

CERTIFICATE OF SERVICE

I, Joyce Fagan, hereby certify that I sent a copy of the foregoing Act 250 Findings of Fact Re: 8B0573-3, on March 30, 2016, by U.S. Mail, postage prepaid, to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note any recipient may change his/her 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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Dated at Rutland, VT, this 30th day of March,
2016

State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #8 ENVIRONMENTAL COMMISSION

RE: Appleridge Development, LLC	Application #8B0573-3
6378 Vermont Rte. 7A	Findings of Fact
Sunderland, VT	Conclusions of Law, and Order
05250	10 V.S.A. §§ 6001-6093 (Act 250)

and

Shires Housing, Inc.
P.O. Box 1247
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I. INTRODUCTION

On September 30, 2015, Appleridge Development, LLC and Shires Housing, Inc. filed an application for an Act 250 permit for a project generally described as construction of 24 apartment units in 7 buildings on lot #3, construction of new roadway, sidewalks, lighting, landscaping, and associated utilities and infrastructure. The tract of land consists of 2.7 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on 09/23/2005 in the land records of Bennington, Vermont. Co-applicant intends to purchase.

The Commission conducted a site visit on October 19, 2015 as part of a pre-hearing conference, followed by Pre-hearing Conference Reports #1 & #2 dated October 20th & 30th, respectively. The Commission held a hearing on this application on November 9, 2015. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on March 28, 2016 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project complies with 10 V.S.A. § 6086(a) (Act 250). Nevertheless, the Commission grants a Stay of the Permit, pursuant to Section 6083(g).

II. JURISDICTION

Jurisdiction attaches because the Project constitutes a development of more than ten housing units, and is a material change to a permitted development, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. AMENDMENT APPLICATION – RULE 34(E)

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

In this application, the applicant does not seek to amend such a critical permit condition, so the Commission may consider the merits of the amendment application without conducting the rest of the Rule 34(E) analysis.

IV. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

1. The Applicants, by Gordon Black, Appleridge Development, LLC; Chris Williams, Blair Sebastian and Stephanie Lane from Shires Housing, Inc.; Matt Moore of Housing Vermont and Jason Dolmetsch, P.E., MSK Engineering.
2. The Agency of Natural Resources not represented at the hearing, but later by Entry dated 12/9/15 by Jenn Mojo, in response to the Recess Order.
3. The Town not represented.
4. The Regional Commission not represented.
5. VT Division of Historic Preservation, by entry dated 12/10/15 by Jamie Duggan.

B. At the Pre-hearing on October 19th, the Chair preliminarily granted party status to the following parties under the listed criteria. (***) indicates attendance at the November 9, 2015 Merits Hearing)

- | | | |
|-----|--|---|
| 1. | David D. and Lorraine Frederickson; *** | 1, 1B, 4, 5, 6, 7, 8, 9, 10 |
| 2. | Fronia Simpson *** | 1, 8, 9 |
| 3. | Marc Simpson *** | 1c, 8 (b and d) |
| 4. | Jeanne McKenna *** | 5, 6 |
| 5. | Judith Fellows-Miller *** | 1, 4, 5, 6, 7, 8, 9, 10 |
| 6. | Don Miller *** | 1, 4, 5, 6, 7, 8, 9, 10 |
| 7. | Mary A. Morrissey *** | 5, 8, 9 |
| 8. | Gerald Amadon *** | 5, 8 |
| 9. | Daniel Amadon | 5, 8 |
| 10. | Dorothy Roy by Mary Morrissey *** | 1, 5 |
| 11. | William and Rose Wolfe *** | 8 - Blasting |
| 12. | Bonnie and Kevin Callanan *** | 1, 2, 4, 5, 7 |
| 13. | Vic and Kathleen M. Milani *** | 1, 7 |
| 14. | Jeff Reed (by phone 10/20/15) *** | 1, 4, 5, 8 - Blasting, 9K |
| 15. | Kevin S. Mattison by Mary Morrissey *** | 5, 8, 6, 8 |
| 16. | Margaret Fletcher *** | 8 – Blasting, 5 – Pathway |
| 17. | Royda Crosland, represented by Malcolm Irons *** | 5, 8, Trees, Noise |
| 18. | Appleridge Homeowners Association by Fred Kennedy, President - *** (Common Road Agreement) | |
| 19. | Healthy Neighborhoods MBE, by David Frederickson | 1(blasting, radon), 1B, 4, 5, 6, 7, 8, 9A, 10 |

Final Party Status Determinations

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

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact are based on the application, Exhibits # 1 - 67, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A. § 6086(a) (1) - (10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. The area proposed now for housing units was originally slated to be duplexes similar to the units already built. The original permittee subsequently subdivided the tract and intends to convey the 2.7 acres to Shire Housing after permitting.

