

**Natural Resources Board**  
District #7 Environmental Commission  
1229 Portland Street, Suite 201  
St. Johnsbury, Vermont 05819

January 16, 2015

QBurke Mountain Resort LLC  
c/o EIV Technical Services  
Attn: Mike Ingram  
55 Leroy Road, Suite 15  
Williston, VT 05495  
via email to [mingram@eivtech.com](mailto:mingram@eivtech.com)

RE: Application #7C0206-15, Received January 5, 2015  
Ski Trail Lighting for Night Skiing, QBurke Mountain Resort LLC

Dear Mike,

Following consultation with the District 7 Environmental Commission, I am writing to inform you that the above-referenced application is incomplete pending receipt of additional information relevant to Criterion 8, as outlined below.

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A. § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings.

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

Please submit additional information relevant to the question of "adverse", focusing on the items bolded above. In order for the Commission to evaluate the aesthetic impact of the project, as viewed from the viewpoints identified, please include some photographs or other suitable rendering which depicts the landscape from the viewpoints, with and without the proposed lighting. Perhaps some photographs of other reasonably "identical" (or sufficiently similar) ski area lighting would be a helpful visual aid.

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, **written community standard intended to preserve the aesthetics or scenic beauty of the area**; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of **character with its surroundings** or significantly diminishes the **scenic qualities of the area**; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings.

Regarding question (1) above, please submit the excerpts from the town plan which are referenced and described in the application; please include the cover page of the town plan reviewed, with the date of the plan. Regarding question (2) above, the Commission will make this determination based on the information provided by the applicant (and other participating parties, if any); you may provide any additional analysis or information as you may wish. Regarding question (3) above, please provide information about additional or alternative designs or plans that were considered, but not incorporated into the proposal, if any; this information may include information about the cost of the rejected alternatives, and whether they would unreasonably increase the cost of the project.

The Commission's review will proceed on receipt of the information identified in this letter. **Thank you and please feel free to call me at 751-0126 if you have any questions or require additional information. I would be happy to discuss this letter with you, and offer some suggestions for your reply.**

Sincerely,

*/s/ Kirsten Sultan*

Kirsten Sultan, P.E., Coordinator

c: Agency of Natural Resources, Attn: Jen Mojo  
QBurke Mountain Resort LLC, Attn: Ary Quiros  
District 7 Environmental Commission

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). A request for reconsideration by the district coordinator, pursuant to Act 250 Rule 3(B), must be sent to the district coordinator at the above address within 30 days of the mailing of this opinion.

Effective July 1, 2013, no appeal may be taken from a jurisdictional opinion or coordinator's decision on reconsideration without reconsideration by the Natural Resources Board. Requests for reconsideration by the Board must be submitted to the Board within 30 days of the mailing of this decision or a coordinator's decision on reconsideration. The mailing address is: Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201. For additional information, see the Board's Interim Procedure on Jurisdictional Opinions and Reconsideration [<http://www.nrb.state.vt.us/policies/recon.pdf>].