

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001- 6092

RE: Okemo Mountain, Inc., Land Use Permit Applications
Timothy and Diane Mueller, #2S0351-30(2nd Revision)-EB and
Vermont Department of Forests, #2S0351-31-EB, and
Parks and Recreation, and Green #2S0351-25R-EB
Mountain Railroad

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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i. SUMMARY OF DECISION

Mount Holly Mountain Watch (MHMW) filed this appeal concerning a Master Plan application and related land use permits for the Okemo ski area in Ludlow, Vermont. The Master Plan consists of a base lodge, retail area, hotel, condominiums, train station, parking, water park, tennis center, golf course, ski trails, and ski lifts located on 400 acres of land near Route 103 in Ludlow, Vermont (Master Plan Project). One of the permits authorizes the construction of Phase I of the Jackson Gore development, including a condominium hotel and related parking, water and sewer facilities, fifteen ski trails, three ski lifts, and snowmaking (Jackson Gore Phase I Project), which is a component of the Master Plan, and the other permit authorizes the development of an 11-lot subdivision known as Solitude Village (Solitude Village Project), which is another component of the Master Plan. As set forth below, the Board concludes that these projects comply with each criterion on appeal, and issues Land Use Permits #2S0351-31-EB, and #2S0351-25R-EB .

I. PROCEDURAL SUMMARY

On December 29, 2000, the District 2 Environmental Commission (Commission) issued Findings of Fact and Conclusions of Law #2S0351-30 (2nd Revision) and #2S0351-31 regarding the Master Plan Project and the Jackson Gore Phase I Project (Master Plan/Jackson Gore Phase I Project), which was subsequently corrected on January 5, 2001 (Master Plan/Jackson Gore Phase I Decision). The Commission also issued Land Use Permit #2S0351-31 (Jackson Gore Phase I Permit) on December 29, 2000, to Okemo Mountain, Inc.; Vermont Department of Forests, Parks & Recreation and Green Mountain Railroad (collectively, Okemo) for the Jackson Gore Phase I Project. MHMW filed a Motion to Alter on January 10, 2001. The Commission denied the Motion to Alter in a Memorandum of Decision issued on January 12, 2001, and corrected its Memorandum of Decision on January 18, 2001.

On January 24, 2001, the Commission issued Land Use Permit #2S0351-25R (Solitude Village Permit), and supporting Findings of Fact, Conclusions of Law, and Order #2S0351-25R (Solitude Village Decision) to Okemo Mountain, Inc. The Commission heard a portion of the Solitude Village Project proceedings and the Master Plan/Jackson Gore Phase I Project proceedings together.

On February 8, 2001, MHMW filed an appeal from the Jackson Gore Phase I Permit, the Master Plan/Jackson Gore Phase I Decision, the Solitude Village Decision and the Solitude Village Permit with the Vermont Environmental Board (Board), pursuant to 10 V.S.A. 6089(a) and Environmental Board Rules (EBR) 6

and 40. In its appeal, MHMW alleges that the Commission erred in its conclusions concerning party status and the projects' compliance with 10 V.S.A. 6086(a)(1), (1)(A), (1)(B), (1)(E), (4), (5), (6), (8), (9)(A), (9)(H), (9)(K), (9)(L), and (10) (Criteria 1, 1(A), 1(B), 1(E), 4, 5, 6, 8, 9(A), 9(H), 9(K), 9(L), and 10).

On February 21, 2001, Okemo filed two cross-appeals, alleging that the Commission erred in its grant of EBR 14(B) party status to MHMW in the Master Plan/Jackson Gore Phase I Decision, on Criteria 1(A), 1(B), 1(E), 5, 6, 8, 9(A), 9(H), 9(K), 9(L), and 10; and in the Solitude Village Decision, on Criteria 1, 1(B), 1(E), 4, 5, 6, 9(A), 9(H), 9(K), 9(L), and 10.

On March 12, 2001, Board Chair Marcy Harding convened a Prehearing Conference.

On March 15, 2001, Chair Harding issued a Prehearing Conference Report and Order (PHCRO), which identified and ordered the parties to brief preliminary issues of party status and ripeness.

On March 16, 2001, Okemo filed a brief on the ripeness of the Master Plan appeal. MHMW did not file a reply brief.

On March 19, 2001, MHMW filed its Petition for Party Status. Okemo filed a brief in opposition to MHMW's Petition for Party Status on March 22, 2001.

On March 22, 2001, John Lysobey filed a Motion to Extend Filing Date, Objection to Time Requirements, and Memorandum Regarding the Need for Speed.

The Board deliberated on preliminary issues on March 28, 2001 and April 25, 2001.

On May 22, 2001, the Board issued a Memorandum of Decision on preliminary issues, granting MHMW party status on the Master Plan proceeding under Criteria 6, 9(H) and 9(L), and dismissing Criteria 1, 1(A), 1(B), 1(E), 4, 5, 8, 9(A), 9(K), and 10; on the Jackson Gore proceeding under Criteria 1(A), 1(B), 1(E), 5, 6, 8 (aesthetics), 9(A), 9(H), 9(K), 9(L) and 10 (Rutland Regional Plan), and dismissing Criteria 1 and 4; and on the Solitude Village proceeding, under Criteria 1(B), 1(E), 4, 6, 9(H), 9(K) and 9(L), and dismissing Criteria 1, 5, 8, 9(A) and 10. The Chair issued a Scheduling Order on the same day, setting this matter for hearing and setting prehearing filing deadlines, among other things.

On July 25, 2001, MHMW and John Lysobey filed requests for subpoenas.

On August 2, 2001, Chair Harding denied Mr. Lysobey's requests and granted MHMW's subpoena request, subject to the right of any party to file an objection on or before August 8, 2001.

On August 8, 2001, Mr. Lysobey asked that the denial of his subpoena requests be reconsidered by the Chair and the Board.

The Board deliberated on this objection on August 15, 2001. On August 21, 2001, the Board issued a Memorandum of Decision denying these requests upon reconsideration.

On August 24, 2001, Chair Harding convened a second prehearing conference, and issued preliminary rulings on evidentiary objections, among other things.

On August 29, 2001, the Board convened a public hearing in this matter, conducted a site visit, admitted exhibits, and heard testimony from MHMW, John Lysobey, and Okemo. The Board also affirmed the Chair's rulings on evidentiary objections. At the hearing, Chair Harding noted that some of the site plans and drawings submitted as evidence bore different revision dates than those listed in certain permits and sewer allocations admitted as Exhibits O23 through O30. Okemo agreed to provide the Board and parties with a copy of the same version of each plan referred to in Exhibits O23-O30, where a version bearing a different revision date already was in evidence.

On August 31, 2001, the Chair issued a Hearing Recess Order giving Okemo until September 6, 2001 to file the supplemental exhibits, and giving the other parties until September 13, 2001 to file any objection or hearing request regarding the supplemental exhibits.

On September 6, 2001, Okemo filed supplemental exhibits with cover sheets detailing the differences between the original and supplemental exhibits.

On September 12, 2001, MHMW filed a letter objecting to, and requesting a hearing on, the supplemental exhibits. MHMW also made other requests in the letter.

On September 21, 2001, Okemo filed a Memorandum in Opposition to MHMW's Request to Reconvene Hearing, and Okemo also requested permission to make unauthorized filings. Also on September 21, 2001, Okemo filed additional supplemental exhibits.

On September 26, 2001, the Board deliberated on MHMW's Request to Reconvene Hearing, and on October 2, 2001 issued an MOD reconvening the hearing.

On November 7, 2001, the Board reconvened the hearing, admitted exhibits and took testimony from Okemo's witness, Bruce Boedtke.

On December 5, 2001, MHMW filed a Motion to Strike. Okemo objected to MHMW's motion on December 11, 2001.

On December 11, 2001, John Lysobey filed a document entitled, "Motion to Accept the Following Evidence and Conclusions of Law in the Above Case." Okemo filed its objection to this motion on December 17, 2001.

The Board deliberated on September 19, 2001, October 17, 2001, December 19, 2001, January 16, 2002, February 13, 2002, and on February 20, 2002. Based upon a thorough review of the record, related argument, and the parties' proposed findings of fact and conclusions of law, the Board declared the record complete and adjourned. The matter is now ready for final decision.

II. PENDING MOTIONS

A. MHMW's Motion to Strike

Since the hearing was adjourned, MHMW has filed a Motion to Strike. Specifically, MHMW requests that the Board strike changes Okemo made in Bruce Boedtke's prefiled testimony, Exhibit O91, and related exhibits, which the Board admitted over MHMW's objections during the November 7, 2001 hearing. The November 7 hearing was held for the limited purpose of allowing parties an opportunity to be heard on any new issues that were raised by exhibits that Okemo had filed after the August 29, 2001 hearing at the Board's request. These exhibits were site plans and other drawings with the same revision dates as those relied upon by the Agency of Natural Resources (ANR) in granting permits for the projects, where a version of the site plan or drawing bearing a different revision date already was in evidence. Chair Harding noted at the August 29, 2001 hearing that some of the drawings bore different dates than referenced on the relevant permits, and an opportunity was provided to Okemo to file the version referenced in the permit. MHMW requested a hearing on the new evidence and the Board granted this request, reconvening the hearing on November 7, 2001.

On November 5, 2001, ANR issued an administrative correction to some of the permits in question, approving many of the drawings Okemo originally had

prefiled in this proceeding. This late development had the effect of reducing the scope of the November 7, 2001 hearing because there were fewer drawings which differed from those approved by ANR in the relevant permits.

At the November 7, 2001 hearing, Okemo sought to introduce as new exhibits corrections to the prefiled testimony of Bruce Boedtke to reflect this late development, and the corrections to the permits. Okemo also sought to introduce a letter from ANR regarding the administrative amendments, Ex. O92. MHMW objected to the admission of Okemo's exhibits on the grounds of the lateness of notice. MHMW had been faxed all but Ex. O92 only the night before the hearing, and argued that it required additional time to study the exhibits, particularly Ex. O92. MHMW also argued that the exhibits had been filed after the deadline for prefiling exhibits.

The Board admitted Okemo's late exhibits, except for Ex. O92, and overruled MHMW's objections to that extent. Apart from Ex. O92, which was not admitted, the new Okemo exhibits reduced the scope of the reconvened hearing by eliminating the need to explore differences between the drawings referenced in the permits and those in the Board's record. In its Motion to Strike, MHMW presents neither new nor persuasive arguments for excluding the corrected permits. The Board denies MHMW's motion.

B. John Lysobey's Motions

On December 10, 2001, John Lysobey filed a document entitled, "Motion to Accept the Following Evidence and Conclusions of Law in the Above Case." In his motion, Mr. Lysobey urges the Board to consider its November 20, 2001 decision in *Re: Main Street Landing*, #4C1068-EB, Findings of Fact, Conclusions of Law, and Order, with regard to Criterion 8 (aesthetics) in this matter.

Mr. Lysobey does not, in his motion, request consideration of facts not already in evidence, but instead requests consideration of the recently issued Board decision in the legal analysis of this case. This motion is, in effect, a motion to file supplemental proposed conclusions of law out of time.

The Board is familiar with the *Main Street Landing* decision and recognizes that the deadline for filing supplemental proposed findings and conclusions fell the day after the *Main Street Landing* decision was issued. The decision, however, does not change the Board's Criterion 8 analysis. There is no reason, therefore, to give the parties in this matter an opportunity to file additional proposed conclusions of law. The Board denies this motion. The motion Mr. Lysobey made at the hearing on this matter, for the Board to hold a hearing on the co-applicancy issue, is also

denied. Mr. Lysobey did not appeal on this issue, and it is beyond the scope of this appeal. See, *Re: Roger Loomis*, Declaratory Ruling #344 (Aug. 8, 1997); *Re: Roger and Beverly Potwin*, #3W5087-1-EB (Revocation) (Jul. 15, 1997); *Re: David Enman*, Declaratory Ruling #326 (Dec. 23, 1996).

III. ISSUES

A. With respect to the Solitude Village Project:

1. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(1)(B).
2. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(1)(E).
3. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(4).
4. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(6).
5. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(9)(H).
6. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(9)(K).
7. Whether, and to what extent, the Solitude Village Project complies with 10 V.S.A. § 6086(a)(9)(L).

B. With respect to the Jackson Gore Phase I Project:

1. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(1)(A).
2. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(1)(B).
3. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(1)(E).
4. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(5).
5. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(6).
6. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(8)(aesthetics).
7. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(9)(A).
8. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(9)(H).

9. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(9)(K).
10. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(9)(L).
11. Whether, and to what extent, the Jackson Gore Phase I Project complies with 10 V.S.A. § 6086(a)(10)(Rutland Regional Plan).

C. With respect to the Master Plan Project:

1. Whether, and to what extent, the Master Plan Project complies with 10 V.S.A. § 6086(a)(6).
2. Whether, and to what extent, the Master Plan Project complies with 10 V.S.A. § 6086(a)(9)(H).
3. Whether, and to what extent, the Master Plan Project complies with 10 V.S.A. § 6086(a)(9)(L).

IV. FINDINGS OF FACT¹

A. General Findings

Projects

1. Each of the proposed projects, the Master Plan Project, Jackson Gore Phase I Project, and the Solitude Village Project, is part of an expansion of the Okemo Mountain ski resort in Ludlow, Vermont. This expansion is designed to offer skiing and year-round recreational opportunities to members of the general public and residents of local communities.

1

To the extent that any proposed findings of fact are included within, they are granted; otherwise, they are denied. See *Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 167 Vt. 228, 241-242 (1997); *Petition of Village of Hardwick Electric Department*, 143 Vt. 437, 445 (1983). These findings are organized by criteria and topic. Findings of fact relevant to more than one criterion or topic are not repeated and shall be incorporated into subsequent criteria as necessary to support the Conclusions of Law.

Solitude Village Project

2. The Solitude Village Project consists of lots and infrastructure for an 11-lot, single-family home subdivision to be known as Solitude Village.

Jackson Gore Phase I Project

3. The Jackson Gore Phase I Project consists of the following:
- a. 13 ski trails, 2 gladed ski trails, 2 fixed-grip quad chair lifts, (Lifts B1 and C) and 1 detachable quad chair lift (Lift B2).
 - b. A condominium hotel comprising the following:

117 condominium units	group sales center
390 seat cafeteria	guest services center
280 seat lounge	lift ticket sales area
210 seat restaurant	fitness center/pool
865 square foot conference room	owners locker room
ski shop	real estate sales center
ski equipment rental shop	video arcade
ski repair shop	sundries shop
113 car underground parking garage	offices
child care center for 100 children	
 - c. Two sewer pump stations. Pump Station #1 is located adjacent to the Jackson Gore base area parking lots and will serve the Jackson Gore condominium hotel. Pump Station #2 is located at the base of the Morning Star Lift, near the bottom of the Solitude subdivision. Pump Station #2 will serve both the condominium hotel and the Solitude single family lots. The force main serving the pump stations will empty into an existing manhole adjacent to the driveway at Okemo's maintenance garage on the main mountain.
 - d. A water system comprised of four components:
 - (1) A gravel packed well located adjacent to Route 103.
 - (2) A water main from the well to a storage reservoir and from the reservoir to the condominium hotel.

