I. INTRODUCTION

The Applicant is the owner and operator of the Hermitage Club in Wilmington and Dover, Vermont. The Hermitage Club was originally the owner of: the East Tract; the Golf Course Tract; the Base Tract, formerly known as the Haystack Resort; together with land and buildings adjacent to the Base Tract comprising the Hermitage Inn; and the adjacent land and buildings comprising the Deerfield Valley Airport, referred to herein as the Airport Tract. On November 17, 2016, the Commission severed the East Tract and the Airport Tract from the master plan application based on the Applicant’s representations that it had completely and permanently divested itself of all interests, rights, and titles in the East Tract and the Airport Tract. The Golf Course Tract is not the subject of this master plan application because the Applicant has no plans for further development there. The Commission’s findings and conclusions, are limited to the Applicant’s proposed development of the Base Tract (Haystack Mountain), including the Hermitage Inn property.

On November 24, 2015, Hermitage Inn Real Estate Holding Company, LLC, filed Application #700002-25 for partial findings of fact pursuant to Act 250 Rule 21 for a project described as the Hermitage Master Plan. The Master Plan addresses development plans at the Base Tract. The projects included in this master plan application are: Stag’s Leap Phase II Townhomes (28 units); Chamonix Trail Bridge & Chamonix Trail; Fannie Hill Rd Loop; Chamonix Trail and Fannie Hill Road Improvement; Chamonix Trail Ski Tunnel; Snowmaking Withdrawals & Mirror Lake Improvements; New Maintenance / Snowmaking Building; Hotel Hermitage (93 units); Condominium Hotels (2 at 90 units each); Hotel Villas (7); Mountain Coaster; Upper Mountain Trailside Homes (36); High Country SFD (7); Future Inn Units (10); Inn Homes SFD (1); Snowmobile Garages (14); Temporary Snowsports Tent; Temporary Rescue Facility; Putting Green at Club House, ATV tours, and Hiking Trails. A total of 362 units were reviewed. Trail clearing or trail improvements are not proposed. Ski lifts were not part of this application.

Under Act 250, projects are reviewed based on the 10 criteria of 10 V.S.A. § 6086(a) (1)-(10). Before granting a permit, the District Environmental Commission (“the Commission”) must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare. The Master Plan application is
a request for partial findings based on the conceptual nature of proposed project elements as presented in the application. Before the Commission can grant a permit to construct, it must be able to make affirmative findings under all of the criteria for those aspects of the project seeking construction approval.

The current Master Plan application does not include a request for affirmative findings under all criteria to construct any particular phase of the Master Plan project as there are no individual projects ready to commence. Each construction project will require a separate application and the Applicant will need to demonstrate conformance with criteria which were not granted affirmative findings in this decision.

The Commission’s review is pursuant to Act 250 Rule 21 Master Plan and Partial Review adopted on December 4, 2015. The Commission’s review was further outlined in the Commission’s Pre-Hearing Conference Report and Order issued on December 30, 2015 which stated that the Applicant must present sufficient evidence so that the Commission is able to make affirmative findings under the critical natural resource issues, including 1(E) Streams, 1(G) Wetlands, and 8(A) Wildlife.

This master plan decision outlines some of the additional information which will be required to support additional affirmative findings. The Commission finds that a ten-year term is appropriate in consideration of the scope of the project. These findings will remain valid for that period of time unless there is a “material” or “substantial” change to the project or background conditions have changed significantly.

The Commission’s decision must be stated in the form of Findings of Fact and Conclusions of Law and Order. The facts we have relied upon are contained in the documents on file identified as Exhibits 1 through 165 and the evidence received at hearings held on March 4, 2016; April 5, 2016; and October 11, 2016. The Commission adjourned the hearing on February 16, 2017, upon completion of Commission deliberations.

II. PROCEDURAL HISTORY

In early May of 2015, Hermitage Inn Real Estate Holding Company, LLC, filed an application for the Hermitage Club Master Plan "partial findings of fact" ("the master plan application"). On May 8, 2015, The District Coordinator ruled that the application was substantially incomplete and the Applicant elected to withdraw the application. On July 2, 2015, the Hermitage submitted an Act 250 application (#700002-26) for a 93-unit hotel. On August 12, 2015, the District Commission issued a Hearing Recess Order for this application which stated that “the Commission will not issue a permit on this application until such time as the hotel and other associated work...are reviewed and receive positive findings in a master plan application that addresses critical natural resource and other cumulative growth issues.” (Emphasis added). On September 15, 2015, the Commission issued a Memorandum of Decision for application #700002-26 that clarified that the mandatory master plan language cited in the
Windham Regional Plan would need to be complied with before any Hermitage Act 250 applications could satisfy Criterion 10 and thus receive an Act 250 permit. On November 24, 2015, Hermitage Inn Real Estate Holding Company, LLC, re-filed Application #700002-25 for partial findings of fact pursuant to Act 250 Rule 21. The master plan application included lands and construction involving the Hermitage Inn, Hermitage Club Base Tract, the East Tract and Deerfield Valley Airport (“the master plan tracts”). On December 7, 2015, the District Coordinator notified the Applicant that certain details had been incompletely addressed in the master plan application, but scheduled a pre-hearing conference. On December 21, 2015, the Commission held a pre-hearing conference to assist the Applicant in preparing a successful master plan application and discuss the purpose of the master plan and the expectations of the District Commission. On December 30, 2015, the Commission issued a Pre-Hearing Conference Report and Order which stated that the Applicant must present sufficient evidence so that the Commission is able to make full findings under the critical natural resource issues, including 1(E) Streams, 1(G) Wetlands, and 8(A) Wildlife. Public hearings on the merits of the master plan application were held at the Springfield Regional Office Building on March 4, 2016 and April 5, 2016. On May 19, 2016, the Commission issued a Hearing Recess Order. On June 1, 2016, the Applicant filed a Motion to Alter which the Commission denied on June 8, 2016. The Applicant filed a Motion to Amend the application on June 16, 2016 which the Commission denied on July 12, 2016. The Applicant filed a motion to divest and withdraw the East Tract and the Airport Tract from the master plan application which was denied on August 5, 2016. On August 29, 2016, the Commission joined Comtuck, LLC and 4V8, LLC as co-applicants. The third hearing was held on October 11, 2016. On October 20, 2016, the Commission issued a second Hearing Recess Order. On November 17, 2016, the Commission issued a Memorandum of Decision severing the East Tract and the Airport Tract from the master plan application and a third Hearing Recess Order. The Commission ordered last evidence to be submitted by December 7, 2016. On January 23, 2017, the Commission issued a fourth Hearing Recess Order to correct evidentiary deficiencies in the record that had been previously asked for but not received. On January 30, 2017, the Commission received final evidence on the application.

III. EAST TRACT AND AIRPORT TRACT

Pursuant to Act 250 Rule 34E and the Stowe Club Highlands Analysis, it was critical to the Commission’s decision on the balance of the Master Plan (the Base Tract) that the Applicant represented complete and total divestiture of the East and Airport Tracts. Accordingly, any further proposal by the owner(s) of Hermitage, their successors or assigns, or those affiliated under 10 V.S.A. §6001(14)(A) shall be barred from developing any portions of East and Airport Tracts prior to review and approval by the Commission of a Stowe Club Highlands Analysis under Act 250 Rule 34.

IV. FINAL PARTY STATUS

Statutory Parties to this application:
1. The Applicants
2. The Wilmington Selectboard
3. The Dover Selectboard
4. The Wilmington Planning Commission
5. The Dover Planning Commission
6. The Municipality of Somerset
7. The Windham Regional Commission ("WRC")
8. The Agency of Natural Resources ("ANR")
9. The Vermont Agency of Transportation ("VTrans")
10. The Agency of Agriculture, Food & Markets

The following adjoining property owners, area residents, and interested persons, were admitted preliminary party status, as indicated, pursuant to 10 V.S.A. § 6085(c)(1) and Act 250 Rule 14(E).

1. John and Barbara O’Mara, 40 Airport Road West Dover, VT 05356, requested preliminary party status under Criterion 1 Air Pollution and Criterion 8 Aesthetics, including noise. Mr. and Mrs. O’Mara made a written request for preliminary party status on February 8, 2016.

2. Francois Barthelemy, 63 Brevoort Lane Rye, NY 10580, requested preliminary party status under Criterion 1 Air Pollution and Criterion 8 Aesthetics, including noise. Mr. Barthelemy made a written request for preliminary party status on March 30, 2016.

Pursuant to 10 V.S.A. § 6085(c)(2) and Act 250 Rule 14(E), the Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. Prior to the completion of deliberations, the Commission re-examined the preliminary party status determinations and found that the non-statutory parties no longer qualified for party status because their criteria of concern related solely to the Airport and East Tract parcels. Since these parcels are no longer owned by the Hermitage and no longer part of the master plan review, as described above, the non-statutory petitioners do not have party status in the present application.

V. BURDEN OF PROOF

The burden of proof is on an applicant with respect to Criteria 1, 2, 3, 4, 9 and 10, while the burden of proof is on parties opposing the application with respect to Criteria 5, 6, 7, and 8. 10 V.S.A. § 6088. Additionally, under Criterion 9(A) (Impact of Growth), if the town where the project is located does not have a duly adopted capital improvement program (as is the case with the Town of Dover), then the burden of proof under this criterion is also on project opponents. 10 V.S.A. § 6086(a)(9)(A). The term “burden of proof” refers to two separate burdens: 1) the burden of production, and 2) the burden of
persuasion. The applicant always has the burden of producing sufficient evidence for the Commission to make an affirmative finding under all criteria (i.e. “the burden of production”), while the burden of persuasion is placed on parties in opposition under Criteria 5, 6, 7, 8 and 9(A). See Re: Pratt’s Propane, #3R0486-EB, Findings of Fact, Conclusions of Law and Order at 4-5 (Jan. 27, 1987); Re: Town of Stowe, #100035-9-EB, Findings of Fact, Conclusions of Law and Order at 38 (May 22, 1998).

VI. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the 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. § 810(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 whose accuracy cannot reasonable 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) 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).

Accordingly, official notice is hereby taken of the Wilmington Town Plan; the Dover Town Plan; the Windham Regional Plan; and the State of Vermont Wetland Rules, subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

VII. FINDINGS OF FACT

A. Introduction to the Findings

At issue in this application, is the extent to which the Commission can conclude that the Applicant has established conformance with the Act 250 criteria. Act 250 Rule 21 discusses “findings of fact [that] support conclusions of law under the applicable criteria, and findings of fact [that] are preliminary and do not support a conclusion of law.” Act 250 Rule 21 uses the term “affirmative” findings which is another way of describing findings of fact that support conclusions of law under the applicable criteria. The Commission has also used the term “positive” findings. Here, these terms are used interchangeably. Affirmative findings are the findings under those criteria the Commission concludes that the Applicant has satisfactorily demonstrated full conformance such that no further evidence need be produced for a fixed period of time in the future. Affirmative findings and a conclusion of law, if not appealed, will remain binding on the Applicant, parties, and the Commission for a period of ten years, for the reviewed project (the Applicant may seek to renew such findings prior to the expiration
of the ten-year period). If a subsequent application is filed within the ten-year period (for construction of an individual component of the Master Plan project), no additional evidence need be submitted by the Applicant under criteria for which affirmative findings have been issued.

In the decision below, the Applicant has achieved affirmative findings for two criteria: 6 Educational Services and 7 Municipal Services. All other criteria and associated findings are considered “partial findings” under Act 250 Rule 21.

The facts of this proceeding require that the Commission develop an additional middle ground between findings of fact that support conclusions of law (also referred to as affirmative findings) and findings of fact that do not support a conclusion of law because of the unique nature of this Master Plan application. The Applicant was obligated by the Regional Plan and previous Commission decisions to achieve “positive” findings under Criteria 1(E); 1(G); and 8(A). In addition, the Applicant has struggled to meet its burden of production and the Commission has labored greatly in its effort to assist the Applicant in this endeavor. As a result, the Commission has found that under Criteria 1(E); 1(G) in part; and 8(A) it is able to grant a “middle ground” to the Applicant where the Commission can conceptually conclude that there will be positive findings in the future. The difference between the “middle ground” findings and “affirmative” findings is that the Commission must wait for additional actions to occur or pieces of evidence to be submitted before the Commission can grant “affirmative” findings. The Commission does not grant this designation to other criteria considered in this Application.

