeyance the cross examination of Mr. Dickinson under this criterion until the full hearing on traffic issues on August 31, 2011.

For these reasons, the Motion to Strike is denied.

- At the August 23, 2011 Hearing, Alan Hunt requested that the *Commission Cancel the Hearing scheduled for August 31, 2011 pending the Applicants' submittal of the final plans for the Lakeside Avenue/Parkway intersection*. The Commission, in its August 26, 2011 Memorandum to all Parties, declined to cancel that hearing and denied the request, but stated that it would hold another hearing, to be scheduled, to cover all traffic related issues. That hearing was scheduled for and was held on November 16, 2011. The Request to cancel was denied.
- In the Applicants' Response to Commission's Hearing Recess Order of 9/12/2011 (Exhibit #188), they requested that the Commission *Allow the Applicants to file the Stormwater Permit as a Pre-Construction Condition* on any permit that the Commission may grant. Vermont Agency of Natural Resources Stormwater Permits are used as rebuttable presumptions for compliance under Criterion 1(B). To allow post-decision filing of that permit would imply that the Commission has not done a review of all stormwater issues prior to granting a permit. Such a proposal would appear to be an impermissible condition subsequent which cannot substitute for an affirmative finding under Criterion 1(B). *Town of Stowe*, #100035-9-EB Findings of Fact, Conclusions of Law and Order at 47 (Vt. Env. Bd. May 22, 1998). Therefore, the Commission denied this request and rendered a decision (Memorandum issued March 7, 2012) that compliance under Criterion 1(B) will not be made until all stormwater permits have been issued for this Project.
- On March 22, 2012, Applicants filed a *Motion to Alter* the Commission's Memorandum of Decision of March 7, 2012. Specifically, they request that we revise the second paragraph on page 1 of that Memorandum of Decision as follows (additions shown in bold, deletions shown as strikethroughs):

Stormwater permits are used as rebuttable presumptions for compliance under Criterion 1B. To allow post decision filing of that permit **as the sole evidence for making a positive finding under Criterion 1(B)** would imply that the Commission has not done a review of all stormwater issues prior to granting a permit. **The Commission may not rely on a post-decision condition to obtain a stormwater permit alone to support**~~Such a proposal is an impermissible condition subsequent which can not substitute for~~ an affirmative finding under Criterion 1(B) *Town of Stowe*, #100035-9-EB Findings of Fact, Conclusions of Law and Order at 47 (Vt. Env. Bd. May 22, 1998). **However, the Commission may rely on other evidence before the Commission that can support positive findings and the conclusion that the project will not cause an undue adverse impact under Criterion 1(B).** Therefore, the Commission denies this **request to the extent that it asks the Commission to rely on a post-decision condition alone as evidence of compliance with Criterion 1(B) for construction-phase stormwater**, and will not render a decision on compliance under Criterion 1 B until all storm water permits are issued for this Project **or the Commission finds that the applicant has submitted other evidence sufficient to render a decision on compliance under Criterion 1(B) with respect to construction- phase stormwater discharges.**

The Commission has reviewed these changes and finds them consistent with the law and the Commission's intent.

The Motion also requested that we revise paragraph (1) on page 2 of the Memorandum of Decision to read:

~~Parties Applicants and Vermont Railway (VTR) are~~ **is** requested to provide a short **brief in response to the Applicant City of Burlington's Proposed Conclusions of Law, pp. 44-50 (December 23, 2011) and Proposed Rebuttal Findings of Fact and Conclusions of Law, Findings 1-3 and pp. 3-5 (January 31, 20 12)** on how much weight should be given to the 1981 Agreement between the City of Burlington and VTR regarding the size of the culvert under the railroad as compared to the culvert size under the proposed parkway for Englesby Brook. (Criterion 1E) **The Applicants shall have 15 days to respond to any brief that VTR may file.**

The Commission has reviewed this request and finds it acceptable.

The Motion further requested that the Commission revise paragraphs (2), (3) and (4) on page 2 of the Memorandum of Decision to read as follows (additions shown in bold, deletions shown as strikethroughs):

A Stormwater Construction Permit for the project **or any other evidence sufficient to support a positive finding under Criterion 1(B) with respect to the construction-phase stormwater discharges associated with the proposed project.** (Criterion 1B)

A Operation Stormwater Permit for the changes to the Lakeside Avenue/Parkway intersection area or a letter from the ANR Watershed Protection Division that one is not required **or any other evidence sufficient to support a positive finding under Criterion 1(B) with respect to the operational stormwater discharges from the proposed project in the Lakeside Avenue area.** (Criterion 1B)

~~Revised Site Plans showing the addition of a crosswalk across Pine Street at Marble Avenue, sidewalks on the north and west side of Home Avenue and Champlain Parkway intersection, an access to the shared used path from the end of Morse Place and the location of the sidewalk connection from the cul de sac at Briggs Street to Home Avenue.~~ (Criteria 5 and 8)

The Commission has reviewed these requests and finds them consistent with the law and the Commission's intent, with the caveat that the Commission has concluded that it requires an issued state stormwater permit to find compliance under Criteria 1(B) and 4 (See Criterion 1B Conclusion, below).

- GP Burlington South, LLC and Fortieth Burlington, LLC in a November 18, 2011 letter (Exhibit #207) requested that the Commission *Order the Applicants to Produce the 2009 Traffic AOT Count and the Analysis Undertaken on the so-called North Road*. In a subsequent filing (Exhibit #209), the Applicants reiterated the Internet location for the publicly available information on the Vermont Agency of Transportation traffic count and provided the Congestion Analysis (Levels of Service) for the Pine St./North Road intersection. The data used by the Applicants was from the referenced Internet site. Moreover, they provided the requested congestion analysis. The Commission considers this matter closed and denies this request.

- Parties Hunt and VTR have requested that the Commission *Disallow Applicants' Proposed Findings of Fact, Conclusions of Law and Order and Motion to Deny Party Status as it Grossly Violates Act 250 Rule 12*. VTR and Mr. Hunt claim that the City's Motion and Proposed Findings exceed the document lengths set forth in Act 250 Rules 12(D)(1) and (4). They argue that Rule 12(D) sets mandatory page limits and the District Commission should reject filings that exceed these mandatory page limits. Their argument is mistaken, as Rule 12(D) merely states that documents "should comply" with the length provisions in the various subsections, not that they "shall" or "must" comply. Rule 12(D) is devoid of mandatory language and certainly does not suggest that documents would be rejected or dismissed for containing more pages than the recommended length. In light of the large amount of testimony and other evidence and exhibits in this Application, and the overall complexity of the Application, the Commission denied both Motions in its Memorandum of March 7, 2012.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A District Commission is required by 10 VSA 6086(a) to review a project on its own merits, not in comparison to previous proposals, to what could or should be built, or to other factors unrelated to the project. *Re: Chittenden Solid Waste District, #EJ99-0197-WFP*, Findings of Fact, Conclusions of Law and Order at 21 n.4 (Waste Facility Panel October 24, 2003). The Commission's analysis is based only on whether the proposed Project would be in compliance with the Act 250 Criteria. The underlying purpose of Act 250 is to regulate the impacts of development, not the purpose served, nor the parties benefited by the construction. *In re Vermont RSA Ltd. Partnership d/b/a Verizon Wireless*, 2007 VT 23, ¶9 (2007), citing *In re Audet*, 2004 VT 30, ¶14, 176 Vt. 617 (mem.)

Prior to taking evidence with regard to the ten Criteria of 10 V.S.A. § 6086(a), the Commission determined that the Applicants through submittal of the Application materials have met the burden of proof with respect to the following criteria:

- | | |
|---------------------------------------|---------------------------------------|
| 1(A) - Headwaters | 9(B) - Agricultural Soils |
| 1(C) - Water Conservation | 9(C) - Productive Forest Soils |
| 1(D) - Floodways | 9(D) - Earth Resources |
| 1(F) - Shorelines | 9(E) - Extraction of Earth Resources |
| 1(G) - Wetlands | 9(F) - Energy Conservation |
| 2 - Water Supply | 9(G) - Private Utility Services |
| 3 - Impact on Existing Water Supplies | 9(H) - Costs of Scattered Development |
| 6 - Educational Services | 9(J) - Public Utility Services |
| 8(A) - Wildlife Habitat | 9(L) - Rural Growth Areas |

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

The Findings of Fact set forth below pertain to the following Criteria:

- | | |
|-----------------------|-------------------------|
| 1 - Air Pollution | 5 - Traffic |
| 1(B) - Waste Disposal | 7 - Municipal Services |
| 1(E) - Streams | 8 - Aesthetics |
| 4 - Erosion | 9(A) - Impact of Growth |

Where testimony or other evidence were in actual or apparent conflict, the Commission evaluated the credibility and weight of the competing testimony and evidence, and resolved the conflict in favor of the findings and conclusions below,

In making the following findings, the Commission has summarized the statutory language of the ten criteria of 10 V.S.A. § 6086(a):

General Findings:

All Findings reference the official Act 250 Land Use Permit Exhibit numbering as detailed on the attached list. The numbered exhibits in parenthesis refer to the exhibit numbers given by either the Applicants or the party submitting the exhibit. It has been duplicated in the official Exhibit List to facilitate cross referencing by all parties.

1. The Parkway is a proposed two-lane divided street that would connect I-189 and Route 7/Shelburne Street in South Burlington, linking to Lakeside Avenue in Burlington, then follow Lakeside Avenue east and Pine Street north, terminating at Main Street in Burlington. Exhibits #2, #14 and #51 (*Cover Sheets, Appl. Exh. 6; Site Plan 1*).
2. Land Use Permit #4C0438-N&S was granted in 1981 for two road projects that were then known as the Northern and Southern Connectors. The Parkway is the current version of the Southern Connector. Land Use Permit #4C0438-N&S (*Appl. Exh. 37-A*).
3. Under its original Act 250 permit, the Southern Connector/Champlain Parkway was permitted as a four-lane highway that would connect I-189 and Shelburne Street to Battery and King Streets. Land Use Permit #4C0438-N&S (*Appl. Exh. 37-A, Permit at 1*).
4. As anticipated by the original permit, final plans for the first part of the Southern Connector/Champlain Parkway were approved by a permit amendment in 1985. This amendment governed construction of the I-189, Shelburne Street/U.S. Route 7/Parkway interchange (the "Interchange") and a new roadway between the Interchange and Home Avenue, along with associated upgrades to nearby streets. Several changes to these final plans were approved by permit amendments in 1987. This first and southernmost portion of the roadway was constructed in the late 1980s. Land Use Permit Amendments #4C0438 N&S, -8,-8(A),-8(B), & -9 (*Appl. Exh. 37-C, D, E, F*).
5. Final plans for the second part (contract 2) of the Southern Connector/Champlain Parkway were approved by LUP #4C0438-N&S-12, issued September 5, 1991. This amendment governed construction of the roadway between Home Avenue and Lakeside Avenue, as well as relocation of utilities and reconstruction of what was then the General Electric parking lot. Although there were two permit amendments (Dash 13 issued September 27, 1991 extending the construction completion date to December 1, 1994 and the Dash 13A issued October 25, 1994 extending the construction completion date to December 1, 1998), this portion of the roadway was never built. LUP #4C0438-N&S -12 & -13, -13A (*App Exh. 37-H & I*).

6. The main components of the currently proposed Parkway are:
 - a. Reconstruction of the southernmost section of the Parkway to reduce the roadway width to accommodate two lanes of travel instead of four lanes of travel and transition from I-189 to a city street.
 - b. Construction of a new roadway between Home Avenue and Lakeside Avenue for one lane of motorized vehicular travel in each direction with turn lanes and traffic signals at major intersections.
 - c. Full-depth reconstruction of Lakeside Avenue from the intersection of the Parkway to Pine Street.
 - d. Resurfacing of Pine Street.
 - e. Construction of a new shared-use path in two locations: along the northern side of the Parkway between Shelburne Street and Pine Street, and from Home Avenue to Kilburn Street along the eastern side of the Parkway, the northern side of Lakeside Avenue, and the western side of Pine Street.
 - f. New and reconstructed sidewalks along the eastern side of Pine Street from Lakeside Avenue to Main Street, and along the western side of Pine Street from the terminus of the shared-use path to Main Street.
 - g. Exclusive pedestrian phases with pedestrian-activated signals for pedestrian crossings at all intersections with traffic signal controls.
 - h. Replacement of four-way stop signs with new traffic signals at the intersections of Pine Street with Maple Street and King Street.
 - i. New stormwater management infrastructure in various locations throughout the Parkway to ensure that there will be no net loading of pollutants to the receiving waters as a result of the Project.

Exhibits #1 and #213.

Criterion 1 - Air Pollution:

Findings of Fact

7. No air pollution permits are needed for this Project. Exhibit #8 and testimony of John Hinckley (*Schedule B at 1-2 & J. Hinckley live testimony 8/23/11*).
8. The Project will not produce any industrial or process emissions. The air pollution sources of the Project will be the vehicles using the Parkway. Exhibit #8 (*Schedule B at 1*).

9. The Project's air quality modeling showed that the predicted highest carbon monoxide concentrations, with the Project built, will be well below the National Ambient Air Quality Standards (NAAQS) for carbon monoxide set by the federal Environmental Protection Agency (EPA). Exhibit #126 (*J. Hinckley pf. at 5-6*).
10. Carbon monoxide is a surrogate for other mobile source air pollutants and other mobile source air pollutants will follow the same pattern as shown in the carbon monoxide modeling. Exhibit #126 (*J. Hinckley pf. at 8*).
11. With the Parkway constructed, there will be a decrease in the average air pollution exposure per residence within the transportation network. About twice as many residences will see a decrease in air pollution as will see an increase in air pollution. Exhibit #126 (*J. Hinckley pf. at 6-7*).
12. Air pollution concentrations will be reduced around the Champlain Elementary School with the Parkway constructed. Exhibit #126 (*J. Hinckley pf. at 6*).
13. During construction, the Applicants propose to control dust through the use of stabilized construction entrances and through the use of water and/or calcium chloride. Also during Project construction, dust will be controlled in accordance with VTrans 2006 Standard Specifications for Construction, Section 609.1¹. Exhibits #8 and #9 (*Schedule B at 2 & Appl. Exh. 1*).
14. Construction-related noise will be controlled by any necessary time-of-day restrictions as required by the City of Burlington's noise ordinances. Exhibit #8 (*Schedule B at 2*).
15. The noise impacts from the Project as currently proposed will be a reduction of the noise levels that were previously permitted for the Project under Act 250. Exhibit #127 (*K. Kaliski pf. testimony 8/15/11 at 3*).
16. Compared to existing conditions, some areas within the transportation network will see an increase in noise levels and some areas will see a decrease in noise levels. Slightly less than 200 residences will experience an increase of 3 dB or more and approximately 450 residences will experience an increase of 3 dB or less. However, over 1,000 residences will experience a decrease in noise levels. Exhibit #28 (*Appl. Exh. 19, Figures 8 and 9*).
17. Changes in noise levels of 3 decibels or greater are considered detectable by humans. Testimony of Ken Kaliski (*8/22/11*).
18. VTrans has adopted a Noise Analysis and Abatement Policy, approved by the Federal Highway Administration (FHWA), for evaluating whether a road project will cause noise levels that require investigation into whether noise mitigation is reasonable and feasible. The Noise Abatement Criteria (NAC) were updated in July 2011, several months after the Parkway's Act 250

¹ VTrans recently issued the 2011 version of the Standard Specifications for Construction. The Applicants state that the Parkway will comply with the most recent applicable version of this document at the time of construction.

application was submitted. Exhibits #28 and #190 (*Appl. Exhs. 19 at 4-6 & 53 at 2-3, Appendix A*).

19. Under the VTrans Noise Policy in effect when the Parkway application was submitted, noise mitigation must be explored if the noise increase due to the project under consideration will be “substantial” or if noise levels will be above certain defined levels for different types of land uses. If noise levels at any locations will experience a substantial increase or will exceed the levels set in the Noise Policy, then there is a requirement to explore whether noise abatement is reasonable and feasible in those locations. Under the post-July 2011 Noise Policy, the same approach is used, but with updated criteria. Exhibits #28 and #190 (*Appl. Exhs. 19 at 4-6 and 53, Appendix A*).
20. Only a few locations along the Parkway alignment are projected to approach or reach noise levels that require investigation into whether noise abatement is reasonable and feasible under VTrans standards (under both the pre- and post-July 2011 Policy). Exhibit #28 (*Appl. Exh. 19 at 12, 18*).
21. Two locations on Pine Street would approach or reach noise levels requiring investigation of noise abatement, but the levels were modeled to be the same under both the build and no-build alternatives. Thus, the noise levels at these locations would not be substantially affected by the Project. The two Pine Street locations are the Jackson Apartments between Locust Street and Howard Street and a business area just north of Marble Avenue. Investigation of noise mitigation in those areas showed that the number of curb cuts in the areas prevents any feasible noise abatement measures, such as sound barriers, from being implemented. Exhibit #28 (*Appl. Exh. 19 at 18*).
22. One other area along the Parkway alignment initially was modeled as reaching the VTrans noise abatement level. This location was at the Arthur Court duplexes at the southern end of the Parkway, between the Interchange and Home Avenue. These were first modeled as reaching the noise abatement levels under the build scenario, but when current background noise levels were monitored, the predicted Parkway noise levels were shown to be below the noise abatement levels. Exhibit #28 (*Appl. Exh. 19 at 12*).
23. At the request of the District Commission, the Applicants analyzed whether any noise barriers would provide noise abatement for the Lyman Avenue and Ferguson Avenue area and whether any such barriers would be aesthetically appropriate for that area. The results of these analyses are discussed in more detail under our Criterion 8 findings and conclusions. Exhibits #190 and #191 (*Appl. Exhs. 53 & 54*).
24. The northern section of the Parkway, i.e., Pine Street between Lakeside Avenue and Main Street and associated side streets, is not expected to have any significant impact in sound levels as a result of the Parkway being constructed. Exhibit #28 (*Appl. Exh. 19 at 17, Figure 8*).