- (3) A pump and filtration building located adjacent to the former Cole residence.
 - (4) A storage reservoir located above the railroad tracks between Trails #4 and #5.
 - e. Parking for 547 automobiles and 8 buses, in addition to the 113-car parking garage beneath the condominium hotel.
 - f. A cul-de-sac at the end of Ranta Road.
 - g. Use of the Cole House for offices. The Ranta House will be leased as a single family home.
4. The Jackson Gore Phase I Project area is located adjacent to and northerly of the existing Solitude ski terrain. The 13 trails within Phase I cover 108 acres plus two gladed areas covering an additional 55 acres, for a total of 163 acres of new skiing terrain. Parking covers approximately 8 acres and the condominium hotel site is 4.04 acres.

Master Plan Project²

- 5. The Okemo's Master Plan is located on 400 acres of land near Route 103 in Ludlow, and includes previously permitted components such as a base lodge, ski trails, and ski lifts, as well as the Jackson Gore Phase I Project and the Solitude Village Project.
- 6. The Master Plan Project consists of the following additional components:
 - a. 23 additional lots in the Solitude Village subdivision;
 - b. 208 condominium units.
 - c. 6-passenger gondola to the summit and 1 more surface lift.
 - d. 9-hole executive golf course.
 - e. 25,000 square feet of retail space in several buildings with residential space on second floor area.
 - f. Train station - 1,000 square foot train station with restrooms, side rail for trains and rail platform.
 - g. Additional parking.

²

The findings of fact and conclusions of law for the Master Plan Project shall remain valid for a period of five years from the date of this decision.

- h. Addition to the Summit Lodge for 150 seats and expanded food service area.
- i. Water park with water slides and 6,000 square foot of pool space.
- j. Tennis center with 3 indoor and 3 outdoor courts. locker rooms and health center.
- k. The following activities and programs will also be proposed:
 - health care center
 - mountain biking
 - in-line skating park
 - miniature golf
 - climbing wall
 - lighted evening activities:
 - alpine slide
 - devil carts
 - wedding chapel
 - bike path
 - events field
 - halfpipe, snow tubing,
 - beginner ski slope

Construction Schedule

- 7. Okemo had commenced construction on the Jackson Gore Phase I and Solitude Village Projects as of the time of the Board's site visit in August, 2001.
- 8. Okemo plans to complete construction of the Jackson Gore Phase I Project and the Solitude Village Project in 2002.
- 9. In 2003, Okemo plans to commence construction on Phase II of the Jackson Gore Project, which will include:
 - a. Construction of 76 condominium units with associated infrastructure.
 - b. Installation of a six-passenger gondola from the Jackson Gore base area to the summit of Okemo Mountain.
 - c. Health care center/first aid facility.
 - d. Outdoor activities center to include:
 - Nature center
 - Climbing wall
 - Water Park
 - Snow tubing area
 - In-line skate park
 - Miniature golf
 - Tennis courts

- e. Nine hole executive golf course.
 - f. Shipping and receiving building.
10. In 2004, Okemo plans to commence construction on Phase III of the Jackson Gore Project, which will include:
- a. Construction of 66 condominium units
 - b. Health spa.
 - c. Welcome center
 - d. Retail space (12,500 square feet).
 - e. Train Station
 - f. Parking
 - g. One surface lift.
 - h. An addition to the summit lodge totaling 150 seats and an expanded food service area.
11. In 2005, Okemo plans to commence construction on Phase IV of the Jackson Gore project, which it expects will include:
- a. Construction of 66 condominium units with related infrastructure.
 - b. 12,500 square feet of retail space.
 - c. Outdoor activity center improvements to include:
 - Alpine slide
 - Bike path
 - Wedding chapel
 - Devil carts
 - Events field
- B. Criterion 1(A) (Headwaters) - Jackson Gore Phase I Project;
Criterion 1(E)(Streams) - Jackson Gore Phase I & Solitude Village
Projects**
12. The Jackson Gore Phase I Project is located within the Coleman Brook watershed.
13. The Jackson Gore Phase I Project site contains streams over 1,500 feet in elevation, each of which flows at less than 1.5 cubic feet per second at times.

14. Two intermittent tributaries join before flowing into the Coleman Brook above the Green Mountain Railroad tracks at an elevation of approximately 1,350 feet. Each of these tributaries has been observed to be dry for significant periods of time.
15. The total area of the Coleman Brook watershed is 1.1 square miles at its confluence with Branch Brook. The watershed extends to the top of Okemo Mountain (elevation 3,300 feet).
16. The watershed above the Green Mountain Railroad tracks is predominately forested and interspersed with ski trails and ski lifts. A portion of Okemo Mountain Road which extends to the top of Okemo Mountain is also located within the upper watershed. Soils within the upper watershed area are of a glacial till origin with moderate to steep slopes.
17. The Coleman Brook watershed below the railroad tracks includes a mixture of wooded and open lands. The brook crosses beneath Okemo Ridge Road, Ranta Road and Route 103 before it enters Branch Brook. Soils within the lower watershed area are of alluvial origin consisting principally of sands and gravels. The slopes in the area have moderate to minimal gradients.
18. The main stem of Coleman Brook originates in a wetland located upslope of the Jackson Gore Phase I Project site at an elevation over 2,500 feet. Coleman Brook descends the mountain in a generally easterly direction.
19. Through the upper portion of the Jackson Gore Phase I Project site, Coleman Brook is relatively steeply sloping, located within a steep-sided, bedrock controlled, ravine with numerous pools and small cascading waterfalls. The two conjoined, intermittent tributaries flow into the Coleman Brook just above the railroad tracks at an elevation of approximately 1,350 feet.
20. Coleman Brook then flows beneath the railroad tracks where a third intermittent tributary flows into the brook at an elevation of approximately 1,100 feet. Coleman Brook turns south and extends along the southerly edge of the Jackson Gore base area where the stream runs beneath Okemo Ridge Road and Ranta Road. From there it descends to Route 103 where it passes through an existing culvert beneath the road, and to its confluence with Branch Brook.
21. There are a total of three intermittent tributaries which join Coleman Brook within the Jackson Gore Phase I Project area.

22. The smallest of the tributaries above the railroad tracks has a watershed area of 0.08 square miles (51 acres). The other intermittent tributary above the railroad tracks has a watershed area of 0.21 square miles (134 acres). The third tributary located beneath the railroad tracks in the Jackson Gore base area has a watershed area of 0.13 square miles (83 acres).

General Mitigation

23. The Jackson Gore Phase I Project has been designed and modified, in response to comments from ANR and the Commission, to provide greater protection to streams and water quality, including the following:
- a. Elimination of all stream culverting in the upper Jackson Gore Phase I Project area;
 - b. Increasing riparian buffers;
 - c. Relocating infrastructure away from sensitive areas;
 - d. Elimination of three stream crossings;
 - e. Significant narrowing of ski trails in sensitive areas near streams;
 - f. Changes in bridge design to narrow width and span, and to minimize impacts to stream channels;
 - g. Development of an iron seep management plan; and
 - h. Development of a water quality management plan.

Ski Crossings - Mitigation

24. Okemo has undertaken a number of measures to mitigate any impacts to Coleman Brook and the three unnamed intermittent tributaries. The Jackson Gore Phase I Project has been designed to minimize the number of lift and trail crossings by reconfiguration of ski trails and the relocation of Lift B1 and B2 so that there will be no clearing or crossing in the area of the cascades where the intermittent tributaries enter Coleman Brook above the railroad tracks.
25. Okemo has relocated chairlifts and reconfigured ski trails to minimize any impacts in the area where the intermittent cascading tributaries enter the Coleman Brook ravine. The original lift and trail design had the unload area of Lift B1 adjacent to the load area of Lift B2. This required a larger cleared area surrounding the lifts and substantial culverting for the tributary crossings in the area. Okemo redesigned the configurations of Lift B1 and Lift B2 as follows: The unload area of Lift B1 was moved to its present location approximately 800 feet to the north. The load area of Lift B2 was moved uphill approximately 100 feet. As a result of these changes, there will be no

clearing in the area where the cascading intermittent tributaries enter the Coleman Brook ravine. These changes also increased the buffer between the load area of Lift B2 and the top of the bank of Coleman Brook ravine to more than 130 feet. The buffers on the unnamed tributaries were increased to a minimum of 50 feet. The trail that exits the B2 lift area was relocated so it now crosses the intermittent tributary above the cascading falls at Crossings #5 and #3. The relocation of the unload area of Lift B2 eliminated the need to culvert substantial sections of the intermittent tributaries.

Bridge #1

26. Bridge #1 is a full span bridge, located where Trails #8 and #9 cross the Coleman Brook, at approximately 2,500 feet in elevation, near the existing Okemo Mountain Road. The bridge will be constructed with its abutments at the top of the existing embankments. The natural contours of the site minimize the amount of regrading and fill needed to build the bridge. There will be only minor tree clearing beyond the limits of the bridge. Trees will be protected and preserved immediately adjacent to the bridge.
27. The more narrow a bridge and the trails which lead to it, the less impact there will be in terms of deforestation, earth disturbance, aesthetics, and reduction of stream buffers.
28. Bridge #1 will be 50 feet wide and 30 feet long. It has been reduced from 125 feet in width. Trail #9 tapers down to 20 feet in width before it intersects with Trail #8. This reduction in trail width will let stand a thick growth of spruce and balsam which will reduce the visual impact of the trails on viewers from the Okemo Mountain Road. Trail #8 narrows from approximately 40 feet in width to approximately 30 feet in width, before intersecting with Trail #8. The trails intersect at the intersection area is approximately 70 feet wide, and tapers down to 50 feet in width where the trails cross Bridge #1 from the north.
29. Trails #8 and #9 have been designed to maximize the stream buffer in the area of Bridge #1.
30. Summer use of Bridge #1 will be limited to a three-week period late in the summer for maintenance work and trail mowing. There will be a permanent gate installed at the exit of Trail #8 and the entrance to Trail #9 to control access to the Jackson Gore area between April 1 and December 1.

31. The bridges will be constructed in a manner which preserves and protects the stream embankments and the stream beds. Trails which enter and exit ski bridge crossings have been designed to preserve a minimum buffer of 50 feet from the top of the stream embankments.

Other Crossings

32. There are two proposed ski trail bridges over Coleman Brook. Bridge #1, the only bridge at or above 2,500 feet on the upper portion of the mountain, is intended to provide direct access to the Jackson Gore area from the existing ski terrain. The second crossing is in the base area to provide skier access from the Solitude area of Okemo to the proposed Jackson Gore base area.
33. Okemo wishes to provide a means of access for skiers between the existing ski area and the Jackson Gore ski trails without having to use a lift. Doing this would require crossing the Coleman Brook. The location for Bridge #1 was selected because it is a location at which any environmental impacts can be minimized and mitigated. The bridge is within 15 to 20 feet of the existing Okemo Mountain Road. The height of the stream banks in that location is approximately 6 feet, which is much less than the height of the stream banks further downstream on Coleman Brook. The site selected for the crossing is in an area of minimum side slopes. The relatively gentle topography at the proposed site results in a minimal fill depth requirement of just 2 to 5 feet, which will be located entirely outside the stream channel and above the stream bank, to tie the proposed bridge deck into native ground. Additionally, the proposed location avoids impacts to a Class 2 wetland and buffer zone located upstream along Coleman Brook. A 50-foot buffer has been provided along the entire length of that wetland. The minimal grade and shallow stream banks at Bridge #1 allow for minimum earth disturbance and reduction in bridge dimensions.
34. The second ski trail crossing of Coleman Brook is below the railroad tracks in the Jackson Gore base area. The bridge is a full span bridge 50 feet wide and 50 feet long, and is located where there once was a farm crossing.
35. There will be a total of five bridge crossings over the two intermittent tributaries above the railroad tracks (Bridges #2, 3, 4, 5, and 9). Each of these has been minimized in length, and have been located and designed to preserve existing vegetation, minimize water quality impacts and minimize disturbance to the stream banks and stream beds.

36. Bridge #2 crosses an unnamed intermittent tributary on Trail #13 at an approximate 2,000 - foot elevation. It is a Tucker bridge design. The bridge is 80 feet wide and 15 feet long.
37. Bridge #3 crosses an intermittent tributary using a full span bridge of the same design as Bridge #1. Bridge #3 is 30 feet wide and 44 feet long. Certain trees will be left on the downhill side to provide stream protection. The bridge is located at approximately the 1,400 foot elevation, between Lift B1 and the loading area of Lift B2.
38. Bridge #4 is located where Trail #15 crosses an intermittent tributary downhill from the unload area of Lift B1, at an elevation of approximately 1,525 feet. It is a Tucker bridge 95 feet wide and 14 feet long.
39. Bridge #5 is a full span bridge located near the bottom of Trail #15 and the loading area of Lift B2, at an elevation of approximately 1,450 feet. The bridge is 60 feet wide and 45 feet long to accommodate the two-way skier traffic entering and exiting this area. This bridge eliminates 200 feet of culverting that was proposed in the original design.
40. Bridge #9 is a Tucker Bridge which crosses a small unnamed tributary on the upper portion of Trail #14, at an elevation of approximately 2,300 feet. This bridge is 95 feet wide and 14 feet long.
41. There will also be two buried utility line crossings installed across the Coleman Brook to access the lower Jackson Gore Phase I Project area. Okemo has received Stream Alteration Permit #WQ-1-0340 (July 18, 2000) from the Department of Environmental Conservation authorizing these buried utility crossings for a sewer force main and water main. The permit requires, among other things, that Okemo:
 - a. Strictly limit the extent of stream bank disturbance and maintain all established vegetation possible.
 - b. Utilize the method of installation which presents the least disturbance of stream flow and results in minimal discharge of turbidity or sediment downstream.
42. The skier bridges will utilize comprehensive soil erosion measures which have been reviewed and approved by ANR. Prior to the start of any removal of vegetation, Okemo will use highly visible fencing material to fence the buffer boundaries for each of the stream crossings, and will notify ANR so

ANR may inspect the buffers before any vegetation is removed. Okemo will also stake the footprint of the bridge abutments, so this can be inspected by ANR at the same time and adjusted as ANR deems necessary to maximize stream protection and protection of surrounding trees and vegetation. The stakes should show the finish grade. ANR must be notified in advance of any bridge abutment construction so that ANR can send a representative to the site to oversee the work. After inspection and prior to cutting, trees which are to be saved, and which are vulnerable to damage from construction, will be protected per specifications of the Department of Forests, Parks, and Recreation.

