

State of Vermont  
**NATURAL RESOURCES BOARD**  
**DISTRICT 7 ENVIRONMENTAL COMMISSION**  
1229 Portland Street Suite 201 - St. Johnsbury - Vermont 05819-2099

**RE:** Q Development  
111 Northeast First St. 4<sup>th</sup> Floor  
Miami FL 33132

Application #7R1355  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**  
10 V.S.A. §§ 6001-6093 (Act 250)  
**§ 6086b - Downtown Development**

## **I. INTRODUCTION**

On January 26, 2015, Q Development filed application #7R1355 (the application) for a project generally described as demolition of nine buildings, known as the "Spates block," in preparation for future development (the Project). The project is located on Main Street, Second Street, and Central Street, in the Downtown Development District designated by the state pursuant to Title 24 Chapter 76A in the City of Newport, Vermont.

The demolition project is the first phase of a planned development (not currently proposed for construction) described as a multiple-use commercial building facing Main Street, to contain 55 to 75 hotel rooms/suites, commercial spaces and retail stores at the ground/sidewalk level, a brew pub and restaurant and spa facilities.

The Applicant's legal interest is ownership in fee simple described in deeds recorded in Book 221, Pages 463 to 472 of the land records of the City of Newport, Vermont, as the subject of deeds to Q Development.

The application is being reviewed by the District # 7 Environmental Commission (Commission) pursuant to 10 V.S.A. § 6086b, and the Natural Resources Board's Interim Policy Guidance for Designated Downtown Development District Findings and Conclusions. On January 26, 2015, the Commission issued its 30-day notice of the application, which established a deadline of February 26, 2015 for its receipt of the 10 V.S.A. § 6086b (3) recommendations from State agencies. On February 23, 2015, the Applicant waived the time period, and extended the deadline to March 6, 2015, for submittal of recommendations by the State Historic Preservation Officer and the Secretary of Natural Resources.

Pursuant to 10 V.S.A. § 6086b, the Commission has reviewed this application under Criteria 1, 2, 3, 4, 5, 8, 8(A), 9(B), 9(C), 9(F), and 9(K). As set forth below, the Commission finds that the Project complies with 10 V.S.A. § 6086b (Act 250).

## **II. JURISDICTION**

Jurisdiction attaches as outlined in a jurisdictional opinion issued via Project Review Sheet on November 20, 2014 (construction of a housing project with 10 or more units is a "development" pursuant to §6001(3)(A)(iv), and demolition for a development project is land clearance preparatory to new construction and constitutes commencement of construction and is thus subject to Act 250 jurisdiction). Since the Project is located completely within the City of Newport's designated downtown development district, it qualifies for review pursuant to 10 V.S.A. §6086b Downtown Development; Findings, in lieu of obtaining an Act 250 permit.

## **III. PARTY STATUS**

The Commission received timely recommendations on this application from all of the "Downtown Agencies" except the Commissioner of Public Service and the Commissioner of Buildings and General Services, from whom no recommendation was received. No party status petition or hearing request was received.

Parties by right to this application pursuant to 10 V.S.A. § 6086b (3) who participated in the application review are:

The Applicant  
The State Historic Preservation Officer  
The Secretary of Transportation  
The Secretary of Natural Resources  
The Secretary of Agriculture, Food and Markets

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Applicant has met the burden of proving compliance with Criterion (9)(F) (energy conservation), through submittal of the application. Therefore, the application shall serve as the Findings of Fact on Criterion 9(F).

The Findings of Fact are based on the application, Exhibits # 1 - 21, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision.