Conclusions of Law

Under Criterion 1, the Commission must determine that a project will not result in undue air pollution. In making this determination we must at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and

the applicable health and environmental conservation department regulations. 10 V.S.A. § 6086(a)(1). Both noise and dust may be considered air pollution 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. Bd. June 7, 2005). In determining whether an increase of noise and dust levels are undue, the Commission looks at whether there are impacts that rise above annoyance and aggravation that cause adverse health effects such as hearing damage. *Re: Talon Hill Gun Club, Inc. and John Swinington, #9A0192-2-EB*, Findings of Fact, Conclusions of Law and Order at 8 (Vt. Env. Bd. June 7, 1995). The historical interpretations of Criterion 1 concerning air pollution do not establish a sole reliance upon governmental air quality standards, but rather vest the Commission with the responsibility of determining whether all applicable factors support a finding of undue air pollution. *In re: Rivers Dev. Act 250 Appeal, 68-3-07 Vtec*, Decision on the Merits at 14 (March 25, 2010).

The applicant has the burden of proof to demonstrate compliance under Criterion 1. 10 V.S.A. § 6088(a); *Re: Pike Industries, Inc. and Inez M. Lemieux, #5R1415-EB*, Findings of Fact, Conclusions of Law and Order at 31 (Vt. Env. Bd. June 7, 2005).

Where noise levels do not have impacts rising above annoyance and aggravation to cause adverse health effects such as hearing damage, the Commission can find that the noise will not result in undue air pollution. *Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079 (Revised)-EB*, Findings of Fact, Conclusions of Law and Order at 67-68 (Vt. Env. Bd. December 8, 2000). However, the increased noise levels may be an annoyance and are therefore more correctly reviewed under Criterion 8.

We have not been presented with any evidence that the increase in air pollution will cause adverse health effects. None of the affected intersections are above the standards set by EPA.

The Commission concludes that this Project with the proposed noise and dust controls will not result in undue air pollution.

Criterion 1(B) - Waste Disposal:

Findings of Fact

25. The Project will not produce any sewage and it will reduce the amount of wastewater that is directed to the City's main wastewater treatment facility (WWTF). The reduction in flows to the WWTF will occur because one part of the Parkway's stormwater plan is to disconnect the stormwater portion of what are currently combined sewage and stormwater sewers in the neighborhoods between Home Avenue and Flynn Avenue. The stormwater from the Parkway and from some of the side streets in this area will be directed to new stormwater treatment facilities constructed as part of the Project. Exhibits #8, #110 and testimony of Jeff Myers (*Schedule B at 2-3, 9; J. Myers pf testimony & J. Myers Direct 7/26/11 & 8/23/11*).
26. The City's Department of Public Works (DPW), which is responsible for the water lines and sewers in the Project area, has stated that the Parkway will not place an excessive or uneconomic demand on these public utility facilities or services. Exhibit #45 (*Appl. Exh. 34A*).

27. State Wastewater System and Potable Water Supply Permit (#WW-4-3595) was issued on September 9, 2010 by the ANR Water Quality Division for the replacement of approximately 3,100 square feet of water main. Exhibit #10 (*Appl. Exh. 2*).
28. Overall, the Parkway would create 2.25 acres of additional impervious surface over existing conditions. This is due to a combination of new impervious surface created between Home Avenue and Lakeside Avenue and a decrease in impervious surfaces in the area of the Project that was previously built, between the Interchange and Home Avenue. Exhibit #8 (*Schedule B at 4-5*).
29. The portion of the Parkway that will run along the existing Pine Street corridor will not involve the expansion of impervious surface, either by expansion of the roadway or by full-depth reconstruction. Therefore, the Pine Street part of the Project does not require coverage under the State's operational stormwater permit. Exhibit #8 (*Schedule B at 4, 13*).
30. Although the Lakeside Avenue section of the Project is an existing impervious surface, which is not typically subject to the State's operational stormwater permit requirements, it will undergo a full-depth reconstruction as part of the Project. Full-depth reconstruction of roads is considered the creation of impervious surface subject to the State's operational phase stormwater permit requirements. Exhibits #8 and #110 (*Schedule B at 13; J. Myers pf. testimony at 3*).
31. The operational-phase stormwater permit authorizes the discharge of properly treated stormwater runoff from the new and reconstructed impervious surfaces associated with the Parkway from areas along the portion of the previously constructed roadway to Lakeside Avenue. The ANR Water Quality Division has issued an Individual Stormwater Permit (#3368-INDS.R). Exhibits #11 and #8 (*Appl. Exh. 3 & Schedule B at 4*).
32. The Applicants plan to apply for an amendment to Permit #3368-INDS.R to include the Lakeside reconstruction within the permit's coverage. Discussions between the Applicants' consultant and the State Department of Environmental Conservation have indicated that the current design of the stormwater system has sufficient capacity to handle stormwater discharges from the Lakeside Avenue portion of the Project and meet applicable treatment standards. Therefore, the permit amendment is expected to be forthcoming once the Applicants apply for it. (*Schedule B at 13; J. Myers pf. testimony at 3*). The Applicants have been in discussions with other interested parties regarding Project plans for the Lakeside Avenue area, which has delayed the Applicants from finalizing plans to submit an application for an amendment to the operational stormwater permit. The Applicants have asked to make the permit amendment a preconstruction condition of any Act 250 permit for the Parkway. *City's 10/24/11 Response to the District Commission's Recess Order of September 12, 2011*.
33. The operational stormwater management system consists of the following major components (from south to north along the Parkway):
 - a. reduction in existing impervious surface between the Interchange and Home Avenue. Exhibit #8 (*Schedule B at 4-5*).

- b. new storm sewer connecting the pre-existing drainage system south of Home Avenue with a storm sewer parallel to the newly built section of the Parkway between Home Avenue and Englesby Brook. Exhibit #8 (*Schedule B at 6*).
 - c. disconnection of combined sewers in portions of Batchelder Street, Briggs Street, Morse Place, Lyman Avenue, and Ferguson Avenue and connection of these areas to the new stormwater collection system, described above. Exhibits #8, #58, #59 and #60 (*Schedule B at 6, Site Plans 8-10*).
 - d. extended wet detention pond with sediment forebay to treat stormwater from the above described collection system before discharging to Englesby Brook. Exhibits #8, #60 and #84 (*Schedule B at 6-7, Site Plans 10 and 25*).
 - e. catch basins and enclosed concrete pipes to convey stormwater runoff from just north of Flynn Avenue to Sears Lane. Exhibit #8 (*Schedule B at 7*).
 - f. grass-lined channel with sedimentation forebay and stone-lined outfall to Englesby Brook. Exhibits #8, #60 and #84 (*Schedule B at 7-8, Site Plans 10 and 25*).
 - g. swirl separator at existing stormwater collection and drainage system at the Foster Street Outfall. Exhibits #8 and #60 (*Schedule B at 9, Site Plan 25*).
 - h. closed stormwater drainage system parallel to the Parkway from Sears Lane to Lakeside Avenue, connected to the new polishing pond at the Pine Street Barge Canal sediment basin and treated by sand filter prior to discharge to the polishing pond. Exhibit #8 (*Schedule B at 10*).
 - i. sand filter with sedimentation forebay at corner of Parkway and Lakeside Avenue. Exhibits #8, #61 and #84 (*Schedule B at 10, Site Plans 11, 25*).
 - j. swirl separator at the existing outlet pipe located at Burlington Electric Department parking lot to offer additional treatment of stormwater from Pine Street. Exhibits #8 and #60 (*Schedule B at 11-12, Site Plan 25*).
34. Several residents and businesses in surrounding properties expressed concerns about stormwater runoff from the Parkway. These concerns were based on existing post-storm conditions at the neighboring properties and were not supported by any specific documentation or expert testimony. Exhibit #120 and testimonies of Carmen Bombardier, Eric Benson and Karen Spach (*C. Bombardier 7/30/11 email and live testimony (8/23/11); E. Benson testimony (7/26/11); K. Spach testimony (8/31/11) and letter to District Commission*).
35. The proposed stormwater management system has been designed to improve the drainage of stormwater compared to existing conditions. The credible evidence demonstrated that these improvements are expected to reduce the flooding and sewer back-ups that currently occur for properties in the Lyman and Ferguson Avenue neighborhoods, including Briggs Street. Exhibits #110 and #153 (*J. Myers 10 pf. testimony at 5-6; J. Myers response to K. Spach testimony/written comments 9/14/11*).

36. The Parkway, including its drainage system, is designed so that stormwater runoff from the Parkway will not be hydrologically connected to adjacent properties, and thus will not contribute to any existing stormwater drainage issues on those properties. Exhibit #110 (*J. Myers pf. testimony at 4-7*).
37. VTR's attorney expressed concerns regarding the impact of the planned Parkway crossing of Englesby Brook, which will occur via a proposed natural-bottomed culvert. The railroad tracks also cross Englesby Brook, in an area to the west and downstream of the planned Parkway crossing. VTR expressed concern that the Parkway culvert could negatively impact the culvert under the railroad tracks. VTR produced no data or expert testimony on this subject. Testimony of Eric Benson (*E. Benson live testimony 7/26/11*).
38. Mr. Myers testified that the size of the culvert for the Parkway crossing was appropriate for the size of the stream and that his analysis of the appropriate sizing for the Parkway culvert accounted for the size of the downstream railroad culvert. Mr. Myers testified that the Parkway culvert would not cause problems for the railroad culvert in terms of flooding, water backups, stream impoundments, or any other stormwater-related concerns. Mr. Myers is a Professional Engineer licensed in Vermont specializing in, among other areas, stormwater design. Exhibit #110 & testimony of Jack Myers (*J. Myers pf, J. Myers testimony 7/26/11*).
39. The Applicants will use erosion prevention and sediment control measures contained in a site specific Erosion Prevention and Sediment Control (EPSC) Plan that conforms to the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2006) to control stormwater runoff during construction. The ANR Water Quality Division has issued Individual Discharge Permit #3368-INDS.R for the Project. This permit does not, however, include the recent changes to the Lakeside Avenue/Parkway intersection area. Nor has a stormwater construction permit been issued for the Project. Exhibit #11 (*Appl. Exh. 3*).
40. The South Meadow Housing Association expressed concerned that the initial Project design would block access to maintain its stormwater facilities. The Applicants and Association have modified the design and resolved all issues. Exhibits #136 and #197 (*memo from So. Meadow to Commission & Site Plan 19F Rev*).

Conclusions of Law

The applicant has the burden of proof of meeting Criterion 1(B). 10 V.S.A. § 6088(a); *Re: Steven L. Reynolds and Harold and Eleanor Cadreact, #4C1117-EB, Findings of Fact, Conclusions of Law and Order at 4 (Vt. Env. Bd. May 27, 2004)*.

With the modification to the access of the South Meadow stormwater facility there is no impact to that project's stormwater system. The ANR Wastewater Management Division issued Potable Water Supply and Wastewater System Permit WW-4-3595 and the ANR Water Quality Division issued Discharge Permit #3368-INDS.R. However, a modification of the operational stormwater permit is needed and a stormwater construction permit has not been issued. The Commission has reviewed the submittals and is confident that based on the testimony, ANR very likely will issue the required permits. The Commission will not, however, issue positive findings under Criterion 1(B) until all required state issued permits are

issued. Therefore, we currently do not find full compliance with Criterion 1B. When the required state permits, an amendment to #3368-INDS.R and the stormwater construction permit are issued, the Applicants should submit those permits to the Commission as rebuttable presumptions for compliance under Criterion 1B in order for the Commission to issue a decision on this Criterion.

Criterion 1(E) - Streams:

Findings of Fact

41. The Parkway corridor is in the vicinity of, or will cross, the following streams and riparian wetlands: Potash Brook, the so-called Oakledge Tributary, Englesby Brook, the Pine Street Barge Canal, and several other wetlands. Exhibit #8 (*Schedule B at 16*).
42. Potash Brook runs through the previously built portion of the Parkway corridor near the Interchange. The previously built roadway will be resurfaced as part of this Project. The proposed shared-use path between Route 7/Shelburne Street and the cul-de-sac at Pine Street will run parallel to Potash Brook. The limits of construction for the currently proposed Project are approximately ten feet away from Potash Brook at the closest point. Exhibit #8 (*Schedule B at 16-17*).
43. The resurfacing of the previously built portion of roadway and construction of the shared-use path are anticipated to have no impact on Potash Brook. All construction activity will be carried out in accordance with any construction stormwater permit issued for the Project and the VTrans 2006 Standard Specifications for Construction. The operational phase stormwater permit ensures that there will be no net addition of stormwater related pollutants to the Potash Brook. These measures ensure that Potash Brook will maintain its current condition. Exhibits #8, #9 and #11 (*Schedule B at 2, 17 & Appl. Exh. 1*).
44. The Oakledge Tributary is a drainage way that flows westerly from approximately Home Avenue to discharge into Lake Champlain at Blanchard Beach. This drainage way is fed by surface runoff and drainage systems, including the previously built detention facility associated with the southernmost section of the Parkway. Exhibit #8 (*Schedule B at 17*).
45. The Parkway's construction limits come no closer than approximately 250 feet from the Oakledge Tributary. This distance, combined with the fact that Parkway construction will be carried out in accordance with the Standards and Specs and the operational phase permit, ensures no net increase in stormwater pollutants and shows that the Parkway will not alter the existing natural condition of the Oakledge Tributary. Exhibit #8 (*Schedule B at 17*).
46. Englesby Brook, which runs southwesterly and discharges into Lake Champlain at Blanchard Beach, would be crossed by the Parkway between Flynn Avenue and Sears Lane. Exhibits #8, #77, #78 and #79 (*Schedule B at 17-18; Site Plans 20A-C*).
47. The Englesby Brook box culvert will be 120 feet long and 12 feet wide by 8 feet high with a 2 foot depth for a natural streambed bottom. It will be constructed of precast concrete. The culvert's sizing is based on the size needed to ensure that the natural condition of Englesby Brook will be

maintained as nearly as possible, which will ensure protection of the rare fish species, Mottled Sculpin and Rosyface Shiner, which inhabit the brook. Exhibit #8 (*Schedule B at 27*).

48. In addition to the natural-bottomed culvert, all construction activity near Englesby Brook will be conducted in accordance with any stormwater construction permit issued for the Parkway and with the Standards and Specs. The operational phase permit and stormwater management plans ensure that there will be no net loading of pollutants to the Brook. The Commission finds that these measures reasonably ensure that Englesby Brook will be maintained in its current condition. Exhibits #8 and #37 (*Schedule B at 18 & Vt. F&W letter of 2/13/2009*).
49. Representatives from VTR opined that if the culvert under the Parkway were larger than the six foot (6 ft.) diameter culvert that carries Englesby Brook under its main rail line downstream from the proposed Parkway, there is a serious risk of a major washout based on experience with previous washouts. Pursuant to a provision of an agreement between the Applicants and VTR, dated March 24, 1981 (*VTR-C*), the Applicants agreed to not place an Englesby Brook culvert under the Southern Connector larger than the culvert that carries Englesby Brook under the VTR rail line. Exhibits #157 and #167.
50. No Stream Alteration Permit from the State of Vermont is required for the Englesby crossing or any other component of the Parkway construction. Exhibits #8 and #20 (*Schedule B at 27 and Appl. Exh. 12*).

Conclusions of Law

The burden of proof is on the applicant under Criterion 1(E). 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 35 (Vt. Env. Bd. November 4, 2005).

The only Project work within a stream channel is the replacement of the culvert for Englesby Brook. The culvert was hydrologically sized to accommodate the brook and provide a natural bottom for rare fish species. Other than an assertion, no evidence was presented to show that the installation of this culvert would create flooding problems for the VTR track located downstream of the culvert. A party has the burden to demonstrate that its interests may be adversely affected by presenting more than unsupported assertions. *Maple Tree Place Associates* #4C0775-EB (Interlocutory Appeal) at 6 (Vt. Env. Bd. October 11, 1996), *aff'd*, *In re Maple Tree Place Associates*, No.96-559 (Vt. S. Ct. October 10, 1997). No hydrologic modeling was presented demonstrating potential flooding problems with VTR's culvert. We do not consider the agreement between the Applicants and VTR regarding sizes of the culvert to be a critical condition (*In re: Mountainside Properties, Inc.* Dkt No. 117-6-05 Vtec (December 13, 2005)) to the previously issued Act 250 permits and amendments. There is no mention of the agreement in either the original permit (LUP #4C0438-N&S) or the amendment #4C0438-12 which approved the then-final plans. There is no discussion in the #4C0438-N&S Findings of Fact, Conclusions of Law and Order of the need for a larger culvert under the railroad as compared to the Parkway. The agreement between the Applicants and VTR is listed as Exhibit #189 of LUP #4C0438-N&S, but that fact alone does not make it a critical condition of the permit. The Project currently under consideration is not the same as the project that resulted in the 1981 agreement. Therefore, a change in size of the culvert must only demonstrate that it is sized hydrologically correctly. Nothing in the Act 250 statutes or rules precludes a permittee from submitting an amended application at any time. *LaFrance v. Environmental Board*, 167 Vt. 597, 598

(1998)(mem.). The Applicants' expert witness submitted evidence that the culvert was correctly sized hydrologically and no rebuttal evidence was submitted by VTR. If the proposal is not in keeping with the 1981 agreement, there are avenues for VTR to pursue compliance with that document. The Commission lacks jurisdiction to enforce compliance with the agreement. *In re Spencer*, 152 Vt. 330, 334 (1989).

For the reasons set forth above, the Commission concludes that the Applicants will maintain the natural condition of any streams to the extent feasible and will not endanger the health, safety or welfare of the public or adjoining landowners.

Criterion 4 - Soil Erosion:

Findings of Fact

51. The topography within and around the Parkway alignment is largely made up of existing paved areas within existing commercial and residential areas. The one area that is an exception is between Home Avenue and Lakeside Avenue where the Parkway itself will create a new paved city street in an area that is currently made up of wooded and grassed areas. The adjacent land is mostly made up of developed city streets and the area of the Parkway alignment is an area that has been previously developed. Exhibit #8 (*Schedule B at 31-32*).
52. The soils along the Parkway corridor are mostly classified as "potentially highly erodible" by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). In some areas, however, the soils are classified as "highly erodible" and in other areas they are classified as "not highly erodible." Exhibit #8 (*Schedule B at 32*).
53. The Applicants will use erosion prevention and sediment control measures contained in a site specific Erosion Prevention and Sediment Control (EPSC) Plan that conforms to ANR's Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2006) to control stormwater runoff. ANR has not issued a Construction Stormwater permit for this Project.
54. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply:
 - i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours.
 - ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).