A secondary purpose of the findings is to provide the Applicant and parties with findings related to non-conformance. For example, the Commission may identify shortfalls in the evidentiary or factual record which have resulted in a failure to achieve affirmative findings. This information places the Applicant and parties on notice of such deficiencies - so that the Applicant and parties may specifically address such issues in future applications.

To the extent that the Commission has agreed with proposed findings of fact and conclusions of law submitted by the Applicant and other parties, those findings and conclusions have been incorporated herein. Otherwise, said requests to find are denied. In making the following findings, the Commission has summarized the statutory language of the 10 Criteria of 10 V.S.A. § 6086(a).

A. General Findings of Fact

1. The Applicant removed all five "High Country" lots north of the Tage Lift, three of the four Hermitage Inn lots, three four-unit Chamonix buildings, and the Haystack Brook withdrawal (originally approved in LUP#700002-18J) from the original master plan proposal.
2. The "Kingsley horse barns" and access road on the Kingsley property are shown on some Master Plan exhibits but these projects have not been reviewed and the Findings of Fact and Conclusions of Law do not apply to them. If these projects are to be undertaken in the future, they will require full evaluation by the District Commission which may include Stowe Club Highlands analysis (Rule 34(E)).

B. Findings of Fact under the Act 250 Criteria

SECTION 6086(a)(1) AIR POLLUTION:

Findings of Fact:

1. The primary heating source will be propane (LPG). There will also be gas and wood fireplaces in nearly all residential units. All wood burning fire places will meet Washington State plus EPA standards as only "Washington Certified Buckley Rumford Fireplaces" will be installed or used. See Exhibits 20, 20A, 20B. Boilers will mostly burn propane (some heating oil) for space heat and hot water. Gas fireplaces and "Washington Certified Buckley Rumford Fireplaces" will provide some space heating needs. Diesel fuel will be burned in emergency engines. Cars, snowmobiles, ATVs/UTVs will burn gasoline. Exhibits 20, 20A, 20B, and 21.

2. Under certain conditions, there will be temporary dust from construction sites which will be controlled as necessary using calcium chloride and water. There will be no burning of wood or wood debris. All forest material will be chipped and used as mulch or wood chips for erosion. All construction debris will go to a State approved landfill. There will also be emissions from automobiles, and standby diesel powered generators. There will be no process emissions, only combustion emissions from sources described above. Smoke and odors will be controlled via proper operation and maintenance of combustion equipment. Exhibits 20, 20A, 20B and 21.

3. There is a significant amount of ledge in all areas of construction. Drilling and blasting will be done by a certified and insured blasting company. Pre-blast surveys will be conducted as deemed necessary. Blasting mats will be used routinely. All blasted rock material will be processed and used as granular material on site.

4. Hours of operation for blasting will be Monday through Friday, 7AM until 5PM. All blasting will be within the project area. There are no nearby residences, other than homes the Haystack Club is constructing. RSG Noise level analysis (Exhibit 22) provides detailed evaluation of all generated noise from construction including recommended mitigation. Construction will take place Monday through Saturday 7AM to 5PM, except holidays and holiday weekends.

5. The Air Quality Control Division issued Air Pollution Control Permit #AOP-10-005, DEC#NS95-0181 to the Hermitage on May 12, 2014. This Air Pollution Control Permit was limited to: five emergency ski lift backup diesel engines; multiple building space heat boilers/ furnaces each less than 10 MMBTU/h² and fueled with propane or No. 2 fuel oil; waste oil furnace less than 0.5 MMBTU/hr. Authorization under this
Air Pollution Control Permit does not cover any other engines, such as for snowmaking purposes, and those sources would need prior approval before they are included in an Air Pollution Control Permit. Exhibit 20.

6. The Applicant proposes to burn firewood in 4 to 6 outdoor fireplaces “firepits” for a few hours per day for social/recreational purposes. Testimony.

7. The Applicant has one Yurt with an open fire place located near the Base Lodge. The Hermitage will remove the yurt from the property and donate it to the Wilmington School District or to an employee of the Hermitage Club rather than provide evidence regarding Criteria 1 Air Pollution or 9(F) Energy Efficiency. Exhibit 120.

**Conclusions of Law:**

The statute provides that before granting a permit, the district commission shall find that the “subdivision or development will not result in undue water or air pollution.” 10 V.S.A. * 6086(a)(10) * “Undue” has been defined . . . to mean “that which is more than necessary—exceeding what is appropriate or normal.” *In re: Rivers Dev. Act 250 Appeal, 68-3-07 Vtec, Decision on the Merits at 14-15 (3/25/10)*, citing *Re: McLean Enters. Corp. * #2S-1147-1-EB, FCO at 41 (11/24/04); *Brattleboro Chalet Motor Lodge, Inc.*, #4C0581-EB, FCO at 6 (10/17/84).

Applications for snowmaking should address minimizing air emissions. All current snowmaking equipment must comply with Air Pollution Control Permit requirements and supplemental applications must be submitted to the Air Quality Control Division if equipment, snowmaking and other, is currently out of compliance with current regulations.

The Applicant did not provide information about the location of the firepits, the maximum of number of days they would be used, and firepits or open fire places were not included in the Air Quality Report. The Commission will allow no more than one firepit provided more information is provided demonstrating that there will not be undue air pollution.

Vehicle idling should be addressed in future applications to eliminate unnecessary emissions.

The Applicant will need to address this criterion in future applications to provide more information on the aforementioned items.

**SECTION 6086(a)(1) WATER POLLUTION:**

**Water Quality Monitoring**
8. The Applicant developed a Water Quality Monitoring Program (WQMP) for Haystack Mountain. Some sampling for base conditions was conducted in June of 2015 by ANR's Water Quality Division and Arrowwood Environmental, Inc. The existence of invertebrates in receiving waters was rated as "good to excellent." Testimony.

9. The Applicant’s Water Quality Monitoring Program (WQMP) was approved by ANR. The Applicant has indicated that it will fully implement the approved WQMP throughout the master plan development period working with ANR's Water Quality Management Division and Department of Fish and Wildlife to address all concerns related to healthy streams and passage of aquatic biota and fish on Oak Brook, Cold Brook and Haystack Brook and their respective tributaries. Exhibit 119.

10. The issuance of final ANR Stream Alteration Permits for replacement of undersized round culverts with open arch culverts for all stream crossings on the Base Tract will serve to improve existing water quality conditions that include significant impediments to fish passage on Oak Brook. On Oak Brook, existing 30 inch round culverts will be replaced with large open arch culverts (18 feet wide at the bottom) necessary to ensure sediment continuity and fish passage, which will re-establish a healthy fishery in that stretch of Oak Brook for the first time in decades. Testimony.

Conclusions of Law:

The Commission cannot make affirmative findings on this Criterion at this point. The Commission will look for evidence that the Hermitage is complying with the WQMP and look for further technical enhancements that will be incorporated during final ANR and Commission review as each construction phase moves forward. The Commission will also evaluate the results of the water quality monitoring as future construction applications are submitted. Importantly, this includes restoration of "minimum stream flows" on Cold Brook in accordance with the Needs and Alternatives Analysis. The District Commission will require the filing of final ANR 401 Water Quality Certification including Wetland, Stormwater, Erosion Control, and Stream Alteration Permits at the time of final construction review and approval for each development phase of the Master Plan for the Base Tract.

SECTION 6086(a)(1)(A) HEADWATERS:

Findings of Fact:

11. The Base Tract is in a headwaters area since it is above 1,500 ft Mean Sea Level and in a drainage area of less than 20 square miles with steep slopes and shallow soils.

12. Individual projects would require State and/or Federal permits from the Vermont Agency of Natural Resources, including the Department of Environmental Conservation, and the U.S. Army Corps of Engineers.
Conclusions of Law:

Criterion 1(A) provides that “[a] permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:

- headwaters of watersheds characterized by steep slopes and shallow soils; or
- drainage areas of 20 square miles or less; or
- above 1,500 feet elevation; or
- watersheds of public water supplies designated by the agency of natural resources; or
- areas supplying significant amounts of recharge waters to aquifers.

10 V.S.A. § 6086(a)(1)(A).

The Commission concludes that the project area is located in a headwaters area. The Commission is unable to make affirmative findings under this criterion because there is not yet sufficient evidence. Future applications will include ANR permits and evidence that the Applicant is following the Water Quality Monitoring Program.

SECTION 6086 (a)(1)(B) WASTE DISPOSAL:

Findings of Fact:

WASTE DISPOSAL

13. The Applicant has an agreement with the Cold Brook Fire District dated May 11, 2012 for waste disposal infrastructure improvements listed as: “Rushing Creek Village, High Country Village, Fawn Ridge Village, the so-called McGovern Lots in Haystack Village West, and the Hermitage Inn Properties.” Exhibit 23.

14. The Agency of Natural Resources issued Discharge Permit No. Vt 01001214/ID-9-0006/ID-0-0027 to the Cold Brook Fire District #1 on June 27, 2014 with treatment and discharge capacities up to 28,000 gallons per day of treated sewage. Exhibit 106.

15. Waste disposal upgrades to serve this current Master Plan application have not been approved by the Agency of Natural Resources.

STORMWATER MANAGEMENT

16. The Hermitage has received "draft" approval from ANR, dated July 21, 2016, to discharge stormwater from specific construction sites into receiving waters on the Base Tract which cover the following: “the Upper Base Lodge Area, Summit Rescue
17. Stormwater from all hard surfaces (primarily roads, parking lots, roofs) in the Base Tract will be treated and disposed of in accordance with the most recent ANR Stormwater Regulations. The goal is to treat stormwater as close to the source as possible and to limit the disposal of flows to a level equivalent to pre-development conditions using low impact stormwater treatment systems. Currently stormwater is treated by filtering through grassed disconnects (lawns and swales close to roads or new homes). Where this is not possible, stormwater is collected and transported to treatment and detention ponds where it is filtered, detained and then discharged at a rate equivalent to pre-development. Stormwater is also treated in underground "stormtec" systems and other underground piping treatment systems as approved by the Vermont's ANR Stormwater Management Division.

18. All stumps are collected and stock piled on site in areas designated that are well above the ground water table and away from streams and wetlands. These stumps are periodically ground up into mulch and wood chips to be used for mulching and erosion control during construction and have proven highly effective in slowing down and treating stormwater. The mulch is also used around trees and shrubs to promote growth and healthy plants. The stump pile is located at the extreme southern end of the upper parking lot on the Base Tract where stumps are periodically ground (once per year). This area is 1/4 mile to nearest residence.

Conclusions of Law:

Criterion 1(B) requires that “the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste material or any harmful or toxic substances into groundwater or wells.” 10 V.S.A. § 6086(a)(1)(B).

The Commission cannot make an affirmative finding based on the evidence that was submitted. The Applicant will apply for water, wastewater, and stormwater permits for all construction and includes these permits in future Act 250 construction applications. Individual project applications will also address construction waste and recycling.

Hermitage shall demonstrate that the proposed upgrades to the Cold Brook Fire District wastewater treatment plant have been completed, by phase or in their entirety, ensuring that the plant has capacity for the proposed development.

SECTION 6086(a)(1)(C) WATER CONSERVATION:

Findings of Fact:
19. Water usage for the entire Project is estimated to be approximately 150,000 gpd (actual flow) at full build out. Present water usage is approximately 30,000 gpd (actual flow).

20. All plumbing fixtures in all new buildings will be the latest available low-flow plumbing devices. Toilets will be 1.6 gallons per flush or less. Shower heads and faucets will be low flow with a maximum rating of 1.6 gpm.