Criterion 1 - Air Pollution:

Findings of Fact

2. The units will be heated by hydronic baseboard heat from high efficiency oil/propane boilers (one located in each building).
3. During construction the applicant will control dust through the use of stabilized construction entrances and through the use of water and/or calcium chloride.
4. The project will require removal of ledge for the installation of certain building foundations. Blasting or hydraulic hammering will be used to complete the removal. Building B will require 20 cubic yards of ledge removal, while Duplex #3 will require 55 CY, to allow foundation walls to extend 6.3 feet below finish floor elevation.
5. Hours of operation will be between 7:00 a.m. and 6:00 p.m. Monday through Saturday during construction.
6. Radon gas has been detected in area homes and is expected to be present in the new units.

7. The Vermont Department of Health (VDH) and the US EPA have reliable information about radon. According to the VDH and others, radon levels can change daily, weekly and seasonally due to a variety of factors. VDH recommends that a radon test run for three to twelve months in order to obtain the most accurate results. Fractures in bedrock are an interconnected network of planar features in the subsurface and exact locations and intersections in the sub-surface are generally difficult to predict. Due to the above factors, radon measurements may vary over time in a dwelling and it would be difficult to prove that a change in measured radon was due to nearby blasting. Although pre-blast and post-blast testing would document any change in radon, it would be particularly difficult to attribute any change to nearby blasting. (ANR entry)
8. Controlled blasting and an adequate blasting plan and implementation from a reputable drilling and blasting company should not result in opening of fractures in bedrock off site or in damage to adjacent homes. The Agency's blasting BMPs to protect groundwater quality will be incorporated any blasting plan.
9. The VDH web site at <http://healthvermont.gov/enviro/rad/Radon.aspx> estimates the cost of a radon reduction system to range from \$800.00 to \$2,500.00 depending on the type of house and choice of system.
10. The proposed buildings will each have a radon reduction system.

Conclusions of Law

Given the lack of predictability in attributing blasting to changes in radon measurements, the Commission will not require the permittee to install radon reduction systems in area homes. Such systems will be installed in project buildings.

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

Criterion 1(A) - Headwaters:

Findings of Fact

11. 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). The Commission concludes that the project will not result in undue water pollution.

Criterion 1(B) - Waste Disposal:

Findings of Fact

12. Waste generated by the Project will include sewage, residential solid waste, and stormwater runoff.
13. The site is already disturbed.
14. The wastewater from the Project's 24 units (42 bedrooms) will be disposed of through connection to the municipal wastewater treatment system.
15. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit WW-8-0847-3 on 12/9/15.
16. The Project does not have any floor drains.
17. Stormwater will be treated through the use of bio retention areas and disconnections. Peak discharge will be mitigated through the use of underground storage.
18. The applicant will use erosion prevention and sediment control measures contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control to control stormwater runoff during construction.
19. The ANR Department of Environmental Conservation has issued coverage under General Permit #4826-9020 for the construction phase of the Project.
20. The ANR Department of Environmental Conservation has issued coverage under General Permit #4826-9015 (Stormwater Discharge General Permit # 4826-9015) for the operational phase of the project.
21. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.
22. Construction debris will be recycled to the greatest extent possible and in accordance with the waste reduction plan submitted.

Conclusions of Law

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

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. In addition, the Project will not cause undue water pollution.

The Project complies with Criteria 1(water) and 1(B).

Criterion 1(C) - Water Conservation:

Findings of Fact

23. The Project will use low flow plumbing fixtures throughout all units.
24. The applicant has considered water conservation in the design of the Project.
25. Multiple uses or recycling of water is not technically and economically practical given the scope of the Project.
26. The Project uses the best available technology for water conservation and provides for continued efficient operation of these systems.

Conclusions of Law

The Project design has considered water conservation, while multiple uses or recycling is not technically and economically practical. It 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

27. The Project is not located in a Flood Erosion Hazard area (FEH) as determined by ANR.
28. The Project is not located in a floodway.

Conclusions of Law

The Commission concludes that the Project will not involve the development or subdivision of lands within any floodway or floodway fringe. The Project complies with Criterion 1(D).