Conclusions of Law

The burden of proof is on the applicant under Criterion 4. 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 35 (Vt. Env. Bd. November 4, 2005).

Without the technical review by ANR for the stormwater construction permit, the Commission does not have all the information it requires to issue positive findings under this Criterion. The Commission has reviewed the submitted testimony and exhibits, and is confident that with issuance of a state stormwater construction permit we will be able to conclude that construction of the Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water.

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

Findings of Fact

55. The Parkway is expected to carry traffic volumes of about 13,000 vehicles per day (vpd) between the Interchange and Lakeside Avenue, and about 8,500 to 16,000 vpd at various sections of Pine Street between Lakeside Avenue and Main Street. Exhibits #22 and testimony of Joe Segale (*Appl. Exh. 14 at 13, Table 5 & J. Segale live testimony 8/31/11*).
56. The Parkway is not a traffic generating project, but generally is intended to allow for the reassignment of traffic from the existing street network to ease congestion in some areas and to allow through-traffic to avoid smaller neighborhood streets. Traffic on existing streets near the Parkway will generally decrease once the Parkway is built. Exhibit #126 and testimony of Joe Segale (*J. Hinckley pf. testimony at 6 (8/15/11) & J. Segale live testimony 8/31/11*).
57. Examples of traffic decreases on existing streets that are expected to occur once the Parkway is built are: a 60%-75% decrease on Pine Street south of Lakeside Avenue; a 30% decrease on Shelburne Street; a 5%-30% decrease on St. Paul Street and South Winooski Street; a 50%-60% decrease on Home Avenue and Flynn Avenue between Shelburne Street and the Parkway; and a 20% decrease on Maple Street between Pine Street and Battery Street. Exhibit #22 and testimony of Joe Segale (*Appl. Exh. 14 at 13, Table 5 & J. Segale live testimony 8/31/11*).

• Project Design

58. The southernmost portion of the Parkway comprises the I-189, U.S. Route 7/Shelburne Street and Parkway Interchange. This part of the Project was constructed in the 1980s and the basic pattern of traffic movement proposed at that time will remain the same in the current version of the Parkway. Exhibit #22 (*Appl. Exh. 14 at 3*).
59. The Interchange operates via a series of on- and off-ramps to move traffic between the three roadways in this area. Currently, only three of the ramps are open to traffic, but when the Parkway is fully constructed, all ramps will be open. Exhibits #22 and #53 (*Appl. Exh. 14 at 3-4 & Site Plan 3*).
60. From the Interchange, Parkway traffic will move west and northward toward Home Avenue. The section of roadway between the Interchange and Home Avenue will provide the transition from the interstate highway system to the city street system. Exhibits #22 and #55 (*Appl. Exh. 14 at 4 & Site Plan 5*).

61. Under existing conditions, this section of roadway is built to accommodate four lanes of traffic and contains a concrete median barrier to separate the two directions of traffic. The current Project plans call for reducing the width of the paved area to allow for only two 12-foot-wide lanes for traffic, removal of excess pavement, and replacement of the concrete median with a raised vegetated median. Traffic will be required to reduce speed from 55 miles per hour to 30 miles per hour as it moves from the Interchange to just south of Home Avenue. Exhibits #22, #29 and #54 (*Appl. Exhs. 14 at 4, 20A & Site Plan 4*).
62. Additional features include construction of a shared-use path between Shelburne Street and Pine Street, located north of the Parkway and Potash Brook. This shared-use path will allow pedestrians and cyclists to travel to the southern end of Pine Street, which will have a reduced volume of motorized vehicle traffic once the Parkway is constructed. Pine Street will terminate short of Queen City Park Road in a cul-de-sac located just to the north of the Parkway alignment; thus, there will be no through traffic using that part of Pine Street. Exhibits #22 and #54 (*Appl. Exhs. 14 at 4, 13, Table 5 & Site Plan 5*).
63. The Parkway will intersect with Home Avenue at a new traffic signal. Traffic will be accommodated with left-turn lanes for north- and south-bound traffic on the Parkway, as well as a right-turn lane for east-bound traffic on Home Avenue. Pedestrians will be accommodated by the shared-use path, crosswalks, and exclusive phases of the traffic signals for crossing the roads. Exhibits #22 and #58 (*Appl. Exh. 14 at 5 & Site Plan 8*).
64. The traffic signal at the Home Avenue/Parkway intersection will be interconnected with the existing railroad crossing of Home Avenue. The interconnection of the signal will ensure that traffic near the railroad tracks on Home Avenue can clear the tracks before a train comes through. The signal will then return to its normal cycle after the Home Avenue corridor is initially cleared and the railroad crossing gates are down. Exhibit #8 and testimony of Joe Segale (*Schedule B at 36 & J. Segale live testimony 8/31/11*).
65. Beginning at the intersection with Home Avenue, another shared-use path will be constructed. The new path will parallel the Parkway all the way to Kilburn Street and it will connect with the existing shared-use path that runs along the western/southern side of the previously constructed section of the Parkway between Home Avenue and the Interchange. Exhibits #58, #59, #60, #61, #62, #63 and #64 (*Site Plans 8-14*).
66. Between Home Avenue and Lakeside Avenue, the following streets will become or remain dead-end streets when the Parkway is constructed: Batchelder Street, Briggs Street, Morse Place, Lyman Avenue, and Ferguson Avenue. Exhibits #22, #58 and #59 (*Appl. Exh. 14 at 5 & Site Plans 8, 9*).
67. Pedestrians and cyclists will have access to the shared-use path from the Lyman Avenue and Ferguson Avenue cul-de-sacs by way of extended sidewalks from those streets to the path and openings in the planned fence that will be installed on the eastern edge of the shared-use path. Exhibits #57 and #59 (*Site Plans 7 & 9*).
68. The Parkway will include a new signalized intersection at Flynn Avenue. This intersection will provide left-turn lanes for both north- and south-bound traffic on the Parkway. The traffic signal

will also be interconnected with the railroad crossing on Flynn Avenue in the same manner as the Home Avenue signal, described above. Exhibits #8, #57 and #60 (*Schedule B at 36 & Site Plans 7, 10*).

69. Pedestrian and cyclist accommodations at the Flynn Avenue/Parkway intersection include exclusive pedestrian crossing phases at the traffic signal, crosswalks on all legs of the intersection, and continuation of the shared-use path along the eastern side of the Parkway. Exhibit #60 (*Site Plan 10*).
70. The intersection of the Parkway with Sears Lane will be similar to the Home Avenue and Flynn Avenue intersections. It will include a new traffic signal, left-turn lanes for north- and southbound traffic, and crosswalks with exclusive pedestrian phases at the traffic signal. The shared-use path will continue to run along the eastern side of the Parkway. Exhibits #57 and #60 (*Site Plans 7 & 10*).
71. Between Sears Lane and Lakeside Avenue, the Parkway will cross a VTR spur track known as the Grocery Spur. The Applicants claimed that this spur track has ceased to be used by VTR to service the customers who historically required VTR rail service, and Project plans call for the removal of a portion of the railroad tracks in order to allow the Project to avoid the very high cost of constructing and maintaining a railroad crossing. VTR rejoined that future customers might use the Grocery Spur, and provided photographic evidence showing railroad cars "stored" on the Grocery Spur. The Pine Street Spur is being used to service two customers. Testimony was given that the spurs had each been used within the two weeks preceding the hearing. Exhibits #8, #195 and #203 (*Schedule B at 36; Site Plan 11 REV & VTR- DD*).
72. At Lakeside Avenue, the Parkway will join the existing street network. A new traffic signal will be installed at the Parkway's intersection with Lakeside Avenue. The signal will include a separate dedicated phase for each of the following approaches: the Parkway, Lakeside eastbound, Lakeside westbound, the DPW driveway and the Fortieth Burlington, LLC driveway. The traffic signal would be actuated, which means that green-light phases for the various approaches would be activated only when there are vehicles at those approaches. Exhibits #139, #195 and #196 (*J. Segale pf testimony at 3 10/28/11 & Site Plans 11 REV, 12 REV*).
73. In order to provide a clear path for the Fortieth Burlington, LLC driveway to and from the Parkway and Lakeside Avenue, eastbound traffic on Lakeside Avenue will be stopped to the west of the Fortieth driveway. Exhibits #139 and #199 and testimony of Joe Segale (*J. Segale pf testimony 10/28/11; Site Plan 11 REV & and J. Segale live testimony 11/16/11*).
74. The Project now proposes changes to the Parkway's intersection at Lakeside Avenue that are different than the original proposal. This section of Lakeside Avenue is approximately 500-feet in length and will include the following design changes:
 - A new fully-actuated traffic signal at the intersection of the Parkway and Lakeside Avenue;
 - A new fully-actuated traffic signal at the intersection of Lakeside Avenue and Pine Street;

- Minor geometric improvements, roadway reconstruction and drainage improvements along Lakeside Avenue, from the GP Burlington South, LLC (formerly General Dynamics) parking lot to Pine Street, which will include turn lanes on the Lakeside Avenue westbound and eastbound approaches to the Parkway, and the Lakeside Avenue eastbound approach to Pine Street; and
- Construction of a shared-use path along the north side of Lakeside Avenue, connecting the shared-use path on the east side of the Parkway to on-road and off-road bicycle facilities to be included with the reconstruction of Pine Street. A sidewalk will continue to be provided on the north side of Lakeside Avenue from Pine Street to and beyond the future intersection with the Parkway.

Exhibits #195 and #213.

75. The roadway approaches to the Lakeside Avenue/Parkway intersection will include turning lanes to ease congestion and facilitate traffic flow. Exhibits #22 and #195 (*Appl. Exh. 14 at 6 & Site Plan 11 REV*).
76. Pedestrian and bicycle-related elements of the Project design at its Lakeside intersection include crosswalks across the Parkway and both legs of Lakeside Avenue, exclusive pedestrian crossing phases at the traffic signal, a sidewalk section on the southwestern corner of the Parkway and Lakeside Avenue, continuation of the shared-use path from the eastern side of the Parkway to the northern side of Lakeside Avenue, and installation of a continuous sidewalk on the southern side of Lakeside Avenue between the Parkway and Pine Street. Exhibits #22, #195 and #196 (*Appl. Exh. 14 at 6 & Site Plans 11 REV, 12 REV*).
77. The Parkway alignment continues east on Lakeside Avenue to the existing intersection with Pine Street. At the Lakeside/Pine intersection, a new fully-actuated traffic signal will be installed. All approaches to the intersection will have turning lanes to facilitate traffic movement. Exhibits #22 and #196 (*Appl. Exh. 14 at 6-7 & Site Plan 12 REV*).
78. Pedestrian and bicycle features at Lakeside Avenue and Pine Street include crosswalks across all legs of the intersection, exclusive pedestrian crossing phases at the traffic signal, continuation of the shared-use path from the northern side of Lakeside Avenue to the western side of Pine Street, and installation of a sidewalk on the eastern side of Pine Street. There will also be a dedicated bicycle lane for southbound cyclists on Pine Street to eliminate the need for on-road cyclists to compete with vehicles that will be turning right onto Lakeside Avenue. Exhibits #22 and #196 (*Appl. Exh. 14 at 7 & Site Plan 12 REV*).
79. Along Pine Street, the southbound travel lane will be 13-foot wide and the northbound travel lane will be 14-foot wide to accommodate shared use by cyclists and motor vehicles. The wider northbound lane is due to the presence of a parking lane parallel to the travel lane. The 13-foot and 14-foot-wide lanes are the preferred widths for shared lanes in the VTrans Bicycle and Pedestrian Facility Planning and Design Manual. Exhibits #22 and #63 (*Appl. Exh. 14 at 7 & Site Plan 13*).

80. The side street approaches to Pine Street between Lakeside Avenue and Maple Street will continue to be controlled by stop signs for the side streets. Exhibit #22 (*Appl. Exh. 14 at 7*).
81. The driveway for the Maltex building (431 Pine Street) is planned to be realigned as part of Project construction so that the driveway is located directly across from Howard Street. Exhibits #64 and #139 (*Site Plan 14 & J. Segale pf testimony at 2*).
82. In order to accommodate the shared-use path along Pine Street, the Parkway would remove the portions of the VTR railroad track that remain on the westerly side of Pine Street, from just south of Howard Street to just south of Kilburn Street. The railroad tracks in this area, known as the Pine Street Rail Spur, are proposed for removal and according to the Applicants do not service any of the adjacent property owners in the area. This is disputed by VTR. Exhibits #8, #64 and #203 (*Schedule B at 36, Site Plan 14, VTR-DD*).
83. As indicated above, the shared-use path will continue along the western side of Pine Street until Kilburn Street, at which point the path will terminate and a rebuilt sidewalk will continue along the western side of Pine Street to Main Street. There will also be a new continuous sidewalk installed along the eastern side of Pine Street from just south of Lakeside Avenue to Main Street. Exhibits #22, #62, #64 and #66 (*Appl. Exh. 14 at 7 & Site Plans 12, 14, 16*).
84. Crosswalks across Pine Street will be located at Locust Street, Howard Street, Kilburn Street, Maple Street, King Street, and Main Street. Exhibits #196, #64 and #66 (*Site Plans 12 Rev, 14 Rev, 16*).
85. The intersections of Pine Street with Maple Street and King Street will be converted from four-way stop-sign-controlled intersections to traffic-signal-controlled intersections. These traffic pedestrian crossing phases will include pedestrian accentuated, exclusive pedestrian crossing phases. Exhibits #22 and #66 (*Appl. Exh. 14 at 7; Site Plan 16*).
86. The Pine Street northbound approach to Maple Street will include a left-turn lane that is approximately 10 feet wide and 150 feet long. This lane was added to Project plans after receiving public input at a series of public meetings held to discuss the Parkway in the summer of 2010. The public expressed concern that northbound through traffic on Pine Street would experience unnecessary delay and long queues waiting for vehicles seeking to turn left down Maple Street. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
87. The left-turn lane will not be accommodated by either a permissive or a protected signal phase. That is, northbound vehicles seeking to turn left from Pine Street onto Maple Street will still have to wait for a break in the normal two-way traffic because they will not have a “green arrow” allowing them to make a protected turn down Maple Street. Exhibit #139 (*J. Segale 8/22/11 pf testimony at 2-3*).
88. The Applicants have proposed signage showing that the preferred truck route is using Pine Street and Main Street. Signage to discourage truck use of Maple and King Streets is also proposed. The posted weight limit on Maple Street is 10 tons. Exhibit #193.

• **Vehicular Traffic Volumes**

89. The traffic volumes the Applicants project for the Parkway are based on the Chittenden County Transportation Model (CCT Model), calibrated to the base year of 1998. The CCT Model is used for comprehensive regional transportation analyses and was developed by the Chittenden County Metropolitan Planning Organization (now part of the Chittenden County Regional Planning Organization). The CCT Model is based on 350 Transportation Analysis Zones, which are small areas that cover all of Chittenden County combined, along with 17 zones that are outside of Chittenden County and represent the immediately surrounding areas. The model also includes 1,200 intersections and 1,600 road segments. It generates results using a four-step process, which includes trip generation, trip distribution, transportation mode choice, and traffic assignment and forecasts for both the morning (AM) and evening (PM) peak traffic hours. The modeling conducted for the Parkway included a fifth step that accounted for land use allocation. The CCT Model does not account for traffic changes on a property-by-property or development-by-development basis. Instead, it projects more general growth trends based on the existing land uses and projected changes in residential and commercial growth. Exhibit #22 and Testimony of Joe Segale (*Appl. Exh. 14 at 11; J. Segale live testimony 11/16/11*).
90. In addition to actual traffic counts at intersections, another method was employed to refine the CCT Model for the Parkway. The second method accounts for the fact that the CCT Model, like other transportation models, does not do a good job distinguishing between how traffic will move between relatively identical routes. To refine the model, the modelers observe actual route choices and known travel times, and then assign traffic volumes between different route choices in places where the model is known to have difficulty distinguishing among the different choices. Exhibit #22 (*Appl. Exh. 14 at 12*).
91. These traffic counts also indicated that the volume of heavy truck traffic is about 2% of the total traffic volume. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
92. The traffic analysis conducted for the Parkway's Final Supplemental Environmental Impact Statement (FSEIS - for the Federal NPDES program) assumed that the estimated time of construction (ETC) would be 2008, making 2028 the 20-year post-construction year (ETC+20). Although it is now known that the ETC will not occur until at least 2012, the FSEIS analysis and the ETC and ETC+20 modeled traffic data are still valid for the Parkway. This is because the CCT Model predicted that traffic along Pine Street would grow at a rate of 2.5% per year, but actual traffic data in the area (at I-189) shows that traffic is growing at a rate of less than one-quarter of 1% per year. Exhibit #22 (*Appl. Exh. 14 at 12, Table 4*).
93. In addition to the actual traffic counts from I-189 that show that traffic growth is occurring at a slower rate than that which was used in the CCT Model, there is at least one other indication that the traffic volume estimates for the Parkway are conservatively high. The projected traffic volume on Lakeside Avenue between the Parkway intersection and Pine Street in the no-build scenario was projected to be 6,100 vehicles per day at ETC and 7,500 vehicles per day in ETC+20. VTrans conducted a traffic count on Lakeside Avenue in 2009 and that count showed a volume of 2,900 vehicles per day on Lakeside Avenue. As with the I-189 example, the actual traffic count shows that the volumes predicted for the Parkway alignment and surrounding streets are conservatively high, meaning that volumes very likely will be materially lower than predicted

when the Project is constructed. Exhibit #22 and testimony of Joe Segale (*Appl. Exh. 14 at 13, Table 5 & J. Segale live testimony 11/16/11*).