21. The Base Lodge lawn area has a small sprinkler system for irrigation. This operates by gravity off the CBFD municipal water system, and uses approximately 2,000 gpd during dry times in the summer months.

Conclusions of Law:

Criterion 1(C) provides as follows:

(C) Water conservation. A permit will be granted whenever it is demonstrated by the Applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

10 V.S.A. § 6086(a)(1)(C)

Water conservation measures using the best available technology with respect to snowmaking will be documented in individual applications. The Applicant has not provided evidence that the sprinkler system for irrigation is the best available technology.

SECTION 6086(a)(1)(D) FLOODWAYS:

Findings of Fact:

22. The Applicant states that there are three existing roadway bridges (crossings) over Cold Brook on Haystack Mountain that are in the floodplain. The Applicant also states that all other structures are above the floodplain except for "open arch culvert" replacements. Exhibit 27. The River Corridor has not been marked on Exhibit 27.

23. No ANR technical field staff have reviewed the Master Plan proposal for conformance with Criterion 1(D) or to verify where the limits of the River Corridor or Flood Hazard Areas are.

Conclusions of Law:

Criterion 1(D) provides that before granting a permit, the applicant must demonstrate that; "(i) the development or subdivision of lands within a floodway will not restrict or
divert the flow of flood waters, and endanger the health, welfare or safety of the public or of riparian owners during flooding; (ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, welfare or safety of the public or of riparian owners during flooding." 10 V.S.A. § 6086(a)(1)(D).

The Commission is unable to make affirmative findings under this criterion because there is not yet sufficient evidence. Future applications will include evidence of the boundaries of the River Corridor and Flood Hazard Areas and evidence that future construction will conform with Criterion 1(D).

SECTION 6086 (a)(1)(E) STREAMS:

Findings of Fact:

24. The Applicant will replace all undersized round culverts with open arch culverts for all stream crossings on the Base Tract. On Oak Brook existing 30 inch round culverts will be replaced with large open arch culverts (18 feet wide at the bottom) necessary to ensure sediment continuity and fish passage, which will re-establish a healthy fishery in that stretch of Oak Brook for the first time in decades. The VWQS and ANR's "Stream Flow Equilibrium" and "Aquatic Organism Passage" policies will be fully implemented. Exhibits 119, 120, 121 and Testimony from the Applicant and ANR.

25. Oak Brook crossings that were approved and constructed pursuant to earlier Haystack Act 250 permits have been redesigned by the Hermitage to bring back a "fisheries habitat" in the stretch of Oak Brook near the Hermitage Hotel as requested by ANR. The Hermitage will reconstruct another bridge (conceptually approved by ANR) which will also allow for fish passage under Fannie Hill Road. Exhibit 119.

26. The Applicant intends to leave intact three small on-stream ponds near the Hermitage Inn.

27. The Fannie Hill Road crossing of Oak Brook has been evaluated by the ANR Stream Alteration Engineer in order to make design recommendations and to form an opinion that the crossing will meet all ANR standards related to Aquatic Organism Passage (OAP) and Stream Equilibrium. Exhibit 119. The stream alteration application for the Fannie Hill Road crossing will be submitted no later than December 31, 2018 and constructed before December 31, 2019, following ANR approval.

28. Two Stream Alteration Permits for three Oak Brook crossings and the Chamonix Bridge were issued by ANR Stream Alteration Engineer on July 2, 2016. Exhibits 133 and 134.
Water Withdrawal; Snowmaking Alternatives; Needs and Alternatives Analysis ("NAA")

29. The Hermitage Master Plan includes a proposed expansion of Mirror Lake, which is an existing off-stream reservoir fed by a water withdrawal structure on Cold Brook, with water withdrawn through a controlled withdrawal piping system. The existing 14 million gallon ("MG") Mirror Lake impoundment could be increased to 28 MG by raising the berm approximately four to five feet. A Dam Safety Permit issued by ANR would be required for this project. Any proposed expansion will be dependent on the final results of the NAA with full review and approval by ANR and the District Commission. Exhibits 80, 80A, 80-1, 80-2.

30. The Applicant eliminated the proposed water withdrawal from Haystack Brook authorized in the ANR's Dam Safety Permit (2007) and LUP # 700002-18J until other alternatives are fully explored pursuant to the NAA.

31. Without increasing the current rate of withdrawal, the Hermitage will continue to use the existing Cold Brook source, as a single withdrawal location following Mt. Snow's anticipated disconnection in the 2017/2018 ski season to determine whether: sufficient water can be obtained for the private resort snowmaking needs via a redesigned water withdrawal structure on Cold Brook; and, whether additional enhancements to the water impoundment and snowmaking infrastructure are necessary. This will be determined at the conclusion of the NAA discussed below.

32. The Applicant has adopted the following schedule recommended by ANR to achieve minimum stream flows on Cold Brook and full compliance following the conclusion of the Snowmaking Needs and Alternatives Analysis ("NAA").
   a. Hermitage evaluates water needs during 2016-2017 snowmaking season and begins analysis of previous years snowmaking data, including water withdrawn from Cold Brook and water use data for snowmaking.
   b. No later than July 1, 2017, Hermitage submits a preliminary report of its assessment of water use and needs to the Agency for review and comment as part of the annual snowmaking report.
   c. No later than October 1, 2017, Hermitage submits a study plan to the Agency for review and approval for the Needs and Alternative Analysis (NAA) pursuant to Section 16-05 of the Snowmaking Rules.
   d. Hermitage continues to assess water needs during 2017-2018 snowmaking season after Mount Snow is no longer using water from Mirror Lake.
   e. No later than July 1, 2018, Hermitage submits a preliminary report of its assessment of water use and analysis of past years’ snowmaking data to the Agency for review and comment as part of the annual snowmaking report.
   f. No later than October 1, 2018, Hermitage submits an NAA to the Agency for review. The NAA shall include a schedule for achieving a conservation flow equal to FMF at the existing Cold Brook withdrawal.
Riparian Management

33. All streams and stream banks in the Base Tract and at the Hermitage Inn have been fully delineated and surveyed. Eight acres of stream buffer impacts are proposed.

34. The proposed disturbances to streams will be stream crossings including replacement of existing round culverts with larger open arch culverts. All stream crossings will comply with this open channel design concept and all current ANR policies and regulations, including "Stream Equilibrium Flow" and "Aquatic Organism Passage" standards. Stream crossings will require approximately 6.3 acres of buffer impacts. The remaining stream buffer impacts (1.7 acres) are due to trails, roads, and other infrastructure and will be analyzed during the application phase for each construction element of the Master Plan.

35. The Hermitage will develop a Master Riparian Management Plan for ANR review and approval that identifies and provides appropriate setbacks and opportunities for the protection of streams within the watershed, and includes:
   a. Any new stream crossings or stream alterations, as well as replacement structures, shall comply with current "Stream Equilibrium" and "Aquatic Organism Passage" ("AOP") standards. In-stream construction dates shall be from June 1 through October 1.
   b. The Chamonix Trail and Oak Brook culverts will be upgraded to comply with current standards. The Hermitage will upgrade the Fannie Hill Road Oak Brook Crossing to comply with current AOP and Stream Equilibrium standards, no later than December 31, 2019;
   c. A map which shows existing buffer encroachments within the Base Tract Project area and an accompanying GIS layer;
   d. Unless other requirements are specified by the Stream Alteration Permit or the Act 250 permit for each applicable construction phase of master plan development, the maintenance of an undisturbed 50-foot buffer along all perennial streams, measured inland, perpendicular and horizontal from the top of stream bank or slope and extending to water's edge at base flow; and
   e. General mitigation strategies, to be determined on a phase by phase basis, for impacts to riparian buffers within each construction phase including: anticipated planting and restoration plans for previously disturbed areas; aquatic passage improvements; and any necessary offsets such as, planned management of additional riparian buffers within the watershed, including mitigation offsets or conservation easements on properties owned by willing landowners. In lieu of appropriate on-site measures, off-site properties may be considered and included for mitigation efforts within the same drainage area.

Exhibit 131.

36. Future construction permit applications will include a comprehensive Riparian Management Plan for each specific construction phase of the Project. Each plan shall include:
a. GIS layer map which shows existing buffer encroachments within the construction Project area;
b. Detailed site and construction plans which show buffer encroachments for the construction process area;
c. Unless other requirements are specified by either the ANR Stream Alteration Permit or the Act 250 permit for each applicable phase of master plan development, the maintenance of an undisturbed 50-foot buffer or a buffer which complies with current buffer standards, along all perennial streams, measured inland, perpendicular and horizontal from the top of stream bank or slope and extending to water's edge at base flow;
d. Specific mitigation strategies within each construction phase including: planting and restoration plans for proposed and previously disturbed areas; aquatic passage improvements; and any necessary offsets such as, planned management of additional riparian buffers within the watershed, including mitigation offsets on properties owned by willing landowners. In lieu of appropriate on-site measures, off-site properties may be considered and included for mitigation efforts within the same drainage area.

e. Each planting and restoration plan shall include a mixed assemblage of appropriate native vegetation; numbers and spacing of plants, shrubs and trees in sufficient numbers to reestablish and maintain a healthy riparian buffer, a monitoring plan and follow up plantings, as necessary, subject to Agency review and approval;
f. Each plan shall be in compliance with ANR's 2016 Riparian Planting Guide (or most current Guide) and include follow-up evaluations and replanting in areas where restoration plantings have failed; and
g. a timeline for implementation of specific mitigation strategies within each construction phase.

Exhibit 131.

**Conclusions of Law:**

Criterion 1(E) requires "that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners." 10 V.S.A. § 6086(a)(1)(E).

Under Criterion 1(E), the Applicant did not meet its burden to produce evidence for affirmative findings. However, the Commission can conceptually conclude that there will be positive findings in the future if the Applicant uses the riparian management plan process to off-set the eight acres of stream and buffer impacts that are proposed in this Master Plan application. Also, for the Commission to conceptually conclude that there will be positive findings in the future, the Commission requires that the three "on-stream" ponds be taken "off-line" so that the ponds are no longer associated with the stream. Future construction applications will demonstrate that the ponds are no longer "on-stream" ponds; will include specific riparian management plans approved by the
Department of Fish and Wildlife; will detail progress on replacing all undersized culverts to allow for fish passage; and final Stream Alteration permits.

SECTION 6086(a)(1)(F) SHORELINES:

Findings of Fact:

37. The Project involves a beach area plus recreational activities on the Mirror Lake snowmaking impoundment including kayaking, boating and fishing. Public access is allowed at Mirror Lake though this does not occur on a large scale. Neighbors and Hermitage Club members may walk their dogs, go swimming in the Lake, and ride bikes, etc. The applicant will continue to maintain a lawn area and beach area with a small dock with periodic mowing around the Lake. All facilities were approved in LUP # 700002-18J.

38. The Applicant has proposed an expansion of Mirror Lake as part of the Master Plan to provide additional snowmaking capacity that has not been reviewed under 1(F).

Conclusions of Law:

Criterion 1(F) provides “permit will be granted whenever it is demonstrated by the Applicant that, in addition to all other criteria, the development or subdivision of shorelines must of necessity be located on a shoreline in order to fulfill the purpose of the development or subdivision, and that the development or subdivision will, insofar as possible and reasonable in light of its purpose:

(i) retain the shoreline and the waters in their natural condition,
(ii) allow continued access to the waters and the recreational opportunities provided by the waters,
(iii) retain or provide vegetation which will screen the development or subdivision from the waters, and
(iv) stabilize the bank from erosion, as necessary, with vegetation cover.”

10 V.S.A. § 6086(a)(1)(F).

The Commission is unable to make affirmative findings under this criterion until such time as plans for the future improvements to Mirror Lake have been submitted by the Applicant and reviewed by the Commission for compliance with the statutory language above. The applicant shall submit the final plans for the Mirror Lake expansion as part of a future application for construction.