Criterion 1(E) - Streams:

Findings of Fact

29. There are no streams on or adjacent to the project.

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

30. The Project is not located on a shoreline.

Conclusions of Law

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

Criterion 1(G) - Wetlands:

Findings of Fact

31. There are no wetlands on the Project tract.

Conclusions of Law

The Project complies with Criterion 1(G).

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

Findings of Fact

32. This Project will use 5,670 gallons per day of water.
33. There is sufficient water available for the Project.
34. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit # WW-8-0847-3 on 12/9/15.

Conclusions of Law

The ANR Wastewater Management Division issued Permit # WW-8-0847-3, which creates a presumption pursuant to Act 250 Rule 19 that the Project has sufficient water available for its reasonably foreseeable needs and complies with Criterion 2. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

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

Criterion 4 - Soil Erosion:

Findings of Fact

35. The Project will affect the capacity of soil on the Project site to hold water.
36. The site is a flat to sloping property that has been cleared and leveled with some infrastructure existing underground and a roadway roughed in.
37. The applicant will use erosion prevention and sediment control measures contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control to control stormwater runoff.
38. All disturbed areas will be stabilized with either permanent impervious infrastructure or with vegetation.
39. The ANR Water Quality Division has issued coverage under General Permit #3-9020 (Construction General Permit) for the Project.

Conclusions of Law

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

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

The Project complies with Criterion 4.

Criterion 5 - Transportation:

Findings of Fact

40. The Project is not in a Transportation Improvement District (TID).
41. Sight distances at both existing accesses onto South Street and Silver Street are adequate.
42. The estimated traffic from the project is 18/15 PM/AM peak hour trips. Town streets have the capacity to accommodate this additional traffic.
43. The 69 parking spaces are adequate for the demands of the Project.

44. The Project does not incorporate transportation demand management strategies.
45. The Project as proposed will use continuous sidewalks for residents to access the nearby downtown. A crosswalk across Silver Street. will connect to the existing town sidewalk. Bike racks will be provided. Pedestrians will also have access via a bark chip mulch pathway to Grandview Street.
46. These measures are appropriate in light of the type, scale, and transportation impacts of the proposed Project, especially its close location to downtown.
47. The largest emergency vehicle that would require access to the project site would be one of the Village Fire Department's pumper trucks. The dimensions of the vehicle owned by the fire department were measured and its turning motions were successfully simulated on the site using Auto Turn, a computer model.
48. Snow plowing and removal will be performed in accordance with the maintenance agreement between Monument View Apartments and the Appleridge Townhouses Owners Association.
49. Since the completed roadway will run from South Street to Silver Street, the Commission will require that it be posted "No Thru Traffic."

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).

Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

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 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).

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

Criteria 6 and 7 - Educational and Municipal Services:

Findings of Fact

50. The applicant estimates that 10-12 K-5 students will be added to the local school as a result of this Project. This estimate was calculated by using current actual data from comparable income-targeted apartment buildings in Bennington owned by Shires Housing, including the newly constructed 14-unit Roaring Branch Apartments, Applegate Apartments, and Willowbrook.
51. No evidence was presented that additional construction of classrooms would be necessary to accommodate the additional students. The school system has the capacity to accommodate these additional students.
52. Bennington has three elementary schools, but Bennington Elementary is designated for this area of Town.
53. The Project will utilize municipal police, fire, and rescue services.
54. The Village Fire Department and the Town Police Department can provide services to the Project.
55. The local Rescue Service can provide rescue services to the Project.

Conclusions of Law

Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criteria 6 and 7. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate the burdens created. *Id.*

As long as per-pupil spending does not change, a change in the Grand List will not change school tax bills after the first year, because under Vermont's school financing system (Act 60), the cost of additional students is financed entirely by the state education fund and by funds which the town has elected to spend above and beyond the state's block grant. Therefore, the inquiry under Criterion 6 is whether the Project will necessitate any physical improvement to local schools that would cause new capital costs to be incurred. If so, the question is whether such a burden is reasonable.

The Commission concludes that the additional students will not impose an unreasonable burden on the municipality's ability to provide educational services. The Project complies with Criterion 6.

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

The burden of proof is on the opponents under Criteria 6 and 7, but the burden of production is on the Applicants. No evidence was presented to contend that the proposed Project will cause an unreasonable burden on the municipality.

Therefore, the Commission concludes that this Project will not place an unreasonable burden on the ability of the municipality to provide educational, municipal or governmental services. The Project complies with Criteria 6 and 7.