94. The estimated ETC (2008) average daily traffic volume on Lakeside Avenue with the Project built is 10,400, an increase of 4,300 vehicles or a 70% increase in daily traffic volume. The estimated ETC +20 (2028) average daily traffic volume on Lakeside Avenue with the Project built is 11,300 or an increase of 3,500 vehicles or a 47% increase in daily traffic volume over the expected estimated ETC +20 (2028) average daily traffic volume on Lakeside Avenue without the Project. Exhibit #22 (*Appl. Exhibit 14, Section 3.3*).
95. One method to analyze congestion of roadways is to measure the Level of Service (LOS) of the intersections along the roadway. LOS is a qualitative measure that is meant to describe driver perceptions of and reactions to traffic conditions by using a letter graded scale. The letter grades are based on various lengths of time of traffic delay, with the letter A representing the shortest delays and the letter F representing the longest delays. Because the letter grades are based on driver perceptions of delay, and since the credible evidence showed that drivers have a higher tolerance for delay at a traffic signal as opposed to at a stop sign or unsignalized intersection, there are different lengths of time associated with the letter grades depending on whether the intersection has a traffic light or not. Exhibit #22 and testimony of Joe Segale (*Appl. Exh. 14 at 14, Table 7; J. Segale live testimony 8/31/11*).
96. The Project is designed to promote traffic flow continuing on Pine Street, instead of turning onto either Maple Street or King Street, for vehicles seeking to reach Battery Street. This is beneficial because Pine Street and Main Street are wider, with more lanes and traffic signals to accommodate through traffic. Also, if traffic stays on Pine Street and Main Street, it will benefit Maple and King Streets because they can then function more as urban side streets instead of as through streets for traffic cutting between Battery Street and Pine Street. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
97. With the Project, Pine Street from Home Avenue to Lakeside Avenue will experience a significant decrease in traffic volume. The Lakeside Avenue to Maple Street Average Daily Traffic (ADT) volumes in the ETC+20 will increase by 9% (1400 vehicles) and from Maple to Main Street by 27% (1800 vehicles). The following streets will experience a decrease in ADT: Battery Street by 8% (600 vehicles), Maple Street by 21% (1300 vehicles) and King Street by 37% (1500 vehicles). Exhibit #22.

• Intersection Vehicular Levels of Service - Congestion

98. The LOS for an intersection is derived from modeling traffic conditions, where the inputs to the modeling include traffic volumes, the number of lanes at the intersection, the presence of a traffic signal and the traffic signal timing plans. The traffic volumes for modeling the LOS are the volumes that are expected at the peak hour of traffic in the so-called Design Hour, which typically represents the 30th highest traffic volume for an hour at a subject area in a given year. Exhibit #22 (*Appl. Exh. 14 at 14*).
99. For modeling the LOS at Parkway intersections, the traffic volumes used were those predicted based on the CCT Model, as described above. The lane configurations described above and

shown on the Site Plans were also used as the model inputs, and the traffic signal inputs assumed that there would be exclusive pedestrian phases at all signalized intersections, that the traffic signals within 0.5 mile of each other would be coordinated, and that the traffic signals would be optimized so that the higher volume (mainline) approaches to the intersections would be allocated the most “green time”. The Commission finds that the data and analysis to be sound and reasonable. Exhibit #22 and testimony of Joe Segale (*Appl. Exh. 14 at 15 & J. Segale live testimony 8/31/11*).

100. Fourteen (14) primary intersections and twelve (12) secondary intersections were studied for both the ETC and ETC+20 scenarios. Exhibit #22 (*Appl. Exh. #14 at 17*).
101. The LOS results for the Parkway intersections show that for 20 of the studied intersections (either AM or PM peak hours), the LOS will stay the same or improve with construction of the Parkway compared to the no-build scenario. Additionally, the signalized intersections along the Parkway are largely predicted to perform at LOS “C” or better through the ETC+20 year. Exhibit #22 (*Appl. Exhs. 14 at 15-19 & 52*).
102. The intersections that will worsen in the ETC with construction of the Project are Battery Street/Main Street (from a LOS “B” to “C” - both AM and PM peak hour), Pine Street/Main Street (from a LOS “B” to “C” - both AM and PM peak hour), Pine Street/Lakeside Avenue (from a LOS “B” (“A” in the AM peak hour) to “C”) and Pine Street/Howard Street intersection (in the AM peak hour) from LOS “D” to “F”. Exhibit #22 (*Appl. Exhs. 14 at 17, Table 10*).
103. The intersections that will worsen in the ETC+20 with construction of the Project are Battery Street/Main Street from a LOS “B” to “C” (AM peak hour), Pine Street/Main Street from a LOS “B” to “C” (both AM and PM peak hour), Pine Street/Lakeside Avenue from a LOS “B” (“A” in the AM peak hour) to “C” and Pine Street/Howard Street intersection (AM peak hour) from LOS “E” to “F”. Exhibit #22 (*Appl. Exhs. 14 at 18, Table 11*).
104. The following intersections do not achieve an overall LOS of better than “D” in the ETC+20: Pine Street/Maple Street (AM and PM peak hour) will experience a LOS “D” (although it improves from LOS “F”); the Pine Street/Howard Street (PM peak hour) and Pine Street/Locust Street (AM and PM peak hour) intersections will experience a LOS “F” but they do not change with construction of the Project. Howard Street and Locust Street are stop sign-controlled intersections. Exhibit #22 (*Appl. Exhs. 14 at 18, Table 11*).
105. No secondary study intersections experienced a worsening of LOS with construction of the Project in either the ETC or ETC+20 scenarios. Several intersections will experience a LOS of “D” or worse but that scenario is not different with construction of the Project. Exhibit #22 (*Appl. Exhs. 14 at 19*).
106. With construction of the Project the following intersections will improve: US Route 7/So. Union Street/St. Paul intersection will improve from a LOS (AM peak hour) “F” to “D” with construction of the Project in the ETC and ETC+20; US Route 7/Flynn Ave intersection will improve from a LOS (PM peak hour) “B” to “A” in the ETC and ETC+20; St. Paul Street/Maple St. Intersection will improve from a LOS (PM peak hour) “E” to “C” in ETC but drop to “D” in the ETC+20; and US Route 7/Briarcliff Manor Eastbound (EB) approach will improve from a LOS (AM peak

- hour) “E” (“F” in ETC+20) to “D” in ETC and ETC+20. Exhibit #22 (*Appl. Exh. #14 at 19, Tables 12 & 13*).
107. One method for decreasing the delays at Howard Street and Locust Street would be to add turn lanes at their intersections with Pine Street. This possible solution would increase the width of these side streets, which could increase the crossing time for pedestrians. The additional lane could also increase the potential for pedestrian-vehicle conflicts. Additionally, if delay times are decreased on the side streets, motorists could be encouraged to use these small neighborhood streets to cut between Shelburne Street and Pine Street. Exhibit #139 and testimony of Joe Segale (*Appl. Exh. 14 at 16-17 & J. Segale live testimony 8/31/11*).
 108. The Applicants conducted a traffic signal warrant evaluation for the Howard Street/Pine Street intersection, but the evaluation showed that a traffic signal was not warranted at that intersection. When a signal is not warranted, the installation can cause unnecessary delays on the main street, increase the potential for rear-end collisions, and not be of much utility to the side street approach. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
 109. Although the overall LOS will improve at the Pine Street/Maple Street and Pine Street/King Street intersections with the addition of traffic signals when the Parkway is constructed, the length of delays for vehicles approaching Pine Street from Maple and King Streets will increase in some situations compared to the no-build scenario. Exhibit #123 (*Hunt Exhs. 2, 3*).
 110. Increases in delay of greater than 20 seconds are projected to occur on the Maple Street westbound approaches in the AM and PM peak hours at ETC and ETC+20. However, decreases in delay for Maple Street eastbound approaches are projected in the AM and PM peak hours at ETC+20 and in the PM peak hour at ETC. Exhibit #123 (*Hunt Exh. 2*).
 111. The Maple Street eastbound approach to Pine Street will generally experience smaller delays when the Parkway is built compared to the no-build scenario. Exhibit #123 (*Hunt Exh. 2*).
 112. The projected delays at signalized intersections, such as the one proposed for Maple Street and Pine Street, are a function of the traffic signal timing. The timing of the signals that was used for the Parkway modeling was optimized to promote the flow of traffic, which entails that the roadways carrying the larger volumes of traffic would get more green time from the signal than the roadways carrying smaller volumes of traffic. It would be possible to change the timing of the signals to lengthen the green time for side street approaches, but this would come at the expense of increasing vehicle delay times on the major through streets where more traffic is traveling. It could also encourage through traffic to use Maple Street and King Street instead of Pine Street and Main Street. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
 113. In addition to decreasing the delay on Pine Street, signalization of the Maple Street/Pine Street and King Street/Pine Street intersections is also expected to keep more vehicles on Pine Street than under the no-build scenario. Exhibits #22, #139 and Testimony of Joe Segale (*Appl. Exh. 14 at 13, Table 5 & J. Segale live testimony 8/31/11*).
 114. In the existing situation and in the no-build scenario, traffic on Pine Street has a four-way stop sign-controlled intersection at Maple Street. In a four-way stop situation, each vehicle that

- reaches its turn to move through the intersection has a completely protected movement; in other words, no other vehicles are moving, which allows the vehicle whose turn it is to make a left-turn, a right-turn, or a through movement with equal ability. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
115. In contrast to a four-way stop situation, when vehicles move through a signalized intersection such as that proposed for the Maple Street/Pine Street intersection, the through and right-turn movements are the only unopposed movements whereas the left-turn movement must contend with through traffic moving in the opposite direction. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
116. The consequence of the difference between the 12 foot left turn lane assumed by the Applicants for the calculation of delay at Maple and Pine and a 10 foot left turn lane, as now proposed, is that the delay at Maple and Pine will be longer than the delay stated in the Applicants' traffic study. Testimony of Roger Dickinson (*Dickinson Direct 8/31/12*).
117. The turning radius for large, east-bound trucks attempting to turn right from Maple Street onto Pine Street is inadequate by applicable normal standards, and cannot be corrected without major redesign. Exhibit #135 and Testimony of Roger Dickinson (*Dickinson pf; Dickinson Direct 8/31/12*).
118. If the Project is built as proposed, the AM peak hour delays for east bound traffic on Maple Street at Pine Street will increase from 39.7 seconds to 49.8 seconds, an increase of slightly more than 25%; the AM peak hour delays for west bound traffic on Maple Street at Pine Street will increase from 20 seconds to 94 seconds, an increase of 320%; and the PM peak hour delays for west bound traffic on Maple at Pine will increase from 38.6 seconds to 83.3 seconds, an increase of more than 115%. The increases in delay all assume the installation of a traffic signal at the intersection. However, the LOS for the Maple Street/Pine Street intersection improves to "C" in the AM peak hour and "D" in the PM peak hour at ETC. Exhibit #22 and Testimony of Joe Segale (*Appl. Exh. 14 at 17, table 10 & Segale Cross*).
119. If the Project is built as proposed, the AM peak hour delays for east bound traffic on King Street at Pine Street will increase from 12.7 seconds to 44.9 seconds, an increase of approximately 253%; the AM peak hour delays for west bound traffic on King Street at Pine Street will increase from 12.2 seconds to 49.3 seconds, an increase of approximately 304%; the PM peak hour delays for east bound traffic on King at Pine will increase from 22 seconds to 51.5 seconds, an increase of more than 134%; and the PM peak hour delays for west bound traffic on King at Pine will increase from 18.4 seconds to 99.7 seconds, an increase of more than 441%. The increases in delay all assume the installation of a traffic signal at the intersection. The LOS for the King Street/Pine Street intersection improves to "B". Exhibit #22 and Testimony of Joe Segale (*Appl. Exh. 14 at 17, table 10 & Segale Cross*).
120. If the Project is built as proposed, the AM peak hour delays on Locust Street at Pine Street will increase by about 88%, from 147 seconds to 277 seconds; PM peak hour delays on Locust Street will increase about 35%; and the AM peak hour delays on Howard Street at Pine will increase by about 220%, from a minute and 34 seconds to more than five minutes. Testimony of Joe Segale (*Segale Cross*).

121. For a four-way stop-controlled intersection, the overall delay is computed as the average of the minor street delays. For a signalized intersection, the delay is computed as the average controlled delay per vehicle. It has been determined that motorists will "tolerate" longer delays at signalized intersections since they are aware that they will eventually be given a green signal, whereas at a stop sign intersection, they must rely on random gaps in traffic and hence an aggravated frustration factor. *Transportation Research Board Highway Capacity Manual 2010*.
122. Level of service is a measure used by traffic engineers to determine the effectiveness of elements of transportation infrastructure. The Level of Service is computed from variables including speed, geometry and traffic volume. *Transportation Research Board Highway Capacity Manual 2010*.

• **Vehicle Queuing**

123. The LOS F in the PM peak hours at the Fortieth Burlington, LLC property will result in vehicle queues of up to 529 feet on the Fortieth Burlington driveway for the 95th percentile queue resulting in very long delays and a form of gridlock within the parking lot of Fortieth Burlington. Testimony of Samuel Offei-Addo (11/16/12).
124. The length of roadway on Lakeside Avenue between the proposed Parkway and Pine Street is approximately 500-feet. Exhibit #196 (*Revised Site Plan 12*).
125. The proposed left turn "storage lane" is approximately 150 feet both east on Lakeside Avenue toward Pine Street, and going west on Lakeside Avenue toward the Parkway. Exhibit #196 (*Applicants' Revised Site Plan 12*).
126. The Applicants' Synchro[®] (traffic analysis software) analysis showed that the 95th percentile AM and PM peak hour left turn queues on Lakeside Avenue eastbound at Pine Street were 440 feet and 640 feet, respectively. The 95th percentile queue is defined to be the queue length that has only a 5-percent probability of being exceeded during the analysis time period, also known as the Design Hour. It is expected to occur during 3 minutes of the Design Hour. No information was provided on the 50th percentile queue length. Testimony of Samuel Offei-Addo (11/16/12).
127. The average queue on Lakeside Avenue westbound is 300-feet if the Project is built. Testimony of Joe Segale (*J. Segale redirect 11/16/11*).
128. The storage capacity of the right turn lane from Pine Street Southbound onto Lakeside is 300 feet. The storage capacity of the left turn lane from Pine Street Northbound to Lakeside Avenue is 150 feet. Exhibit #62.

• **Pedestrian/Bicyclist Issues**

129. The City will construct a multi-use path from the Interchange to Lakeside Avenue. The path will continue along the north side of Lakeside Avenue and along the west side of Pine Street until Kilburn Street. In addition pedestrian actuated signals (at traffic signal controlled intersections) and crosswalks will be provided at intersections along the Parkway for safe bicycle and

- pedestrian use of the Parkway alignment. These are additional facilities to the Parkway as originally permitted and also improve upon existing conditions south of Kilburn Street. Exhibits #22, #188 and testimony of Joe Segale (*Appl. Exh. 14 at 20, 23; City's Response to Local Motion; J. Segale live testimony 8/31/11*).
130. The proposed Project would eliminate the bicycle lane on the west side of Pine Street between Maple Street and Kilburn Street. If the Project is built as planned, bicyclists who now have that bicycle lane to themselves will have a choice of sharing the street with motor vehicles or sharing the sidewalk with pedestrians. Exhibit #149 and Testimony of Joe Segale (*Local Motion written testimony of August 31, 2011 Page 4, & Segale Cross 8/31/16*).
 131. Local Motion has requested that other pedestrian and bicycle accommodations be implemented throughout the Parkway as part of Project plans. Local Motion is of the opinion that the accommodations are needed for pedestrian and cyclist safety. Exhibits #149 and #206 (*Local Motion letters 8/31/11 & 11/16/11*).
 132. The Applicants have represented that they will explore whether any of the Local Motion requests are possible to implement, but their position is that none of the requests are required to ensure pedestrian or cyclist safety, and that the proposed Project plans already include very good pedestrian and cyclist accommodations. Exhibits #138 and #188 (*J. Segale pf testimony at 3-4 & City Letter of Oct. 24, 2011*).
 133. The Applicants have agreed that a crosswalk at Marble Avenue can be added to the design. With the addition of this crosswalk, there would be crosswalks at Lakeside Avenue, Locust Street, Howard Street, Marble Avenue, Kilburn Street, Maple Street, King Street and Main Street. They have also offered to investigate the possibility of adding a sidewalk connection from the cul-de-sac on Briggs Street to Home Avenue as well as crosswalks on the north and west sides of the Home Avenue and Parkway intersection. In addition, the Applicants will provide a connection between the end of Batchelder Street and the shared use path on the north side of Home Avenue. Exhibit #188.
 134. Local Motion has requested that between Lakeside Avenue and Kilburn Street, the Project reduce the lane widths along the Pine Street portion of the Parkway to the typical 10 to 11 foot width called for in the City's Transportation Plan (2011), and allocate the surplus width to a buffered northbound bike lane that runs between the on-street parking and the northbound car lane. Pine Street currently has a northbound shared lane that is 14 feet wide and a southbound bike lane that is striped for use by cyclists but varies in width from 3-5 feet. Allocation of the space to a bike lane would provide an inconsistent and, in places, a below-standard, bike lane. Instead, the Applicants chose to provide a continuous shared lane with markings on both sides of Pine Street. Additionally, the State's manual on pedestrian and bicycle facilities states that installing a bike lane in just one direction on a two-way street should be avoided due to safety concerns for cyclists. Exhibits #113 and #188.
 135. Local Motion recommended installing "bicycle boxes" at the top of the through-lane and left-turn lanes with advanced green lights for bicycles; prohibiting parking and including bike lanes on Pine Street; installing countdown crossing signals for pedestrians with advanced pedestrian crossing and illuminated "no right on red" signs; and bumping out curbs to shorten crossing

distance on Main Street. The Applicants have responded that bicycle boxes are not yet an approved design for use in Burlington. They are not part of the Manual on Uniform Traffic Control Devices (MUTCD) and the Applicants have not completed the necessary studies that would allow the City to use a non-MUTCD traffic control device. Exhibits #149 and #188.