SECTION 6086(a)(1)(G) WETLANDS:

Findings of Fact:
39. Wetlands are a dynamic resource which change over time. If the Applicant wishes to obtain a final wetlands permit at a later date, a reevaluation of the resource, and current regulations, will be necessary and may require design changes.

40. Hermitage is electing at this time not to file for final ANR wetlands permits. The Hermitage must obtain final Vermont Wetlands Permit authorizations prior to initiating project construction for individual project phases where such permits are required, pursuant to the Vermont Wetland Rules and NRB Rule 19.

41. The Hermitage intends to provide “In Lieu” fee payment(s) to the Army Corp of Engineers as compensation for adverse impacts to wetland functions that are presumed to be compensable under Vermont Wetland Rule §9.5(c). Exhibit 80.

42. The Hermitage Table C Wetland and Wetland Buffer Impacts (Exhibit 130) indicates 2.3 acres of possible impact to Class II Wetlands and Wetland Buffers on the Base Tract. The largest potential impact relates to the possible expansion of Mirror Lake (.87 wetland acres) which will be dependent on completion of the Needs and Alternatives Analysis.

43. The Hermitage submitted the functions and values for the impacted wetlands on the mountain tract. Exhibit 165.

44. The impacted wetland descriptions include: road and building construction, tree clearing for the Mountain Coaster, tree planting, grading/fill, and the Mirror Lake Expansion. Exhibits 164 and 165.

45. The functions and values for all impacted except the Mirror Lake expansion represent that the proposed projects will have no undue adverse impact on the functions and values. Exhibit 164.

46. The Hermitage’s own analysis concludes that there will be an undue adverse impact on the functions and values for the Mirror Lake expansion as the wetlands will no longer be able to serve the functions they currently do. The functions that will be impacted are functions: Section 5.2 and Section 5.10. Exhibit 164.

47. Wetland Rules Section 9.5 is the Individual Permit Review Standard. It states:

   a. Burden of Proof
   Applicants for an individual wetland permit shall have the burden to show that a proposed activity in any Class I or Class II wetland or its buffer zone complies with these rules and will have no undue adverse effect on protected functions and values. In determining whether this burden has been met, the potential effect of any proposed activity shall be evaluated on the basis of both its direct and immediate effects as well as on the basis of any cumulative or on-going effects on the significant wetland.
b. Mitigation Sequencing
An adverse effect on any protected function, other than a minimal impact, shall be presumed to constitute an undue adverse effect unless:

(1) The proposed activity cannot practicably be located outside the wetland or on another site owned or controlled by the applicant or reasonably available to satisfy the basic project purpose; and
(2) If the proposed activity cannot practicably be located outside the wetland, all practicable measures have been taken to avoid adverse impacts on protected functions; and
(3) If avoidance of adverse effects on protected functions cannot be practically achieved, the proposed activity has been planned to minimize adverse impacts on the protected functions and a plan has been developed for the prompt restoration of any adverse impacts on protected functions.

c. Compensation
Compensation may be considered only when full compliance with the requirements of subsection b (1-3) is insufficient to achieve no net undue adverse effect on any protected function. Such compensation measures may include establishing new wetlands or enlarging the boundaries of an existing wetland to compensate for the adverse impact of the proposed activity. The compensation may also include payment of fees to a federal “in-lieu fee” program or mitigation bank approved by the Secretary. Compensation to avoid undue adverse impacts on protected functions in Class I wetlands or their buffer zones may only be considered upon the showing that the adverse impacts are necessary in the course of meeting a compelling public need to protect public health or safety. Compensation will be allowed for impacts to either Class I or Class II wetlands only to reduce adverse impacts on those protected functions that are compensable. Compensation is presumed to be possible for adverse impacts on the functions specified in Sections 5.1, 5.2(d), 5.4(a)(1 and 2), and 5.9. For any remaining functions and values specified in Section 5 the applicant must show that compensation will be successful in achieving no net loss in any protected function. Any compensation plan must demonstrate that:

(1) there will be no net loss of the protected functions or acreage of significant wetlands;
(2) the compensation measures will be fully implemented prior to, or concurrently with, the proposed activity;
(3) the compensation measures shall be monitored and managed for a period necessary to insure full replacement of the protected functions in question and any additional period that may be required by subsequent remedial measures but in no event for less than five years;
(4) measures shall be designed to be self-sustaining following the period for which monitoring or management is required;
(5) adequate financial surety is provided to carry out the proposed compensation including any necessary remedial measures; and
(6) any replacement wetland will be permanently preserved by a conservation easement or deed restriction conveyed to a suitable party or by other appropriate means.

48. The following are the Base Tract Wetland Plans that were submitted as part of this application:

1) Exhibit 080-22Q - Wetlands MTN-CW-101C.pdf
2) Exhibit 080-22R - Wetlands MTN-CW-101D.pdf
3) Exhibit 080-22S - Wetlands MTN-CW-102A.pdf - (latest version, Exhibit 118, ANR Item 3) SBRMP
4) Exhibit 080-22T - Wetlands MTN-CW-102A1.pdf - (latest version, Exhibit 118 ANR Item 3) SBRMP
5) Exhibit 080-22U - Wetlands MTN-CW-102D.pdf - (latest version, Exhibit 118 - ANR Item 3) SBRMP
6) Exhibit 080-23 - CW-102A Wetland Impacts – Base Lodge; Hotels, Ski Trail.pdf - (same plan as No. 3)
7) Exhibit 080-24 - CW-102A1Wetland Impacts – Hotels; High Country.pdf - (same plan as No. 4)
8) Exhibit 080-24A - Wetlands MTN-CW-102A1.pdf - (same plan as No. 3)
9) Exhibit 080-27 - CW-102F Wetlands Impacts – Hermitage Inn, HI Lots.pdf - (latest version was included in the response to Jen Duggan's Comments submitted on July 27, 2016)
10) Exhibit 080-28a - CW-101C Wetland Impacts – Mountain Coaster.pdf (same plan as No. 1)
11) Exhibit 080-28b - CW-101D Wetland Impacts – Mountain Coaster.pdf (same plan as No. 2)

Conclusions of Law:

The Commission concludes that parts of the Base Tract are conceptually eligible for wetlands permit coverage, subject to final wetlands applications for each phase, and possible design changes that may be necessary to comply with the Vermont Wetland
Rules. Final ANR Wetland Permits will be required for each construction stage of development. The parts of the Base Tract that the Commission can conceptually conclude that there will be positive findings in the future include: building and road construction, tree planting, grading/fill, and tree clearing for Mountain Coaster. Tree clearing for ski trails is not included in this Master Plan application and so it has not been reviewed. The Commission concludes that the proposed Mirror Lake expansion is not conceptually eligible for wetlands permit coverage and the Commission cannot conceptually conclude that there will be positive findings in the future. The Mirror Lake expansion may have an undue adverse impact that cannot be mitigated or compensated for under Criterion 1(G). Furthermore, the Commission wishes to make clear that any compensation that includes fees for any wetland impacts on the Base Tract shall be strictly limited to creating or restoring wetlands in the Deerfield River Watershed in Vermont.

SECTION 6086(a)(2 & 3) WATER AVAILABILITY AND IMPACT ON EXISTING SUPPLY:

Findings of Fact:

49. The Applicant has an agreement with the Cold Brook Fire District (“CBFD”) dated May 11, 2012 for water supply infrastructure that will serve: “Rushing Creek Village, High Country Village, Fawn Ridge Village, the so-called McGovern Lots in Haystack Village West, and the Hermitage Inn Properties.” Exhibit 23.

50. Water is currently supplied by the CBFD municipal water system at approximately 30,000 gallons per day (actual flow). Exhibit 23

51. All existing Hermitage water supplies outlined for this Master Plan Application are shown on Exhibits 63, 65. The primary source of water for the Base Tract is Well #9. This well produces 150 gpm and has been connected to the CBFD’s municipal water system. A second well at the Summit of Haystack Mountain (estimated to be in excess of 100 gpm) meets setbacks for a public well and could be developed in the future if deemed necessary. The Golf Tract has its own water system, as does the Hermitage Inn.

Conclusions of Law:

Criteria 2 and 3 require that a project or development “has sufficient water to meet its reasonably foreseeable needs” and “must not cause unreasonable burdens on an existing water supply”. 10 V.S.A. § 6086(a)(2)&(3).

Based on the information provided, the Commission cannot conclude that there is enough water to meet the demands of the project. The Commission requested and did not receive a current agreement with CBFD. The Applicant will be required to provide Water Supply and Waste Water Permits from ANR to demonstrate that there is an adequate water supply for each construction phase of the Master Plan as well as a
current agreement with CBFD and evidence of CBFD upgrades to the water supply system will be required to support the full build-out of the Hermitage Master Plan.

SECTION 6086 (a)(4) SOIL EROSION AND THE CAPACITY OF THE LAND TO HOLD WATER:

Findings of Fact:

52. Erosion control measures include flagging limits of disturbance (LOD), siltation fencing, uphill diversion swales, temporary sediment ponds, stone filter check dams, stoned construction access points, natural fiber erosion control matting (no plastic), hydro-seeding, wild turkey grass seed mix, and wood chips. Permanent erosion control measures include permanent seeding, sodding, stone lined ditches, permanent treatment storm-water ponds, shrubs, trees, and energy dissipaters.

53. The Hermitage inspects erosion control daily during winter months and weekly during summer months. The OSPC (on-site plan coordinator) is on the site daily and does daily inspections and reports. The ESPCS, (erosion and sediment plan control specialist) inspects weekly and provides weekly reports to Act 250 and the Vermont Solid Waste Management Division (VTSWMD). The contractors sign erosion control permit applications as co-permittees and are held accountable for all maintenance. The Hermitage on-site construction manager is in charge of daily inspections. Weekly reports to ANR and the District Commission are prepared by a Professional Engineer.

Conclusions of Law:

Criterion 4 provides the Commission cannot issue a permit unless it finds that the Project “will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.” 10 V.S.A. § 6086(a)(4).

The Commission is unable to make affirmative findings under this criterion because there is not yet sufficient evidence. Future applications will include ANR Stormwater permits.

SECTION 6086 (a)(5) TRANSPORTATION:

Findings of Fact:

54. The Applicant has assessed the transportation conditions at Haystack Ski Area and the Hermitage Inn in Wilmington and West Dover, Vermont. The existing transportation operations and future expected transportation operations conditions
(2024 No Build and 2024 Build) have been evaluated. The Applicant’s consultant collected traffic count data at the study area intersections during higher than average skier weekends and holiday periods during the afternoon peak period of the area (3:00 PM to 5:00 PM). Using VTrans data, all traffic volumes were adjusted as necessary to represent 2014 Design Hourly Volume conditions. Exhibit 32A.

55. In order to adjust to a 2024 condition without the Master Plan projects in place, the traffic from over 200 residential units currently permitted in the area was determined and added to the 2014 traffic volumes that had been increased for background traffic growth. The Applicant’s consultant performed trip generation analysis for the proposed redevelopment for the peak hour using the industry standard, Institute of Transportation Engineers publication “Trip Generation, 9th Edition,” in addition to local data. Based on the location of the proposed hotel and residential units, it is anticipated that a number of trips will be made on foot between the hotel and residences and the recreation opportunities available, specifically skiing and the amenities at the Hermitage Inn. Shuttle service through the resort, especially associated with the hotel trips, will also reduce trips. As a result, up to 35 percent of the peak hour trips to some of the components were assigned to walking, skiing and shuttle trips internal to the development. The stop controlled approaches at the unsignalized intersections are currently operating at level of service (LOS) C or better during the peak hour. Exhibit 32A.

56. The Applicant’s traffic study analyzed the following intersections:
   - Handle Road at Tannery Road
   - Handle Road at Hermitage Access
   - Coldbrook Road at Village Road East
   - Coldbrook Road at Haystack Access
   - Coldbrook Road at Mann Road
   - Route 100 at Coldbrook Road
   - Route 9 at Haystack Road
   - Route 9 at Route 100
   - Route 9 at Route 100 South

   Exhibit 32A.