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

Findings of Fact

Aesthetics, Scenic or Natural Beauty

56. The building site is a cleared downtown residential property that is a partially constructed development with no natural features remaining. No woodlands, ridgelines, wetlands, streams or existing natural vegetation remain on the interior of the site. The topography has been modified, leveled and excavated and utilities have been installed underground. A roadway has been roughed-in and a functioning stormwater collection system is in place including catchbasins, swales and underground pipes.
57. The duplexes are 2-story cottage/shingle style with an approximate 2,000 SF footprint, with front and side porches, pitched roofs and clapboard siding typical of the earlier phase of this development. The two multi-family buildings - 6 units and 8 units - are also two-stories with pitched roofs, gable ends, and dormers consistent with more recent condominium and multi-family development adjacent to the site, such as the abutting condominium development with a 16-unit building.
58. Exterior colors have not been chosen, but will be a subtle mix of natural colors likely including browns, beiges, and reds. The proposed exterior paint and stain colors will consist of a variety of rich warm colors to give each house unique identities.
59. The project will generate typical construction noise for wood-framed residential construction. Construction is expected to take 12 months.
60. Propane tanks will be buried. The trash dumpster will be enclosed by fencing and evergreen shrubs. Electrical services are and will be underground.
61. Landscaping beyond the minimum required by town standards is proposed, including: 24 deciduous street trees along both sides of the roadway and along the Silver Street frontage; one dozen evergreen trees along the property boundary shared with neighbors to the north.
62. Exterior lighting will include street lights, parking area pole-lighting, walkway bollards and building fixtures at entrances. Pole lighting is specified as 15' 59 watt LED with photocell controls. Bollard lighting is specified as 42" 16 watt LED with

photocell controls. Building entrance lighting is specified as down-facing 13-watt LED mounted at 8.5'.

63. This project proposes duplex and multi-family apartments in the Mixed Residential District, the purpose of which is "to provide suitable locations for apartment buildings, row houses and similar group housing, and planned development projects with integrated design" (Bennington zoning bylaws). The residential uses proposed include both permitted uses (duplexes) and conditional uses (multi-family housing).

Historic Sites

64. The overall parcel at 426 South Street includes an existing historic house, formerly known as the G.W. Harmon House, which is listed in the State Register of Historic Places (SRHP) as a contributing resource in the Bennington South Street Historic District. The South Street district was officially listed in the SRHP by the Vermont Advisory Council on Historic Preservation (Council) on April 18, 1990. In the statement of significance, the Harmon House is considered an "outstanding architectural component" and described as "a little-altered mid-century Greek Revival style temple front house with Greek Doric porches."
65. There are a number of other historic, 19th and early 20th century houses and outbuildings in the surrounding neighborhoods found on Grandview and Silver Streets, many contributing to a broader, local, historic zone. Both Grandview and Silver Streets were listed in the SRHP on November 19, 1997.
66. The Bennington Downtown Historic District, which is listed in the National Register of Historic Places (NRHP), is located approximately two blocks to the north along Route 7.
67. In regards to direct effects, the site was previously reviewed and cleared for archaeological sensitivity by DHP. That determination remains as there is little potential to yield important information related to archaeological resources and therefore, there are no direct effects to historic resources from the currently proposed work.
68. The overall parcel was previously approved for infill development and while the new proposal has a slightly different layout, it continues to follow a pattern of construction deep in the lot, and the surrounding neighborhood, helping to minimize the visual effects of new construction within the district from public views and adjacent streetscapes.
69. The eight plex and six plex buildings are out of scale with surrounding homes.
70. The currently proposed project will have an indirect adverse effect as a significant visual alteration within the district. It will have a strong visual presence, and become a significant non-contributing feature within the historic district and amongst the other historic houses in the adjacent neighborhood. However, the design elements

included in the elevation drawings provided (Exhibit 25, 26, 27) indicate exterior materials for new construction will be either wood clapboard siding or cement board siding; wood trim or solid composite trim.