43. ANR reviewed and approved all stream crossings. It is the opinion of ANR's principal hydrologist that the design approach for the bridges will effectively protect the natural stream channel if the construction and erosion control practices recommended by ANR are followed.
44. Bridge and utility line construction will be performed during dry or low flow conditions and construction will be scheduled so as to be started and completed in the shortest number of consecutive days possible. Work will be suspended during heavy rain events, and any stream flow or potential stream flow due to rain events will be bypassed around the work area during construction. Disturbed areas will be seeded and stabilized immediately upon completion of construction. Downstream erosion control measures will be installed before construction commences.
45. At the end of each day or prior to construction shut downs for weekends or for longer periods, all erosion control measures will be inspected and whatever maintenance that would be required will be performed in order to insure that the entire erosion control system functions properly during a rainfall event. These and other erosion control measures will be implemented by Okemo in accordance with the Vermont Handbook of Soil Erosion and Sediment Control on Construction Sites (1982).
46. The full span bridges which will be used for Bridges #1, #3 and #5 have been designed to meet AASHTO loading criteria. The structural design of the bridges has been reviewed and approved by DeWolfe Engineering Associates, Inc., Civil and Structural Engineers, Montpelier, Vermont (DeWolfe Engineering). DeWolfe Engineering will provide construction inspection services to ensure and confirm that the bridges are constructed in accordance with the design plans and specifications. When the bridges are completed, DeWolfe Engineering will certify to Okemo that the bridges have been constructed in conformance with DeWolfe Engineering and other

applicable design documents. All inspections will be completed by a registered professional engineer licensed in the State of Vermont.

Purpose of Bridge #1

47. Bridge #1 will enable Okemo ski patrol personnel to ski quickly between the main mountain area and the Jackson Gore terrain to provide fast response to ski injuries. In the case of lift evacuations, ski lift evacuations are supported by teams of personnel that travel to the disabled lift from other sections of the mountain. A quad chairlift may have more than 200 skiers on the lift at any one time. If the lift becomes disabled, mountain and support staff have to be able to rope-evacuate these passengers in a very short amount of time, particularly in severe weather conditions.
48. A serious emergency on a Jackson Gore ski trail, would likely require the presence of a number of specialized patrollers, EMTs, or a physician. Additionally, special equipment such as a backboard, oxygen, and other equipment must be transported to the scene as quickly as possible. It may be possible for a ski patroller to reach an injured skier in the Jackson Gore area from the patrol station at the top of the Jackson Gore area. However, Okemo does not plan to keep available all specialized emergency care specialists or equipment at that location. Bridge #1 provides an alternative means of reaching a disabled skier or evacuating a lift.
49. Alternatives to Bridge #1 will require additional earth work and will result in greater visual impact, greater stream impact, or will fail to provide direct access between existing and proposed ski terrain.
50. The entry and egress grades on both sides of Bridge #1 are fairly gradual, in the order of 10%, and the bridge crossing itself is essentially flat. Skiers moving in both directions on the bridge will be moving very slowly and in many cases, will be using their ski poles to propel themselves across the bridge. This is designed to minimize skier speeds and allow maximum safety.
51. Bridge #1 also provides skier circulation between the main mountain and the Jackson Gore ski trails. Okemo wishes to provide a means for skiers to return to the existing ski area from the Jackson Gore ski trails to provide easier access between ski areas.
52. Okemo proposes to construct a gondola from the base of Jackson Gore to the top of the main mountain. If constructed, this gondola would provide

access between the existing facilities and the Jackson Gore expansion. Okemo estimates that the gondola will be a \$6 Million project. Even if the proposed gondola were constructed, Bridge #1 would provide additional means of access and egress to the main mountain which would be useful in case the gondola is not working at anytime.

53. Lift configurations and ski trail design for the Jackson Gore Phase I Project were provided by an engineering company which undertook a thorough field investigation of the study area giving consideration to slope gradients, vertical differentials, solar exposure, configuration of the sloping land masses, vegetation cover, and presence of streams, tributaries, and wetlands.
54. The ski trails and crossings were designed in accordance with generally accepted design practices for ski resorts, which include the following:
 - a. Trails should adhere to the fall line as much as possible in order to minimize construction impacts, cut and fill requirements, and visual impacts;
 - b. Trail widths should be no greater than what is necessary to achieve the ability level designation of the trail;
 - c. Lift terminals need to be placed where there is adequate room for terminal siting, loading and unloading the lift, and queuing the lift waiting line;
 - d. There should be an interconnection of terrain pods throughout the mountain so that guests originating in one section of the resort are able to ski from one pod to another with a minimum amount of crossing other trails and mixing of ability levels;
 - e. An appropriate distribution of ability levels of terrain should be provided in order to fulfill the demand of the market;
 - f. There must be adequate "escape routes" at the bottom or top of all lift and terrain pods to allow skiers to exit the area in the event of a lift shut down, evacuation, or other emergency;
 - g. Adequate buffers should be provided between trails, stream banks, natural features, and manmade structures.
55. The Jackson Gore and existing ski pods cannot be connected at an elevation above the Coleman Brook because of bear habitat, wetlands, and topography issues in that area. In addition, the area above the Coleman Brook is not currently being leased by Okemo.

Mitigation - Coleman Brook and the Intermittent Tributaries

56. The Jackson Gore Phase I Project has been designed with stream and wetland buffers at least 50 feet wide as measured from the top of the banks, with substantially greater buffers in several areas.
57. Along Coleman Brook, within the upper portion of the Jackson Gore Project site, buffer widths are generally greater than 100 feet from the top of the bank. A small segment of ski trail will be approximately 50 feet from the top of the bank near Bridge #1.
58. In the lower portion of the Jackson Gore Phase I Project area below the railroad tracks, buffer distances to the top of the bank of Coleman Brook meet or exceed 50 feet. Fifty foot buffers are also provided for the intermittent tributaries and a number of small riparian wetlands.
59. Unlike impervious surfaces adjacent to a stream buffer, the well-vegetated and maintained ski trails will provide some additional protection to the Coleman Brook and the intermittent tributaries.
60. Permanent buffers are a minimum of 50 feet along the entire length of Coleman Brook and the intermittent tributaries. The trails have been designed to minimize the number of stream crossings. Bridges have been designed to maintain the natural condition of the stream banks and stream beds to the maximum extent possible while preserving trees and vegetation.

Water Quality Monitoring Plan; Vermont Water Quality Standards

61. Okemo has proposed a water quality monitoring plan, which was designed in collaboration with ANR. The purpose of the plan is to characterize existing background water quality conditions in Coleman Brook and the intermittent tributaries, provide for continued monitoring during and following construction of the project, and provide a mechanism to assure compliance with the VWQS both during construction and operation of the Jackson Gore Phase I Project.
62. The water quality monitoring plan will track water quality conditions throughout the project area to identify any changes or potential impacts. The monitoring program will enable evaluation of, and rapid response to, any water quality impacts during construction or operation of the Jackson Gore Phase I Project.
63. The VWQS were adopted on June 10, 1999, and took effect on July 2, 2000.

64. The policies of the VWQS are implemented by the general and classifications specific criteria contained in Section 3-01 through 3-04 of the standards. The comprehensive water quality monitoring plan implemented by Okemo will monitor any potential changes to the waters in the project area and will enable the Okemo to make necessary modifications to maintain conformance with the water quality criteria of the VWQS.
65. The plan calls for a total of eleven monitoring stations on Coleman Brook and the intermittent tributaries, and includes within the eleven, one location on Branch Brook. The locations of these stations are shown on the watershed maps. The stations are described below.
66. Station C1 is located on Coleman Brook, above Beaver Pond (RM 2.1) at elevation 2,530 feet. This station is a control site for event- based sampling on Coleman Brook, upgradient of proposed mountain developments and proposed bridge installation at elevation 2,500 feet.
67. Station C2 is located on Coleman Brook, at the outlet of Beaver Pond (RM 1.9), at elevation 2,505 feet. This station is a control site for the Coleman Brook, below Beaver Pond, upgradient of proposed on-mountain developments and wooden bridge installation at elevation 2,500 feet.
68. Station C3 is located on Coleman Brook below the proposed wooden bridge installation (RM 1.8) at elevation 2,460 feet. This station is located below the proposed bridge installation at elevation 2,500 feet.
69. Station C4 is located on Coleman Brook above the confluence with Tributary A (RM 0.9) at elevation 1,350 feet. This station is located downgradient of ski trail construction and lift installation, upgradient of Tributary A.
70. Station C5 is located on Coleman Brook above the railroad tracks (RM 0.8) at elevation 1,265 feet. This station is located below the confluence with Tributaries A and B, downgradient of ski trail construction and lift installations.
71. Station C6A is located on Coleman Brook below the railroad bridge and just above confluence with Access Road drainage tributary (RM 0.5) at elevation 1,125 feet. This station is located above the confluence with Access Road drainage and Tributary C and is a sediment comparison location for Station C6.

72. Station C6 is located on Coleman Brook above Access Road (RM 0.4) at elevation 1,110 feet. This station is an historical ANR sampling location, downgradient of proposed ski trail construction and lift installation, downgradient of the confluence with Tributary C and Access Road drainage.
73. Station B1 is located on Branch Brook, below the confluence with Coleman Brook (RM 0.5) at elevation 1,030 feet. This station is downgradient of stormwater discharge for the proposed parking lots.
74. Station I1 is located on Intermittent Tributary A, above the confluence with Tributary B (RM 0.1) at elevation 1,420 feet. This station is downgradient of proposed Lift 2B installation and associated with additional ski trails 10, 11, and 12.
75. Station I2 is located on Intermittent Tributary B, above the confluence with Tributary A (RM 0.1) at elevation 1,415 feet. This station is downgradient of proposed ski trails 13, 14, and 15 and proposed Lift 2B installation.
76. Station I3 is located on Intermittent Tributary C above the junction with Coleman Brook, (RM 0.1) at elevation 1,125 feet. This station is downgradient of ski trail construction, Lift 1B installation, and all proposed base lodge development.
77. The monitoring network is designed to examine water quality downgradient of construction activities proposed in the Jackson Gore development and to identify specific stream reaches where impacts are identified. Monitoring stations are located at the mouth of tributaries that drain construction or development sites, and above and below areas where proposed riparian zone alterations will occur.
78. The monitoring design for the plan will provide an overall assessment of water quality and aquatic habitat conditions. Monitoring parameters include:
 - a. Aquatic biota and habitat;
 - b. Water chemistry;
 - c. Event and base flow;
 - d. Sediment assessment;
 - e. Stream morphology;
 - f. Temperature (water and air).

Aquatic Biota Sampling and Habitat Surveys

79. Macroinvertebrate kick net sampling and habitat surveys will be conducted annually during September and October. Background sampling began in 2000. Habitat conditions will be observed and recorded at each of the biomonitoring sites within the study segment. Habitat data will include:
- a. Percent substrate composition;
 - b. Percent embeddedness;
 - c. Percent canopy cover;
 - d. Percent stream bank vegetation and type;
 - e. Stream bank stability;
 - f. Percent periphyton cover/type;
 - g. Habitat type;
 - h. Pool depth;
 - i. Riparian zone width and vegetation.

Water Chemistry

80. There will be event-based sampling during unique weather events such as rapid snow melt, spring rains, and summer thunderstorms. This sampling provides a set of data that can indicate possible sources of pollution that are not obvious during base flow conditions such as runoff from roads, stormwater runoff, and in-channel erosion resulting from high velocity flows. During this schedule, turbidity, conductivity, pH, and water temperature data will be collected. Total suspended solids will also be analyzed when turbidity is greater than 10 nephelometric turbidity units (NTU).
81. Base flow sampling will be used to evaluate water chemistry during normal flows throughout the summer and fall months. Base flow sampling parameters will include total phosphorus, dissolved phosphorus, total Kjeldahl nitrogen, nitrate, pH, alkalinity, turbidity, conductivity, temperature, and iron. Total suspended solids will be analyzed when turbidity is greater than 10 NTU.

Sediment Assessment

82. Sediment assessment will include measurements of substrate composition using the Wolman Pebble Count Procedure and the percentage of substrate embeddedness (percent fines) using Bovee's (1986) Quartile Estimate Guidelines. Sedimentation information will be used in conjunction with other habitat and biological data to document background conditions and investigate, if possible, impacts on sedimentation or sediment loading due to the development within the Jackson Gore Phase I Project area.

Stream Morphology

83. Stream morphology assessment will include evaluation of the following:
- a. Entrenchment;
 - b. Width/depth ratio;
 - c. Sinuosity;
 - d. Channel materials;
 - e. Slope;
 - f. Stream width;
 - g. Stream depth.

Temperature

84. Water temperature will be monitored by using data loggers at paired locations above and below identified structures or proposed developments which may result in warming of streams.
85. An air temperature data logger will be installed within the Coleman Brook watershed in a shaded location near Station C-5 to collect continuous air temperature data.
86. The Jackson Gore Phase I Project is designed with the extensive stream buffers, which will mitigate or eliminate any warming of Coleman Brook. Water temperature will be monitored as part of Okemo's water quality monitoring plan. This will enable a direct determination to be made as to whether any changes in water temperature occur during or after construction. Should a temperature or other water quality-related issue arise, Okemo will be responsible for rapid remediation, in concert with ANR.

Stream Flow and Precipitation

87. At Stations I1, I2, and I3, the intermittent tributaries will be monitored for stream flow and presence of water throughout the monitoring season.
88. A staff gauge will be installed to measure the stage of Coleman Brook at a natural control section. A rating curve developed for the staff gauge will provide an estimated stream flow based on the water level measured off the staff gauge at a given time.

89. Okemo will install a data logging rain gauge to record precipitation events. Continuous rainfall data will be collected from May through October for each monitoring year to help determine the magnitude of storm events as well as general wetness or dryness over the course of the season.

Pool Survey

90. A pool survey will be completed for the section of Coleman Brook from Station C3 to C6 to determine if there is any increase in sediment loading from construction activities within the watershed.

Monitoring Schedule

91. The monitoring schedule requires background monitoring, three years of monitoring during construction, and at least one year of post-construction monitoring. Monitoring may be extended following completion of project construction if ANR determines that additional data collection is warranted.
92. The monitoring study will run for five consecutive years starting in April 2000. Each March, beginning in 2001, an annual report summarizing the prior year's water quality monitoring results will be submitted to ANR. During the monitoring period, monthly data transmittals will be provided to ANR summarizing recent base flow and event based water chemistry monitoring data.