##### **General Findings:**

1. The Project consists of demolition of nine buildings, known as the "Spates Block," in preparation for future development. The Project is located on Main Street, Second Street, and Central Street, in the Downtown Development District designated by the state pursuant to Title 24 Chapter 76A, in the City of Newport, Vermont.
2. The existing buildings to be demolished are wood frame construction type, or brick construction type.
3. The demolition Project is the first phase of a planned development (not currently proposed for construction) described as a multiple-use commercial building facing Main Street, to contain 55 to 75 hotel rooms/suites, commercial spaces and retail stores at the ground/sidewalk level, a brew pub and restaurant and spa facilities.
4. Pursuant to 10 V.S.A. § 6086b(3)(E), the Agency of Natural Resources (ANR) has reviewed the Project and has provided its recommendation on whether the improvements will have a significant impact on any land or facilities under its jurisdiction or on any important natural resources, other than primary agricultural soils. With respect to criteria 1 (air / water pollution), 1A (headwaters), 1D (water conservation), 1D (floodways), 1E (streams), 1F (shorelines), 1G (wetlands), 2&3 (water supply), 8 (rare and irreplaceable natural areas), 8A (endangered species; necessary wildlife habitat), 9C( productive forest soils), and 9K (adjacent public facilities, services and lands), the ANR finds that the project will not have significant impacts. With respect to criterion 1B( waste disposal), ANR identified that the Applicant has developed a final waste management plan titled "Newport Renaissance Block Deconstruction Project, Disposal and Recycling Plan – Newport, Vermont, dated 2/26/15" which was reviewed and approved by ANR's Waste Management Program on March 2, 2015. ANR concludes that, with the information provided by the Applicant, including the finalized waste management plan, the Project will not have a significant impact on any land or facilities under its jurisdiction or on any important natural resources.

The above Findings 1 to 4 are incorporated into all sections of the Findings below.

##### **Criterion 1 - Air Pollution:**

###### **Findings of Fact**

5. There will be no air pollutant emissions, noxious odors or noise pollution from operation of the Project.
6. During the construction (demolition) work the applicant will control dust pursuant to VOSHA / OSHA rules for worker safety, and American National Standards Institute for public protection.

Municipal (Newport City) water will be used to spray down the structures as the demolition happens, and this will reduce airborne particulate emissions.

7. The Project does not involve blasting or burning.
8. An Air Pollution Control permit from the Agency of Natural Resources (ANR) is not required.
9. Construction hours will be implemented, and will likely be 7:00 AM to 4:30 PM weekdays.

#### Conclusions of Law

The Commission concludes that this Project will not result in undue air pollution.

The Project complies with Criterion 1 (air).

#### **Criterion 1(A) - Headwaters:**

##### Findings of Fact

10. The Project is not located in, and has no potential to impact, a headwaters area.

##### Conclusions of Law

The Commission concludes that this Project is not located in a headwaters area as defined by this section because it is not situated in a drainage area of 20 square miles or less, is not above the elevation of 1,500 feet, is not in the watershed of a public water supply, and is not in an aquifer recharge area.

The Project complies with Criterion 1(A).

#### **Criteria 1 and 1(B) - Water Pollution and Waste Disposal:**

##### Findings of Fact

11. The demolition Project will not create additional impervious surfaces.
12. Stormwater from the project will be treated and disposed via conveyance to existing catch basins, where inlet protection will be provided, along with Best Management Practices, and daily inspection by a qualified person who will ensure that corrections are implemented as needed.
13. The Project does not include any manufacturing or industrial discharges.
14. The Project will not generate residential solid waste, additional stormwater runoff, or waste stumps from land clearing.
15. Workers at the Project will have access to sanitary facilities (e.g. temporary port o let bathrooms or access to other existing facility). Following the demolition work, the Project will not generate sewage.
16. The Project does not involve construction of any floor drains or new storm drains.
17. The Project will include removal of the existing buildings, including any existing hazardous waste component, with management and disposal of this demolition debris to be completed pursuant to the final waste management plan which has been reviewed and approved by the Agency of Natural Resources' Waste Management Program.

18. A Construction General Permit and Stormwater Discharge Permit are not required for the Project.
19. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

#### Conclusions of Law

The Commission concludes that the Project will not result in undue water pollution. The Project complies with Criterion 1(water).