71. DHP recommends that wood siding and trim are the appropriate materials for significant new construction within the historic district in order to minimize these aesthetic concerns. This selection will best meet the Secretary of the Interior's *Standards for Rehabilitation*, the appropriate standards for consideration of adverse effects. Moreover, it is a reasonable step to preserve the character of the historic area.
72. Nevertheless, Applicant agrees to wood siding, but objects to wood trim, because composite trim has the same appearance and texture as wood, while being more durable.
73. DHP and neighbors are concerned about the potential need for additional blasting and/or heavy vibrational activity to remove ledge on site. These activities have the potential to create significant, indirect adverse effects to historic resources within and surrounding the Area of Potential Effect (APE) for this project. DHP recommends that a trained, certified and licensed blasting and drilling company be hired to design an excavation plan that will allow for the site work to be completed without any damage to adjacent houses, especially houses listed on the State Register. A comprehensive program of pre-construction surveying of adjacent historic buildings should be completed prior to any heavy construction commencing. Vibrational monitoring should be run on the adjacent structures during construction and earth-moving activities, and post-construction surveying completed to identify if any damages have occurred. This survey, investigation and monitoring process should be managed by an independent third party, who should also be responsible for assessing any potential damage and collect fees/supervising corrective action.
74. Before utilizing blasting, applicant will attempt to remove ledge by mechanical means, i.e. hammering or ripping, which would be performed by the site contractor. Only after these other less intrusive means have been attempted and have failed, would they select blasting as a means to remove the ledge. If blasting is required to remove ledge, a blasting contractor will be hired to perform the work in accordance with state regulations. The Agency of Natural Resources supplied the Vermont Best Management Practices for Blasting, which applicant agrees to follow, if blasting is required.
75. To prevent an "undue, adverse impact" on historic resources, DHP recommends conditions be included in the permit pertaining to wood siding, blasting, and monitoring.

Rare and Irreplaceable Natural Areas

76. There are no rare and irreplaceable natural areas.

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

AESTHETICS and NATURAL AND SCENIC BEAUTY

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010) (citations omitted); see also, Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985); In re Halon, 174 Vt. 514 (mem.) (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A. § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. In re Rinkers, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Env'tl. Ct. May 17, 2010) (citing Re: Susan Dollenmaier, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt. Env'tl. Bd. Feb. 7, 2005); In re Eastview at Middlebury, Inc., No. 256-11-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct. Feb. 15, 2008), *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses" In re McShinsky, 153 Vt. 586, 589 (1990) (quoting In re Quechee Lakes Corp., 154 Vt. 543, 553–54 (1990)).

1. Adverse Effect

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

This Project will have an adverse aesthetic impact as it is out of scale with surrounding homes. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or

shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. In re Rinkers, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010) (citing In re: Times & Seasons, LLC, 2008 VT 7, ¶ 8; In re McShinsky, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. 4/9/02). A clear, written community standard must be "intended to preserve the aesthetics or scenic beauty of the area" where the project is located. Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. 12/21/00).

A plan which states "consideration should be made . . ." is not a clear, written community standard. Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079 (Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Env'tl. Bd. Dec. 8, 2000).

The Commission has reviewed relevant portions of the municipal plan. There are no specific standards relating to the aesthetics of the area in which the Project is located.

Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

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

The project constitutes a pattern of construction deep in the lot, and the surrounding neighborhood, helping to minimize the visual effects of new construction within the district from public views and adjacent streetscapes. Given all of these considerations and conditions, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicants have "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." In re Times & Seasons,

2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must “take generally available mitigating steps to reduce the negative aesthetic impact of a particular project,” otherwise, “[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse.” *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995) (quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)). A generally available mitigating step “is one that is reasonably feasible and does not frustrate either the project's purpose or Act 250's goals.”

The Commission requires wood siding and wood trim as the appropriate materials for significant new construction within the historic district in order to minimize aesthetic concerns. The Commission will require that a trained, certified and licensed blasting and drilling company be hired to design an excavation plan that will allow for the site work to be completed without any damage to adjacent houses, especially houses listed on the State Register. The permittee shall follow the Vermont Best Management Practices for Blasting, if blasting is required.

The Commission will include conditions in the permit pertaining to wood/trim siding, blasting, and monitoring.

Given all of these considerations and conditions, we find that the Applicants will take the available mitigating steps to minimize the adverse impacts of the proposed Project on the historic resources.

(d) Conclusion

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

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. Envtl.Bd. May 27, 2004); Re: Manchester Commons Associates, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Envtl.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).

The Project is surrounded by historic homes, not including the phase one duplexes and Nathaniel Court units. Historic 19th and early 20th century houses and outbuildings in the surrounding neighborhoods found on Grandview and Silver Streets contribute to a broader, local, historic zone. Both Grandview and Silver Streets are listed in the SRHP. The Bennington Downtown Historic District, which is listed in the National Register of Historic Places (NRHP), is located approximately two blocks to the north along Route 7.

As contemporary buildings, the project duplexes and multi-unit buildings do not fit the surrounding area and therefore are adverse.