57. The addition of the Hermitage Club Master Plan traffic will increase delay at the unsignalized intersections approximately six seconds per vehicle. Exhibit 32A.

58. At the Route 9 and Route 100 intersection where the level of service is at a “D,” the Master Plan Project related traffic is anticipated to increase delays approximately nine seconds. Exhibit 32A.

59. Parking spaces and parking areas are provided on the site plan and meet zoning requirements when applicable. Parking garages and underground parking will be provided for the proposed condo hotel sites. All residences will have 3 parking spaces or as required by local zoning.
60. Working with VTrans, the Applicant proposes mitigation at the Route 9/100 intersection in Wilmington. The Applicant will provide new controller technology to ensure optimal operations at the intersection. The cost of this equipment is estimated at $50,000, and the Hermitage will assume the entire cost of the upgrade. Testimony and Exhibit 32B.

61. Pedestrian and safety improvements at the intersection of Handle Road and Tannery Road will be implemented as a part of the Hermitage Club Master Plan. Finally, in the vicinity of the Hermitage Inn and Hermitage Club driveways, the Applicant will install pedestrian warning signs and investigate lowering the speed limit in order to ensure safe travel for vehicles and pedestrians. Exhibit 32A.

62. The Club encourages all types of outdoor recreation activities including walking and bicycling. The snowmobile trails may be used during summer months for walking, bicycling or horseback riding. These activities are encouraged on the property, and also on the Valley Trail on lands formerly owned by the Hermitage, connecting Wilmington and Dover.

63. There are no sidewalks planned for inside the resort, with the one exception of a future walkway along Gatehouse Trail, leading from the northern most Hotel in the current maintenance area, across the bridge over tunnel ski trail with connection to the Base Lodge.

64. As outlined above, to reduce the number of vehicle trips generated by the Master Plan, a shuttle system will be provided to serve guests. In addition, many members and guests will have the ability to ski in and out of the residences and hotels, reducing the number of automobile trips necessary. The Hermitage Club will attempt to reduce critical trips through the intersection of VT 100 and VT 9 by creating employee shifts that avoid exiting during the critical peak hours as well as by providing ride-matching services for any interested employees. The Hermitage Club will provide members and guests with alternative routes either to avoid the intersection entirely or to pass through the intersection avoiding the critical movements. The Hermitage Club will also work with Mount Snow to provide members and guests with up-to-date information on queues at that intersection. Exhibit 32B.

65. The Hermitage Club has a Transportation Demand Management Plan (“TDM”) for Hermitage Club at Haystack Mountain. The Project includes a program to reduce peak hour vehicle trips. The residential condominium hotels, as well as many of the residences, will have direct access to ski trails, eliminating the need for travel to and from the Mountain. In addition, the Hermitage Club has its own bus transportation system available to all members and guests every day, all year. Currently there are three Sprinter Vans that travel throughout the Deerfield Valley from Wilmington to Dover and Mount Snow as well as internally. Exhibit 32B.
66. A TDM plan is a plan to reduce the number of vehicular trips to a site, especially during the critical peak hours, either by encouraging alternative modes or by encouraging options that accommodate more than one person per vehicular trip. The Hermitage Club has previously discussed a number of the components of its plan in the Transportation Master Plan and other written correspondence as well as in the public hearing process. However, the entire plan is provided below. Hermitage Club has already implemented these efforts:

- The HR Director has been assigned to manage and track the TDM program to ensure that these efforts are implemented and their benefits maximized.
- The Hermitage Club typically has staggered shift schedules for its employees. Unlike an office environment or other standard employment, the Hermitage Club employees do not follow a 9 to 5 shift. Based on the variety of positions and shifts to handle operations, skiing and other recreation, food and beverage, housekeeping, etc., only a minimal number of employees commute during the critical peak hours. All supervisors and employees will be reminded each year during orientation that shift change should not occur during the peak 3:00 to 5:00 PM period and that all attempts should be made not to commute during that time period. Management will continue to consider traffic impacts in future shift scheduling.
- The Hermitage Club offers transit options for both employees and guests. As outlined in previous correspondence, the Hermitage Club provides a frequent employee shuttle to each of its housing and parking facilities. The presence of this employee shuttle ensures that even late night service employees will have a transit opportunity. At peak employment (400 employees), this service accommodates 170 employees, reducing the potential number of vehicle trips.
- Secure employee bicycle parking will be provided on the Hermitage Club site to encourage this mode of travel as well. The Hermitage Club resort shuttle reduces the number of guest trips by offering guests the option of leaving their personal vehicles at home and traveling via shuttle throughout the resort. As density increases, this service will provide more rides for larger groups between destinations reducing vehicle trips.
- To reduce impacts at the intersection of Route 9 and Route 100, the Hermitage Club encourages guests to approach and depart the Hermitage Club using routes that avoid that intersection. In the event that visitors need to pass through that intersection, they are directed to utilize Haystack Road and Mann Road. This route creates more through trips through the intersection instead of the critical southbound left turns that cause additional delays, especially in peak periods.
- The design of the Hermitage Club site which encourages ski in/ski out trips reduces a significant number of automobile trips over the course of the weekend. The provision of connections to the majority of the units ensures that members and guests do not need to drive to skiing (the highest generator of trips each day). This extensive trail network mitigates as many as half of the guest trips each day.
The provision of an extensive trail system throughout the Hermitage Club encourages walking trips. The snowmobile and in-village ski trails may also be used for walking between site locations. During the summer, all trails may be used for walking, bicycling, and horseback riding.

The following programs are currently being implemented:

- The TDM coordinator will implement a ride sharing program for interested employees. All employees who drive to work will be asked to participate in the program and incentives will be provided for those who participate, i.e. random drawings for gas cards, etc. Although it is standard practice to incentivize ride sharing with preferential parking, the Hermitage Club model of having its employees park off site and shuttle to work does not lend itself to this benefit.
- Any employee who participates in a rideshare, who experiences an emergency during the day that requires that employee to leave earlier than his/her ride, will be guaranteed a ride home as a part of this program (arranged with other staff or a cab service).
- An activity program will be promoted on Sunday evenings in an attempt to encourage members and guests to spend more time at the Resort on Sundays and avoid the peak congestion period.
- The Deerfield Valley Transit Authority runs the MOOver, a shuttle service that serves the Mount Snow Valley (“MOOver”). Discussion between MOOver and the Hermitage is ongoing.
- As indicated in the Transportation Master Plan, the use of alternative modes is anticipated to reduce the number of peak hour trips at full build out by 30 percent. The total PM peak trip generation was estimated at 327 peak hour trips and 99 of those trips were anticipated to be made via walking, skiing, shuttle and ridesharing. This provided ACT 250 with a targeted TDM goal for the Hermitage Club.

Exhibit 32C.

Conclusions of Law:

Criterion 5 provides that, before granting a permit, the board or district commission shall find that the subdivision or development:

(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation, existing or proposed; and

(B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. In determining appropriateness under this subdivision (B), the District Commission shall consider whether such a
strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision. 10 V.S.A. § 6086(a)(5).

The Commission will also require that for each application for a construction phase the applicant will demonstrate that the anticipated traffic flows are within the prescribed limits in the applicant’s traffic study; the transportation improvements have been constructed as planned; the TDM is effective; and the traffic control signal for Route 100/9 has been installed.

SECTION 6086(a)(6) EDUCATIONAL SERVICES:

Findings of Fact:

67. At its peak of construction activity, the Project will generate nine to ten additional students in the Town of Wilmington and 33 to 34 additional students in the region. In the long term, the Project will generate seven to eight additional students in the Town of Wilmington and 25 to 26 additional students in the region.

68. Total enrollment in the Wilmington Elementary School decreased by 25 students over the past five years. Therefore, the elementary school has more than adequate capacity to handle eight to nine new students. Similarly, enrollment in area schools decreased by a cumulative total of more than 110 students over the past five years. Therefore, area schools have more than adequate capacity to handle 33 to 34 new students. Exhibit 6D.

Conclusions of Law:

Criterion 6 requires that, before issuing a land use permit, the Commission must find that the proposed project “will not cause an unreasonable burden on the ability of a municipality to provide educational services.” 10 V.S.A. §6086(a)(6).

The Commission does not require additional information under this Criterion and issues affirmative findings valid for ten years.

SECTION 6086(a)(7) MUNICIPAL SERVICES:

Findings of Fact:

69. The project will generate $1,016,800 in annual, additional municipal costs. The project will generate $2,086,000 in annual, additional municipal revenues. Exhibit 41.

70. The Town of Wilmington and the Hermitage signed an agreement that includes conditions related to the following topics: Water Supply; Fire Prevention/Hazard Mitigation; Village Buildings; Fire Equipment; Fire Training. Exhibit 6F.
71. The Hermitage will donate $302,438 to the Town of Wilmington for the purchase of fire apparatus. Exhibit 6F.

72. The Hermitage will pay for training for high-rise buildings approved by the Fire Chief of the Wilmington Fire Department. The cost will not exceed $35,000.

**Conclusions of Law:**

Criterion 7 requires that, before issuing a land use permit, the board or district commission shall find that the proposed project “[w]ill not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.” 10 V.S.A. § 6086(a)(7).

The Commission does not require additional information under this Criterion and issues affirmative findings valid for ten years.

**SECTION 6086 (a)(8) AESTHETICS, SCENIC BEAUTY, HISTORIC SITES, RARE AND IRREPLACEABLE NATURAL AREAS:**

**Findings of Fact:**

**Aesthetics and Scenic Beauty**

73. The architectural theme for the Base Tract is highly consistent throughout the development area and consists of rustic, post and beam, natural wood, barn style and New England style homes with classic colonial, or sugar house design. A number of elevation drawings and architectural renderings have been provided in prior submissions for construction elements in the Master Plan. There will be very limited signage, only as necessary to identify location of villages, golf course, ski area. Typical 911 house signage can be seen in Exhibit 34A. The signs are black and white with the following dimensions: 12" x 16" on each individual house or post with 2" numbers, 1 1/2" letters. All parking lots and streets will have downcast exterior street lighting and all units will have downcast exterior entranceway lights for safety and convenience. All exterior lighting will be down shielded and meet current energy efficiency standards. Exhibits 34 and 34(E).

74. Existing mature trees will be protected and maintained to the maximum extent possible given construction requirements. Landscape designs for each construction phase will be reviewed and approved by the District Commission. Tree and shrub plantings will be accomplished by local landscaping companies for all Hermitage residences and buildings.

75. A helicopter landing pad located at the southern end of the main parking lot at the clubhouse is mentioned in some exhibits but was specifically not reviewed under Criterion 8 as it relates to Noise.
Historic Sites

76. Hartgen Archeological Associates, Inc. (Hartgen) was retained to conduct Phase IB Archeological Investigations on two parcels of land proposed at the Hermitage Club [Base Tract] on Haystack Mountain, located in the Towns of West Dover and Wilmington, Windham County, Vermont (Map 1). An Archeological Resource Assessment (ARA) was conducted by Hartgen in 2013 for the overall Hermitage Club development. The ARA identified two areas of pre-contact sensitivity within the Haystack Mountain area of development [Base Tract], including the proposed location of Siegel Pond, and High Country Estates residential development.

77. Siegel Pond: The Phase IB archeological field survey was conducted on June 3 and June 10-12, 2015 by a crew of Hartgen archaeologists. The survey entailed the excavation of 68-50 cm (1.6 ft) square shovel test pits (STPs) systematically placed at 10 meter (33 foot) intervals, within the archeologically sensitive portions of the proposed Siegel Pond project area (Map 2). The shovel tests were placed at 10 meter (33 foot) intervals, according to VDHP guidelines, in areas of level terrain. Excavated soil was passed through 0.25-inch hardware mesh and examined for both pre-contact (Native American) and historic artifacts. Excavation of shovel tests was conducted with hand tools, including shovels and trowels. All of the shovel tests were excavated into an intact C horizon subsoil. The deposits were excavated by natural strata. The stratigraphy of each test was recorded including the depth, soil description and Munsell color. Photographs were taken characterizing the project area and archeological excavations.