Review by ANR

93. ANR has reviewed and approved Okemo's water quality monitoring plan. Recommendations made by ANR's Water Quality Division Hydrologist and Aquatic Biologist were incorporated into the final water quality monitoring plan.

Baseline Data

94. Background sampling within the Coleman Brook watershed began in April 2000. These observations, together with historical water quality records provided by the ANR, provide baseline data on existing water quality conditions throughout the Coleman Brook watershed. Data collected during construction and post-construction years will be evaluated based on the background conditions. The water quality monitoring plan will indicate changes in water quality from background/historical levels and evaluate

compliance with the draft proposed biocriteria which have been developed by ANR for Class A and Class B waters.

95. The background monitoring component of the water quality monitoring plan was implemented during April 2000. A full report of the monitoring, entitled "Okemo/Jackson Gore Master Plan Water Quality Monitoring Plan, 2000 Performance Report," was filed with ANR and the Commission in March 2001.
96. The results of the September, 2000 biomonitoring results for Station C2, located in Class A(1) waters, are presented in comparison with the Class A(1) threshold standards in the 2000 Performance Report, as follows:

Biomonitoring Results for Jackson Gore Station C2 Comparison to Class A1 Thresholds and Application of Small High Gradient Scoring Guidelines									
	Density	Rich- ness	EPT	PMA-O	BI	%O	EPT/ EPT+C	PPCS FG	Outcome
Standard	>300	≥ 35	≥21	≥ 65	≤ 2.5	≤ 2	≥0.65	≥ 0.50	n/a
Results	270	27.5	13	50	1.62	0.2	0.70	0.43	Fail A1

Test results which do not meet the standards for Class A(1) waters are indicated in bold.

97. The density, species richness, EPT organism richness, PMA-O, and PPCS-FG metrics did not meet the proposed Class A1 thresholds. The following factors indicate why Station C2 did not meet Class A(1) biocriteria:
- a. The mean alkalinity at this station was only 4.1 mg/L, suggesting this site is acid stressed. Studies have documented lower densities of macroinvertebrates in critically acidified streams;
 - b. This station is at a high elevation (2,505 feet), and lower density and richness values are expected at such a high elevation. The biocriteria for small high gradient (SHG) wadeable streams are based on only a small percentage of reference streams at elevations above 2,500 feet.
 - c. Kick net sampling at this station was difficult due to the angular rocks and the limited number of riffles available.

- d. The station is immediately below a wetland, and is not similar to the reference stations that were used to develop the biocriteria for SHG streams.
98. The results of September 2000 monitoring for waters designated Class B(2)-(3) (below 2,500 feet) showed that the Class B waters in the Jackson Gore Phase I Project area are of good quality, although acid stressed, particularly at higher elevations. Stations C3, C5, and I3 all passed Class B(2)-(3) scoring guidelines. Given the low alkalinities found at these stations, the densities and richness values are quite good. Station C6 resulted in an indeterminate outcome in 2000, suggesting that the station likely passed Class B(2)-(3) criteria.

Biocriteria

99. Sections 3-02 and 3-04 of the VWQS contain specific requirements applicable to Class A(1) and Class B waters, respectively. Included in these sections are numerical criteria for turbidity and *Escherichia coli* (E.Coli), and narrative criteria for aquatic biota, wildlife, and aquatic habitat. In the case of the numeric biological indices, the VWQS set specific thresholds for each of the listed biocriteria constituents.
100. ANR developed proposed biocriteria for Class A and Class B waters in Vermont, on February 9, 2000. Class A biocriteria apply to small mountain streams sampled above 2,500 feet elevation. Class B (2)-(3) biocriteria apply to small mountain streams sampled below 2,500 feet elevation.
101. ANR conducted macroinvertebrate sampling at a station in the Class B segment of the Coleman Brook on September 16, 1998, at a site just above the Access Road. The results are listed in the table below, as are ANR's proposed biocriteria for Class A and Class B(2)-(3) wadeable streams:

Aquatic Biota Summary (Coleman Brook, 1998) & Proposed Biocriteria								
	Density	Richness	EPT	PMA-O	Biotic Index (0-10)	% Oligochaeta	PPCS-FG	EPT/EPT&C
A	≥300	≥35	≥21	≥65	≤3.25	≤2.0	≥0.50	≥0.65
B2-3	≥300	≥27	≥16	≥45	≤4.75	≤13	≥0.40	≥0.45
Sample	228	25	13	50.6	1.43	0.0	0.40	0.81

Test results which do not meet the standards for Class A(1) waters are indicated in bold.

102. The 1998 sampling results show that the natural background condition of the Coleman Brook is such that certain of the draft proposed biocriteria are not met, namely density, richness, and number of EPT organisms.

Iron Seep Program

103. Iron seeps are generally caused by the placement of iron-rich fill materials below the water table, where release or transformation of iron can occur.
104. Iron seeps are most likely to occur when low pH, iron-rich glacial till soils are used as fill materials and placed in direct contact with soils where saturated ground conditions occur.
105. Okemo will implement an iron seep control plan in which they will undertake the following measures:
- a. At-risk areas (generally, locations with wet soils, seeps and springs, and areas of water ponding where the placement of fill is proposed) will be identified in the field prior to construction and as construction proceeds within each specific development area;
 - b. Following identification of these areas, evaluation of the extent of special fill treatment will be made with project erosion control specialists;
 - c. Within each of these areas, native topsoil materials will be removed to a depth of 2 feet below native ground surface;
 - d. These zones will then be backfilled with crushed limestone of 2 inch or smaller size to original ground surface elevation;
 - e. As needed, provisions will be made for the drainage of groundwater within the soil replacement area. This will be determined on a case by case basis.

- case basis and may include a gravel pad, additional crushed limestone, or drainage pipe downslope of the treatment area;
 - f. A continuous layer of geotextile fabric will be placed over the limestone materials throughout each treatment area;
 - g. Common fill material will then be placed to achieve grades as specified by the proposed site plans.
106. Under this plan, Okemo will avoid the placement of iron-rich fill materials below the water table, where iron transformations and release can occur.

Snowmaking

107. Okemo currently operates a total ski trail network of 500 skiable acres, of which 475 acres, or 95% of total, are served by the existing snowmaking system. The proposed Jackson Gore Phase I Project will increase the skiable terrain by 108 acres, all of which would be served by snowmaking. In addition, 55 acres of new gladed terrain are proposed, which could be served by snowmaking, if needed. Thus, the total ski trail area would be 608 acres (not including gladed areas) with snowmaking coverage on 583 acres. This represents an increase of approximately 23% above existing snowmaking coverage.
108. Okemo's proposed snowmaking expansion consists of the following components:
- a. An additional 108 acres of new trails fully served by snowmaking;
 - b. 55 acres of new gladed terrain served on an as-needed basis by snowmaking;
 - c. Use of the existing snowmaking water sources (West Hill Reservoir and the Black River) and storage system to serve the expansion;
 - d. An increase in the pump rate for on-mountain delivery from the current 6,000 gallons per minute (gpm) to 11,000 gpm, which would match the existing Black River withdrawal pump capacity;
 - e. Evaluation of the feasibility of enlarging Okemo's storage reservoir which was constructed in 1994; and
 - f. Increase the current conservation flow on the Black River of 0.78 cubic feet per second per square mile (csm) to 0.80 csm.
109. Water demand for the existing snowmaking system was previously estimated to be 446 million gallons (Mgal) per operating season. A review of data on actual usage and projections for a range of weather conditions, however, indicates that a more realistic water demand estimate for existing

snowmaking operations would be 387 Mgal per operating season.

Expanding snowmaking coverage to serve the proposed ski trails within the Jackson Gore Phase I Project area will increase seasonal water demand to approximately 464 million gallons. This is 4% above the previously projected demand, and approximately 20% above the revised projected demand.

110. Okemo proposes to continue the use of the existing withdrawal facilities from the Black River and West Hill Reservoir. Currently, Okemo is authorized to withdraw a maximum of 11,000 gpm from the Black River for transfer to the holding reservoir it constructed in 1994. Okemo currently withdraws no more than 6,000 gpm from the Black River to the mountain. The proposed expansion in snowmaking will not exceed the existing maximum pumping capacity of 11,000 gpm.
111. ANR reviewed and approved Okemo's snowmaking needs and alternatives analysis for the Jackson Gore Phase I Project, consistent with ANR's rule, "*Water Withdrawals for Snowmaking.*"
112. This evaluation examined water source and storage options to identify reasonable and feasible alternatives to minimize any impacts to the withdrawal sources.
113. Okemo uses two water sources for snowmaking, the Black River and West Hill Reservoir. At each of these locations conservation flows equal to the February median flow (FMF) are in effect. This flow rate is the current standard in Vermont, pursuant to the ANR Rule "*Water Withdrawals for Snowmaking.*" When natural stream flows fall below the FMF value, no water withdrawal is allowed from these sources.
114. Okemo uses two water storage facilities to enable the continuation of snowmaking operations when natural stream flows are too low to allow direct withdrawals. Okemo has authorization for wintertime storage of 27 Mgal of water in the West Hill Reservoir, a pre-existing flood control structure. Also, in 1994 Okemo constructed a lined storage reservoir with a capacity of 73 Mgal.
115. As recommended by the Water Quality Division of ANR, Okemo will implement the following conditions in its snowmaking expansion:

Flow Standard

- a. Okemo Resort shall maintain a minimum conservation flow equal to the February median flow below the Black River diversion at all times that the system is active. No withdrawals shall occur during periods when the Black River is flowing at less than this minimum flow rate. The numeric standard shall be 0.80 csm until such time that a site-specific estimation of the February median flow can be done in accordance with Condition 2 below.

Site-Specific Estimation of Flow Standard

- b. When supported by ten years of reliable data, the site-specific February median flow shall be determined, subject to Department approval, and that value, if higher than 0.80 csm, shall become the minimum conservation flow for the Black River. If the revised February median flow is less than 0.80 csm, then the applicant [Okemo] may request a permit amendment to reduce the flow standard, subject to a demonstration of water need in accordance with Section 16-05 (Alternatives Analysis) of the ANR Environmental Protection Rules, *Water Withdrawals for Snowmaking*, or any applicable regulations in place at that time. Okemo Resort shall file a report on or before June 1, 2004 summarizing the February daily flow data collected at the diversion site for the period 1995-2004. The report shall include a description of the quality of the data for each of the February months, discussing ice influences, if any, and providing the rating curve used for each month. The Department may determine this data set to be adequate for making a site-specific February median flow determination or may require the collection of additional data. After making a determination, the Department may periodically review the estimate as more data becomes available.

Ramping

- c. Specific language will be developed after a determination of the significance of this issue. The removal of 11,000 gpm from the Black River during lower flow periods may cause some biological impacts, such as stranding of organisms that occupy the stream margins. In order to address this, the withdrawal should be ramped up to avoid, for example, going from no withdrawal to an immediate withdrawal of 11,000 gpm. The withdrawal can result in as much as one third of the river flow being diverted. To develop a permit condition specific to this issue, we would ask that you work with the Fish and Wildlife

Department and provide us with proposed language (Roderick, Wentworth, Impact Assessment Specialist, 802 241-3700).

Revisions to Alternatives Analysis

- d. Okemo Resort shall update the snowmaking alternatives analysis and file the updated analysis with the Department at intervals not exceeding 10 years. The first revision shall be filed by July 1, 2010. The results of a revised alternatives analysis may be used to reopen existing permits if the analysis shows that it is reasonable and feasible to increase the conservation flow requirements.

Recordkeeping

- e. Records shall be maintained for each day during the snowmaking season. For the Black River diversion, the records shall include the hourly rates of diversion, daily maximum diversion rates, and total daily volumes with daily average rates; minimum instantaneous below-diversion flows, and hourly and daily average natural flows. For the 1994 snowmaking reservoir and for West Hill Reservoir, the records shall include hourly reservoir levels. Records shall also include the daily snowmaking water use volumes for each of the two water sources. Records shall be filed with the Department in table form and in whatever machine-readable format the Department requires. For each of the months of October through March, within 21 days of the end of the month, a report shall be filed with the Department, including the date specified above and a narrative description of flow and water use conditions throughout the month, as well as any operational problems encountered or corrective actions taken. The Department may modify these reporting requirements with respect to the timing of filings and the necessity of paper copies of the records.

Annual Report

- f. By July 1 following each snowmaking season, Okemo Resort shall file an annual water use report consistent with Section 16-04(b) of the Environmental Protection Rules.
- g. Each ski area shall file annually with the Agency a report which includes the daily pumping rate and volume, seasonal water withdrawal, trail coverage, compliance with existing conservation flow requirements, available data on stream flow, temperature, and

snowfall, known expansion plans, and projections on future water use. This information shall be filed annually as soon as it is available but in any event no more than three years after issuance of this rule.

System Maintenance

- h. If the gaging or flow devices are malfunctioning, or are not functioning because of lack of power or for any other reason, diversion of flow [from the Black River] shall be discontinued until the malfunctions or non-functioning has been corrected. The Department shall be notified within 24 hours of any malfunctioning or non-functioning.
- i. A maintenance log shall be maintained for the two upstream weirs associated with West Hill Reservoir and for the Black River diversion. The log shall note the date and time of the visits, weather conditions, ice or debris conditions that may affect the withdrawals, any pipe inlet obstructions, and maintenance activities performed. A summary of the maintenance activities, including any observed problems, shall be included with the annual report discussed in Condition 5 above. Chronic problems shall be brought to the attention of the Department, and alternatives to correct the problems proposed for approval and implementation.

Miscellaneous

- j. The Department shall maintain continuing jurisdiction over the snowmaking system with respect to compliance with the VWQS and other applicable State laws and regulations and may modify the conditions of its permits as necessary to assure future compliance.
 - k. The permit is limited to the use of these public waters solely for the purposes of making snow and fighting fires. If water is proposed to be withdrawn for any other purpose, prior approval is required.
116. ANR's Water Quality Division reviewed and approved Okemo's proposed snowmaking expansion, subject to the conditions in the preceding finding.

Ramping

117. As proposed by Okemo and approved by the Department of Fish and Wildlife and Water Quality Division of ANR, Okemo will use the following ramping

procedure, to start the pump and slowly achieve the desired withdrawal rate from the Black River:

<u>Minutes</u>	<u>Pumping Rate</u>
0-15	Up to 3,000 gpm
15-30	3,000 gpm to 6,000 gpm
30-45	6,000 gpm to 9,000 gpm
45 +	9,000 gpm to 11,000 gpm

118. The Department of Fish and Wildlife and the Water Quality Division of ANR concluded that this ramping rate provides adequate protection to aquatic habitat. ANR recommended that the ramping procedure be included in a condition in future permits.