In addition, the Commission concludes that the Project will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal, and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Therefore, the Project complies with Criterion 1(B) (waste disposal).

#### **Criterion 1(C) - Water Conservation:**

##### Findings of Fact

20. Municipal (Newport City) water, from an existing fire hydrant near the Project site, will be used to spray down the structures as the demolition happens (and this will reduce airborne particulate emissions). Following completion of this limited duration demolition work, the Project will not use water. Thus, it does not incorporate water conserving fixtures or other water conservation technology.

##### Conclusions of Law

The Commission concludes that the Project design has considered water conservation, incorporates multiple use or recycling where and economically practical, uses the best available technology for water conservation, and provides for continued efficient operation of these systems.

The Project complies with Criterion 1(C).

#### **Criterion 1(D) - Floodways:**

##### Findings of Fact

The Project is not located in a floodway, floodway fringe, Flood Erosion Hazard area (FEH), Special Flood Hazard Area (SFHA), or within 100 feet of a perennial stream or river.

##### Conclusions of Law

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

Therefore, the Project complies with Criterion 1(D).

#### **Criterion 1(E) - Streams:**

##### Findings of Fact

21. The Project is not located in or near any stream, nor does it involve any withdrawal of water from any stream.

##### Conclusions of Law

The Commission concludes that the Project is not on or adjacent to a stream. The Project complies with Criterion 1(E).

**Criterion 1(F) - Shorelines:**

Findings of Fact

22. The Project is not located on or near a river, lake, pond, or reservoir shoreline.

Conclusions of Law

The Commission concludes that this Project will not be located on any shoreline. Therefore, the Project complies with Criterion 1(F).

**Criterion 1(G) - Wetlands:**

Findings of Fact

23. There are no wetlands on or near the Project tract that will be impacted by the Project.

Conclusions of Law

The Commission concludes that this Project will not impact a significant wetland or the buffer of a significant wetland pursuant to the Vermont Wetland Rules. Therefore, no Wetland Permit is required and the Project complies with Criterion 1(G).

**Criteria 2 and 3 – Water Availability and Impact on Existing Water Supply:**

Findings of Fact

24. Municipal (Newport City) water, from an existing fire hydrant near the Project site, will be used to spray down the structures as the demolition happens, and use of the hydrant will be coordinated with City officials. There is sufficient municipal water available to supply the short-term needs of the Project.
25. Following completion of the Project, there will be no water demand.
26. The Project will not restrict or negatively affect existing municipal water system users, or any existing water supply.

Conclusions of Law

The Commission concludes that there is sufficient water available to meet the reasonably foreseeable needs of this Project. The Project complies with Criterion 2.

The Commission concludes that the Project will not place an unreasonable burden on an existing supply. The Project complies with Criterion 3.

**Criterion 4 - Soil Erosion:**

Findings of Fact

27. The Project site is a city block developed with structures to be demolished, some small parking areas, and gently sloped grassed lawn areas. Building foundations will remain in place, the demolition work is occurring above grade, and no specific earth disturbance is planned.

28. The Project does not require or have coverage under the Agency of Natural Resources' Construction General Permit, which addresses erosion prevention and sediment control. However, no specific earth disturbance is planned, and the Project will be constructed in accordance with a plan to prevent erosion and control sediment.
29. Any vegetated areas that are impacted by heavy equipment will be seeded and mulched; stormwater from the Project will be treated and disposed via conveyance to existing catch basins, where inlet protection will be provided, along with Best Management Practices; the erosion controls will be inspected daily during the demolition work; and the demolition contractor and construction manager will be accountable for maintenance, and ensure that corrections are implemented if needed.

#### Conclusions of Law

The Commission concludes that the Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. Accordingly, the Project complies with Criterion 4.