136. Local Motion requested that the Applicants install a Rectangular Rapid Flashing Beacon (RRFB) or High-Intensity Activated Crosswalk (HAWK) signal at Pine Street and Kilburn Avenue to give pedestrians added visibility and safety for crossing; and install signage or markings to indicate that the aforementioned signal is also a crossing signal for northbound bicyclists who are crossing at this location. According to the Applicants, MUTCD outlines the details for an engineering study to determine the need for the HAWK-type of signal. The traffic engineers did conduct a signal warrant analysis for the Howard Street intersection (where pedestrian volume during peak hours is now higher due to the presence of Dealer.com employees working in that facility at the southwest corner of the Pine Street intersection with Howard Street) and the analysis showed that the pedestrian volumes along Pine Street are not expected to be high enough to necessitate this level of signalization. The MUTCD guidelines suggest that a HAWK-type signal can be used when there are about 200 pedestrians per hour at the intersection. RRFB are not currently an approved device in the MUTCD. FHWA has issued Interim Approval and guidance on the use of RRFBs to jurisdictions that submit written requests for their use. Exhibits #149 and #188.
137. Local Motion has requested that all pedestrian crossings should be exclusive pedestrian-activated crossings, which means that all vehicular traffic will have a red light when the pedestrian crossing signals are activated. The Applicants have agreed to use MUTCD signs or markers to clarify that the pedestrian signals may also be used by bicyclists or other non-motorized users of the shared-use path. Exhibits #149 and #188.
138. Pedestrian actuated signals have been added to the Parkway intersections with Flynn Avenue, Sears Lane and Lakeside Avenue. Signals have also been added to the intersections of Pine Street with Lakeside Avenue, Maple Street and King Street. Exhibits #22, #66, #195 and #196 (*Appl. Exh. 14 at 6, Site Plans 16, 11 REV, 12 REV*).

• **Vehicular Safety**

139. In terms of vehicular safety, there are several areas within the Parkway alignment that are High Crash Locations (HCL) under VTrans guidelines. 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. Exhibit #22 (*Appl. Exh. 14 at 20, 24, Figure 7*).
140. One HCL is near On-Ramp A on I-189. The types of crashes reported appear to be due to merging movements. When the Parkway is operational, there will be a reduction in the number of vehicles using On-Ramp A by about 120 and 110 vehicles per hour in the AM and PM peak hours, respectively. At the same time, the Parkway will cause an increase of traffic on the mainline when the Parkway is open. The combination of reduced traffic from the ramp, which is required to merge, with the increased mainline traffic is expected to have a neutral effect on this HCL. Exhibit #22 (*Appl. Exh. 14 at 21*).

141. Another HCL is near Off-Ramp C, where vehicles leave I-189 and join U.S. Route 7/Shelburne Street. Because the Parkway will greatly reduce the number of vehicles using Off-Ramp C, the Parkway is expected to improve conditions at this HCL. Exhibit #22 (*Appl. Exh. 14 at 21*).
142. The U.S. Route 7-Swift Street intersection is another HCL. As with Off-Ramp C, traffic at this intersection will be reduced when the Parkway is operational, this should improve conditions at this HCL. Exhibit #22 (*Appl. Exh. 14 at 22*).
143. There are two HCLs located towards the northern end of the Parkway alignment: the St. Paul/South Winooski/Howard Street intersection and the stretch of St. Paul Street between Spruce and King Streets. Traffic in these areas is projected to decrease when the Parkway is operational, thus lowering the chances of crashes in these areas. Exhibit #22 (*Appl. Exh. 14 at 22*).
144. Two additional HCL segments are located along Pine Street: one on the southern end of Pine Street (mile marker 0.8 to 1.1, near Home Avenue) and one on the northern end of Pine Street, between Howard Street and Kilburn Street. Traffic at the southern end of Pine Street will decrease dramatically and thus should decrease the chance of crashes occurring at this HCL. Exhibit #22 (*Appl. Exh. 14 at 22*).
145. Most of the crashes that occurred at the northern end of Pine Street, between Howard and Kilburn Streets, appear to be indicative of access management issues. This could be due to the number of commercial driveways and side street intersections in this section of Pine Street. Although traffic in this area is projected to increase moderately (9%-14%) with the Parkway, the Parkway will also involve new curbing and sidewalks that will provide better definition for existing driveways. This should help with access management issues. Exhibit #22 (*Appl. Exh. 14 at 22*).
146. VTR presented several witnesses who testified that they had seen vehicles being caught under the railroad crossing gates at the Maple Street and King Street rail crossings, as well as at the Home Avenue and Flynn Avenue rail crossings. None of these witnesses reported seeing vehicular damage, train damage, train crossing gate damage, or injuries to people. None of the VTR witnesses described any causal connection between the construction of the Parkway and the likelihood of increased incidences of vehicles being caught under railroad crossing gates. Testimony of VTR (*VTR witness live testimony 11/16/11*).
147. Joe Segale testified that he had examined analyses of the projected vehicle queues westward on Maple and King Streets from Pine Street. Mr. Segale testified that there was no reason to believe that the Parkway would cause or contribute to vehicular traffic being caught in railroad crossings. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*). VTR disputed this.
148. At peak hours, the Project will cause traffic, including truck traffic, to increase on Pine Street between Maple and King Streets by as much as 46%. Testimony of Roger Dickinson (*Dickinson Direct 8/31/12*).
149. The Applicants concede the obligation under federal law and state policy that whenever there is a federally funded highway project within 1,000 feet of a railroad crossing there must be a Federal Railroad Administration (FRA) prescribed crossing diagnostic done for each such crossing, of which there are four within that distance for this Project. The Applicants conceded that they have

not completed the federally required FRA crossing diagnostic of VTR's affected crossings for the Project that it is before the Commission in the instant application.

150. It is VTrans' policy to design its highways and to require others accessing its facilities to make improvements that will maintain a LOS² "C" for the prescribed design period. "In interpreting this policy, . . . Reduced LOS criteria may be acceptable, when approved by the Secretary of Transportation or designee on a case-by-case basis, especially within densely settled areas. . . In extreme circumstances, where the existing LOS is less than desired and where the necessary geometric improvements are not feasible, a lower LOS may be acceptable, as long as the safety and mobility of the traveling public is improved. Strategies effecting such improvements should include traditional traffic engineering approaches such as: (i) Installation of traffic and pedestrian signals; (ii) Adjustment to signal phasings and timings; (iii) Modification to existing lane configurations; (iv) Pedestrian crossings and (v) Other, similar measures." *Traffic Impact Study Guidelines Vermont Agency of Transportation Policy and Planning* Revised October 2008 at 32-34.

Conclusions of Law

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. *Id.* However, 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. Bd. Oct. 11, 1990). 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. Unlike Criterion 5, the Commission may deny a permit solely under reasons set forth under Criterion 9(K).

Unlike most projects before an Act 250 District Commission which are located at a point location, this is a linear highway project. As such, its impacts are spread out over a large area. While the additional traffic re-directed along the proposed Parkway removes traffic from other areas, thus alleviating congestion at other areas not on the Parkway route, the scope of review under Criteria 5 and 9(K) is whether a project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highway and does not materially jeopardize or interfere with the function, efficiency or safety of the roadways". Therefore,

² The Highway Capacity Manual defines "Level of Service as the quantitative stratification of a performance measure or measures that represents quality of service. The measures used to determine LOS for transportation system elements are called service measures. The HCM defines six levels of service, ranging from A to F, for each service measure, or for the output from a mathematical model based on multiple performance measures. LOS A represents the best operating conditions from the traveler's perspective and LOS F the worst. For cost, environmental impact, and other reasons, roadways are not typically designed to provide LOS A conditions during peak periods, but rather some lower LOS that reflects a balance between individual travelers' desires and society's desires and financial resources. Nevertheless, during low-volume periods of the day, a system element may operate at LOS A." LOS grades are based on delay for intersections. It is based on other things for different types of roadway (urban streets, arterials, highways etc.). The delay equations involve several parameters or previously calculated values. *Highway Capacity Manual*, Transportation Research Board, National Research Council (2000).

in reviewing and acting on an application for a land use permit, the Commission reviews whether there are impacts caused by the project, not impacts that a project will alleviate elsewhere. See *Mount Anthony Union High School District #14*, #8B0552-EB(Interlocutory), Memorandum of Decision at 10 (Vt. Env. Bd. January 31, 2002). The scope of our review must be the potential impacts of the project along the Parkway alignment and not the alleviation of congestion at other areas.

Criterion 5

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 any form of mitigation. Therefore, although we cannot deny a project under Criterion 5, we are within our authority to impose permit conditions that will alleviate congestion.

Lakeside Avenue: Under Criterion 5, the burden of proof is on a party opposing an application, but an applicant has the burden of producing sufficient evidence for the Commission to make positive findings. 10 V.S.A. § 6088(b); *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. Bd. November 4, 2005). The Applicants have submitted a detailed Traffic Impact Study, completed by a certified Traffic Engineer and supplemented that with specific analyses requested by the Commission. After considerable deliberation, we conclude that the Applicants have met the burden of production. Opponents Fortieth Burlington, LLC and GP Burlington South, LLC have alleged that the Applicants' Traffic Impact Study does not "take into account new or potential development on Lakeside Avenue...does not take [into account] the new development by Champlain College, the change in occupancy of the Fortieth Burlington property, or the potential development of the GP Burlington South" Property. The property owned by Fortieth Burlington, LLC received Act Permit 4C0077-3 and the property owned by GP Burlington South LLC received Act 250 permit #4C0177-7, both on October 4, 2001. There have been no amendments to these permits issued affecting their expected traffic generation. These projects occurred prior to the Traffic Impact Study; hence they were included in that analysis. The construction of the Champlain College building did occur afterwards. No other projects in the Project area have been identified by any parties. The CCT Model estimated higher growth rates than what has been experienced. The difference between the expected trip generation from the Champlain College building should not come close to offsetting the overestimate by the model. Other than the allegation, no evidence was submitted to the Commission. Therefore, we conclude that Fortieth Burlington, LLC and GP Burlington South, LLC have not met their burden of proof in refuting the credible evidence submitted by the Applicants. Additionally, the Commission agrees that the traffic volumes assumed by the Applicants are reasonable.

Levels of Service (congestion): Under Criterion 5, we 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. It is undisputed that many of the intersections affected by this Project experience congestion at peak hours. Many of the studied intersections' overall LOS will improve. However the Battery Street/Main Street, Pine Street/Main Street and Pine Street/Lakeside Avenue intersections will experience a worsening of their LOS at one or both of the peak hours. These worsened LOS's do not violate VTrans standards for even a rural area intersection. The one exception is the Pine

Street/Howard Street intersection at the AM peak hour which worsens to LOS “F”. Several intersections will improve from a failed urban condition (LOS E or F) to an acceptable urban condition (LOS D or better), specifically: US Route 7/So. Union Street/St. Paul, St. Paul Street/Maple St. and US Route 7/Briarcliff Manor Eastbound (EB) approach.

The Pine Street/Maple Street (both peak hours) and Pine Street/Howard Street (PM peak hour) intersections will experience a poor LOS (by rural standards, not by urban standards which is the case here) with construction of the Project but it does not change from the pre-construction condition. The Pine Street/Locust Street intersection will experience a poor LOS by urban standards, but it does not change with construction of the Project. The Locust Street and Howard Street intersections with Pine Street are stop sign-controlled.

Another measure of congestion suggested by opponents to the Project is the delay time at an intersection. The LOS takes delay time into consideration when assigning the qualitative grade. It is not appropriate to make simple quantitative comparisons of the delay times under two different intersection scenarios, namely unsignalized and signalized. It is standard traffic design theory that a longer delay may be tolerated at a signalized intersection as compared to an unsignalized intersection. Although the delay at Pine St./Maple St. EB AM will increase, its LOS will improve because the Project will install traffic signals. The mathematical calculations used to calculate the delay times take different factors into consideration. We do recognize that the delay times may increase at a small subset of the affected intersections. Several turning movements will also experience a worsening LOS. The Pine St./Maple St. Westbound (WB) (AM and PM peak hours) traffic will worsen to a LOS “F”. The Pine St./King St. WB AM turning movement’s LOS will worsen to “D”, but this is an acceptable level in an urban setting. In addition, the Pine St./King St. WB PM turning movement’s LOS will worsen to LOS “F”.

In sum, the congestion (as measured by LOS) at each of one turning movement at two different intersections will be exacerbated, yet the overall LOS for those intersections will be maintained within acceptable VTrans standards for an urban area. The overall LOS at three other intersections on the alignment will be improved from a failing condition to ones that meet VTrans’ standards for an urban setting. The fact that the delay times are increasing at some intersection turning movements is not indicative of a necessarily worsening congested condition. The Commission concludes that with the exception of the Howard Street and Locust Street intersections with Pine Street, the Project will not worsen the LOS at the affected intersections. It will have a positive effect on many intersections both directly and indirectly affected by the Project.

The Commission is cognizant of the fact that the traffic volume on a portion of Pine Street will increase by 46%. This is a substantial increase and the Commission has reviewed it thoroughly. The Applicants’ stated purpose for the Project is to increase traffic on the Parkway, including Pine Street, and lessen it on other streets. In general, an increase in traffic volumes may lead to congestion or aggravate a congested condition. Yet, as the Commission concluded above, although the increased volume will increase the delay time, the LOS will actually decrease (except at Howard Street and Locust Street), thereby not aggravating congestion. A condition will be included in a permit decision that if the intersections of Howard Street and Locust Streets with Pine Street meet the warrants for a traffic signal, they must be constructed.

The proposed Project has made many concessions to alleviating potential vehicular conflicts with cyclists and pedestrians. Crosswalks with and without pedestrian actuation signals have been added to several

intersections. A multi-use path from the Project's start at Route 7 will be constructed up to Kilburn Street. The Project will eliminate a bicycle lane on southbound Pine Street from Maple Street to north of Kilburn Street. It is substituting lane markings indicating that cyclists will be sharing a portion of the vehicular travel lane. We recognize that this may not be ideal for cycling commuters. The existing bike lane is narrower than recommended by AASHTO, it varies in width and in condition as could be observed during the site visit. The bike lane is also not connected to other bike lanes in the area. We find the Project's proposed shared lane, although not ideal for bicyclists, to be an adequate replacement for the current system. The physical dimensions do not exist to add an exclusive bicycle lane and still make the necessary Project improvements for vehicular traffic.

Act 250 has always been a balance between competing interests. *In re Village Assocs.*, 2010 VT 42 ¶ 17. The proposed Project aims to improve a congested traffic situation at the terminus of the current Interchange. The changed distribution of traffic will increase vehicle volumes at the northern end of Pine Street. Some areas along Pine Street will experience a concomitant slowing down of traffic. The proposed Project provides for increased methods of bicycle commuting through construction of the multi-use path and increases the ability to traverse this urban area by the construction of the shared path and the addition of several crosswalks. We conclude that although two turning movements will thus experience an increased delay time and two intersections will continue to experience a failing LOS, this is more than offset by the construction of non-vehicle amenities and the improving of the Vehicular LOS at many intersections on the alignment.

We note that the Applicant's evidence and thus our conclusions are based on a predictive model. In a permit decision, the Commission will require regular traffic monitoring, including signal warrant analysis at the Locust Street and Howard Street intersections with Pine Street after construction. If the Commission determines, based on the subsequent traffic reports, that the congested situation has not been mitigated, it may impose additional conditions necessary to alleviate congestion. Therefore, the Commission concludes that this Project, with proposed mitigation conditions, will not cause unreasonable congestion or unsafe conditions with respect to transportation and therefore complies with Criterion 5.

Criterion 9(K) (traffic)

The main concern under Criterion 9(K) in this case is the impact on the Project area's congested intersections. 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 at 34 (Vt. Env. Bd. Oct. 11, 1990). 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. Bd. November 4, 2005).

Analyses under Criterion 9(K) call for two separate inquiries with respect to public facilities, i.e., public roads. 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 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. Bd. Oct. 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. Bd. Oct. 11, 1990). In the *Pilgrim Partnership* decision, the Vermont Supreme Court (153 Vt. 594, 596 (1990)) stated that “Criterion 5 does not require that proposed development be the principal cause or original source of traffic problems. Several causes may contribute to a particular effect or result. The Board found that the development would contribute to the existing traffic problem. It would be absurd to permit a hazardous condition to become more hazardous... Safe travel on this right of way is in the public interest. Exacerbating the existing traffic hazard by allowing additional travel on Anderson's road would be detrimental to the public interest. Thus, the Board reasonably concluded that the development did not meet Criterion 5.” We believe that this guidance is applicable to our review under Criterion 9(K).

One criterion by which an intersection may be considered hazardous is if it is considered a High Crash Location (HCL). There are several HCLs in the Project area. The Project will decrease the traffic volumes at HCLs at the southern end. It cannot be estimated, but it is expected that a reduced volume will decrease the number of vehicle crashes, potentially mitigating those situations.

The other HCLs occur toward the northern end of the Project at the St. Paul/South Winooski/Howard Street intersection and the stretch of St. Paul Street between Spruce and King Streets. These areas will also experience a decrease in traffic volume as vehicles are directed onto Pine Street. We also expect a decrease in the number of vehicle crashes in these areas.

Significant queue lengths can occur with the proposed design. For the 95th percentile queue on Lakeside Avenue WB, vehicles will back up onto the right turn lane of Pine Street. With the Pine Street right-turn lane, there is adequate storage for the 95th percentile AM queue for these vehicles. There is not enough storage for the PM 95th percentile queue. This queue, however, is expected to form just 5% of the time in the Design Hour. There are 8,760 hours in a year and the Design Hour and higher volume hours occur less than 3% of the time. Therefore, the available storage is exceeded less than 0.02% of the time in a given year and likely less than 0.5% of the peak hour times. The average queue is 300 feet and there is adequate storage for these vehicles. The Commission has not been presented with enough information to show that the queues occur for a sufficiently long duration to warrant additional mitigation. Therefore, we conclude that the expected 95th percentile queues do not occur for a sufficient duration to materially jeopardize or interfere with the function, efficiency or safety of the roadways. However, in a permit decision, the Commission will require regular traffic monitoring, including queuing analysis, at Lakeside Avenue to determine if additional mitigation is needed.

It has been argued that large, eastbound trucks on Maple Street turning right onto Pine Street will not have an adequate turn radius if there is a northbound left turn lane on Pine Street at its intersection with Maple Street; that lack of an adequate radius will increase the time that a truck takes to complete the turn; and that this would have a resulting impact on traffic flow on Pine Street, potentially increasing congestion. The encouragement of truck traffic to access Pine Street via Main Street, instead of via Maple Street, through use of preferred traffic signal timings, signage and wider lanes, will decrease the number of trucks that will make this turn. Creating a more adequate turn lane may encourage more truck use of Maple Street. In a permit decision, the Commission will add conditions to monitor the truck traffic on Maple Street and King Street and will require further truck traffic discouragement if the condition rises to a level affecting the safety, function or efficiency of these streets.