Recordkeeping and Reservoir Levels

119. Okemo has proposed an alternative method to monitor reservoir levels consisting of measuring levels of the 1994 storage reservoir and the West Hill Reservoir at the beginning and end of pump cycles.
120. Okemo will use the alternative monitoring method it proposed, with the following conditions recommended by the Water Quality Division of ANR:
- a. Reservoir levels are measured directly at least once a day if the snowmaking system is being run continuously; and
 - b. The pressure gauge at the Black River pump station is carefully calibrated against reservoir levels for the 1994 storage reservoir and accurate reservoir readings are provided to the Water Quality Division.
121. With these conditions, the monitoring procedure Okemo proposed is acceptable to the Water Quality Division of ANR.

Snowmaking - Water Quality

122. The water used for Okemo snowmaking is Class B water. The waters within the Jackson Gore Phase I Project area for the proposed ski trails are also Class B waters, except for the portion of the Coleman Brook above an elevation of 2,500 feet.
123. Okemo does not use any additives in its snowmaking water.

124. The water withdrawn from the Black River is withdrawn more than one mile upstream of the Ludlow wastewater treatment facility.
125. The wetland at the origin of Coleman Brook is protected by a 50-foot wide undisturbed forested buffer. There will be no construction upgradient of the wetland. The edge of the wetland is located 50 to 110 feet from the proposed edge of the nearest ski trail, which is Trail #8. There will be no snowmaking in the wetland.
126. There is no reason to believe that use of snowmaking on the ski trails within the proposed project area will result in any alteration of water chemistry or aquatic habitat. Any change in water quality will be addressed through the water quality monitoring plan.
127. The application of water for snowmaking to ski trails within the Jackson Gore Phase I Project area will not result in any degradation of water quality in the Coleman Brook or its tributaries.

Criterion 1(E) (Streams) - Solitude Village Project

128. Within the Solitude Village Project area, there is an unnamed intermittent tributary that flows out of the upper Solitude area into the Solitude Village Project site, also known as Lower Solitude, on the south end. The intermittent tributary flows under Okemo Ridge Road and into the wooded area to the south of the Solitude Village Project and eventually into the Black River.
129. The Solitude Village Project has two crossings of the unnamed intermittent tributary that extends along the south end of the subdivision. One is a ski trail crossing located at the south end of the border of Lots S27 and S32. The other crossing is a roadway at the northerly boundary of Lots S24 and S25. Both are Tucker Bridges. The skier bridge is 15 feet wide and 40 feet long. The driveway bridge is 15 feet wide and 15 feet long.
130. To protect the intermittent tributary which extends along the southerly edge of the Solitude Village Project, there will be protective stream buffers at least 50 feet wide, implementation of careful construction practices, and only two crossings.
131. To protect the streams and surface waters in the Solitude Village Project area and prevent downgrading of water classification, Okemo has established buffers to protect surface waters, minimized the width of skier

crossings and the width of trails. Also, lift loading and unloading areas have been redesigned protect natural features, and the water quality monitoring plan monitors compliance with the VWQS.

132. All wetlands within the Solitude Village Project area have been mapped and identified. Fifty foot buffer zones have been established where ANR has deemed them to be appropriate.

C. Criterion 1(B) (Waste Disposal) - Jackson Gore Phase I & Solitude Village Projects

Jackson Gore Phase I - Wastewater

133. Wastewater from the Jackson Gore Phase I Project flows to a pump station located adjacent to the upper end of the skier parking lot in the Jackson Gore base area. Sewage is pumped through an underground force main to the Solitude Pump Station #2 located at the base of the Morning Star Lift. From the pump station, the wastewater is pumped via a force main to an existing manhole near the Okemo maintenance building on the main mountain. From that manhole, the wastewater flows to the Ludlow wastewater treatment facility via existing gravity lines.
134. Okemo will construct and maintain, at its sole expense, the wastewater force main from the Jackson Gore base area to the gravity manhole near the maintenance garage within the Solitude area.
135. Okemo has received Subdivision Permit #EC-2-2418 (Sept. 12, 2000) approving a one-lot subdivision of 4.04 acres for the condominium hotel.
136. Okemo has received Water Supply/Wastewater Disposal Permit, WW-2-1213 (May 12, 2000). The Division of Wastewater Management has approved the condominium hotel for connection to the Ludlow municipal wastewater treatment facility with an approved total design flow of 58,040 gallons per day. The permit requires an engineering certification that the work has been completed in accordance with the approved plans. The permit also requires a professional engineer to make a thorough inspection, evaluation, and report of the completed sewage pump stations annually during the month of May. A copy of the engineer's written report shall be submitted to the Division of Wastewater Management prior to June 15 of each year for review and approval. Water use shall be metered daily. The daily metered results shall be submitted monthly to the Division of Wastewater Management.

137. The Ludlow Village Board of Trustees, serving as Sewer Commissioners, approved a sewer allocation for Jackson Gore Phase I in the amount of 69,443 gallons per day. The allocation was granted in conformance with the Ludlow Sewer Ordinance, as revised. Okemo has paid a sewer allocation fee of \$315,271.22, calculated at \$4.54 per gallon. Okemo will pay a hook-on fee of \$259,600 within 30 days of connecting to the municipal system.
138. The Ludlow wastewater treatment facility has sufficient reserve capacity to service the Jackson Gore Phase I and Solitude Village Projects without creating any undue burden upon the system.

Jackson Gore Phase I Project - Stormwater Discharge

139. ANR issued Stormwater Discharge Permit #1-1361 (Jan. 11, 2001) to Okemo, approving a stormwater discharge plan for stormwater from roadways, parking and roofs associated with the Jackson Gore condominium hotel. The permit requires regular inspections and a yearly written report submitted to the Department of Environmental Conservation by September 30 of each year. The annual report shall summarize the results of inspections conducted in the previous year and set forth the dates and details of the cleaning and maintenance operations carried out in the preceding year.
140. ANR has reviewed and approved Okemo's stormwater discharge plan for the Jackson Gore Phase I Project. Under this plan, stormwater will be collected in a pipe drainage system to a treatment system integrated into the main parking lot in the Jackson Gore base area. The stormwater treatment system consists of a series of detention ponds to settle out sediment and reduce peak runoff. Stormwater then flows to a state-of-the-art bioretention system which acts as a secondary treatment prior to its discharge into receiving waters.
141. A total of 7 subwatersheds within the lower portion of the Jackson Gore Phase I project area were defined and evaluated. The subwatersheds range in size from 2.1 to 23.2 acres. A total of 5 discharge points to Branch Brook, on the eastern side of Vermont Route 103 and Buttermilk Falls Road, have been identified. These discharge points correspond to the following subwatersheds:
 - a. Discharge Point #1 - proposed Jackson Gore stormwater detention basin outfall;
 - b. Discharge Point #2 - Subwatershed A;

- c. Discharge Point #3 - Subwatersheds B, C, D, and E;
 - d. Discharge Point #4 - Subwatershed F
 - e. Discharge Point #5 - Subwatershed G.
142. Generally, the size of these subwatersheds will decrease as some of the area is regraded and redirected to the stormwater detention basins proposed for the project. On an overall basis, the area upslope of Discharge Point #2 will decrease by 51%, and the area upslope of Discharge Point #3 will decrease by 7%. Since the land cover conditions in the remaining subwatersheds draining to these discharge points will remain unchanged, no increased peak runoff flow rates will occur.
143. There will be no increase in the amount of stormwater runoff to Buttermilk Falls Road residents.

Jackson Gore Phase I Project - Forest Debris

144. Forest debris from trail clearing will be skidded to predesignated landing areas where it will be sorted into pulp logs for paper, mill logs for lumber, and the remainder will be chipped and hauled away for power generation. Okemo does not burn any of the wood cleared from the ski trails.

Jackson Gore Phase I Project - Recycling

145. Okemo has an extensive recycling program. Okemo recycles all cardboard, glass bottles and cans. With respect to construction materials, Okemo has committed to work with ANR to develop a process for recycling of construction material waste.

Solitude Village Project - Wastewater

146. The wastewater from the Solitude Village Project is collected by buried gravity lines that flow into the Solitude pump station at the base of the Morning Star Lift. From the pump station, the wastewater is pumped via a force main to an existing manhole near the Okemo maintenance building. From this manhole, the wastewater flows to the Ludlow wastewater treatment plant via existing gravity lines.
147. Okemo has received Subdivision Permit #EC-2-2128-8 (Oct. 2, 2000) from the Department of Environmental Conservation approving 11 lots of the Solitude subdivision. The Division of Wastewater Management approved the subdivision for connection to the Ludlow municipal wastewater treatment

facility with an approved design flow of 8,540 gallons per day. The permit requires certification by a professional engineer that the work has been completed in accordance with the approved plans.

148. The Ludlow Village Board of Trustees, serving as Sewer Commissioners, approved a sewer allocation for 11 of the 34 Solitude single family home lots in the amount of 8,640 gallons per day. This allocation was granted in conformance with the Ludlow Sewer Ordinance, as revised. Okemo has paid an allocation fee of \$39,225.60. Okemo will pay a hook-on fee of \$2,200 per home for a total hook-on fee of \$24,200.

Solitude Village Project - Stormwater Discharge

149. ANR has issued Stormwater Discharge Permit #1-1431 (Dec. 22, 2000, as amended) for stormwater from roadways, parking, and roofs from the Solitude Village Project. The permit requires the discharge treatment system to be inspected at least quarterly. A written report shall be submitted to the Department of Environmental Conservation by September 30 of each year summarizing the results of inspections and setting forth the dates and details of the cleaning and maintenance operations carried out in the preceding year. Boedtger direct at 7, Exhibit O30.

D. Criterion 4 (Soil Erosion/Capacity to Hold Water) - Solitude Village Project

150. Okemo's comprehensive erosion control plan consists of measures addressing site preparation, erosion control during construction, roadway erosion, clearing and grubbing, grading, vegetation, seeding and mulching, erosion control after completion of construction, and establishment of permanent vegetation.
151. Okemo's comprehensive erosion control plan (Exhibit O3F) is in conformance with the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites (1982).
152. ANR has reviewed and approved the erosion control plan submitted by Okemo in connection with construction of the Jackson Gore Phase I Project and the Solitude Village Project.
153. At the end of each day or prior to construction shutdowns for weekends or for longer periods, all erosion control measures will be inspected and whatever

maintenance that would be required will be performed in order to insure that the entire erosion control system will function properly during a rainfall event.

154. Okemo will implement the comprehensive erosion control plan.

E. Criterion 5 - Traffic Jackson Gore - Phase I Project

Traffic Impact Analysis

155. Okemo's traffic consultant performed a traffic impact analysis of the Jackson Gore Phase I Project. The traffic impact analysis was based on an increase of 113 lodging units to a total of 1,238 units, and an increase in Comfortable Carrying Capacity (CCC) of 1,630 for a total CCC of 11,380. The 4 additional lodging units proposed for the Jackson Gore condominium hotel have minimal affect on the analysis or conclusions presented in the traffic impact analysis of Jackson Gore Phase I.
156. The Design Hourly Volume (DHV) is the 30th highest hour of the traffic experienced during the year, i.e., that volume which is not exceeded more than 29 hours during the year.
157. CCC is an engineering standard by which a ski area can measure the capacity of its infrastructure to accommodate a given number of people efficiently and safely over the span of an entire day. The existing CCC of Okemo Mountain is 9,750. The Jackson Gore Phase I Project will increase CCC by 1,630 (16%) to a total CCC of 11,380.
158. Okemo's consultant has developed a regression analysis equation that relates 30th DHV to the number of on-mountain lodging units and the total CCC of the resort. The equation has been continuously tested during the implementation of the previous Master Plan and the development of resort projects. The results of testing and comparison against actual traffic counts showed that the equation is a valid method of calculating potential traffic volumes. The equation is as follows:

$$30^{\text{th}} \text{ DHV} = 688 \times \text{lodging units} + .023 \times \text{CCC} + 40.63$$

159. The equation has been tested since 1991 utilizing the actual number of on-mountain dwelling units, CCC, and the 30th DHV at count station Y-58. Comparing the calculated 30th DHV against the actual 30th DHV of the winter count station on the Access Road, there has been only a 3% difference. This

minimal difference indicates that the equation continues to be a good predictor for determining trip generation rates for the resort.

160. Existing traffic conditions were evaluated by analyzing traffic counts on peak winter weekends. Traffic counts from the winter count station Y-58 located on the Okemo Access Road along with winter turning movement counts taken during peak traffic weekends at the following intersections: Route 100 North/Route 103; Depot Street/Route 103; Route 131/Route 103; and Route 103/Route 11, were utilized to validate the equation which has been developed for predicting traffic generation at Okemo Mountain Resort.
161. The traffic volumes calculated in the traffic impact analysis include a growth rate based on historical traffic growth, increase in on-mountain lodging units, CCC, and increase in traffic growth at the Killington Ski Resort based on Killington’s traffic study.

Traffic Generated by the Project

162. The Jackson Gore Phase I Project is projected to increase DHV by 90 vehicles. Utilizing the regression analysis equation, the projected DHV will increase from 839 vehicles to 918, which was rounded up to 920. This number was increased by an additional 10% to reflect the relationship between the total Okemo Access Road traffic at the intersection of Route 103 and the location of the former count station Y-58.

Distribution of Traffic

163. The projected DHV was factored and distributed to the key intersections along Route 103. The intersection volumes were developed utilizing the 1997/1998 winter traffic counts and the factors previously developed for those intersections. The intersection traffic counts as a factor of count station Y-58 remained consistent between 1989 and 1997. These results are shown below:

<u>Intersection</u>	<u>Factors*</u>				
	1996/97	1995	1994	1993	1991
Rt 103/100 N	1.27	1.26	1.32	1.42	1.21
Rt 103/Okemo Mt. Access	2.10	2.19	2.30	2.18	2.22
Rt 103/Depot St.	1.87	1.91	1.77	1.87	1.80
Rt 103/131	1.37	1.48	1.54	1.47	1.11
Rt 103/11	1.16	1.25	1.24	1.31	1.19

* The factor represents the total intersection volume divided by the corresponding DHV at Station Y-058.

Intersection Levels of Service

164. Levels of service were calculated for No-Build and Build conditions for the key intersections along Route 103. Present levels of service are A or B, with the exception of the left turn from Route 131, which is a Level D. If Okemo continues to provide traffic control during peak periods, the level of service of the key intersections will not change with the exception of the turning movement onto Buttermilk Falls Road, which will change from a level of service B to a level of service C.
165. On November 30, 1992, the Board of Selectmen and Village Trustees adopted a resolution stating the level of service for intersections within the Town and Village of Ludlow would be determined based on a 50th design Hour Volume and that level of service E would be an acceptable rating for traffic flow within the Town and Village of Ludlow.