#### **Criterion 5(A) and 5(B) - Transportation:**

##### Findings of Fact

30. All existing access to the site will be maintained. The access to the site has been approved by the Department of Public Safety and the City of Newport Fire Department.
31. The Applicant has developed a traffic plan which establishes truck routes for the demolition Project. The roads to be used for the Project are designated truck routes.
32. Flaggers will direct trucks entering and leaving the site, to maintain safety.
33. Any temporary road or sidewalk closures will be coordinated with local officials, to maintain pedestrian and bicycle safety, and to prevent unreasonable traffic delays or unsafe conditions. Access to the demolition Project site is controlled by a 6 feet high fence which surrounds the work zone.
34. Following completion of the demolition Project, the site will not generate any traffic. Future traffic (not yet reviewed) will be evaluated as a component of the expected future application to construct the phase 2 multi-use project.
35. The demolition Project will require some temporary off-site parking, and there is sufficient public parking available nearby, to meet this temporary parking demand.
36. The Project is not in a Transportation Improvement District (TID).
37. Pursuant to 10 V.S.A. § 6086b(3)E, the Vermont Agency of Transportation (VTrans) has determined that trucking of demolition debris to the Coventry landfill and/or recycling centers will have a minimal impact on the State of Vermont's highway system, thus VTrans concludes that the demolition Project will not have a significant impact on any highway, transportation facility, or other land or structure under the Secretary's jurisdiction. VTrans further identified that it would like to review the future application and its Traffic Impact Study, and provide a response to the Commission, when this application is filed for construction the future Phase 2 multi-use project.

#### Conclusions of Law

Criterion 5(A) requires that the Project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways." See 10 V.S.A. § 6086(a)(5)(A).

Criterion 5(B) requires that a project, “as appropriate . . . 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.” 10 V.S.A. § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The Commission concludes that the Project complies with Criterion 5(A) because it will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

The Project complies with Criterion 5(A), incorporates all appropriate transportation measures, and complies with Criterion 5(B).

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

#### Findings of Fact

38. The ±1.7 acre Project site is a city block in the City of Newport, developed with 9 existing structures of various shapes and sizes, some small parking lots, and gently sloping grassed lawn areas inside the limits of the site.
39. Following the demolition Project, the site will be fenced with a 6 feet high fence, and with related signage and exterior street type lighting, which are requirements of the Department of Public Safety. The new street lighting is consistent with other existing street lights in the immediate area of the Project site.
40. In the event that commencement of construction of the future (phase 2) multi-use project is not commenced by September 1, 2017, the Project site will be temporarily or permanently restored into a useable condition (e.g. a park-like green space setting, the “Contingency Work”), pursuant to the Memorandum of Understanding (MOU) Between the Vermont Division for Historic Preservation and Q Development” [Exhibit 19], unless the September 1, 2017 date is extended by the parties to the MOU. The plan for temporary or permanent restoration into a useable condition will be subject to (additional) review and approval by the Commission, with an opportunity for input from all Parties, notably the City of Newport and its Planning Commission, prior to construction of the restoration into a useable condition.
41. The Applicant has completed an Archeological Resources Assessment (by Charles Knight, Ph.D., University of Vermont, Consulting Archaeology Program, Report No. 851, dated February 5, 2015), and a Historic Resources Review (by Catherine A. Quinn, Historic Preservation Specialist, University of Vermont, Consulting Archaeology Program, dated February 6, 2015) [Exhibits 20 and 21]. These reports indicate that the Project site is not considered archaeologically sensitive, and that the nine buildings proposed for demolition are contributing resources to the Newport Downtown Historic District, integral and significant, such that removal will have an adverse effect, and further recommends renovation / rehabilitation / reuse of the buildings, unless the buildings are found unsound / unsafe after a professional structural analysis, or this is not feasible, in which case specific recommendations include, in summary (i) additional review by DHP, perhaps in conjunction with the National Park Service, (ii) demolition should not occur unless a definitive plan is in place for rebuilding on the property, with any planned reconstruction appropriate to the historic character of the district, and (iii) photographic documentation of all nine building, pursuant to the applicable DHP standards for photographic documentation.
42. The Project site contains nine (9) buildings, all of which are listed as contributing resources in the Newport Downtown Historic District, which is listed in the National Register of Historic Places. The existing buildings on the Project site are “historic sites.” In addition, the Project is located within the Newport Downtown Historic District, which is also a historic site.