The Project has proposed many improvements for pedestrians and cyclists. The proposed primary purpose of the Project was not to create a bike path or provide a sidewalk system. However, the components of the Project, crosswalks, pedestrian actuated signals and a multi-use path will improve travel for pedestrians and cyclists. Potential conflicts with non-vehicular street crossings have been mitigated by the pedestrian-actuated signals. More could be done and the Commission may impose reasonable permit conditions within the limits of its police power to ensure that the Project complies with the statutory criteria. 10 V.S.A. § 6086(c); *In re Stokes Communications Corp.*, 164 Vt. 30, 38 (1995). But unless failure to create more pedestrian or cyclist amenities creates a safety issue, it is not the jurisdiction of this Commission to require them.

For the reasons discussed above, the Commission concludes that the Project 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.

Criterion 7 - Municipal Services:

Findings of Fact

151. The Parkway will require police services, fire protection services, water supply, sewage disposal, and road maintenance. Exhibit #8 (*Schedule B at 37*).
152. The affected municipal departments have stated that they are able to serve the needs of the Parkway without an unreasonable burden on services. Exhibits #24, #45, #46, #47 and #48 (*Appl. Exhs. 16; 34-A, B, C, D*).

Conclusions of Law

Under Criterion 7, an unreasonable burden may arise from either the fact that a development will require additional municipal services or impair a municipality's financial ability to provide or maintain an existing level of service. The burden of proof is on the opponents under Criterion 7, but the burden of production is on the Applicants. 10 V.S.A. § 6086(b); *Green Meadows Center LLC, The Community Alliance, and SEVCA*, #2W0694-1-EB, Findings of Fact, Conclusions of Law and Order at 34 (Vt. Env. Bd. December 21, 2000). The Applicants have provided "Ability to Serve" letters from the various municipal agencies. No evidence other than an allegation 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.

Criterion 8 - Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas:

Findings of Fact

- **Aesthetics and Scenic or Natural Beauty**

153. The Parkway is located entirely within an urban context. Exhibit #25 (*Appl. Exh. 17 at 5*).
154. At the Interchange, the surroundings are an existing highway system and busy commercial area. As the Parkway continues west and north away from the Interchange, the surroundings begin to become more residential towards the end of the previously built section. In this area, there are existing sound barriers that provide substantial visual separation between the roadway and the residential areas. Exhibit #25 (*Appl. Exh. 17 at 5*).
155. From the Interchange to Lakeside Avenue, new street lighting is proposed along the Parkway alignment. The light fixtures would be a mix of traditional “cobra head” street lights and ornamental lighting fixtures, similar to those currently installed along Main Street near the University of Vermont campus. Exhibits #8 and #85 - #102 (*Schedule B at 39; Site Plans 26B-26S*).
156. The lighting will all contain LEDs and be controlled via individual photocells on each fixture. The traditional streetlights will be about 30 feet high with 180 watt lamp wattage and the ornamental fixtures will be about 20 feet high with 90 watt lamp wattage. Both types of lights will make use of cut-off optics to minimize their impact on surrounding areas when illuminated. Exhibits #8, #26 and #27 (*Schedule B at 39-40; Appl. Exh. 18-B*).
157. Between Home Avenue and Lakeside Avenue, all overhead utility wires will be underground. Exhibits #8 and #25 (*Schedule B at 40; Appl. Exh. 17 at 4*).
158. Project plans between Home Avenue and Lakeside Avenue call for the installation of the Parkway alignment to be approximately 37 feet wide, with landscaped greenbelts on either side of the road. The shared-use path will be approximately ten feet wide and installed on the east side of the road and greenbelt. There will be a black metal grill type fence installed on both sides of the road (to the east of the shared-use path), which is currently proposed to be between 4 and 6 feet high. Exhibit #25 (*Appl. Exh. 17 at 4*).
159. Additional plans for the Home Avenue to Lakeside Avenue section include landscaping of the stormwater detention pond near Flynn Avenue and the installation of small “pocket parks” or other small green areas at the northeast and southeast corners of the Flynn-Parkway intersection and the northeast corner of the Sears Lane-Parkway intersection. Existing vegetation will be left intact as much as possible. Exhibits #8, #25, #60 and #195 (*Schedule B at 40; Appl. Exh. 17 at 4; Site Plans 10, 11 REV*).
160. From Lakeside Avenue to Main Street, the Parkway alignment follows existing City streets. Plans call for leaving the width of the streets at approximately their current widths, with resurfacing and installation of new curbs. The shared-use path will be a new feature in this area, along with the installation of continuous sidewalks along the eastern side of Pine Street. All street trees will be left in place, to the extent feasible. Exhibit #15 (*Appl. Exh. 17 at 4*).
161. Along with the shared-use path, the other substantial change to this northernmost section of the Parkway is the replacement of the four-way stop signs at Maple Street and King Street with traffic signals. Exhibit #15 (*Appl. Exh. 17 at 4*).

162. The residential areas between Home Avenue and Flynn Avenue would experience adverse aesthetic impacts with the installation of the Parkway alignment in an area where there currently is no roadway. The Parkway would be visible in the foreground from about 15 homes in this area, as well as from the Flynn Avenue Cooperative Apartments. The additional traffic lights and noise resulting from the new roadway will be new adverse aesthetic impacts in this residential area. Exhibit #25 (*Appl. Exh. 17 at 9*).
163. Between Morse Place and Sears Lane, installation of the Parkway across Englesby Brook and construction of the stormwater pond will necessitate clearing of an existing wooded area. The mature wooded area in the vicinity of Englesby Brook has some open space value. Exhibit #25 (*Appl. Exh. 17 at 10*).
164. From Lakeside Avenue and along Pine Street to Main Street, the Parkway alignment will not cause any new adverse aesthetic impacts given that the roadway already exists and will not be changed in any significant ways. The primary visual change will be installation of pedestal-style traffic lights at the Maple-Pine and King-Pine intersections where there are currently stop signs. The installation of the left-turn lane on Pine Street at the Maple Street intersection may result in the loss of a few on-street parking spaces. Exhibit #25 (*Appl. Exh. 17 at 10*).
165. Approximately 1,000 homes in the Project area, including homes in the Maple-King neighborhood and on Maple Street, will suffer an increase in air pollution, including carbon monoxide exposure if the Parkway is built as proposed. Exhibit #126 and testimony of John Hinckley (*Hinckley pf, chart, page 7; Hinckley Cross*).
166. Even though traffic volumes are projected to increase along Lakeside Avenue and the northern end of Pine Street, there are no new noise impacts that exceed the NAC projected to occur with installation of the Parkway. Visibility of the increased traffic, including additional vehicle lights at night, could contribute to an adverse aesthetic impact. Exhibits #25 and #28 (*Appl. Exh. 17 at 10; 19*).
167. The City of Burlington Municipal Development Plan (MDP) specifically identifies the Parkway as a needed positive addition to the City to help deal with traffic in the Enterprise District and the South End neighborhoods. Exhibit #25 (*Appl. Exh. 17 at 11-12 quoting 2006 MDP,³ Chapter I*).
168. The MDP makes several recommendations for the built environment, including creating pleasing pedestrian environments, keeping street widths appropriate to the character of adjacent land uses, and replacing excess paved areas with green areas, sidewalks, or other public amenities. Exhibit #25 (*Appl. Exh. 17 at 12-13 quoting 2006 MDP, Chapter III*).
169. The Parkway's shared-use path, sidewalks, and pedestrian-friendly street crossings are consistent with the MDP's recommendations. In addition, the Parkway width would be similar to the widths of surrounding streets and the proposal would include installation of greenbelts and a vegetated

³ At the time that Exhibit #25 (*Appl. Exh. 17*) was prepared, the 2006 MDP (Exhibit #35) was in effect. At the end of March 2011, the City of Burlington re-adopted the 2006 MDP in its entirety, with the exception of a new Transportation Section, which is Chapter V of the MDP (Exhibit #49). Thus, wherever the 2006 MDP is discussed, the same language is valid for the 2011 MDP, except for the case of Chapter V.

- median in areas that previously were paved (i.e., the southern end of the Parkway). Exhibit #25 (*Appl. Exh. 17 at 13*).
170. The proposed landscaping plans to maintain existing street trees where possible and to add new large shade trees in the 10-foot wide or wider greenbelts, are also consistent with MDP recommendations. Exhibit #25 (*Appl. Exh. 17 at 13*).
 171. The new Transportation Chapter of the MDP specifically calls out the Parkway as a planned new roadway to be constructed. It also states that Project plans presented in the FSEIS, which did not include the shared-use path along Lakeside Avenue and Pine Street, are consistent with the Complete Streets model. Exhibit #35 (*Appl. Exh. 50 at 13*).
 172. The Regional Plan similarly calls for the development of the Parkway and it does not identify any scenic resources or values in the Project corridor. Exhibit #25 (*Appl. Exh. 17 at 15-16*).
 173. The Burlington Underground Ordinance calls for utility facilities to be placed underground in the right-of-way of new road projects. The Parkway will place utilities underground in the new roadway section from Home Avenue to Lakeside Avenue. Exhibit #25 (*Appl. Exh. 17 at 15*).
 174. The utilities will be placed underground between the Interchange area and Lakeside Avenue wherever they cross the Parkway alignment, but the City determined that undergrounding the utilities on Lakeside Avenue and Pine Street was not appropriate. The Parkway plans meet all the requirements of the Undergrounding Ordinance. Exhibit #25 (*Appl. Exhs. 17 at 15; 21*).
 175. Although noise and visual impacts will increase in some areas along the Parkway, the same impacts will decrease along other adjacent streets and neighborhoods as traffic redistributes. The unusually long planning period for the Parkway (40-plus years) has created a reasonable expectation of change in the neighborhoods along the alignment. Exhibit #25 (*Appl. Exh. 17 at 16*).
 176. Mitigation includes the reduction of the Parkway alignment from the originally permitted 4-lane road to a 2-lane road; landscaping, including flowering trees and shade trees, shrubs, and perennials; wide greenbelts on both sides of the new roadway; retaining existing mature street trees on Pine Street as much as possible; and attractive metal picket fence style fencing. The City will have the City arborist review the landscape plans to ensure that plantings are not invasive or disease-prone species. Exhibit #25 (*Appl. Exh. 17 at 16-17*).
 177. The pedestrian features such as crossings, shared-use paths, and sidewalks also mitigate aesthetic impacts by creating an attractive pedestrian environment. Exhibit #25 (*Appl. Exh. 17 at 17*).
 178. The Lyman Avenue-Ferguson Avenue area was not an area that was shown to approach or exceed the NAC in the VTrans Noise Policy, under either the pre- or post-July 2011 Policy. Therefore, noise abatement measures were not considered by the City or VTrans originally, but the analysis was conducted at the District Commission's request. Exhibit #190 (*Appl. Exh. 53*).
 179. The Lyman-Ferguson area analysis showed that at most, four residences would receive a noise reduction benefit if a sound barrier were installed in the area. However, the four residences would

- benefit only if the barriers were placed within a few feet of the residential property lines and if the barriers were at least ten feet tall. Exhibit #190 (*Appl. Exh. 53 at 5, Table 1*).
180. The Lyman-Ferguson area analysis showed that at most, two residences would receive a noise reduction benefit if a sound barrier were installed along the eastern edge of the shared-use path. These two residences would benefit only if the barrier were twelve feet tall. If the barrier were ten feet tall, then only one of these residences would benefit. Exhibit #190 (*Appl. Exh. 53 at 5, Table 1*).
181. The VTrans Policy, both the pre-July 2011 and post-July 2011 versions, requires that any noise abatement measures considered must meet reasonableness and feasibility criteria. Some of these criteria are related to how many noise receivers would benefit from the noise abatement measure, some are related to physical and technical considerations, and one is directly related to costs. The cost criterion is the most straightforward to apply in a quantitative way in this situation. The noise abatement options analyzed for the Lyman-Ferguson area were shown to be cost-prohibitive based on the VTrans reasonableness criterion. The lowest-cost noise barrier out of all of the options analyzed would cost about \$37,500 per benefitted receiver using the pre-July 2011 criterion and \$56,250 per benefitted receiver using the post-July 2011 criterion. The reasonableness limit under the pre-July 2011 Policy is \$20,000 per benefitted receiver and under the post-July 2011 Policy is \$40,000 per benefitted receiver. Exhibit #190 (*Appl. Exh. 53, Attachment A, § 7*).
182. 23 CFR 772 sets a NAC for $L_{eq(1hr)}$ ⁴ of 67 dBA and $L_{10(1hr)}$ ⁵ of 70 dBA (both exterior levels) for federally funded highway projects. This standard has been adopted by VTrans. Exhibit #28 (*Appl. Exh. 19*).
183. Only sound monitoring stations along Pine Street modeled a L_{eq} that approached the NAC. Two stations modeled a L_{eq} of 71 dB. For an additional model run, the percentage of trucks was tripled to 6% of all traffic. Of the 35 modeled stations, one would experience an increased sound level of 2 dB and the remaining stations would experience an increase of 0-1 dB as compared to the lower truck volume situation. Exhibit #28 (*Appl. Exh. 19*).
184. As compared to the no-build scenario, all the receiver locations on Pine Street (from Lakeside Avenue to Main Street) are modeled to experience a change in sound levels from -2 to +2 dB. Areas between Route 7 and Lake Champlain are modeled to experience a decrease in sound levels due to the redirected traffic. Only the receiver locations along the Parkway from the Interchange to Lakeside Avenue are modeled to experience an increase in sound levels of up to 16 dB. However, only 5% of the residences in the area are modeled to experience an increase of 3 dB or more. While 11% of the residences in the area will experience a decrease of 3 dB or more. Exhibit #28 (*Appl. Exh. 19*).

⁴ The $L_{eq(1hr)}$ is the one hour equivalent average sound level. It is the most commonly used descriptor to represent traffic noise during the peak noise hour of the day.

⁵ The L_{10} is sound level exceeded ten percent of the time that is the loudest 10 percent of traffic noise during the peak hour of traffic noise. It is used more commonly in low-volume areas with high truck traffic

185. The City also analyzed the visual aesthetic impacts of the noise barriers that were shown to have any noise reduction benefits for the Lyman-Ferguson area. The visual aesthetics analysis showed that the sound barriers located along the shared-use path would have a significant visual impact on users of the Parkway due to the presence of a solid wall in the neighborhood area that would be very different from the proposed metal grill fencing along the alignment in this area. Exhibit #191 (*Appl. Exh. 54*).
186. The sound barriers located along the property lines, closer to the residences, would have slightly less of an impact on Parkway users because most of the length of the barrier would be shielded from Parkway users by vegetation. But there would be walled areas immediately adjacent to the shared-use path where the property line is on the Parkway side of the Lyman and Ferguson cul-de-sacs. These areas would have a pronounced visual impact. Additionally, this alignment of the sound barriers would have significant impacts on the residences whose property lines are immediately adjacent to the Parkway right-of-way. Exhibit #191 (*Appl. Exh. 54*).
187. None of the residences at Arthur Court that were constructed before the construction of the noise barrier showed an increase in sound levels with construction of the Parkway. The three northern duplexes were constructed after the initial approval of the Southern Connector and the noise barrier did not extend behind them. Exhibit #28 (*App Exh. 19 at 16*).
188. At the northern end of Arthur Court, three residences were modeled (in 2028) to exceed NAC. The existing L_{10} was 46 dBA, while the L_{10} in 2028 build scenario was modeled at 63 dBA an increase of 17 dBA. For comparison purposes, the increase in L_{eq} was only 14 dBA. According to the VTrans Noise Analysis and Abatement Policy, a noise barrier must lower noise levels by more than 5 dB at the benefitted receptors and cost less than \$20,000 per benefitted receptors (in 1997 dollars). The construction of a noise barrier was analyzed at six affected residences. A 23-foot high 500-foot long barrier would result in more than a 5 dB reduction at each of the three duplexes and cost \$20,000 per affected unit. A 300-foot long 10-foot high barrier would also reduce traffic noise levels at each of the duplex units by more than 5 dB and would cost \$10,900 per affected units. Exhibit #28 (*App Exh. 19 at 15*).
189. None of the parties who would receive noise reduction benefits from the sound barriers or whose property lines could be bounded by the sound barriers provided any feedback on the City's analyses.
190. The MDP contains the following Neighborhood Objectives: Removal of Truck Traffic from Local Streets; Removal of Commuter Traffic from Local Streets; Provision of Safe and Convenient Pedestrian Routes; Provision of Safe and Convenient Bicycle Routes; Strong Linkages Within and Among Neighborhoods and Integration of Traffic-Calming Techniques for Local Streets. Exhibit #117 at V-8.
191. The MDP states that redesign of the Parkway must meet the following objectives: remove trucks from residential streets and serve as a designated truck route; remove through traffic from residential streets by serving as an alternative route into the city; and blend into adjacent residential neighborhoods with no more than two travel lanes, narrow lane widths, a low design speed and speed limits, sensitive streetscape design, utilities placed underground, and safe pedestrian crossings. Exhibit #117 at V-9.