Validation of Traffic Impact Analysis

166. The Jackson Gore Phase I traffic impact analysis prepared in December 1998 and revised in February 1999 (Exhibit O34) remains an accurate predictor of traffic volumes generated by the Jackson Gore Phase I Project. The projected 1999 No-Build traffic volumes presented in the Master Plan study were compared to the actual 2000 turning movement counts, except for the following 5 out of the 48 turning movements in the study area:

<u>Intersection</u>	<u>Movement</u>
Rt. 103/Okemo Ridge Road	Left - Northbound thru Eastbound
Rt. 103/Okemo Access Road	Right - Eastbound
Rt. 103/ Rt. 131	Thru - Southbound
Rt. 103/ Rt. 11	Thru - Eastbound

167. The 2000 actual counts were slightly less than the 1999 projections, and for all of the intersections the 2000 actual total intersection volumes were less than the total 1999 projected intersection traffic volumes.

168. Vermont Agency of Transportation (VTrans) has reviewed and approved the Jackson Gore Phase I Project traffic impact analysis and has concluded that the key intersections included in the study will operate at acceptable levels of service with traffic control officers present during peak periods at Route 103/Route 100 North; Route 103/Okemo Access Road; and Route 103/Route 11.
169. The new Jackson Gore Access Road located 1.8 miles north of the Village of Ludlow (Okemo Ridge Road) will reduce the volume of vehicles using the main access road in the Village of Ludlow. Approximately 37% of the traffic exiting Okemo's present Access Road turns left to travel north on Route 103. It is likely that a significant percentage of skiers who presently live north of Okemo will use the Jackson Gore access and parking areas.

Traffic Safety

170. The most recent accident data from the VTrans for Route 103 from I-91 north to the Route 100 north intersection between 1991 to 1999 showed a reduction in accidents. From 1995 to 1999, there were 12 accidents with only 3 occurring during the winter ski season. The smaller number of accidents occurring during the winter ski season may be attributed, in part, to the implementation of the use of Okemo's traffic control measures.

Traffic Mitigation Measures

171. Okemo Mountain Resort has implemented a series of traffic mitigation measures within the Route 103 corridor since 1987. Those measures include the following:
 - (a) Okemo pays for traffic control provided by the Ludlow Police Department during weekends and holiday weeks at key intersections in and around Ludlow;
 - (b) On peak weekends and holiday weeks, Okemo personnel set up traffic cones and signs to create travel lanes for incoming and outgoing traffic, and a center lane for vehicles making left turns into the Grand Union Plaza and onto Depot Street;
 - (c) Okemo operates a Village shuttle bus system consisting of 4 buses covering 4 routes, with scheduled stops within the Village of Ludlow and Proctorsville;

- (d) Okemo contracts with the operator of the Town and Village Bus to transport Okemo employees to and from work. The Town and Village Bus operates 2 shuttles which run routes between Chester and Okemo as well as from Springfield through Perkinsville and Cavendish to Okemo;
 - (e) Okemo offers ski packages with Amtrak. These packages include transportation on the Amtrak Ethan Allen Express to Rutland with transportation from Rutland to Okemo.
 - (f) Okemo has aggressively marketed midweek ski vacations to encourage use of the resort midweek. Several years ago, Okemo began selling the “*Sunday Solution*” ski ticket. This ticket is valid from 8:00 a.m. to 1:00 p.m. so that skiers can ski in the morning and leave before peak period traffic in the afternoon.
 - (g) Okemo entered into a Memorandum of Agreement with Southern Windsor County Regional Planning Commission to work with the Planning Commission and other parties in the Ski Country Traffic Management Plan to develop measures which will mitigate traffic related impacts throughout the Route 4/Route 100/Route 103 corridor.
172. In addition to the traffic mitigation measures described above, Okemo has agreed to implement the recommendations and conditions contained in the Act 250 permit issued by the District 2 Environmental Commission which required the following:
- (a) Installation of a street light at the intersection of Route 103/Okemo Ridge Road/Buttermilk Falls intersection;
 - (b) A sign identifying the Jackson Gore project;
 - (c) A traffic control officer at the Okemo Ridge Road intersection during peak periods;
 - (d) Ongoing traffic counting and monitoring;
 - (e) Installation of “*Turning Vehicles Ahead*” signs on Route 103 in advance of the intersection.
173. Okemo will implement a Friday to Friday check-in and check-out procedure for the Jackson Gore lodging which may reduce Sunday peak hour traffic.

The traffic projection of 90 peak hour additional trips for the Jackson Gore Phase I Project assumes 77 Sunday peak hour trips from the Jackson Gore condominium hotel. It is projected that the Friday to Friday schedule could reduce the number of peak hour trips by 50% or 39 trips.

174. Okemo will require all employees who come from towns north of Ludlow to park in the Jackson Gore parking lots so that they will not contribute to additional traffic volume within the Village of Ludlow. Over the past 3 years between 127 and 137 employees have come from towns north of Ludlow. Using the ratio of 1.5 riders per vehicle, this mitigation measure will reduce total volume by 84 vehicles and reduce peak hour traffic by 67 trips (84 vehicles x 80% exiting 4:00 to 5:00 p.m.).
175. It is expected that there will be some reduction in peak hour trips with the provision of onsite retail, dining, entertainment opportunities, as well as an owners lounge and guest baggage check room at the Jackson Gore condominium hotel which would encourage patrons to stay at the resort after skiing and avoid peak hour traffic.
176. The Okemo Ridge Road/Route 103/Buttermilk Falls Road intersection will have officer control during peak periods which will insure an acceptable level of service and allow Buttermilk Falls Road residents to exit safely without unreasonable delays.

F. Criterion 6 - Master Plan, Jackson Gore & Solitude Village Projects

177. Many of the children who resulted from the high birth rates of the 1980's and the early 1990s have moved through the elementary systems and are attending secondary schools. This "peak" will move through secondary schools during the next few years. While local trends may vary somewhat, the class by class enrollment data for most towns in the Okemo region indicate that total enrollments will be decreasing in the secondary schools in the coming years.
178. Grades 7 through 12 from the Towns of Ludlow and Mount Holly attend Black River High School in Ludlow. Black River High School's enrollment is presently near capacity. As a result of population trends, Black River High School's enrollment will increase slightly above the current level over the next 3 years, and then decrease significantly over the following three years.

179. Jackson Gore Phase I Project will not generate a significant number of school aged children in the area. The Condominium Hotel Declaration prohibits the condominium units from being used as a residence on a year round basis. Experience has shown that it is unlikely that any of the single family units in the Solitude Village Project will be used as year round housing units. However, the Jackson Gore Phase I Project will result in increased employment opportunities which will generate some increase in school aged children.
180. Vermont statistics have consistently shown that the average household generates approximately 0.5 children of school age. This will vary from town to town and household to household, but represents a good value for projection purposes.
181. The Jackson Gore Phase I Project, including the Solitude Village Project, is projected to generate 13.6 students on a regional basis. It is projected that 4 or 5 students will migrate to Ludlow, Cavendish and Mount Holly area.
182. At present, each of the elementary and secondary schools in the Okemo region have excess capacity. While the Black River High School is currently in a near capacity situation, the number of students projected to be generated by the Jackson Gore Phase I Project is insufficient to bring enrollment to a level that will exceed the capacity level. This is confirmed by the fact that Black River High School currently elects to accept tuition students (ranging from 4 to 10 in the most recent 3 years).

Solitude Village Project

183. The experience at Okemo Mountain is that high value second homes do not have year round occupants. A number of trailside homes at Okemo have values in excess of \$1,000,000. Many of these houses have been in use for over 10 years and none of them are used on a year round basis. In addition, the previously approved Solitude Village 20 lot subdivision has houses that are also valued in excess of \$1,000,000. None of the houses that have been constructed since 1998 have year round occupants.

Jackson Gore Master Plan

184. The entire Jackson Gore Master Plan is projected to increase the number of school age students by approximately 30 within the entire region. It is projected that 10 or 11 students will migrate to the 3-Town area. However,

apart from the Jackson Gore Phase I Project, the additional enrollment due to the Jackson Gore Master Plan will not occur for several years.

185. The schools in Ludlow, Cavendish and Mt. Holly have sufficient capacity to accommodate the limited number of students generated by the Jackson Gore Phase I Project and the entire Master Plan Project.
186. The additional enrollment will be below a level necessary to reverse the decline in enrollment that is inevitable at the school due to population trends. It is possible that Black River High School will undergo capital improvements because of a deficient physical plant. However, it is not reasonable to attribute these capital improvements to the limited enrollment generated by the Jackson Gore Phase I Project, Master Plan Project, or the Solitude Village Project.

G. Criterion 8 (Aesthetics and Scenic Beauty) - Jackson Gore Phase I Project

187. The lifts and trails associated with the Jackson Gore Phase I Project are located in an area directly adjacent to and north of the Solitude area and the existing lifts and trails on Okemo Mountain. The new area of skiing terrain and interspersed woodland covers an area of approximately 375 to 400 acres and extends from the new base area in the proposed Jackson Gore development at an elevation of 1,250 feet, up to an elevation of 2,700 feet.
188. The Jackson Gore base area is a multi-use recreation resort development located at the base of the Jackson Gore Phase I Project. The Jackson Gore base area occupies a small portion of the approximately 117 acres of land bordering Route 103. Elevations of the base area range from 1,075 feet up to 1,250 feet.

Nature of the Surrounding Area

189. The existing landscape is characterized by a mixture of land use types, cover types and topography.
190. The Village of Ludlow is characterized by tightly grouped clusters of commercial and residential structures arranged along a central main street and side streets. The village is confined primarily to the Black River valley floor and is bounded on all sides by hills that rise fairly abruptly from the valley floor. Residential uses extend beyond the village into wooded and open hillsides surrounding the village.

191. Views from the village and major roadways are dominated by three predominant visible land use types, the extent of which is dependent on specific viewing location. The general land use types include:
 - (1) The village center and associated commercial and residential land uses;
 - (2) Wooded and open hillsides surrounding the village with varying densities of residential use; and
 - (3) Okemo Mountain Resort and associated ski-related commercial, recreational and residential uses.

192. The valley floor is characterized by a mixture of open fields and woodlands. Open landscapes are a result of current and past agricultural uses. Woodlands are predominately hardwood forests, the typical species composition of northern New England valley floors. Hillsides surrounding the village are a mixture of open lands and woodlands. The open lands are past agricultural fields and pastures, many of which are occupied by old and new residential structures. Woodlands are a mixture of deciduous and coniferous second and third growth forest and abandoned pastures that have grown over. Forest lands on Okemo Mountain are primarily northern hardwood forests (beech-birch-maple) with interspersed stands of coniferous vegetation (hemlock-red spruce-white pine). The top of the mountain is predominantly coniferous boreal forest (red spruce-white spruce-balsam fir). Openings created for ski lifts and trails comprise a major component of the view of the mountain as seen from the valley floor and hillsides surrounding the village.

193. Okemo Mountain is the most dominant visual element in the valley landscape and contributes substantially to the visual context of the area. The ski trails and resort related recreation, residential and commercial activities combined with the commercial and residential activity in and around the village create a context that can be characterized as a moderately-to-densely settled valley floor comprised of commercial and residential activities with a predominant ski-related recreation resort component. The village is surrounded by wooded and open hillsides with Okemo Mountain and the resort-related activities occupying an important focal point within this portion of the Black River Valley.

194. The buildings and parking areas have been sited and screened to minimize visibility from offsite vantage points. The building size, density, and location

are consistent with that of a resort related village, with the density concentrated on a small portion of the overall site. Most of the site will remain substantially open and the building and most improvements will not be visible from most major viewpoints in the area.

195. The ski area expansion, base area, condominium hotel, and the commercial and recreational uses proposed for the Jackson Gore Phase I Project are consistent with the land use activities and development patterns at the parts of Okemo Mountain which already are developed.

Colors and Materials

196. The proposed hotel and lodge structure will be constructed of wood clapboard and stone, both traditional materials that have been historically in buildings in the area, as well as throughout New England. The hotel will be white with a dark gray to black roof. Stone will be used on the facade of the central entrance arch and first floor. Both the colors and materials are consistent with other structures in the area.

Visual Analysis

197. Previous visual assessments prepared for Okemo dating back to 1991, identified several viewpoints from which the mountain is visible. These viewpoints are located along major roadways and represent views that are frequently seen by relatively large numbers of viewers. Additional viewpoints have been added in the same travel corridors to better describe the sequence of views. The viewpoints are shown and summarized on Exhibit O48-A, Viewpoint Inventory.

Route 103 Northbound - Viewpoints 4, 5, & 6

198. The views of Okemo Mountain from Route 103 northbound approaching and entering Ludlow from the south are long in duration (20 seconds to 1 minute) because the highway is generally oriented toward the mountain, and views are fairly unobstructed.
199. Viewpoints #4 and #5 represent views from Route 103 approaching the mountain. Viewers traveling this corridor see the eastern face of the mountain and can easily observe the existing trail and lift clearings and residential development there.

200. Viewpoint #6 is located in Proctorsville, approximately 5 ½ miles from the proposed Jackson Gore Phase I Project area. It is the first point from which Okemo Mountain is visible when entering the valley on Route 103 from the south.
201. The proposed clearings for lifts and trails will be visible from Viewpoint 6. The trails will be visible directly adjacent to existing trails on Okemo mountain. Because the mountain is the dominant feature in the view, the new area will appear to be an extension of the existing areas of lifts and trails. The Jackson Gore Phase I Project area will be seen to the far right side of the mountain and substantially lower in elevation.
202. As the viewer approaches Ludlow, views of the expansion area become less apparent because of intervening landforms, buildings and roadside vegetation along the north side (right side) of the highway. Jackson Gore base area facilities are at lower elevations and will not be visible from Viewpoints 4, 5 and 6.

Ludlow Village Center - Viewpoint #2

203. Most of the Jackson Gore Phase I Project will not be visible from the center of Ludlow Village, Viewpoint #2, 2 to 2 ½ miles away. The new lifts and trails will be blocked from most viewing locations in the village by buildings and vegetation. Jackson Gore base area facilities are at lower elevations and will not be visible.

Route 100 Northbound - Viewpoint #1

204. The Jackson Gore Phase I Project will not be visible from where Route 100 enters Ludlow from the south (Weston direction) because this area, Viewpoint #1, is located on the opposite side of the mountain from the proposed expansion. Viewing distances are 1 to 3 miles from the mountain and approximately 4 miles from the expansion area.