78. High Country Estates: The proposed High Country Estates Development entails the construction of three new homes and associated driveways. The home sites are approximately 1.2 acres in area, with the house footprint each measuring approximately 0.67 acres in size. In the ARA, a portion of the proposed housing development was determined to be sensitive for pre-contact resources and Phase IB archeological survey was recommended prior to construction. The area of sensitivity is characterized as a small terrace overlooking the convergence of two small unnamed streams (Photos 6 and 7). While the three home sites encompass a total area of approximately 3.6 acres, the archeological sensitivity area was limited in location and size, measuring approximately 0.15 acres in size.

79. The Phase IB archeological field survey was conducted on July 16, 2015 by a crew of two Hartgen archeologists. The survey entailed the excavation of eight-50 cm (1.6 ft) square shovel test pits (STPs) systematically placed at 10 meter (33 foot) intervals or less, on areas of level terrain within the archeologically sensitive portions of the proposed High Country Estates project area (Map 3). Excavated soil was passed through 0.25-inch hardware mesh and examined for both pre-contact (Native American) and historic artifacts. Excavation of shovel tests was conducted with hand tools, including shovels and trowels. All of the shovel tests were excavated into an intact C horizon subsoil. The deposits were excavated by natural strata. The
stratigraphy of each test was recorded including the depth, soil description and Munsell color. Photographs were taken characterizing the project area and archeological excavations.

80. In summary, the Phase IB archeological surveys conducted for the proposed Siegel Pond and the High Country Estates project areas identified no pre-contact artifacts or potentially significant historic deposits. The Phase IB archeological survey recommended that the results of the Hermitage’s investigation be submitted to the U.S. Army Corps of Engineers and the Vermont Division of Historic Preservation for review and concurrence. Exhibit 36C

Rare and Irreplaceable Natural Areas

81. In support of its master plan application, the Hermitage has provided substantial information on any existing rare and irreplaceable natural areas on the Mountain which includes Exhibit 79 (reference APPENDIX E - email correspondence with Vermont's State Botanist):

There are two likely Class 2 wetlands with Rare, Threatened or Endangered (RTE) vegetation present and potential impacts resulting from the Master Plan. In the case of RTE Species, Muhlenbergia uniflora, in wetland #705, it's unlikely that the wetland would be impacted, but the RTE population extends well outside the wetland itself so the disturbance limits of the Upper Mountain Trailside Home development might touch the plant population. Any impacts will be fully mitigated in accordance with ANR recommendations. Arrowwood Environmental (AE). Exhibit 79.

82. Final construction drawings have not commenced for the Upper Mountain Trailside Homes (near wetland #705) and a more formal review will occur during final design. The Applicant has indicated that the conceptual plans for the Upper Mountain Trailside Homes are being reworked primarily to reduce the grade of the access road and to avoid potential impacts. We have received assurances and we will require that the Hermitage work closely with ANR’s Wildlife Botanist to fully avoid or fully mitigate for any potential impacts. Exhibit 79 (Appendix E):

The Agency of Natural Resources typically requests mitigation for impacts greater than 20% of a population of a rare plant (ranks S1, S2 or S2/S3). At this site, ANR was concerned mainly about the larger populations of the rarer species and provided a list of these species. (Bob Popp, ANR Botanist, personal communication 2014; Appendix E) This list is shown in Table 3 [in the Arrowwood Report].

RTE Species, Muhlenbergia uniflora, is also located in wetland #706. Since the Mountain Coaster plan isn't fully developed it's not yet clear how
much, if any impact to the plant population there would be, so we can’t really comment on avoidance or minimization other than to say the final project design will avoid impacts to the extent possible. Aaron Worthley, Arrowwood Environmental, Inc. – email to Robert Popp at ANR, October 5, 2015.

Conclusions of Law:

Criterion 8, provides before issuing a permit, the Commission must find the proposed project “will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare or irreplaceable natural areas.” 10 V.S.A. § 6086(a)(8).

Aesthetics: The Applicant shall address this criterion more fully with each application for construction elements of the Master Plan for the Base Tract, including final details regarding architectural styles, landscaping, and lighting. The helicopter landing pad has not been reviewed by the Commission and would require a noise study if it is applied for in the future.

Historic Sites: The Applicant shall consult with the Vermont Division for Historic Preservation before submitting applications in areas that are potentially archeologically sensitive. This Criterion will be more fully addressed in individual applications.

Rare and Irreplaceable Natural Areas: The Applicant shall work closely with ANR during final design for the Upper Mountain Trailside Homes and the Mountain Coaster to avoid or sufficiently mitigate any potential impacts to any identified “rare and irreplaceable natural areas” on the Base Tract. The Commission will require evidence that this issue has been addressed in applications for construction of these elements of the Master Plan.

SECTION 6086 (a)(8)(A) NECESSARY WILDLIFE HABITAT AND ENDEANGERED SPECIES:

Findings of Fact:

Necessary Wildlife Habitat and Rare, Threatened and Endangered Species (RTE)

83. The Project site includes two types of necessary wildlife habitat: Bicknell’s Thrush breeding and nesting habitat and black bear scarred beech habitat. The Project site also contains Montane Forest Habitat which is a rare, natural community. Exhibit 080-3.

84. There are Montane Spruce-Fir and Montane Yellow Birch-Red Spruce-Fir Forest communities along the summit and upper elevations of the Haystack ski slopes. All the Hermitage Haystack Mountain property above 3000 feet, as well as, contiguous
montane forest fir habitat below 3000 feet is necessary breeding and nesting habitat for Bicknell’s Thrush (BITH). BITH is a rare "Species of Special Concern" throughout the northeast. Human activity and disturbance can cause BITH to abandon nests and can affect the productivity of breeding and nesting pairs, constituting significant imperilment of BITH habitat. Exhibit 79.

85. Projects associated with the Master Plan that impact BITH habitat include a proposed ATV trail which will utilize existing ski area work roads and be entirely within existing cleared ski trails and will require date and use restrictions if it is permitted. Exhibits 38 and 79.

86. The upper end of the Mountain Coaster is over 1500' away from the Montane Forest natural communities. Exhibit 79.

87. Lift lines and trails in the mapped BITH habitat as depicted in Map B in Exhibit 20 / Exhibit 38 of The Hermitage Club Wildlife Habitat Management Plan November 2015, and a 300-foot buffer zone around the mapped BITH habitat, shall be closed to all recreational activities including but not limited to: tours, hiking, biking and motorized vehicle use between May 15 and July 1. Exhibit 38.

88. Recreational use of the lift lines and trails in the mapped BITH habitat as depicted in Map B in Exhibit 20 / Exhibit 38 of The Hermitage Club Wildlife Habitat Management Plan (November 2015), and a 300-foot buffer zone around the mapped BITH habitat, shall be limited exclusively to foot traffic from July 1st to August 1st. Pedestrian recreationists may access the summit via chairlift during this time period. The chairlifts shall operate between the hours of 11am and 4pm on weekends only. Exhibit 38.

89. Hermitage shall request that neighbors owning or controlling Haystack Pond and the Deerfield Ridge Trail to Mt. Snow close trails through Bicknell’s Thrush nesting habitat from May 15 to August 1. Exhibit 38.

90. Closed trails owned by the Hermitage shall be marked as closed with clearly observable signage. In addition, closed trails shall be barricaded with a physical obstruction that renders the trail impassible by motorized or mechanized means. Signs shall explain why the trail is closed and that violators will forfeit lift tickets and the right to recreational use of the trails. Exhibit 38.

91. Recreational trail users shall be provided with written materials on wildlife issues and the importance of staying on designated trails. All recreational users of motorized or mechanized vehicles shall be required to review a video containing information regarding wildlife, promoting safe interactions with wildlife and environmental awareness. The written materials and video shall be reviewed and approved by the Vermont Fish and Wildlife Department. Exhibit 38.
Black Bear Habitat - Haystack Mountain

92. The bear scarred beech area and the buffer around the bear scarred beech area on Haystack Mountain have been identified by ANR as necessary wildlife habitat because bear scarred beech provides critical feeding opportunities for black bears. In addition, buffers from human disturbance are necessary to ensure that the bears will continue to use this critical habitat. Cumulative impacts of the Project and any proposed development within the buffer will significantly imperil necessary black bear feeding habitat on Haystack and requires suitable mitigation. Exhibit 38.

93. There is no new development proposed within the mapped black bear scarred beech habitat, including but not limited to: construction of any buildings or structures; trail construction; widening existing trails; and clearing existing trails. Exhibit 38.

94. There will be no further development in the buffer of the bear scarred beech area above (to the north) of the Tage Lift line. The Department of Fish and Wildlife will never support development of any kind in this area. Exhibit 080-3.

95. Hermitage shall convey a permanent conservation easement (Grant of Development Rights and Conservation Restrictions) to the Department of Fish and Wildlife that includes at least 133.8 acres of bear scarred beech and associated bear scarred beech buffer as depicted on the Bear Mitigation Map. The Grant shall include legal access or a right-of-way to the protected property. The form and terms and conditions of the Grant must be acceptable to the Department of Fish and Wildlife. The Hermitage shall be responsible for all the work required for the conveyance, including but not limited to: a survey, a baseline documentation report, a habitat and forest management plan, deed descriptions, property transfer forms, and recording of the Grant deed, all subject to Department of Fish and Wildlife review and approval. Exhibits 38 and 94a.

96. There are existing ski trails on Haystack Mountain that are within the mapped black bear scarred beech: Outcast, Last Chance, Witches, and Hazel. The Hermitage will ensure that all uses are avoided on these trails in all months except the winter ski months. These uses include but are not limited to: tours, hiking, biking, and motorized vehicle use. Exhibit 38.

97. Snowmaking may not commence prior to December 1 on the Outcast Trail, the Last Chance Trail, and lift lines and other trails within the bear scarred beech habitat and buffer zone as depicted in Map E of Exhibit 38.

98. The Tage Lift which is located within the mapped bear scarred beech habitat and buffer zones shall only be operated during the ski season. However, the Hermitage may conduct fall foliage lift-line tours and snowmaking in this area between September 1st and December 1st with the Department of Fish and Wildlife’s and the District Commission’s written permission, when beech nut production is low. Exhibit 38.
99. The Site Plan that depicts an access road and horse barns on the “Kingsley Parcel” (see Exhibit 131) is specifically not included in this Master Plan as it has not been reviewed by ANR or the District Commission. Any cutting or construction that is proposed on this parcel has not been reviewed under Criterion 8(A) or any other Criterion and is not included as an affirmative finding or conceptually affirmative finding.

100. Mowing ski trails will only take place during August 1st and September 1st. Exhibit 38.

101. The cross-country ski trails that are uphill of the Hermitage Inn will be closed to all recreation during all seasons except the ski season. Exhibit 38.

102. The Hermitage will require bear-proof trash and recycling containers. The Hermitage and/or the homeowners associations for each development will be responsible for educating employees and/or residents and providing written instructions about the importance of making garbage and food unavailable to bears and how to make the garbage and food (including pet food and bird seed in non-winter months) unavailable to bears. Exhibit 38.

103. The “mountain coaster” will have a 150 foot buffer of trees and vegetation on the south between the outside Lower Dutchman and Witch Hazel trails. Exhibit 38.

**Conclusions of Law:**

Criterion 8(A) provides that: a “permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species, and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied, or

(iii) a reasonable acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.”

10 V.S.A. § 6086(a)(8)(A)(i)-(iii).
The Commission can conceptually conclude that there will be positive findings in the future based on the transfer of the permanent conservation easement as described above and adherence to all above findings which will be incorporated as permit conditions in future construction permits. The Applicant shall work closely with the ANR in order to fulfill such permit conditions for each construction phase of the Master Plan so that no undue adverse impacts occur to the values protected under Criterion 8(A).