• **Historic**

192. The MDP states that as a City Policy it will: “Conserve the existing elements and design characteristics of its neighborhoods, and maintain neighborhood proportions of scale and mass; Retain and enhance Burlington’s historic buildings and architectural features; Enhance the City’s gateways and streetscapes and Enhance the pedestrian experience by improving opportunities for pedestrian access and interaction throughout the city.” Exhibit #117 at III-1 & 2.
193. The MDP states that the City will continue to protect historic sites and structures from unnecessary demolition or changes incompatible with their historic significance. Exhibit #117 at IV-5.
194. There are no buildings older than 50 years within the Parkway right-of-way. Exhibit #8 (*Schedule B at 40-41*).
195. The Project would remove portions of two rail spurs that are both more than 50 years old, the Grocery Spur and the Pine Street Rail Spur. The VTrans Historic Preservation Officer (HPO) evaluated these rail spurs and concluded that the removal would not adversely affect the historic resources in the area. Exhibits #8 and Testimony of Scott Newman (*Schedule B at 41; S. Newman live testimony 8/23/11*).
196. The Parkway alignment goes through areas that could likely contain prehistoric archeological sites. In 2001-2003, Cultural Resources Investigations were conducted on the Parkway alignment from the Interchange to Lakeside Avenue to identify historic resources, allow for accurate planning for additional field testing, and to identify archeological resources in the area. Exhibit #8 (*Schedule B at 41*).
197. The field testing completed in the Parkway sections produced negative results for archeological resources. VTrans confirmed that no further work was necessary to identify archeological resources and that the Project would not adversely impact such resources. Exhibits #8, #31, #32 and #33 (*Schedule B at 42; Appl. Exhs. 22; 23-A, B*).
198. Preliminary archeological review has been conducted for the Pine Street corridor of the Parkway. The review conducted by the senior archeologist for VTrans concluded that there were no anticipated archeological concerns and that when detailed Project plans were complete, final review and clearance would be completed. Exhibits #8 and #34 (*Schedule B at 42; Appl. Exh. 24*).
199. The Parkway alignment runs through four historic districts, all of which are located near or north of Lakeside Avenue. There are two National Register Listed Historic Districts: the Battery Street Historic District and the Lakeside Historic District. According to the Vermont Division of Historic Preservation (DHP), the other two districts, Pine Street Historic District and Queen City Cotton Mill Historic District, are eligible and have been nominated for inclusion on the National Register. Exhibits #8 and #33 (*Schedule B at 42; Appl. Exh. 23-B at 3-51 through 3-63*).

200. All of these districts were historically used and are historically significant for the mix of industrial, commercial, residential and transportation uses. Exhibits #128, #130 and Testimony of Scott Newman (*S. Newman pf testimony at 3 8/15/11; Appl. Exh. 48, Attachment 2 at 2-4; 49*).
201. Construction of the Parkway features will not have any physical impact on historic resources. The Parkway will widen only short sections of Lakeside Avenue or Pine Street and it will not damage or destroy any historic buildings. Exhibit #128 and Testimony of Scott Newman (*S. Newman pf testimony at 4 8/15/11*). There was no contrary testimony or evidence submitted under this Criterion.
202. The Parkway changes in the Battery Street Historic District will be the installation of pedestal traffic lights, the replacement of sidewalks and curbs, and the resurfacing of Pine Street. The pedestal style of the traffic light is compatible with other existing light fixtures in the area. Exhibit #8 (*Schedule B at 43*).
203. All of the residential buildings in the Maple-King neighborhood are also contributing structures to the Battery Street Historic District. Exhibits #114, #145 and Testimony of Scott Newman (*Hunt Exhs. 1 and 4; Newman Cross*).
204. The Lakeside Historic District is located west of the Parkway alignment, roughly bounded by Lakeside Avenue, the railroad tracks west of the Parkway alignment, Harrison Avenue, and Proctor Place. There will be no Parkway construction in this area and the VTrans HPO and FHWA have determined that the Parkway will not adversely affect this district. Exhibits #33 and #8 (*Appl. Exh. 23-B at 3-60; Schedule B at 44*).
205. The Pine Street Historic District includes the area roughly bounded by Howard Street, Lake Champlain, Maple Street, and St. Paul Street. Thus, it includes the area of the Parkway on Pine Street between Howard Street and Maple Street. Exhibit #33 (*Appl. Exh. 23-B at 3-53*).
206. Parkway changes in this district would be limited to some resurfacing of the roadway, installation of new curbs, pavement markings, sidewalks, and the shared-use path in the area of the rail spur. The VTrans HPO and FHWA have determined that the Parkway will not adversely affect the historic district. Exhibit #8 (*Schedule B at 44*).
207. The Queen City Cotton Mill Historic District is located in a small area along the northern side of Lakeside Avenue between the railroad tracks and Pine Street. The Parkway changes adjacent to the Queen City Cotton Mill Historic District are the full depth reconstruction of part of Lakeside Avenue, the installation of new traffic signals to control the Fortieth Burlington driveway, the DPW driveway, and the Lakeside and Parkway intersection, and the shared-use path. These changes will not have any adverse impacts on the historic district, as determined by FHWA and the VTrans HPO. Exhibits #8 and #33 (*Schedule B at 44; Appl. Exh. 23- B at 3-53*).
208. The railroad spurs that will be affected by the proposed Project are not listed on the State or Federal Register of Historic Places nor was any evidence of their historic significance presented to the District Commission by expert testimony.

209. The increase in traffic along Pine Street that is projected to result from the Parkway will not adversely affect the historic districts or structures under this Criterion. As noted above, the historic districts are significant and continue to be used for commercial, industrial, and transportation uses. All such uses are associated with traffic, including the type of truck traffic that serves commercial and industrial uses. Exhibit #128 (*S. Newman pf testimony at 4-5 8/15/11*).
210. Additionally, just as the Parkway will bring moderate increases in traffic along the Pine Street corridor through some historic districts, there will be moderate decreases in traffic on some of the other streets included in the Battery Street Historic District. Testimony of Joe Segale (*J. Segale live testimony 8/31/11*).
211. According to the Applicants' expert, the implementation of traffic signals at the intersections of Pine and Maple and Pine and King Streets will mitigate the effect of the moderate traffic increases predicted in those areas. The signals will promote the flow of traffic so that this portion of the Battery Street Historic District does not have the amount of backed-up traffic and stop-and-go traffic that it currently has, or would have in the future in the absence of these planned signals. Additionally, the signals will include dedicated pedestrian crossing phases, which will increase the ability of pedestrians to travel in this more residential area of the mixed-commercial/industrial-residential district. Exhibit #128 (*S. Newman pf testimony at 6 8/15/11*).
212. The Parkway will not interfere with the public's ability to interpret or appreciate the historic qualities of these districts. As noted above, the districts are all historically significant for their contributions to the industrial, commercial, and transportation history of the City. Thus, the roadway improvements in these areas are not out of character with the historic qualities of these districts, and the change in traffic will not hinder the ability of the public to appreciate the area's historic qualities. Exhibit #128 (*S. Newman pf testimony at 6 8/15/11*).
213. The Project includes certain improvements to pedestrian access and use of the area, including a shared-use path covering most of the Parkway, continuous sidewalks along Pine Street, and dedicated signalized pedestrian crossings. These enhancements will increase the ability of the public to interpret and appreciate the historic districts. Exhibit #128 (*S. Newman pf testimony at 6 8/15/11*).
214. There are three sources for written community standards regarding historic resources: the Burlington Zoning Ordinance (BZO), the MDP, and the Regional Plan. The BZO contains a section entitled Historic Buildings and Sites. *BZO § 5.4.8*. In the zoning ordinance, the historic section contains several goals for the City to preserve its historic resources, followed by a description of the criteria that make a building or site eligible for listing in the historic registers, and finally a set of standards for review of zoning applications involving historic structures. *BZO § 5.4.8(b)* and Exhibit #128 (*S. Newman pf testimony at 7 8/15/11*).
215. The MDP contains a section focused on the City's historic resources, but the MDP does not contain any clear written standards for the protection of historic resources. Instead, the MDP states plans and goals for how the City will preserve historic resources, and cites to the BZO for the specific standards the City will apply to review of projects involving historic sites. MDP, Chapter IV; pp. IV-5 through IV-6 and Exhibit #128 (*S. Newman pf testimony at 7-8 8/15/11*).

216. Similarly, the Regional Plan does not contain any standards for historic resource review or protection, and is instead focused on describing how historic resources are identified and stating goals and general methods for their preservation. Regional Plan at 3.3-3.5 and Exhibit #128 (*S. Newman pf testimony at 8/8/15/11*).

• **Rare or Irreplaceable Natural Areas**

217. There are no designated rare or irreplaceable natural or fragile areas within the Parkway alignment or in the Project area. Exhibits #8, #36 and #37 (*Schedule B at 45 & Appl. Exh. 25-A, B*).

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 the aesthetics and historic sites subpart of Criterion 8.

A. Aesthetics

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law and Order at 18-20 (Vt. Env. Bd. Nov. 4, 1985).*

The burden of proof under Criterion 8 is on the opponent to a project, 10 V.S.A. §6088(b), but the applicant must provide sufficient information for the Board to make affirmative findings. *Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law and Order at 13 (Vt. Env. Bd. April 9, 2002); Re: Southwestern Vermont Health Care Corp., #8B0537-EB, Findings of Fact, Conclusions of Law and Order at 28 (Vt. Env. Bd. February 22, 2001); Re: Black River Valley Rod & Gun Club, Inc., #2S1019-EB, Findings of Fact, Conclusions of Law and Order at 19 (Vt. Env. Bd. June 17, 1997).*

1. Adverse Effect

With respect to the analysis of adverse effects on aesthetics and scenic beauty, the Commission looks to whether a proposed project will be in harmony with its surroundings, i.e., whether it will "fit" the context within 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 designs 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. Bd. Nov. 4, 1985); Re: Okemo Mountain Inc., #2S0351-8-EBR, Findings of Fact, Conclusions of Law and Order at 9 (Vt. Env. Bd. Dec. 18, 1986); Re: Horizon Development Corp., #4C0841-EBR, Findings of Fact and Conclusions of Law and Order at 20 (Vt. Env. Bd. Aug. 21, 1992).*

The Project redirects vehicular traffic from Route 7 onto a limited access highway and then onto a road that is classified as an urban minor arterial. Residents along the route will experience increased traffic volumes, some will experience increased sound levels or increases in carbon monoxide levels. The route also brings vehicles through designated historic districts.

Accordingly, the Commission finds that this Project significantly impacts aesthetics, which constitutes an adverse effect.

2. Undue Adverse Effect

Having determined that the Project will have an adverse effect on aesthetics, we now move to the second part of the aesthetics test. The Commission will conclude that the adverse effect is undue if it reaches a positive finding with respect to any one of the following factors: (1) a violation of 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; and/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.

(a). Clear, Written Community Standard

As to whether the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area, the Commission has reviewed relevant portions of the City of Burlington's Municipal Development Plan 2011 (MDP). The proposed Project is specifically listed in the MDP. We have identified no parts of the MDP related to scenic resources that may be impacted by the Project. We have identified elements of the MDP that are related to the potential impacts of the Project.

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 project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env. Bd. April 9, 2002); *The Van Sicklen Limited Partnership*, #4C1013R-EB, Findings of Fact, Conclusions of Law and Order at 38 (Vt. Env. Bd. March 8, 2002). The Commission has reviewed relevant portions of the MDP. 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*, #2W0694-I-EB, Findings of Fact, Conclusions of Law and Order at 36 (Vt. Env. Bd. December 21, 2000).

The MDP does state specific objectives that the Parkway must strive for. It does not contain absolutes. Truck traffic will be removed from residential streets but it does not say all truck traffic must be removed. In fact, it goes on to state that some truck traffic must occur on residential streets.

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. Bd. December 8, 2000). The proposed Project does meet the specific goals or objectives cited above.

Given all of these considerations, we find that the Project does not violate any clear written community standards.

(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 (Dec. 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. *Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law and Order at 20 (Vt. Env. Bd. Aug. 21, 1992).

A Project is considered 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. Bd. November 4, 2005).

The Project cuts through urban streets in a densely developed area. Heavy vehicle traffic is not out of character with the area. The proposed Project redirects traffic onto the route of the Parkway and then onto Lakeside Avenue and Pine Street. Some residents along the route will experience an increase in average daily traffic volume: Lakeside Avenue (70% increase, 47% in the ETC+20); Lakeside Avenue to Maple Street (9% increase); and Maple Street to Main Street (27% increase). Along Pine Street from Home Avenue to Lakeside Avenue will experience a significant decrease in traffic volume as will Battery Street (8%), Maple Street (21%) and King Street (37%). The increase in traffic will have a concomitant increase in noise. Noise can be considered an aesthetic consideration. *Re: George and Diana Davis*, #2S1129-EB, Findings of Fact, Conclusions of Law and Order at 7 (Vt. Env. Bd. December 15, 2004). Sound level modeling by the Applicants showed no residences with a sound level that will exceed the NAC standard. Only 5% of homes in the area will experience an increase in sound level of 3 or more dBs. Only two receptors were approaching the NAC standard and none exceeded it. For noise, the determination of shocking and offensive turns on whether a project's noise is merely annoying or whether it will dramatically interrupt the setting being out of character. *Re: George and Diana Davis*, #2S1129-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env. Bd. December 15, 2004); *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law and Order at 15 (Vt. Env. Bd. April 9, 2002). Given the level of increase we do not find that the increased sound levels will dramatically interrupt the setting or are out of context.

It has also been argued that excessive truck traffic through an historic village is shocking or offensive. *Re: OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of Fact, Conclusions of Law and Order at 38 (Vt. Env. Bd. May 25, 1999), *aff'd*, *OMYA Inc. v. Town of Middlebury*, No. 99-282 (7/26/00). The Battery Street Historic District will experience an increase of 27% more vehicles on Pine Street with a reduction in vehicle traffic on Maple Street and King Street. Truck traffic makes up less than 3% of the current vehicle flow. The increased vehicle traffic on Pine Street between Maple Street and Main Street from construction of the Project will approximately double the number of trucks in the area. Models were run with double and triple the percentage of trucks. The increase in the sound level estimated by the increased truck traffic model was 2 dB. This is equivalent to

twice the number of trucks expected from the Project. Therefore, in this particular case it is not expected that the increased truck traffic will be excessive from the perspective of increased sound levels. Even when the number of trucks was tripled, the NAC criteria status did not change for any of the modeled receiving stations. Therefore, we conclude that the increase of truck traffic into the historic districts will not result in a shocking or offensive situation

Given all of these considerations and conditions, we find that the Project is not projected to be offensive or shocking, out of character with its surroundings, nor does it significantly diminish the scenic qualities of the area.

(c). Generally Available Mitigating steps

The Applicants have designed the Project such that the increased sound levels are less than what was originally approved. The Project is not generating new traffic but redirecting existing traffic. Noise levels and traffic volume will decrease in many areas and will increase in just a few. A noise barrier was constructed along the Arthur Court residences as required by the permit for the Southern Connector and this barrier was shown to be effective with full construction of the Project. Additional mitigation includes the reduction of the roadway from the originally permitted 4-lane road to a 2-lane road; landscaping including flowering trees and shade trees, shrubs, and perennials; wide greenbelts on both sides of the new roadway; retaining existing mature street trees on Pine Street as much as possible and attractive metal picket fence style fencing.

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 be in violation of a clear written community standard intended to preserve the aesthetics or scenic beauty of the area; will not offend the sensibilities of the average person, or be offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; and has not failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. Therefore, the Commission finds that the Project with the proposed mitigation will not have an undue adverse effect on aesthetics.

B. Historic Resources

The Commission uses a three-part test to determine whether the Project meets the portion of Criterion 8 relating to historic resources. First, it determines whether the Project site contains an historic resource. Second, it determines whether the proposed Project will have an adverse effect on the historic resource, and thirdly whether the proposed Project's adverse effect will be undue. *Re: Middlebury College #9A0177-EB Findings of Fact, Conclusions of Law and Order at 9 (Vt. Env. Bd. January 26, 1990).*

The burden of proof under Criterion 8 is on the opponent to a project, 10 V.S.A. § 6088(b), but the applicant must provide sufficient information for the Board to make affirmative findings. *Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law and*

Order at 13 (Vt. Env. Bd. April 9, 2002); *Re: Southwestern Vermont Health Care Corp.*, #8B0537-EB, Findings of Fact, Conclusions of Law and Order at 28 (Vt. Env. Bd. February 22, 2001); *Re: Black River Valley Rod & Gun Club, Inc.*, #2S1019-EB, Findings of Fact, Conclusions of Law and Order at 19 (Vt. Env. Bd. June 17, 1997).

1. Whether the proposed Project contains a historic resource

10 V.S.A. § 6001(g) defines "Historic site" as any site, structure or district or archaeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by the testimony of the Vermont Advisory Council on Historic Preservation as being historically significant. Accordingly, there are three ways in which a site's historic nature may be established under Act 250: (1) placement on the National Register of Historic Places; (2) placement on the Vermont Register of Historic Places and (3) persuasive evidence of historic significance brought before the Board or District Commission by the testimony of the Vermont Advisory Council on Historic Preservation. The Vermont Advisory Council on Historic Preservation has delegated to DHP the identification of historic significance for Act 250 review. In their January 28, 2006 correspondence to the Applicants, they state that the proposed Parkway route affects two areas that have been designated as Historic Districts by being on the State or Federal Registers: the Lakeside Historic District and the Battery Street Historic District. The Pine Street Historic District and the Queen City Cotton Mill Historic District are eligible for listing on the Federal Register and have been nominated. By the fact that the two districts are listed, they are considered historic resources for purposes of Act 250. The other two districts are eligible and the fact that they have been nominated by the Vermont Advisory Council on Historic Preservation is evidence that they are historic resources for purposes of Act 250. The railroad spurs have not been nominated nor has any evidence other than their age been submitted that they qualify as historic resources under Act 250. Therefore, we conclude that the railroad spurs are not historic resources.

2. Whether the proposed Project will have an adverse effect on the historic resource

In evaluating adverse effect on a site, it is central to determine whether a proposed project is in harmony or fits with the historic context of the site. Important guidelines in evaluating this fit include: (1) whether there will be physical destruction, damage, or alteration of those qualities which make the site historic, such as an existing structure, landscape, or setting; and (2) whether the proposed project will have other effects on the historic structure, landscape, or setting which are incongruous or incompatible with the site's historic qualities, including, but not limited to, such effects as isolation of an historic structure from its historic setting, new property uses, or new visual, audible or atmospheric elements.

The Historic Districts are components of an urban area. Urban areas are characterized by higher traffic volumes and noisier conditions. No evidence other than testimony from Mr. Hunt that there will be a substantial increase in vehicles on Pine Street, has been submitted showing that the higher traffic volumes will result in physical destruction, damage or alteration of the historic buildings in the area. His claims of impacts were not substantiated by expert testimony on the expected noise and vibration levels and their impact on building integrity. The buildings exist and have existed for many years in an urban setting with relatively high traffic volumes. As stated above the increase in noise levels are not expected to have an undue adverse aesthetic impact and they are therefore also not expected to have an adverse impact on the historic districts. The Commission concludes that without any compelling information to the contrary, the routing of vehicles through these historic districts will not cause physical destruction,

damage or alteration of the historic qualities of the area. Neither has any evidence been submitted that shows that the expected noise levels or increase in vehicle volume is incongruous or incompatible with the districts' historic qualities.