43. Pursuant to 10 V.S.A. § 6086b(3)(E) the Vermont Division for Historic Preservation (DHP) has evaluated the demolition Project. In its letter dated March 6, 2015, with attachments, (Exhibit 18), DHP recommends that the Commission find that the Project will have an adverse effect on historic sites, but not an undue adverse effect. This recommendation is based upon the stipulations included in the Memorandum of Understanding (MOU) Between the Vermont Division for Historic Preservation and Q Development" [Exhibit 19], which are generally available mitigating measures which a reasonable person would take to preserve the character of the historic site, in this case, the Newport Downtown Historic District. The Commission so finds. The information reviewed by DHP included photographs of current conditions, and letters and emails from local and state officials which addressed the current condition of the structures proposed for demolition, related safety concerns, and recommended demolition as soon as possible.
44. The impacts of the future (phase 2) multi-use project under Criterion 8 (aesthetics, historic sites, etc.) have not yet been determined, and will be evaluated by the Commission, with input from parties, as a component of the expected future application to construct the phase 2 multi-use project.
45. There are no Rare and Irreplaceable Natural Areas on the Project site.
46. There are no known community standards which the Project violates.

#### Conclusions of Law

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

#### HISTORIC SITES

The Commission uses a three-part test to determine whether the Project meets the portion of Criterion 8 relating to historic sites. The Commission determines:

Whether the Project site is or contains a historic site;  
Whether the proposed Project will have an adverse effect on the historic site; and  
Whether the adverse effect will be undue.

Re: Steven L. Reynolds and Harold and Eleanor Cadreact, #4C1117-EB, Findings of Fact, Conclusions of Law, and Order at 5 (Vt. Env'tl. Bd. May 27, 2004); Re: Manchester Commons Associates, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. Sept. 29, 1995).

1. Whether the proposed project site is or contains a historic site.

"Historic site" is defined as "any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant." 10 V.S.A. § 6001(9).

Listing on the national and state registers is a question of fact. Re: Manchester Commons, supra, at 19. If a structure is listed on the State register as an historic site, Act 250 has no discretion to declare such structure not to be historic. Re: Stonybrook Condominium Owners Association, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order at 9 (Vt. Env'tl. Bd. Sep. 18, 2001); Re: OMYA. Inc. and Foster Brothers Farm. Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Env'tl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).

Even if a site has not been listed on the national or state register, 10 V.S.A. § 6001(9) allows the Commission to declare it to be an "historic site" if it is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant. Accordingly, the Commission must

consider whether such testimony establishes a site, structure, district, or archeological landmark as historically significant. The Commission is not bound by the opinion provided by the Council, but rather, must weigh the testimony and make the determination. Re: Manchester Commons, supra, at 20.

The Project is located within the Newport Downtown Historic District, which is listed on the National Register of Historic Places. The existing nine buildings on the Project site (all proposed for demolition) are "historic sites," because they are significant contributing resources to the Newport Downtown Historic District.

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

The next question is whether the Project will have an adverse effect on the historic site, or whether the Project is in harmony with or fits the historic context of the site.

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

Re: Middlebury College, #9AO177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Envtl. Bd. Jan. 26, 1990); cited in Re: OMYA. Inc. and Foster Brothers Farm. Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Envtl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).

The destruction and removal of the historic site (the nine buildings) is an adverse impact on this historic site. In addition, the demolition and removal of the nine building component of the Newport Downtown Historic District historic site, is also an adverse impact on this district historic site.