SECTION 6086(a)(9)(A) IMPACT OF GROWTH:

Findings of Fact:

104. The Commission incorporates, by reference, findings under Criteria 5, 6, and 7 above.

105. The towns of Wilmington and Dover do not have duly adopted capital programs.

106. The Project is oriented toward seasonal lodging accommodation use and will have minimal, if any, year-round occupancy. At completion, the Project's year-round average occupancy level - or "effective population" - will be approximately 842 persons, a 28 percent increase over the Town of Wilmington's current "effective population" level. During peak periods (at completion), it is projected that the Project's occupancy (effective population) will be approximately 2,839 persons, a 38 percent increase over the Town of Wilmington's current peak population level. Exhibit 41.

107. At completion, it is projected that the municipal costs will be $1,016,800 and the Project will generate $2,086 million in annual municipal property taxes (estimated based on current municipal property tax rate). Exhibit 41.

108. At completion, the Project is proposed to generate $5.876 million in annual Education Fund revenues (based on current tax rate). Assuming that the student population in Wilmington increases by a maximum of eight students as a result, the build out of the Hermitage Project, the Hermitage Project will annually contribute $734,500 per student to the Education Fund.

109. Wilmington’s population has declined in recent years. However, the Hermitage Club employment will draw from a broader geographic area than the town alone and that the variety of jobs that are created in a Resort/Club business will allow the operation to draw from a number of labor pools. A recreational resort often offers the following types of jobs: Full-Time, Year-round positions; Part-Time, Year-Round positions; Full-Time, Seasonal positions; Part-Time, Seasonal positions. These positions may be filled by area residents; second home owners; internationals; and migrants. Exhibit 41.
110. The Memorandum of Understanding between the Hermitage and the Town of Wilmington Planning Commission is fully incorporated into these findings as memorialized in Exhibit 97A.

Affordable Housing

111. It is the intent of the Hermitage Club to honor its Agreement with Vermont Housing and Conservation Board, dated December 1, 2006, in accordance with the applicable conditions of Land Use Permit #700002-18 in order to provide the equivalent of nineteen (19) affordable housing units in the Towns of Dover, Wilmington or Whitingham. Payment will be $270,000 or include three percent interest if made in installments. The payment is $600 per residential housing unit. This Agreement is based on the proposed construction of 450 residential units on Haystack Mountain as outlined in the Agreement and in Master Plan application # 7000002-18. The Hermitage is up to date with its payments. Exhibit 83 and Testimony.

Conclusions of Law:

Criterion 9(A) Impact of Growth provides that in “considering an application, the district commission shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title, the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting, however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.” 10 V.S.A. § 6086(a)(9)(A).

The Commission is unable to reach an affirmative finding under this criterion because there is not yet sufficient evidence reconciling the number of units proposed in the #700002-18 and the number of units proposed in this Master Plan application. Future applications will include that information and a proposal for providing affordable housing units or payments for the creation of affordable housing units for the residential units not previously accounted for.

SECTION 6086(a)(9)(B) PRIMARY AGRICULTURAL SOILS:

Findings of Fact:
112. There is a total of 2.39 acres of primary agricultural soils on the Base Tract according to the Soil Matrix prepared by the Hermitage Club.

113. The Hermitage did not provide the response of the Agency of Agriculture, Food & Markets to whether the 2.39 acres of primary agricultural soils on the Base Tract meets the definition of primary agricultural soils; how much mitigation is required; and where mitigation will occur.

Conclusions of Law:

Criterion 9(B) -- Primary agricultural soils reads as follows:

A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the agricultural potential of the primary agricultural soils; or,

(i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and

(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than primary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and

(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and

(iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the land use panel.

10 V.S.A. § 6086(a)(9)(B)

The Commission does not have sufficient information to conclude that build out of the Master Plan will not reduce the agricultural potential of any primary agricultural soils. Any future projects will need to provide evidence from the Agency of Agriculture, Food & Markets that there will not be a reduction in the agricultural potential. This evidence must be from the Agency and not a response that the Applicant made to the Agency.
SECTION 6086(a)(9)(C) PRODUCTIVE FOREST SOILS:

Findings of Fact:

114. The Applicant has extensive land holdings in Wilmington and Dover. Some of the property has been categorized as "productive forest soils." The Hermitage Club has a forestry plan from 2012. Exhibit 39A.

Conclusions of Law:

Criterion 9(C) Productive forest soils provides that a “permit will be granted for the development or subdivision of productive forest soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the potential of those soils for commercial forestry; or:

(i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and
(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than productive forest soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and
(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of the potential of those productive forest soils through innovative land use design resulting in compact development patterns, so that the remaining forest soils on the project tract may contribute to a commercial forestry operation.”

10 V.S.A. § 6086(a)(9)(C).

The Commission does not have sufficient information to conclude that the Hermitage Master Plan will not result in any reduction in the potential of any productive forest soils for commercial forestry. The Applicant must update the Forest Management Plan to include all wildlife conservation easements and provide for forest management that protects the intent and values of wildlife habitat. The updated Forest Management Plan will be reviewed by the Vermont Fish and Wildlife Department and provided to the District Commission with future construction applications.

SECTION 6086(a)(9)(D & E) EARTH RESOURCES & EXTRACTION OF EARTH RESOURCES:

Findings of Fact:
115. All earth materials will be processed on-site to reduce the amount of material needed to be trucked in from Brattleboro, Bennington, or elsewhere. Blasting is usually required as ledge is prevalent throughout the region in varying amounts which are unknown until projects are construction ready. Blasting companies must be licensed in Vermont and have blaster’s insurance. Pre-blast surveys are conducted if existing infrastructure is nearby. Seismic surveys are conducted on nearby structures if within 100 feet. Blasting plans are developed on-site for each blast. Blasting mats are used to prevent blasted rock spread and to reduce noise.

116. An estimated 30,000 cubic yards (“CY”) of earth material on the Mountain will be excavated, processed and reused. The designated processing location is on the south end of the existing Base Lodge parking area, well removed from any residential dwellings. Typically about half of the excavation would be ledge, which is crushed and used as coarse aggregate for ditch lining, road bases and structural support under buildings. The rest is screened into suitable fill material, loam, and topsoil. These materials are used to finish grade around buildings and slopes.

117. The processing of material on-site prevents a significant amount of air pollution compared to trucking this material to off-site disposal areas. Thus, the proposed excavation and filling of side slopes will be an integral part of all site grading plans and will not have an unduly harmful impact upon the environment or surrounding land uses and development. In addition, the completion of all extraction and processing operations will feature full reclamation. These areas will be left by the applicant in a condition suitable for an approved alternative use or development, which includes ski area development and operations.

118. The Project has been designed to balance cuts and fills as much as possible for minimizing soil disturbance. Materials will simply be moved from the cuts to the fills as appropriate. Excess material is intended to be stockpiled in the existing parking lot south of the new base lodge area. This is a large parking lot that has ample room for stockpiling ledge, topsoil, and fill materials as removed. The applicant also intends to have a rock crusher on a temporary basis to crush ledge and obtain aggregate for use on the Project. This could reduce truck traffic and hauling from the nearest sources, which are Brattleboro, Bennington, or Jamaica.

**Conclusions of Law:**

Criterion 9(E) Extraction of Earth Resources provides a “permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material:

i. when it is demonstrated by the applicant that, in addition to all other applicable
criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and

ii. upon approval by the district commission of a site rehabilitation plan which insures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the state, except that the gravel, silt and sediment may be removed pursuant to the rules of the agency of natural resources, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resource board."


The Commission concludes that build out of the Master Plan will not prevent or significantly interfere with the extraction or processing of mineral or earth resources under Criterion 9(D).

The Commission further concludes that the Applicant has not provided sufficient information for affirmative findings under Criterion 9(E) because a reclamation plan and details related to pre-blast surveys of wells and structures and proposed notification to impacted neighbors was not submitted. Prior to making an affirmative finding for any future construction phase, the Commission will need to review site specific reclamation plans which insure that upon completion of any extracting or processing operation the site will be left by the applicant in a condition suitable for future development.

SECTION 6086(a)(9)(F) ENERGY CONSERVATION:

Findings of Fact:

119. The Hermitage Club will comply with the most recent Residential Building Energy Standards (RBES) and Commercial Building Energy Standards (CBES) as adopted by the Vermont Department of Public Service. In addition, the Applicant is using all the latest energy technology including motors and pumps; and, have installed new fan jet snow-making guns which are highly efficient.

Solar Energy

120. The Hermitage Club has signed an agreement with Alternative Energy Development Group (AEDG) to develop up to five solar sites. The majority of those sites are to be located on parcels not owned by the Hermitage Club.

121. Several sites are being investigated on Haystack Mountain but the majority of the power will be generated off-site through the State's Group Net Metering law which was expanded in recent years to include 500 KW systems which can be located anywhere in the State. Following an appropriate examination by Agency
of Natural Resources, two smaller sites may be proposed for the Hermitage property. The anticipated power generation for five permitted solar sites could offset a major portion of Resort's annual power needs.

122. The Renewable Energy Credits (RECs) associated with the solar generation of electricity will not be sold on the New England market but held by the Resort. Solar projects are subject to the review of the Public Service Board in accordance with Sections 248 and 248j of Title 30. Exhibit 81.

123. In response to the Commission’s request for more information about how the proposed yurt will conform to 9(F) the Hermitage provided:

   The yurt has been used as a very part-time warming hut for the skating season and, in light of other issues that Hermitage is addressing in this Application, has minimal environmental impacts. However, if the Commission feels that it cannot include the yurt in its approval of the Master Permit, we will remove the yurt from the property and donate it to the Wilmington School District or to an employee of the Hermitage Club.

   Exhibit 120.

Conclusions of Law:

Criterion 9(F) provides that “[a] permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 21 V.S.A. § 266 or 268. 10 V.S.A. § 6086(a)(9)(F).

The Commission cannot make final affirmative findings under criterion 9(F) based on the information submitted, due to the fact that “best available technology” is a standard which changes over time with the development of new technology, construction materials and equipment. The Commission concludes that the Applicant has not presented any evidence demonstrating that the yurt will conform to Criterion 9(F). Use of the yurt is not approved and any future application that includes use of the yurt must present evidence that the yurt conforms to Criterion 9(F). The Applicant shall submit updated information and demonstrate compliance for each component of the Master Plan Project, via submittal of more specific design information for the building portions of the Project and thus demonstrate conformance with the most current Vermont's Commercial Energy Standards (CBES) and Residential Building Energy Standards (RBES).
SECTION 6086(a)(9)(G) PRIVATE UTILITIES:

Findings of Fact:

124. Homeowners Associations, Covenants, and Bylaws have been established, and there is a partial agreement with the Cold Brook Fire District, to maintain some privately owned utilities on the Base Tract. Exhibits 23, 46, 46A, 47 and 47A.

Conclusions of Law:

Criterion 9(G) provides that a permit will be granted: for a development or subdivision “which relies on privately-owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately-owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.”

10 V.S.A. § 6086(a)(9)(G).

The Commission is unable to make affirmative findings, in part, because the agreement with Cold Brook Fire District does not describe the project the Hermitage is applying for with this Master Plan. The Commission will require an updated agreement with Cold Brook Fire District. New or amended documents relating to the establishment of Homeowners Associations, Protective Covenants, and Bylaws will be submitted during the application phase for each successive development of the Master Plan.

SECTION 6086(a)(9)(H) SCATTERED DEVELOPMENT:

Findings of Fact:

125. The Hermitage has not established that it is an “existing settlement” (see Criterion 9(L) below) even though parts of the development have been in existence since the 1960s-1970s.

Conclusions of Law:

Criterion 9(H) provides:

Costs of scattered development. The district commission will grant a permit for a development or subdivision “which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.”
The Commission is unable to make affirmative findings under this sub-criterion. See findings and conclusions for sub-criterion 9(L) below.