Therefore, the District Commission concludes that the increase in traffic volume and noise in the historic districts is not an adverse impact on historic resources. We then do not have to consider if these impacts to historic resources are undue.

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(A) - Impact of Growth:

Findings of Fact

218. The Parkway has long been planned as a measure to help accommodate the historic growth that has occurred in the City. It is not a project that is expected to induce population or other growth; it is intended to redistribute traffic patterns. Exhibits #8 and #40 (*Schedule B at 47; Appl. Exh. 28*).
219. The Parkway is intended, in part, to improve access to the South End of the City in the Enterprise Zone, the City's only industrial area, and the City Center District. To the extent the Parkway causes any growth, it would be expected to be in these areas, which are already highly developed. Growth in these areas would be in-fill growth of vacant or under-used properties, which the City has sought to encourage. Exhibits #8 and #40 (*Schedule B at 47; Appl. Exh. 28*).
220. In-fill development does not typically require new unplanned investments in municipal infrastructure or services. Additionally, any growth in the Enterprise Zone or City Center District would likely contribute to the City's tax base and provide a benefit to the City. Exhibits #8 and #40 (*Schedule B at 47; Appl. Exh. 28*).
221. There will be an incremental increase in costs associated with maintaining the new portion of roadway associated with the Parkway. However, this new roadway will be a very small addition to the approximately 100 miles of streets and roads that the City already maintains. Because the City has long been planning for construction of the Parkway, this small incremental increase in maintenance is already expected and planned for by the City. Exhibit #41 (*Appl. Exh. 29*).
222. The Parkway is and has been part of the City's Capital Program. Exhibits #39 and #40 (*Appl. Exhs. 27 & 28*).

Conclusions of Law

To make an affirmative finding under Criterion 9(A), the Commission must determine that the proposed development will not significantly affect the City's and the region's ability "to accommodate two separate items: (i) growth that will occur generally, regardless of the proposed project and (ii) growth that will occur specifically because of the project." *Re: Town of Stowe, #100035-9-EB, Findings of Fact,*

Conclusions of Law and Order at 52 (Vt. Env. Bd. May 22, 1998); *Re: St. Albans Group and Wal*Mart Store, Inc.*, #6F0471-EB, Findings of Fact, Conclusions of Law and Order (Altered) at 29 (Vt. Env. Bd. June 27, 1995), *aff'd, In re Wal*Mart Stores, Inc.*, No. 95-398 (Vt. Sup. Ct. Aug. 29, 1997). The analysis under this criterion differs from that under Criterion 7 in that here we consider the experienced growth, expected growth and projected growth of the municipality. *See Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet* 1R0048-12-EB Findings of Fact, Conclusions of Law and Order at 49 (Vt. Env. Bd. August 20, 2001).

The City has a duly adopted capital improvement plan; therefore, the burden of proof that the proposed development will not significantly affect the existing or potential financial capacity of the town and region to accommodate such growth is on the Applicant. 10 V.S.A. § 6086(a); *See Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet* 1R0048-12-EB Findings of Fact, Conclusions of Law and Order at 47 (Vt. Env. Bd. August 20, 2001).

The Parkway has long been a part of the City's capital improvement plan and is not expected to increase growth in the areas it crosses. The small increase in maintenance is not expected to have a significant impact on the City's ability to accommodate the planned construction. Based on this information and the testimony presented at the hearings, the Commission concludes that the Project will not cause an undue burden on the existing and potential financial capability of the City and the region to accommodate growth caused by the Project.

Therefore, the Commission concludes that the City and the impacted region will be able to accommodate the total growth and rate of growth that will result from this Project, and that the proposed Project will not cause an undue burden on the existing and potential financial capacity of the City and region in accommodating growth caused by the Project.

Criterion 9(K) - Effects on Public Investments (non-traffic):

Findings of Fact

223. Public facilities on or adjacent to the Parkway include the City of Burlington Fire Station No. 5 located on Ferguson Avenue, the City of Burlington Police Substation (located on the first floor of Fire Station No. 5) on Ferguson Avenue, the City of Burlington DPW, the City of Burlington Street Department, Burlington Electric Department, Vermont Gas Systems, and South (Callahan) Park located off Pine Street, the Champlain School on Pine Street, and the existing shared use path between Home Avenue and the Interchange. Exhibits #8 and #109 (*Schedule B at 56; D. White pf testimony at 5 7/18/11*).
224. The City of Burlington's Police and Fire Stations are located easterly of the proposed Parkway, on Ferguson Avenue. These facilities will not be affected by the "dead-ending" of Ferguson Avenue, as Ferguson Avenue connects directly to Foster Street, which provides direct access to Home Avenue, Morse Place, Lyman Avenue, and Flynn Avenue. Therefore, sufficient alternative routes exist such that access by emergency response vehicles and general travel patterns will not be affected by the Project. South (Callahan) Park will not be impacted directly or indirectly as it is topographically higher than Pine Street and separated from Pine Street by a wooded slope extending along the east side of Pine Street. Exhibit #8 (*Schedule B at 56-57*).

225. The Champlain School and the preexisting shared-use path on the southern and western sides of the previously built section of the Parkway are two public investments that will be enhanced by the Parkway. The school will receive a significant benefit due to the relocation of through-traffic and truck traffic away from the southern end of Pine Street. The preexisting shared-use path will be enhanced by its connection to the new shared-use path, which will provide a continuous path into the downtown area of Burlington. Exhibit #109 (*D. White pf testimony at 5 7/18/11*).
226. In addition, as part of this Project, “pocket parks” will be constructed at the northeast and southeast corners of the intersection of Flynn Avenue and the new roadway. These parks will enhance the public’s use of these areas. Exhibit #8 (*Schedule B at 57*).
227. Traffic volumes on Lakeside Avenue and Pine Street will increase as a result of the Project, but the existing public investments in these streets will be protected due to the reconstruction of Lakeside Avenue and the resurfacing of Pine Street. Additionally, the new traffic signals on these streets and the new pedestrian facilities will enhance the public investment in the existing roads. Exhibit #22 (*Appl. Exh. 14 at 30*).
228. Much of the residential housing in the Maple and King Street areas is supported by government-sponsored affordable housing programs. Several types of affordable housing programs are represented in the Maple-King neighborhood, including (a) federal government Section 8 project-based rent subsidies; (b) low-interest loans and grants from the State, specifically, the Vermont Housing and Conservation Board; (c) loans or grants from the City’s own Housing Trust Fund; (d) tax-exempt financing supplied by or through the Vermont Housing Finance Agency; and (e) federal low-income housing tax credits. Testimonies of David White and Alan Hunt (*White Cross; Hunt live testimony 7/26/11*).
229. The Maple-King neighborhood has long been a priority area to target strategies to support reinvestment. Since 1979, the King Street Neighborhood Reinvestment Corp. has rehabilitated over 200 rental housing units and leveraged over \$9 million of funds. Home ownership opportunities are being created for first-time buyers. Private reinvestment is currently taking place in this neighborhood. As of October, 2008, \$16 million had been invested in recent years and another \$6 million was planned. The result of this reinvestment has been a gradual improvement in the condition and integrity of historic buildings in the neighborhood through correcting many years of deferred maintenance, resulting in substantial rehabilitation and increased pride of ownership. Exhibit #143 (*Hunt Exh. #5, page 4*).
230. VTR provided testimonial and documentary evidence of three prior applications to bring Amtrak to Burlington for high speed passenger rail service on the VTR rail line. In each of these applications, the existing Ethan Allen Express resources were proposed to be used. VTR President, David Wulfson, testified that the Amtrak train would have to be turned and the only track available for that purpose would be either the Pine Street Spur or the Grocery Spur where a wye would be installed. According to Mr. Wulfson, there is no other location reasonably accessible to turn the train given the applied-for configuration. Chris Cole, VTrans Director of Policy, Planning and Intermodal Development on behalf of the Applicants testified that in recent hearsay conversations with Amtrak, other means of turning the Amtrak train were discussed as potential options for a future application. Exhibit #209 (*VTR-X-1; VTR-X-2; VTR-X-3*).

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. Bd. Oct. 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. Bd. November 4, 2005). The Applicants have provided sufficient information to show that the proposed Project will not endanger public parks or facilities. Furthermore, the redirection of traffic will move vehicle traffic away from at least two school areas.

However, Hunt and VTR have argued that the proposed Project will interfere with or jeopardize a public investment.

Hunt claims that the buildings in the historic districts are public investments because they receive public grant money or other public subsidies. At the outset, we note that a building or structure is not protected by Criterion 9(K) merely because public funds have been invested in it. *Re: OMYA, Inc. and Foster Brothers Farm, Inc.*, #9A0107-2-EB, Findings of Fact, Conclusions of Law and Order at 45 (Vt. Env. Bd. May 25, 1999), *aff'd*, *OMYA Inc. v. Town of Middlebury*, 171 Vt. 532 (2000). In addition, as to Hunt's testimony that the historic districts themselves are covered by Criterion 9(K), the former Environmental Board has ruled that an historic village center is not a public land, service or facility protected under Criterion 9(K). *Re: Pittsford Enterprises, LLP, and Joan Kelley*, #1R0877-EB, Findings of Fact, Conclusions of Law and Order at 36-37 (Vt. Env. Bd. December 31, 2002). Therefore, since we find that neither the buildings that received public funding nor the historic districts are protected facilities under Criterion 9(K), the proposed Project is not out of compliance with Criterion 9(K) because of alleged impacts to the buildings or the historic districts.

Mr. Hunt also alleged that the increase in traffic along Pine Street that will occur if the Parkway is built will decrease the value of the residential housing and decrease the desirability of the neighborhood for residential use, which would endanger public investments in that housing. He has also stated that the Parkway will cause current owners not to pursue future plans for reinvestment, resulting in the physical deterioration of historic structures and the integrity of the Battery Street Historic District as a whole. We have already discussed, above, that the public investment in the area's housing is not covered under Criterion 9K. Individual economic interests are not cognizable under Criterion 9(K). *L & S Associates*, #2W0434-8-EB Memorandum of Decision at 7 (Vt. Env. Bd. November 24, 1992). Therefore, the Commission is unable to consider these potential effects under Act 250.

VTR did not request nor did it receive party status under Criterion 9(K), and the Commission will not consider VTR's 9(K) testimony or arguments. We do note, however, that there was little credible evidence the proposed Parkway will interfere with the operation of the railway: the removal of parts of the Pine Street Spur occurs in areas not shown to be used by VTR or its customers; and the uses of the Pine Street Spur submitted by VTR were not on Pine Street but off Pine Street.

The Project proposes to remove a portion of the Grocery Spur and Pine Street Spur. The Commission has no jurisdiction to determine the rights of the Applicants and VTR regarding these spurs, and thus no authority to resolve the dispute between them. If a court of competent jurisdiction finds that the Applicants do not have the rights to remove either the Grocery Spur or the Pine Street Spur, the Applicants will need to redesign one or both elements of the Application and, if a permit has been issued, seek an amendment of the permit.

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

231. The City of Burlington's MDP explicitly discusses the Parkway in various sections, clearly identifying that the MDP envisions the Parkway being constructed as a benefit to the City. Exhibits #25, #49, #117, #132 and #109 (*Appl. Exhs. 17, 35, 42, 50; D. White pf testimony at 6 7/18/11*).
232. The Transportation Chapter of the MDP states that the Parkway is a funded Capital Project and that the cross-sections of the Project as shown in the FSEIS are "generally consistent with the Complete Street model in the Street Design Guidelines." Exhibit #132 (*Appl. Exh. 50 at 13*).
233. Local Motion has contended that the Parkway plans lack certain elements that are necessary for the Project to conform to the MDP, specifically to the Street Design Guidelines included as an Appendix to the Transportation Chapter. Exhibit #149 (*Local Motion Letter 8/31/11*).
234. Chapter V of the Burlington Municipal Development Plan, filed with the initial Application ("Transportation Plan #1") specifies a mandatory design standard that requires removal of trucks and through traffic from residential streets in the Project area. We note, however, that Transportation Plan #2 (2011) states that "There is no way to remove trucks from City streets." Exhibits #49 and #132 (*Appl. Exh. #35, page V-9 and App Exh #50 at V-9*).
235. Transportation Plan #2 (2011) defines Pine Street from Lakeside Avenue to Kilburn Street as a "Complete Street". A Complete Street must carry all travel modes: cars and trucks, buses, bikes, and pedestrians, because no alternatives exist. Typically, these streets today include four travel lanes with no space for bikes and poor pedestrian crossings. A Complete Street could include: (1) enhanced transit stops; (2) traffic calming by removing a lane of through traffic; (3) short pedestrian crossings; (4) bike lanes; (5) updated utilities and lighting; (6) landscaped median islands and turn lanes; (7) stormwater planters; and (8) tree belts. Exhibit #132 (*App Exh. #50 at V 7-8*)

236. Transportation Plan #1 contemplated that trucks and through traffic would be removed from the residential streets in the Maple-King Neighborhood by diverting traffic to Battery Street without using the Maple-King Neighborhood at all. Exhibit #49 (*Appl. Exh. #35, page V-8*).
237. The Parkway is included in the City's capital program as a line item in the Capital Improvement Budget each year. Exhibits #39 and #109 (*Appl. Exh. 27; D. White pf testimony at 7/7/18/11*).
238. The Chittenden County Regional Plan shows the Parkway corridor on the Regional Core map and as a "Major Recommended Transportation Improvement." Exhibits #109, #118 and #119 (*D. White pf testimony at 6/7/18/11; Appl. Exhs. 43, 44*).

Conclusions of Law

Before issuing a permit, the District Commission must find that the Project is in conformance with the Town Plan and Region Plan. 10 V.S.A. § 6086(a)(10). The burden of proof is on the Applicant. 10 V.S.A. 6088(a); *Re: Pike Industries, Inc. and Inez M. Lemieux, #5R1415-EB, Findings of Fact, Conclusions of Law and Order at 51 (Vt. Env. Bd. June 7, 2005)*.

The Commission has reviewed the relevant City Plan (MDP) and in the absence of any opposition to the contrary, the Commission has determined that the City Plan is sufficiently specific. *Re: The Mirkwood Group #1R0780-EB, Findings of Fact, Conclusions of Law and Order at 19 (Vt. Env. Bd. August 19, 1996)*. Because the Commission reaches the conclusion that the City Plan is clear and unambiguous it is unnecessary for us to review the zoning bylaws. *See In re Frank A. Molgano Jr. 163 Vt. 25 (1994)*.

"In proceedings under 10 V.S.A. Chapter 151, in which the provisions of a regional plan or a municipal plan are relevant to the determination of any issue in those proceedings:

- (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 LUP #4C0775-EB, Findings of Fact, Conclusions of Law and Order at 53 (Vt. Env. Bd. June 25, 1998).

The MDP and the Chittenden County Regional Plan have included the Parkway (as the Southern Connector) for many years. Based upon its review of both documents, the Commission concludes that the pertinent provisions of the City and Regional Plans are not in conflict.

Two arguments have been advanced to show that the proposed Project is not in line with the MDP. The first is that the MDP states that truck traffic will be removed from residential streets. The MDP does not state that *all* truck traffic must be removed from *all* streets. In fact, Transportation Plan #2 goes on to state that some truck traffic must occur on residential streets. Therefore, we conclude that the fact that the Project allows truck traffic on residential streets, or shifts some truck traffic from some streets to others, does not conflict with the MDP.

The second argument is that the Parkway plans lack certain elements that are necessary for the Project to conform to the MDP, specifically pedestrian and cyclist amenities. The MDP states that Complete Streets could include various amenities but does not require that they must be included. Earlier, we noted the Project's proposed improvements for pedestrian and bicycle travel and safety. For all of these reasons, we conclude that the proposed Project is not in conflict with the MDP.

Accordingly, the Commission concludes that this Project conforms to the local and regional plans.

VII. SUMMARY CONCLUSIONS OF LAW

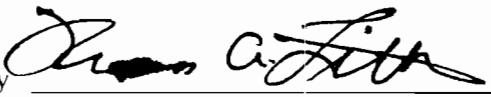
This is a complex and large project, with potential negative and positive impacts across a large swath of Burlington and a portion of South Burlington. In deliberating on this Application, the Commission reviewed the Application, the Exhibits, the legal memoranda and proposed findings of fact filed by the parties, and carefully considered the parties' testimony from each of the five hearings. The Commission studied Act 250 and the applicable Rules and the court and Environmental Board decisions that have interpreted and applied Act 250 and the Rules. Based upon those deliberations as expressed in the foregoing Findings of Fact and Conclusions of Law, it is the judgment of this District Environmental Commission that the Project described in the Application, if completed and maintained in conformance with all of the terms and conditions of the Application, will not cause or result in a detriment to public health, safety or general welfare under the Criteria 1, 1(A), 1(C), 1(D), 1(E), 1(F), 1(G), 2, 3, 5, 6, 7, 8, 8(A), 9, 9(A), 9(B), 9(C), 9(D), 9(E), 9(F), 9(G), 9(H), 9(J), 9(K), 9(L) and 10 as described in 10 V.S.A. § 6086(a).

However, the Commission also concludes that it is not able to find compliance under Criteria 1(B) and 4 as described in 10 V.S.A. § 6086(a), until the state issued stormwater permits are received.

VIII. ORDER

1. Before the Commission may issue a land use permit for this Project we must make affirmative findings under all the remaining criteria of 10 V.S.A. § 6086(a). Accordingly, should the Applicants wish to proceed with this Project, they must submit an application to address criteria 1(B) and 4.
2. The foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C0438-17 are valid for a period of five (5) years from date of issuance unless a request for extension is submitted.

Dated at Essex Junction, Vermont, this 27th day of April, 2012

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

Commissioners participating in this decision:
Marcy Harding, Vice Chair
Parker Riehle

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 Board Rule 31(A). Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220.

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 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05 620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

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