The site itself has no historic sites or places, rather, it is surrounded on three sides by historic houses.

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, #9A0177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env'tl. 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. Env'tl. Bd. May 25, 1999), *aff'd*, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).

The site itself contains no historic site, but it does not fit the context of the historic surroundings. This impact is adverse.

3. Whether the adverse effect will be undue.

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

1. Has the applicant failed to take generally available mitigating steps which a reasonable person would take to preserve the character of the historic site? A comprehensive program of pre-construction surveying of adjacent historic buildings shall be

completed prior to any heavy construction commencing. Vibrational monitoring shall be run on the adjacent structures during construction and earth-moving activities, and post-construction surveying completed to identify if any damages have occurred. This survey, investigation and monitoring process will be managed by an independent third party, who will also be responsible for assessing any potential damage and collect fees/supervising corrective action. To mitigate the historic impacts of the Project, The Commission will condition the permit to require:

- Exterior cladding for the new buildings will be wood siding and wood trim in order to be compatible with the historic architectural character of the South Street Historic District, as well as adjacent historic sites on Grandview and Silver Streets
- A trained, certified and licensed blasting and drilling contractor will be retained to provide a comprehensive blasting plan that will ensure there will be no physical damage to any historic resources within or adjacent to the subject parcel.
- An independent, third-party consultant will be retained for survey, inspection, monitoring, damage assessment and reparation.

VDHP will be provided an opportunity to review any changes to the plans or design of the project during construction or at any later date.

2. Will the proposed project interfere with the ability of the public to interpret or appreciate the historic qualities of the site? There is no evidence to that effect. The project is located within the block and will not interfere with appreciation of the Silver Street and Grandview historic homes, nor the Downtown historic district.

3. Are the cumulative effects on historic qualities of the site by the various components of a proposed project, when taken together, so significant that they create an unacceptable impact? We find no evidence to that effect.

4. Does the project violates a clear, written community standard which is intended to preserve the historic qualities of the site? We find no evidence to that effect.

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

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

Findings of Fact

77. 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)

Conclusions of Law

The Project does not impact any necessary wildlife habitat or endangered species. Therefore, the Project complies with Criterion 8A.

Criterion 9(A) - Impact of Growth:

Findings of Fact

78. The Town has a duly adopted capital improvement plan.
79. The proposed new homes will add 44 bedrooms. Assuming a range of 1 to 1.5 persons per bedroom, from 44-66 persons may live at Monument View. The 2010 census population of Bennington was 15,764; therefore 44-66 persons would represent a less than one percent increase in population (0.2 to 0.4 percent).
80. The estimated property tax is \$24,000 based on the formula for rent-restricted property.

Conclusions of Law

To make an affirmative finding under Criterion 9(A), the Commission must determine that the proposed development will not significantly affect the municipality's and the region's ability "to accommodate two separate items: (i) growth that will occur generally, regardless of the proposed project and (ii) growth that will occur specifically because of the Project. Re: Town of Stowe, #100035-9-EB, Findings of Fact, Conclusions of Law, and Order at 52 (Vt. Env'tl. Bd. May 22, 1998); Re: St. Albans Group and Wal*Mart Store. Inc., #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 29 (Vt. Env'tl. Bd. June 27, 1995), aff'd, In re Wal*Mart Stores. Inc., No. 95-398 (Vt. Sup. Ct. Aug. 29, 1997). The analysis under this criterion differs from that under Criterion 7 in that here we consider the experienced growth, expected growth and project growth of the municipality. see Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet, 1R0048-12-EB Findings of Fact, Conclusions of Law, and Order at 49 (Vt. Env'tl. Bd. August 20, 2001).

The municipality has a duly adopted capital improvement plan, therefore the Applicant bears the burden of proving that the proposed Project will not significantly affect the existing or potential financial capacity of the town and region to accommodate such growth. see Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet 1R0048-12-EB Findings of Fact, Conclusions of Law, and Order at 47 (Vt. Env'tl. Bd. August 20, 2001).

In the present case, the Project will not cause an undue burden on the existing and potential financial capability of the municipality and the region to accommodate growth caused by the Project.

Therefore, the Commission concludes that the Project complies with Criterion 9(A).

Criterion 9(B) - Primary Agricultural Soils:

Findings of Fact

81. 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.

Conclusion of Law

The project complies with Criterion 9B.

Criterion 9(C) - Productive Forest Soils:

Findings of Fact

82. No productive forest soils are located on the Project tract.

Conclusions of Law

The Commission concludes that the Project complies with Criterion 9(C).