SECTION 6086(a)(9)(J) PUBLIC UTILITIES:

Findings of Fact:

126. Findings of Fact from Criteria 2 and 3 are incorporated by reference for Criterion 9(J).

127. On June 3rd, 2015, Green Mountain Power Corporation filed a Petition for a Certificate of Public Good with the Public Service Board for the construction of "a new distribution substation on a new site located adjacent to the existing GMP 69kV Transmission line along Ski Area Access Road (also known as Gatehouse Road or Gatehouse Trail) in Wilmington, Vermont. This new substation is proposed to be built in order to accommodate planned load growth by GMP customer, the Hermitage Club (previously Haystack), with the additional benefits of accommodating future growth and improving feeder backup to the other two area substations, which currently have very limited backup capability, particularly in the winter months." Components of the new substation will include a "15/20/25/28 MVA power distribution transformer, three distribution circuits, and related equipment." Petition of Green Mountain Power Corporation (Docket No. 8541), filed with the Public Service Board on June 3, 2015.

128. GMP has decided to allocate Hermitage costs for the new substation based on an "incremental cost associated with their project, beyond what GMP would have constructed without their Master Plan. GMP Response to PSB Memorandum dated September 30, 2015 (page 6). GMP ratepayers will not be adversely affected. The public good determination will be made by the Public Service Board in accordance with its authority and obligations under Title 30.

Conclusions of Law:

Criterion 9(J) provides that "[a] permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth."

10 V.S.A. § 6086 (a)(9)(J).
The Commission is unable to make affirmative findings under this criterion and will not be able to do so until the Public Service Board issues a Certificate of Public Good; the substation is constructed; and Green Mountain Power has certified that it is able to provide power to Hermitage projects. The Commission has outlined what information must be provided under Criteria 2 and 3 to prove that there will not be an undue burden placed on the Cold Brook Fire District, Dover, or Wilmington by the Hermitage Master Plan.

SECTION 6086(a)(9)(K) PUBLIC INVESTMENTS:

Findings of Fact:

129. The Base Tract containing the Haystack ski area is surrounded by public roads and utilities as well US Forest Service (USFS) Land, all of which are public investments under Criterion 9(K). USFS land abuts Hermitage property on the south, west, and north. The Hermitage has indicated that it will work with the USFS in the Manchester office to review all of future projects and thus insure compliance with USFS regulations and guidelines.

Conclusions of Law:

Criterion 9(K) provides:

A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including but not limited to, highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to the facility, service or lands.

10 V.S.A. § 6086(a)(9)(K)

The Commission is unable to reach an affirmative finding under this sub-criterion without additional information or evidence related to impacts on the public investments cited above.

SECTION 6086(a)(9)(L) SETTLEMENT PATTERNS
Findings of Fact:

Prior History and Existing Conditions

137. Ski area development began at Haystack Mountain in the early 1960s when approximately 1,000 acres of land on the east side of Haystack Mountain were purchased by the Haystack Ski Area, Inc. and the Haystack Corporation from various landowners in the Towns of Wilmington and Dover, Vermont. The Haystack Ski Area began development of ski lifts, trails, and a base lodge on the Lower Mountain. By 1970, ski area, resort and recreational development had occurred and was continuing on the Base Tract (consisting of the ski area and certain residential villages west of Coldbrook Road). Exhibit 50.

138. The Haystack ski area and resort experienced significant growth from 1960 through 1976, with development of the nearby golf course, and roads, sewers, water lines, houses, townhomes, ski trails, lifts and snowmaking, base lodges, administrative buildings, and other associated improvements.

139. The principal component of the Hermitage Club master plan is the redevelopment of existing base areas at Haystack, including a new base lodge, condominiums, and other residential development.

140. Wastewater from development within the Base Tract will be treated at the Cold Brook Fire District (CBFD) municipal treatment plants, and disposed of through spray irrigation systems on existing land, plus direct discharge to the North Branch Deerfield River through an existing piping network after the approved spray irrigation system discharges have been maximized.

141. There are no sidewalks planned for inside the Hermitage Club Resort, with the one exception of a future walkway along Gatehouse Trail, leading from the proposed northern most Hotel in the current maintenance area, across the bridge over tunnel ski trail with connection to the Base Lodge. However, there will be an extensive system of paths and walkways connecting various uses, as well as an interior transit system.

142. The Hermitage is not located within a "designated center."

143. The Hermitage does not currently exhibit most of the attributes of an "existing settlement." Although it is compact in form and size, it does not contain a mixture of uses (e.g. stores, churches, post office), nor does it include a substantial (50%+) residential component and that are within walking distance of each other; it does not have significantly higher densities than densities that occur outside the center; and it is served by self-contained water and sewer systems which do not extend to other portions of town, nor does it have sidewalks, public parks or greens, or other civic land uses.
Conclusions of Law

Criterion (9)(L) - Settlement Patterns requires that the Commission find:

To promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and

(ii) (I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title. 10 V.S.A. Section 6086(a)(9)(L)

Pursuant to 10 V.S.A. § 6001(16),

(A) “Existing settlement” means an area that constitutes one of the following:

(i) a designated center; or

(ii) an existing community center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

Although the Base Tract land uses are well established and have been in their geographic locations for more than half a century, this fact does not satisfy the definition of “existing settlement.” The site is not in a designated center pursuant to 10 V.S.A. 6001(3). Nor does it satisfy the definition of “existing settlement” cited above, because it does not exhibit a mix of land uses typical of a designated center. It has few commercial uses at present, no civic uses, no sidewalks, and a self-contained sewer and water system. Currently its residential density is not higher than the surrounding area. Future build-out of the master plan may well result in a compact center that exhibits most of the characteristics of an existing settlement, however the test under 9(L) is based on existing conditions, not future conditions.
Since the project is located outside an existing settlement, the applicant must address sections (i) and (ii) of Criterion 9(L) above. The applicant did not provide any information to demonstrate that the development will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and will not contribute to a pattern of strip development along public highways or that the development will incorporate infill, if confined to an area that already constitutes strip development.

Future applications for construction elements must include sufficient information to demonstrate that:

a) The specific construction project will make efficient use of land, energy, roads, utilities, and other supporting infrastructure.

b) The project will not contribute to a pattern of strip development along public highways; or

c) If the development or subdivision will be confined to an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36).

The applicant may also seek to amend the Master Plan Decision in the future in order to obtain a final conclusion of law under Criterion 9(L) for the remaining life of the Master Plan. Information that would be enable the Commission to reach a conclusion that the development on the Base Tract meets the definition of "existing settlement" would include, but not be limited to, evidence of a mixture of uses such as retail, office, civic, institutional, cultural and recreational uses that are within walking distance of each other, as well as a substantial residential component with densities that are significantly higher than densities that occur outside the development.

Alternatively, the applicant may seek to demonstrate that development associated with the Master Plan will meet subsections (i) and (ii) of this criterion.

In summary, the Commission is unable to make affirmative findings under this criterion because there is not yet sufficient evidence. The Commission will require that subsequent applications for construction of individual elements of the Master Plan project address this criterion.

SECTION 6086(a)(10) CONFORMANCE WITH THE LOCAL OR REGIONAL PLAN:

Findings of Fact:

144. The majority of the Hermitage Club Master Plan including the Base Lodge is located in Wilmington. The Hermitage Inn is located in Dover, as are several homes planned for construction.
145. The Memorandum of Understanding between the Hermitage and the Town of Wilmington Planning Commission is fully incorporated into these findings as memorialized in Exhibit 97A.

146. The 2014 Windham Regional Plan contains the following policy:

Land Use
7. Concentrate ski resort expansion and secondary growth to minimize the trend toward dispersed/sprawl development. All ski resort development shall be reviewed and approved as part of a development master plan before any individual development projects are approved in order to assess cumulative impacts of the potential growth of the development.

147. The Regional Plan addresses housing, noting that: “there are challenges that face the region with respect to housing for the entire cross section of the population. Some ‘ski town’ areas saw high rates of new development despite dramatic population declines. For example, 305 new units were constructed in Dover between 2000 and 2010 and yet the population dropped 20.3 percent. Wilmington saw a 15.7 percent population decline. These trends are likely attributable to the increase in the number of housing units used as second homes. The trend in these two ‘ski towns’ parallels others in the state such as Ludlow and Killington.”

148. The Regional Plan calls for developers to play a role in the construction of affordable housing in the region, and through Hermitage Club’s Agreement with VHCB, the Hermitage Club has agreed to contribute funds to support construction of affordable housing on a per unit basis; such that when a unit is built at the Hermitage Club a payment is made to support affordable housing initiatives as discussed under Criterion 9(A), Impact of Growth.

149. Chapter 2 of the Regional Plan is devoted to Land Use and describes the existing land use for the Built Environment and Resort Centers as follows:

Large-scale resort centers are located in the western part of the region in the Green Mountains. This plan recognizes four resort centers: Mount Snow, Stratton Mountain, Magic Mountain, and The Hermitage Club at Haystack Mountain, each of which provides recreational facilities and services and contributes to the region’s seasonal housing stock. Resort centers in the region have invested in private wastewater treatment facilities or have access to municipal facilities.

150. The Hermitage Club at Haystack Mountain provides recreational activities and housing units for sale.

Conclusions of Law:
(10) Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24. In making this finding, if the district commission finds applicable provisions of the town plan to be ambiguous, the district commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence. 10 V.S.A. § 6086(a)(10).

Based on the evidence received in this application, the Commission concludes that the proposed Hermitage Master Plan is in conformance with current local and regional plans. However, the Commission cannot make affirmative findings under Criterion 10 prior to the filing of a complete application for construction approval for each phase of the Master Plan project. For each application, the applicant shall submit an updated analysis to demonstrate compliance with the current local and regional plans. This analysis shall be based on the local and Regional Plans in effect at the time of the future application(s) for specific construction elements.

VIII. SUMMARY CONCLUSION OF LAW

Having reviewed this application for findings pursuant to Act 250 Rule 21, the District Environmental Commission hereby issues affirmative findings and conclusions of law under Criteria 6 Educational Services and 7 Municipal Services. The Commission issues preliminary findings of fact that do not support a conclusion of law under criteria: 1(Air); 1(Water); 1(A); 1(B); 1(C); 1(D); 1(E); 1(F); 1(G); 2; 3; 4; 5; 6; 7; 8; 8(A); 9(A); 9(B); 9(C); 9(D); 9(E); 9(F); 9(G); 9(H); 9(J); 9(K); 9(L); and 10. The Commission can conceptually conclude that there will be positive findings in the future under Criteria 1(E); 1(G) (in part); and 8(A). All the affirmative findings and preliminary findings are binding on all parties for a period of ten years from the date of this decision. Affirmative findings and conclusions of law as noted above do not need to be revisited unless there are "material" or "substantial" changes to the Master Plan or to the relied upon facts provided those "facts relevant to the matter have so materially changed as to render the findings of fact or conclusions of law clearly erroneous, contrary to the purposes of the Act and without basis in fact" pursuant to Rule 21. The applicant may seek to renew or revise the Partial Findings prior to expiration.

IX. ORDER

The Commission's Findings and Conclusions described above shall remain in effect for a period of ten years from the date of this decision unless there are "material" or "substantial" changes to the Master Plan. Prior to the submission of subsequent applications to construct discrete elements of the Master Plan Project, the Applicant shall produce additional evidence as outlined in the decision, including a description of materially changed circumstances, if any.
Dated at Springfield, Vermont on February 16, 2017.

By: __________________________
   Leslie Hanafin, Vice Chair
   District #2 Environmental Commission
   Natural Resources Board

Other Commissioner members participating in this decision: J. Christopher Callahan
   Julia H. Schmitz

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A). Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the $295 entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court’s website at: http://www.vermontjudiciary.org/GTC/environmental/default.aspx or call (802) 828-1660. The Court’s mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.
E-Notification CERTIFICATE OF SERVICE #700002-25

I hereby certify that I, the undersigned, sent a copy of the foregoing Partial Findings of Fact and Conclusions of Law and Order on February 16, 2017, by electronic mail to the following email addresses. All email replies should be sent to NRB.Act250Springfield@vermont.gov. Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.

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