3. Whether the adverse effect will be undue.

An adverse effect is undue if any of the following factors exists:

1. the applicant has failed to take generally available mitigating steps which a reasonable person would take to preserve the character of the historic site;
2. the proposed project will interfere with the ability of the public to interpret or appreciate the historic qualities of the site;
3. the cumulative effects on historic qualities of the site by the various components of a proposed project, when taken together, are so significant that they create an unacceptable impact;
4. the project violates a clear, written community standard which is intended to preserve the historic qualities of the site.

Middlebury College, supra at 10; cited in Re: OMYA. Inc. and Foster Brothers Farm. Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 40 (May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000); see also, Manchester Commons, supra at 22.

Regarding factor 1 above, the demolition Project will have an adverse effect on historic resources, however this adverse effect will not be undue, if the stipulations included in the Memorandum of Understanding (MOU) Between the Vermont Division for Historic Preservation and Q Development [Exhibit 19] are followed, thus the Applicant has agreed to take generally available mitigating measures, which a reasonable person would take to preserve the character of the historic site. The Commission concludes that the Project satisfies factor 1.

Regarding factor 2, the Commission understands that interpretive signage, or other suitable means of enabling the ability of the public to interpret or appreciate the historic qualities of the impacted historic site, will be developed or implemented, in coordination with the Vermont Division of Historic Preservation, in accordance with usual practices, and thus concludes that the Project will not interfere with the ability of the public to interpret or appreciate the historic qualities of the site. The Commission concludes that the Project satisfies factor 2.

Regarding factor 3, the Vermont Division of Historic Preservation has reviewed the demolition Project, including its impact on the district historic site, and has entered into a detailed MOU which the Commission understands will address potential cumulative effects, and thus the Commission concludes that the Project satisfies factor 3.

Regarding factor 4, there is no known clear, written community standard which is intended to preserve the historic qualities of the site, which the project violates, thus the Commission concludes that the Project satisfies factor 4.

The demolition Project will not have an undue adverse effect on historic sites – even though there is an adverse impact, with the inclusion of the stipulations in the Memorandum of Understanding (MOU) Between the Vermont Division for Historic Preservation and Q Development [Exhibit 19], that impact is not undue. Based on these facts, the Commission concludes that the Project will not have an undue adverse effect on historic sites.

#### Conclusion

The Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas, with inclusion of the stipulations in the Memorandum of Understanding (MOU) Between the Vermont Division for Historic Preservation and Q Development [Exhibit 19]. The Project complies with Criterion 8.

#### **Criterion 8(A) - Wildlife Habitat and Endangered Species:**

##### Findings of Fact

47. No necessary wildlife habitat or endangered species have been identified on or near the Project site (e.g. winter deer yard, bear habitat or corridors, bobcat dens, bat caves, other).

##### Conclusions of Law

Since the Project will not impact any necessary wildlife habitat or endangered species, the Commission concludes that the Project complies with Criterion 8A. The Project complies with Criterion 8A.

#### **Criterion 9(B) - Primary Agricultural Soils:**

##### Findings of Fact

48. The project tract does not contain any soils mapped by United States Department of Agriculture's Natural Resource Conservation Service (NRCS) as prime, statewide, or soils of local importance.
49. The Project site is developed with historic buildings, and no history of agricultural use of the site was identified.
50. The soils on the project tract are not of agricultural importance due to the lack of present or recent agricultural use.
51. Pursuant to 10 V.S.A. § 6086b(3)(E) the Vermont Agency of Agriculture, Food & Markets has recommended that the Commission find that the project site does not contain primary agricultural soils as defined by 10 V.S.A. §6001(15), therefore the Project will not reduce or

convert primary agricultural soils and no mitigation is required for any reduction in or conversion of these soils. The Commission so finds.

#### Conclusion of Law

Under Criterion 9(B) a subdivision or development may not result in any reduction in the agricultural potential of the primary agricultural soils or significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. Act 250 defines primary agricultural soil as either (1) important farmland soils map unit identified by the NRCS as prime, statewide, or local importance or (2) "soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities..." Based on the facts presented, the Commission concludes that the project does not contain primary agricultural soils as defined by Act 250 (10 V.S.A. §6001(15)) and, therefore, will not result in any reduction in the agricultural potential of primary agricultural soils.