Criterion 9(D) - Earth Resources:

Findings of Fact

83. The Project tract does not have lands with high potential for mineral extraction.

Conclusion

The Project complies with Criterion 9(D).

Criterion 9(E) – Extraction of Earth Resources:

84. The Project does not involve the extraction or processing of mineral or earth resources.

Conclusions of Law

The Commission concludes that this Project complies with Criterion 9(E).

Criterion 9(F) - Energy Conservation:

Findings of Fact

85. The applicant will construct and operate the duplexes and multi-family dwellings in accordance with the Residential Building Energy Standards, including Stretch code, issued by the Vermont Department of Public Service pursuant to 30 V.S.A. § 51
86. The Project's mechanical equipment meets energy star standards or exceeds code minimum requirements.
87. The project's planning and design incorporates the following energy conservation measures, which will reduce the project's greenhouse gas emissions from the use of energy: site orientation maximizes use of passive solar, "solar ready" pv

construction, LED lighting, Energy-Star Appliances, and connections to walking paths.

88. The Project will not involve the installation and/or use of electric resistance space heating.

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).”

“Substantial and reliable evidence of compliance with the RBES and, ...the stretch code established and updated under this section shall serve as a presumption of compliance” with Criterion 9(F), except with regard to electric resistance space heating. 30 V.S.A. § 51(e).

The applicant will construct and operate the dwellings in accordance with the Residential Building Energy Standards issued by the Vermont Department of Public Service pursuant to 30 V.S.A. § 51 (RBES and stretch code).

Therefore, the Project complies with Criterion 9(F).

Criterion 9(G) - Private Utility Services:

Findings of Fact

89. Eden Way roadway and the stormwater system will remain privately owned with shared easements and rights-of-way benefitting the subject property and the neighboring condominium association. The municipal water and sewer systems have already been constructed and transferred to the Town of Bennington.
90. The existing Appleridge Association will enter into a maintenance agreement for the “shared cost and responsibility for care, maintenance, plowing and service of the existing road through the Condominium Project.” The agreement is in a working draft form resulting from several meetings with the association, and the agreement will be executed upon the sale of the parcel.
91. The municipality involved has a capital program or plan, and the private utilities conform to it.

Conclusions of Law

Criterion 9(G) is intended to prevent private utilities from becoming a burden to municipalities should some event occur that requires the municipality to provide service it did not plan for. Thus, a project that relies on privately owned utility services complies with Criterion 9(G) when an applicant demonstrates that either: 1) the privately owned utility services conform with a capital program or plan of the municipality involved, or 2) adequate surety is provided to the municipality to cover the costs of assuming responsibility for these services or facilities. 10 V.S.A. § 6086(c)(9)(G).

The Commission concludes that Project complies with Criterion 9(G).

Criterion 9(H) - Costs of Scattered Development:

Findings of Fact

92. The project is located within an existing settlement. Moreover, it is located within a designated Growth Center.

Conclusions of Law

Criterion 9(H) applies only to projects that are not located within or immediately contiguous to an existing settlement. The proposed Project is physically contiguous to an existing settlement. The Project complies with Criterion 9(H).

Criterion 9(J) - Public Utility Services:

Findings of Fact

93. The supportive governmental and public utility facilities and services to be used by the project are water and sewer.
94. There is a duly adopted capital improvement program or plan.
95. Necessary supportive governmental and public utility facilities and services are available.
96. The Project will not place a demand on these services and facilities. The provision of such services and facilities has been planned based on a projection of reasonable population increase and economic growth.

Conclusions of Law

The Commission concludes that the Project complies with Criterion 9(J).

Criterion 9(K) – Development Affecting Public Investments:

Findings of Fact

97. The project is not adjacent to governmental and public utility facilities, services, or lands. The project is within easy walking distance to Town offices.
98. The Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the Town offices.
99. The Project will not 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.

Conclusions of Law

The Commission concludes that the Project complies with Criterion 9(K).

Criterion 9(L) – Settlement Patterns:

Findings of Fact

Existing Settlement

100. The Project tract is in a growth center designated pursuant to 24 V.S.A. Chapter 76A.
101. The Project is in an existing settlement.

Conclusions of Law

Criterion 9(L) is intended to “promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside” by requiring that projects outside an existing settlement: (1) make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and (2) not contribute to a pattern of strip development; or, if confined to existing strip development, the project must infill and minimize strip characteristics. 10 V.S.A. § 6086(a) (9)(L).