Route 100 Southbound - Viewpoint #3

205. Okemo Mountain is visible from Route 100 southbound as it approaches the intersection of Route 103 about 1½ miles north of the Village of Ludlow, Viewpoint #3. Viewers face the Solitude area of lifts, trails and development, from an approximate elevation of 1,050' and approximately ½ to 1 mile away from the Jackson Gore base area and 1 to 2 miles from Jackson Gore lifts and trails. Travelers along this section of Route 100 are decelerating as they

approach the stop sign at Route 103. This view provides the best viewing position of the expansion area. Portions of the new lifts and trails will be visible as seen from this viewpoint. (See Exhibit O48-C, Viewpoint #3). Jackson Gore Phase I base area facilities will not be highly visible because of the intervening landforms, vegetation and screening.

Route 103 Southbound - Viewpoint #7

206. Views of the mountain from the north on Route 103, Viewpoint #7, are substantially obscured by topography and intervening roadside vegetation, and are brief because the posted speed limit is 50 mph. It is possible to see the Solitude area lifts and trails, although these views are broken by roadside vegetation and are located at a right angle to the viewer. Portions of Jackson Gore and associated lifts, trails and base area development may be visible from these areas. The Jackson Gore base area facility will be located above the viewer at a right angle to the highway and directly adjacent to the highway. There are varying amounts of intervening landform and vegetation between Route 103 and the Jackson Gore Phase I Project site.

Open Space

207. Because of the recreation-oriented nature of the expansion, open spaces will be substantially preserved. Building construction is clustered around the base area core. Surrounding the base area core will be summer and winter outdoor recreation spaces, woodland and open land. The site has been designed to cluster the buildings and infrastructure to maximize open spaces while substantially limiting base area construction from offsite visibility.

Coleman Brook Above the Railroad Tracks

208. The Jackson Gore Phase I Project design provides for buffers between the most sensitive features of the site, leaving the Coleman Brook ravine and the cascading tributaries in their natural settings.
209. The relocation of the on-load area of Lift B1 away from the Coleman Brook ravine and the relocation of the load area of Lift B2 100 feet uphill from its original location, have reduced clearing limits in the area of Lift B2 by 2.8 acres, and have increased the buffer from the cleared area of Lift B2 to the Coleman Brook ravine from 40 feet to 130 feet.

210. Due to the relocation of the trail exiting the load area of Lift B2, there will no longer be any ski trail crossing within visibility of the Coleman Brook cascades.

Landscaping and Screening

211. Okemo's landscaping plan has been designed to preserve and protect existing screening vegetation where possible and to add plantings to substantially limit visibility of base area construction and the parking areas.
212. CVPS plans to clear their right-of-way along Route 103 in 2002. Following the clearing activity, the cleared area will be replaced with a mixture of mugo pines and low deciduous trees and shrubs. These plantings will be maintained at a maximum height of 12 feet. These plantings will provide screening, as well as replace some of the "hedgerow" characteristics of the existing vegetation when viewed from Route 103.
213. VTrans has granted permission to Okemo to provide additional screening along Route 103 within the highway right-of-way. Okemo proposes to plant approximately 450 trees in the area along Route 103 and the access road. The trees will be balsam fir, white fir, Fraser fir, blue spruce, red spruce, white pine and American arborvitae. The addition of these plantings along the top of the slope along Route 103 will substantially limit the visibility of the Jackson Gore parking area. Existing vegetation in the areas between Route 103 and the parking lot will remain in place, and will be supplemented as necessary to screen the view of the parking lot from Route 103.
214. Because the Jackson Gore base area is not highly visible from offsite, the need for mitigation plantings is minimal. The majority of landscaping in the Jackson Gore base area will be implemented to complement the onsite aesthetics of the area. Roadways, parking areas and pedestrian spaces will include planted areas to provide screening, add scale and direct pedestrian passage. Plantings around the buildings will be added to complement the architecture, provide screening, privacy, give scale and create outdoor spaces. More than 230 shrubs of varying varieties will be planted around the condominium hotel and pedestrian areas.

Lighting

215. The lighting plans have been prepared in accordance with ANR's "Guidelines for Ski Area Lighting" as well as IESNA (International Illuminating

Engineering Society of North America) and NSAA (National Ski Area Association) codes.

216. Originally, Okemo had proposed lighting for nighttime skiing and snowboarding on terrain of approximately 5 acres adjacent to the condominium hotel and base area. Okemo proposed hours of operation from dusk until 10:00 p.m. Sunday through Thursday (non-holiday) and from dusk until 11:00 p.m. on Fridays, Saturdays and holidays.
217. The Ludlow Development Review Board (DRB) issued a permit limiting the ski trail and half-pipe lighting to “special occasions with a special permit only to be obtained from the Town of Ludlow Selectboard.” During the special permit process, Okemo will sponsor demonstrations that will allow all potential parties to view the lighting impacts from different locations. The details and impacts of any such special occasion lighting proposals are not known at this time and would have to be reviewed and approved by the Commission as well as the Selectboard.
218. Okemo has also revised its overall lighting plan for parking at the buildings in response to concerns expressed by the DRB. The lighting has been revised to reduce visibility from Route 103. The number of fixtures and pole heights have been reduced and all lights have been oriented away from Route 103. There will be no “building mounted” fixtures other than recessed lights at entry ways and within the entrance way to the plaza area. The DRB prohibited the use of facade lighting on the buildings. Lighting for the main parking lot shall be turned off at 8:00 p.m., except as needed for plowing.

Noise

219. Construction will generate noise, but the noise will be limited to the immediate construction site and will only occur during normal working hours. Seasonal (winter) noise will be generated by snowmaking equipment.
220. The nearest offsite residence is approximately 2,000 feet away.
221. Okemo has recorded noise from snowmaking guns as part of previously issued land use permits, and there is no reason to believe that snowmaking guns have gotten louder since that time. Noise levels from snowmaking guns range from 88 dbA 25 feet away from the guns to 68 dbA 200 feet directly in front of the guns, and 57 dbA 600 feet away from the guns.

222. Noise levels have also been taken at various locations in the Village of Ludlow, ranging from 1 mile to 1 ½ miles away from the guns and under various weather conditions. In all instances, there was no recordable level of noise, although snowmaking could be heard at certain times as a dull background noise.
223. Because of the remoteness of snowmaking on the proposed trails, it is not anticipated that the noise will impact existing residential areas.

Signs

224. Okemo proposes no signage for the Jackson Gore Phase I Project.
225. Any signage for the Jackson Gore Phase I Project must be reviewed and approved by the Commission.

Skier Bridges

226. Bridge #1 and associated trails will not be visible from offsite. Winter viewers will likely be active winter sports enthusiasts who are using the trails and bridge for recreation and enjoyment. The bridge and trail will not negatively effect their view or experience. Summer visitors driving or walking the Mountain Road are constantly crossing ski trails, lifts and encountering equipment and structures related to the area's winter operation. The bridge and trail will not be out of context or detract from the summer use of the Mountain Road and winter sports trails.
227. Winter viewers of will likely be active winter sports enthusiasts who are using the trails and skier bridges for recreation and enjoyment. Summer visitors who drive or walk the mountain road encounter ski trails, lifts, and structures related to the area's winter operation. The skier bridges will not be out of context or detract from the summer use of Okemo Mountain Road and the Okemo State Forest.

Ludlow Zoning Regulations

228. The proposed condominium hotel is in the Mountain Recreation District under the Ludlow Zoning Regulations. Section 570 of the Ludlow Zoning Regulations governs the Mountain Recreation District, and sets a height limit on residential buildings of "35 feet or 3 stories, whichever is less."

229. The proposed condominium hotel contains both residential and commercial uses, and has an average height of 60.5 feet (60 feet, 6 inches), as measured in accordance with the Ludlow Zoning Regulations.
230. The Ludlow Zoning Regulations also provide that the DRB may modify height and other density restrictions for any Planned Unit Development (PUD).
231. "Planned Unit Development" is defined in the Ludlow Zoning Regulations as:

An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any, the plan for which does not correspond in lot size, bulk, or type of dwelling, commercial or industrial use density, lot coverage and required open space to the regulations established in any one or more districts created in this Zoning Regulation.

232. On November 27, 2000, the DRB issued a Notice of Decision modifying the height limit for the proposed condominium hotel PUD. In its decision, the DRB stated, in relevant part, that:

The Board finds that the height modification to 60'6" meets the Standards of Review, page 15 of the Regulations, in particular, standards 1, 3 and 5, in that, the PUD project, by the density of the construction and the allowance for the tight clustering of units, which optimizes this density of construction, makes appropriate provision for preservation of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas, and unique natural and man-made features, and that adequate municipal facilities and services may be provided.

* * *

The Board finds that the modification of the Mountain Recreation District, Building Height Maximum of 35 feet or 3 stories whichever is less should be permitted, and it is hereby permitted to be modified as proposed to 60'6", which promotes the purposes of the Municipal Plan, the Mountain Recreation District and PUD.

233. Section 570 of the Ludlow Zoning Regulations provides, in part, that:

The purpose of the Mountain Recreation District is to provide for the orderly growth of the existing ski resort in the Town of Ludlow. Future uses of land within this District are envisioned to be those which are consistent with the direct operation of the ski area facilities, as well as those uses which complement ski area activities. Clustering of buildings is encouraged in order to maintain open space and protect fragile areas.

H. Criterion 9(A) - Jackson Gore Phase I Project

234. The Towns of Ludlow, Cavendish and Mount Holly do not have duly adopted capital improvement plans.

Region of Impact

235. The preponderance of impacts will be within the Town of Ludlow. The 3-Town area of Ludlow, Cavendish and Mount Holly is the primary area of impact. The Okemo region includes Ludlow, all adjoining towns, Springfield, and Weathersfield.

Growth in Population Experienced by the Town and Region

236. For the 20 year period of 1980 through 2000, the Town of Ludlow, the 3-Town area of Ludlow, Cavendish and Mount Holly, and the Okemo region, have grown at slower rates than Windsor/Rutland Counties and the State of Vermont.
237. The population of Ludlow grew from 2,398 persons in 1980 to 2,449 persons in 2000, an increase of 2.1% over the 20 year period.
238. The population growth of the 3-Town area, Ludlow, Cavendish and Mount Holly, grew from 4,691 persons in 1980 to 5,160 persons in 2000, an increase of 10% over the 20 year period, or 0.5% per year.
239. From 1990 to 2000, the population in the 3-Town area increased from 4,718 persons to 5,160 persons, an increase of 9.4% over the 10 year period, or 0.9% per year.
240. Total Growth and Rate of Growth Which is Expected Without the Project

241. From 2000 to 2005, without the Jackson Gore Phase I Project, the population of Ludlow is projected to increase by a total of only 3% over the 5 year period. The population of the 3-Town area of Ludlow, Cavendish, and Mount Holly, is projected to increase from 5,160 persons to 5,381 persons, an increase of 4.3% over the 5 year period.

Total Growth and Rate of Growth for the Town and Region Which will Result From the Project if Approved

242. The Jackson Gore Phase I Project will produce some population growth, but that growth will not significantly affect the rate of growth that would otherwise be expected without the project.

243. From 2000 to 2005, with the Jackson Gore Phase I Project, the population of Ludlow is projected to increase from 2,449 persons to 2,537 persons, an increase of 3.6%. This is only 0.6% greater than the 3% increase in Ludlow population that is projected to occur without the project.

244. From 2000 to 2005, with the Jackson Gore Phase I Project, the population of the 3-Town area is projected to increase by a total of 4.7% over the five year period. That is only 0.4% greater than the projected increase in population without the project (4.3%).

245. The Jackson Gore Phase I Project will result in 27 new households migrating to the entire region. It is projected that 9 or 10 households will move into the 3-Town area.

246. Using a multiplier of 2.44 persons per household, it is projected that the Jackson Gore Phase I Project will increase the population of the 3-Town area by 24 persons.

Peak Seasonal Population

247. Peak population includes year-round population, lodging beds at 75% of bed capacity, and 95% room occupancy, and seasonal homes at 80% occupancy with 4 persons per unit.

248. In the year 2000, the peak population of Ludlow was 8,467 persons. The combined peak population of the 3-Town area of Ludlow, Cavendish, and Mount Holly was 13,335 persons. This level of community occupancy is attained once or twice annually.

249. The number of persons present at Okemo Resort during a peak ski season event would include three basic elements:
- (a) The comfortable carrying capacity (CCC) of the resort - 11,380 (Phase I);
 - (b) The number of peak period employees at the resort - 1,060 (80% of the total number of persons employed would be at the resort at one time);
 - (c) Non-skiers at the resort - estimate of 2,000.
250. This density event is a temporary condition that occurs on only a few occasions during the year during peak holiday periods.
251. The Jackson Gore Phase I Project is projected to increase the peak population of the 3-Town area by 385 persons, a 2.9% increase over the current level.

Employment Trends

252. The 3-Town area experienced strong employment gains during the 1990 to 1999 period. The 3-Town area saw an increase in employment from 1,898 jobs in 1990 to 2,532 jobs in 1999, an increase of 33.4% over the 9 year period.
253. From 1983 to 2000, above average rates of employment growth in the 3-Town area did not result in above average population growth. From 1983 to 1990, the population in the 3-Town area increased by 10.4% as compared with Vermont growth of 15.8%. For the 10 year period of 1990 to 2000, the population in the 3-Town area increased by 9.4% while Vermont's population increased 8.2% during the same period of time.

Present Okemo Employment

254. The number of persons employed at the Okemo ski area varies substantially on a seasonal basis. At present, Okemo employs 128 full time, year round employees and 1,030 seasonal employees.
255. The present peak employment of 1,158 employees is equivalent to 360 full time employment positions (FTEs).

On-Mountain Housing Units

256. The total of on-mountain housing units has increased from 400 units in 1982 to 1,190 in 2000. The vast majority of on-mountain units were constructed during the 1980s. From 1990 to 2000, the number of on-mountain units has increased by 217 units.
257. Experience has shown that occupancy levels for on-mountain units varies dramatically during the course of the year ranging from 80% occupancy at peak periods to less than 10% occupancy at other times of the year. The average annual occupancy of units managed by Okemo is 31%.

Skier Visits

258. Okemo's skier visits showed steady growth over the years and plateaued in 1997 at 540,000 skier visit days over the course of the entire season. During the most recent winter, Okemo, like many other ski areas in Vermont, saw an increase in skier visits. Okemo's skier days were 593,000 for the entire 2001 ski season.

Employment

259. The Jackson Gore Phase I Project will generate employment as a result of construction activity, an increase in resort utilization, and an increase in expenditures made by visitors at the resort and within the region of impact.