The Project complies with Criterion 9(B).

#### **Criterion 9(C) - Productive Forest Soils:**

##### Findings of Fact

52. No productive forest soils are located on the Project tract because it is a small ( $\pm 1.7$  acre) site developed with 9 historic buildings in downtown Newport City.

##### Conclusions of Law

The threshold question is whether the Project involves the development or subdivision of productive forest soils. Act 250 defines productive forest soils as:

[T]hose soils which are not primary agricultural soils but which have a reasonable potential for commercial forestry and which have not been developed. In order to qualify as productive forest soils, the land containing such soils shall be of a size and location, relative to adjoining land uses, natural condition, and ownership patterns so that those soils will be capable of supporting or contributing to a commercial forestry operation. Land use on those soils may include commercial timber harvesting and specialized forest uses, such as maple sugar or Christmas tree production.  
10 V.S.A. § 6001(8).

The Project tract does not contain productive forest soils. Therefore, the Commission concludes that the Project complies with Criterion 9(C).

#### **Criterion 9(F) - Energy Conservation:**

##### Findings of Fact

53. The demolition Project will reduce energy consumption by removing older less efficient structures.
54. The additional street lighting will use energy efficient LED technology.
55. The limited duration demolition Project will involve transport of waste materials to the nearby solid waste landfill in Coventry, and does not involve any known substantive or inefficient energy usage.
56. The building energy standards under 30 V.S.A. §51 (RBES) or 53 (CBES) do not apply to the building demolition component of the (phase 1) demolition Project because it involves removal of existing buildings, and does not involve construction of any new buildings.

57. Following completion of the demolition Project, the site will not generate any specific or currently known energy consumption, other than the energy efficient LED street lighting. Future energy usage (not yet reviewed) will be determined as a component of the expected future application to construct the phase 2 multi-use project.

#### Conclusions of Law

Criterion 9(F) requires the Applicant to show that the planning and design of the Project “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.” 10 V.S.A. § 6086(a)(9)(F).

Criterion 9(F) requires the Applicant “provide evidence that the subdivision or development complies with the applicable building energy standards under 30 V.S.A. §51 (RBES) or 53 (CBES).”

As outlined above, the Commission concludes that the Project complies with Criterion 9(F).

#### **Criterion 9(K) – Development Affecting Public Investments:**

##### Findings of Fact

58. The Project is located in proximity of the Emory Hebard State Office Building.
59. The Commissioner of Buildings and General Services was notified of this application and did not submit any comments or recommendation to the Commission.
60. As identified by local and state officials, the existing buildings on the Project site create a safety concern, and demolition is recommended. The planned removal of the nine unmaintained and/or unsafe buildings is expected to help maintain the public investment in the Emory Hebard building.
61. The Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the Emory Hebard building, nor materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to the Emory Hebard building. Other than removal of existing structures, the Project does not alter conditions at or near the Emory Hebard building; the Project involves a limited duration usage of available public parking, installation of compatible street lighting, and temporary traffic impacts for which a traffic plan has been developed, and for which additional coordination with local officials will occur as a component of any temporary sidewalk or road closure during the demolition work.

#### Conclusions of Law

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the applicant bears the burden of proving that the project 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).

As outlined above, the Commission concludes that the Project complies with Criterion 9(K).

#### **V. SUMMARY CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with in the findings and conclusions of this decision, including the stipulations in the Memorandum of Understanding (MOU) Between the Vermont Division for Historic Preservation and Q Development [Exhibit 19], will comply with the applicable Act 250 criteria, 1, 2, 3, 4, 5, 8, 8(A), 9(B), 9(C), 9(F), and 9(K). 10 V.S.A. § 6086b.