Under this Criterion, the threshold question is whether the proposed Project is in an “existing settlement.” Act 250 defines “existing settlement” as any designated center pursuant to 24 V.S.A. Chapter 76A, or:

An existing 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.

The Commission concludes that the Project complies with Criterion 9(L).

Criterion 10 – Town and Regional Plans:

Findings of Fact

102. The Bennington Town Plan denotes the site as Mixed Residential District with compliance since the project is a “compact residential development that...includestwo family dwellings as well as apartments.” The parcel “has a minimum lot area of 10,000 square feet, with relatively high density allowed for the development of multi-family housing” and is also “served by municipal water and sewer service.” The “scale, design and orientation of (the buildings) ... shall be consistent with historic structures and development patterns in the surrounding areas” because they front the streets they are located on, are close to the street and “include appropriate pedestrian amenities” which are “linked by pathways and sidewalks” to the neighborhood.
103. There are no statements about lot line setbacks in the Town Plan. The plans submitted accurately show the buildings on the plans and their relationships to adjoining lot lines. Both the subdivision plan and the proposed conditions plan C2 show the existing fences and furthermore show that portions of the fence do not follow the property line. Setbacks from the property line to each building are labelled on plan C2 and comply with the Town of Bennington’s Land Use and Development Regulations side lot setback requirements for two-family dwellings located in the Mixed Residential District.
104. Town Plan 1.2 Goals #4 Support policies, public investments and projects undertaken by both private and non-profit developers that help ensure the availability of an adequate supply of housing that is affordable and desirable for all of the town's residents.
105. Ch.5 Housing-Location and Design of Residential Development section emphasizes "opportunities for 'infill' development on underutilized sites." This project is an infill development on an under-utilized residentially zoned site.
106. Housing Programs-The plan specifically recognizes the co-developer of this project-recently renamed Shires Housing--"The Bennington Regional Affordable Housing Corporation (RAHC) is a local nonprofit organization that develops and maintains affordable housing throughout Bennington County. RAHC has completed a number of projects in Bennington ranging from rehabilitation of single family homes to construction of new multifamily housing projects and adaptive reuse of historic structures for residential use. The town should continue to work cooperatively with RAHC and other organizations to encourage development of affordable housing in the area."
107. The Project will not have substantial regional impacts.
108. The regional plan finds the site is located in the Urban Center.

109. Plan policies 11.3- "Any affordable housing project that is developed with significant public involvement (e.g., financing, special zoning regulations, etc.) should include provisions to ensure long-term affordability."
110. -"The BCRC and individual towns should continue to support and work with the Regional Affordable Housing Corporation and other nonprofit housing organizations and land trusts."
111. -"Towns should seek opportunities for "infill" housing and housing in mixed-use developments, especially in village and urban areas."

Conclusions of Law

The Project complies with Criterion 10.

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 and the conditions of Land Use Permit #8B0573-3, will comply with the Act 250 criteria. 10 V.S.A. § 6086(a).

VI. FINDINGS FOR STAY OF PERMIT

The Commission's record contains an Affidavit of Aaron J. Brondyke, Natural Resources Board Enforcement Officer, dated March 29, 2016. In pertinent part the affidavit states:

Appleridge Development, LLC, as of March 29, 2016, has failed to complete, operate, and maintain its project in accordance with the issued Findings of Fact and Conclusions of Law, as well as Exhibit 42, in violation of Condition 2 of Land Use Permit 8B0573. Specifically, Respondent failed to complete construction of a stockade fence; Respondent added an exterior pre-cast concrete chimney to an historic structure in conflict with the U.S. Department of the Interior's Standards for Rehabilitation of Historic Properties; and Respondent failed to cover the exterior of the permitted new construction with wood clapboard and trim.

VII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, a Land Use Permit #8B0573-3 would be issued, but for substantial noncompliance by the permittee Appleridge Development, LLC. Pursuant to 10 V.S.A. Section 6083 (g), the Commission finds substantial noncompliance with respect to violations of LUP #8B0573. Accordingly, issuance of the Permit is stayed until such time as the violations are corrected or a clear schedule for compliance is established with the NRB through an Assurance of Discontinuance.

DATED at Rutland, Vermont, this 30th day of March, 2016.

By /s/ John Liccardi
John Liccardi, Acting Chair
District #8 Environmental Commission

Commissioners participating in this decision:

Ed Weissman
Leslie Keefe

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 \$265.00 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, National Life Dewey Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing by the district commission was requested. 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, and Burlington, VT 05401.