Construction Related Employment

260. The Jackson Gore Phase I Project will be constructed over a 2 year period and will generate construction costs of approximately \$50 million.
261. The entire Jackson Gore Master Plan will be constructed over a period of 5 years and will generate construction costs of approximately \$133 million.
262. The Jackson Gore Phase I Project will result in the average creation of approximately 160 direct jobs and approximately 170 secondary and induced jobs during the two year construction period. This number of construction jobs will decline as construction is completed.

Growth in Okemo Employment

263. Okemo will hire additional employees to respond to increased levels of activities at the resort. It is projected that the Jackson Gore Phase I Project will increase winter visitation by approximately 51,000 persons over the course of the entire ski season.
264. At the completion of Phase I, Okemo Mountain Resort employment is projected to increase by 10 full time positions and 159 seasonal positions. This converts to 46 full time equivalent positions.

Employment Created by Resort Visitor Expenditures

265. Completion of the Jackson Gore Phase I construction is projected to increase annual area spending by approximately \$9 million. Approximately 63% of this spending is projected to occur in the resort while the remainder (37%) will occur outside the resort.
266. It is estimated that the increase in resort visitor expenditures resulting from the Jackson Gore Phase I Project will generate a total of 117 full time equivalent positions within the entire region.

Cumulative Employment Generated by Jackson Gore Phase I Project

267. The Jackson Gore Phase I Project will generate approximately 350 full time equivalent jobs in the region during the construction period. The majority of the positions are related to construction activity. The number of jobs will decline as construction is completed. After construction activities are completed, Phase I is projected to maintain 115 to 120 full time equivalent jobs in the region.

Highway Access and Maintenance

268. Okemo Ridge Road is the main access road to Jackson Gore base area. It intersects with Route 103 approximately 1.8 miles north of the Village of Ludlow. Okemo Ridge Road was constructed to Town of Ludlow highway specifications. The road was constructed at the sole expense of Okemo and is privately maintained by the Okemo Ridge Road Association. This road association is currently comprised of 6 condominium associations and Okemo Mountain, Inc. The Jackson Gore Condominium Association and the lots in the proposed Solitude 34 lot development will become members of the association and will share in the maintenance costs of the road. The municipality will not incur any future costs to maintain this road.

Traffic Control

269. Okemo Mountain, Inc. currently pays for all traffic control during peak traffic periods during the ski season in the Towns of Ludlow and Chester as conditioned in previously issued Act 250 permits. Okemo has agreed to provide traffic control at the intersection of Okemo Ridge Road/Route 103 and Route 103/Route 100 north during peak traffic periods during the ski season. Okemo Mountain will pay for this traffic control so that the municipality will not incur any expenses for additional traffic control in connection with Phase I of the Jackson Gore project.

Waste Disposal

270. Okemo Mountain, Inc. will construct and maintain, at its sole expense, the pump stations and sewer line connection from the Jackson Gore site to the existing sewer line located at the Solitude area of the mountain. The Ludlow Village Board of Trustees, serving as Sewer Commissioners, have approved sewer allocations for Jackson Gore Phase I and 11 lots of the Solitude subdivision. With respect to the Jackson Gore Phase I Project, Okemo will pay a total sewer allocation and hook-on fee in the amount of \$751,548. These fees are designed to cover costs of future capital improvements in the event they are needed. In addition, an annual operating fee will be paid. The Town of Ludlow will not incur any additional expenses for waste disposal from the Jackson Gore Phase I Project and the Solitude Village Project.
271. The Ludlow wastewater treatment facility does not require any expansion or modifications to serve the Jackson Gore Phase I Project. The treatment facility has ample capacity to accommodate the project.

Water Supply

272. The Town of Ludlow will not incur any additional expenses to provide water to Jackson Gore Phase I or the Solitude Village Project. Okemo Mountain will construct and maintain, at its sole expense, the water supply system serving the Jackson Gore Phase I Project. Okemo has been issued a public water system permit by the ANR authorizing Okemo to construct a new water system including wells, pipelines, a water treatment building and a two celled storage reservoir to satisfy the Jackson Gore Phase I Project.
273. Each of the lots within the Solitude Village Project will be serviced by individual wells as permitted in Subdivision Permit #EC-20-212808. Each lot

owner will be responsible for the construction and maintenance of their own well and waterline.

Police Services

274. Increased resort activity will result in increased police service costs, primarily in Ludlow. Okemo will continue to pay for traffic control during peak traffic periods and for any additional traffic control necessitated by the Jackson Gore Phase I project. To the extent that the police department incurs any additional expenses, such expenses will likely be offset by Okemo's contributions to the Ludlow Enterprise Fund and municipal tax revenues generated by the project.

Fire Services

275. The Ludlow Fire Department has reviewed and approved the plans for the Jackson Gore condominium hotel with respect to fire safety measures. The condominium hotel is fully sprinkled and has incorporated the latest in fire protection technology. Ludlow has a fire department impact fee of \$.35 per foot. Based on the floor space of the Jackson Gore structure, this represents a payment of \$87,500. Okemo Mountain has agreed to make an advance payment of \$259,000 to enable the Ludlow Fire Department to purchase a new pumper truck with foam capability.

Net Positive Financial Impact

276. As a result of Okemo's contributions to the costs of the infrastructure, Jackson Gore Phase I Project, including the Solitude Village Project, is projected to increase municipal costs by less than \$200,000 annually.

Revenues

277. Jackson Gore Phase I, including the Solitude subdivision, will have a total taxable market value in excess of \$76 million.
278. Based on the present municipal tax rate of \$0.37, Jackson Gore Phase I, including the Solitude subdivision, will generate more than \$272,000 in municipal taxes annually.
279. The increased municipal costs of up to \$200,000 will be offset by annual municipal tax revenues of \$272,000 (based on current municipal rate of

\$0.37) and traffic mitigation costs of \$20,000, for a net, positive financial impact of approximately \$90,000 on an annual basis.

280. Okemo has entered into a development agreement with the Ludlow Board of Selectmen and Village Trustees for the creation of a Ludlow Enterprise Fund (LEF) for the purpose of mitigating the effects of resort related demands on municipal services. The LEF is to be funded in part by a charge issued on day ski tickets sold by Okemo. The LEF fund committee will make recommendations to the Board of Selectmen on expenditures to be made from the fund. The committee includes members from the Town Selectboard, Village Trustees, Ludlow School District, Ludlow Water Department, Ludlow Chamber of Commerce, Ludlow Town Manager, member of the Planning Commission, a Ludlow citizen (at large) and a representative from Okemo. Okemo shall make annual contributions to the LEF no later than August 1 of each year based upon prior ski seasons ticket sales. It is projected that the Jackson Gore Phase I Project will generate approximately \$292,000 in development agreement fees over the span of 3 years. Thereafter, the payments are expected to increase as the volume of skier days increases.
281. The Jackson Gore Phase I Project, including the Solitude Village Project, would generate capital/impact fees of \$1,189,074, consisting of the following:
- (a) Fire department impact fee of \$259,000;
 - (b) Development agreement fees of \$178,525 (approximately \$90,000 per year);
 - (c) Sewer allocation fees and hook-on fees of \$751,549.
282. The Jackson Gore Phase I Project, including Solitude Village Project, will generate approximately \$840,000 to the State Education Fund on an annual basis.
283. The Jackson Gore Phase I Project, including the Solitude Village Project, is projected to generate an increase of more than \$280,000 annually in Vermont withholding, meals/rooms, sales/use tax, and State land lease payments.

Recreational Benefits

284. The Jackson Gore Phase I Project will provide additional recreational opportunities by supplementing the ski experience with a number of outdoor

and recreational activities which will be available to the general public and members of the community on a year round basis.

Affordable Housing

285. Based on the “*Okemo Formula*” for affordable housing mitigation, 7 households within the Okemo region will need affordable housing. It is projected that 3 to 4 households will need affordable housing in the 3-Town area.
286. The Jackson Gore Phase I Project will result in 17 to 18 households migrating to the Okemo region. Of these, 9 to 10 households are projected to move into the 3-Town area of Ludlow, Cavendish, and Mount Holly. Affordable housing programs are oriented toward households earning 80% or less of the regional median income level. It has been assumed that the proportion of these households with incomes below the 80% level will be similar to that for the area population as a whole. Available data indicates that approximately 40% of the households in the area have incomes below this level. Therefore, 7 to 8 of the households who migrate to the Okemo region might be expected to have a need for affordable housing.
287. The affordable housing mitigation formula calls for a fixed subsidy to be paid to the VHCB for each marketable real estate unit that the resort develops. The mitigation formula was derived as follows:
288. The median household income for Rutland and Windsor Counties was weighted to reflect the difference in number of households. This weighted median household income was used to derive the maximum allowable monthly household expense for housing (30% of income).
289. Monthly expenses of home ownership were deducted from the total monthly allowable housing expense to derive the maximum mortgage payment that a household could afford. These expenses included home insurance and property taxes.
290. Using a hypothetical mortgage arrangement (30 year, 6.94% Rate, 5% down), the maximum home sale price that the buyer could afford was derived.
291. The median home sale price was derived based on a data set that included all sales in Rutland and Windsor Counties from January 1996 to March 2001. Three classifications of property were used: residential homes on less than

six acres and mobile homes. These classifications were used as they best reflect the housing options for candidates for affordable housing.

292. The difference between the median home sale price recorded in the Okemo region and the maximum home price that the buyer could afford is the affordable housing subsidy.
293. The subsidy was applied to the projected number of affordable housing to be subsidized. The total subsidy amount for all affordable housing units was divided by the number of marketable real estate units that Okemo will build under the Jackson Gore Phase I Project, to determine a subsidy per marketable unit.
294. In this case, the subsidy is \$503 per marketable unit in the Jackson Gore condominium hotel. This amounts to a total subsidy of \$10,850 per affordable unit, which is consistent with recent affordable housing agreements reached in the Killington and Stratton Master Plan Reviews.

I. Criterion 9(H) - Master Plan, Jackson Gore & Solitude Village Projects

295. Jackson Gore Phase I, Solitude Village, and the Master Plan Projects are all located in a resort area . The area is not compact in size nor does it contain a variety of uses such as residential or industrial.
296. Ludlow is located two miles away. Ludlow is a compact area containing a variety of uses including residential, commercial, and industrial.
297. Additional costs of public services and facilities will be minimal due to Okemo's substantial contribution to the necessary infrastructure. The Town of Ludlow will not incur substantial additional costs to provide services. Okemo will construct and maintain, at its sole cost and expense, the access roads, water lines, pump stations, sewer mains, and related infrastructure which serve the Projects.
298. Each lot owner in Solitude Village will be responsible for the construction and maintenance of their well and waterline.
299. The Projects will result in substantial tax revenues. Jackson Gore Phase I and the Solitude Village Project will result generate more than \$272,000 in municipal taxes annually. At its completion, the Master Plan is projected to have a net positive annual municipal impact of over \$120,000.

300. The Jackson Gore Phase I Project and the Master Plan will result in increased recreational opportunities.

J. Criterion 9(K) - Jackson Gore & Solitude Village Projects

301. The Jackson Gore Phase I and Solitude Village Projects are an expansion of Okemo ski area. The Jackson Gore Phase I and Solitude Village Projects are proposed for land that is located on or near governmental and public utility facilities, and public lands such as the Okemo State Forest and public highways.
302. The Jackson Gore Phase I and Solitude Village Projects have been clustered to preserve open space, maximize wooded buffers, and achieve efficient utilization of infrastructure. The Projects include protective stream and tributary buffers, environmentally sensitive design, careful construction practices, and a comprehensive water quality monitoring plan to monitor water quality during and following construction.
303. The trails have been reconfigured and Lifts B1 and B2 were relocated so there will be no construction or land disturbance in the area where the two intermittent tributary cascades enter Coleman Brook ravine above the railroad tracks. The Jackson Gore Phase I Project will protect the natural features so that they are preserved for the public's use and enjoyment while providing enhanced recreational opportunities within Okemo State Forest.
304. Jackson Gore Phase I is projected to increase Design Hourly Traffic by no more than 90 vehicle trips. The distribution of traffic and intersection levels of service are minimally impacted. Okemo will continue to provide traffic control and implementation of traffic management and mitigation measures as detailed under Criterion 5.
305. Okemo State Forest was originally purchased for its recreational opportunities and its natural beauty. The public has access to the portions of the Jackson Gore Phase I Project located on the Okemo State Forest year round with the exception of a few weeks each fall for maintenance.
306. The Jackson Gore Phase I Project will increase the recreational opportunities for the public while only having a minor detrimental impact on the natural beauty of the Okemo State Forest.

K. Criterion 9(L) - Master Plan, Jackson Gore & Solitude Village Projects

Jackson Gore Phase I

307. The vast majority of the area in which Jackson Gore Phase I construction will occur is in a headwaters area because it is greater than 1500 feet in elevation and in a drainage area less than 20 square miles. The area also contains streams, earth resources, primary agricultural soils, and public investments which are the natural resources referred to in 10 V.S.A. §6001(16). The major area of public investment is the Okemo State Forest.

Solitude Subdivision

308. The vast majority of the area proposed for construction of the Solitude Project is a headwaters area. It also contains streams.

Jackson Gore Master Plan

309. The entire Jackson Gore Master Plan area is comprised of one or more of the natural resources referenced in 10 V.S.A. 6001(16) including but not limited to headwaters, streams, and public investments

L. Criterion 10 (Rutland Regional Plan) - Jackson Gore Phase I Project

310. The Rutland Regional Plan was adopted by the Rutland Regional Planning Commission (RRPC) on November 16, 1999. The RRPC is comprised of 27 member towns in Rutland County.

311. The purpose of the Rutland Regional Plan, as stated on Page 1, is “to provide a guide for managing change within the region and a framework within which individuals, businesses, and local governments can make decisions regarding growth and development.”

312. The Town of Ludlow is not in the Rutland region. The Town of Ludlow is in Windsor County and is part of the Southern Windsor County Regional Planning Commission. Compliance with the Southern Windsor County Regional Plan is not at issue in this appeal.

313. Mount Holly is in Rutland County, in the RRPC region. A portion of the Jackson Gore Phase I Project, containing ski trails and the upper quarter of Lift B2, is in Mount Holly.

Provisions of Rutland Regional Plan

314. The Rutland Regional Plan provides in part, under Section 3 - Subject Plans; (B) Economic Activity:

Goal 1

“Support and encourage economic activity in Rutland County through the retention or expansion of existing activity and the appropriate location of new economic activity.”

Policy 3

“Support and encourage the improvement and further development of tourism and recreation.” (Section 3, Page 9).

Goal 2

“Encourage the sustainable use of natural resources.”

Policy 2

“Actively encourage the responsible use by the general public of the natural environment for recreational and related purposes whether through the public or private sector.” (Section 3, Page 10).

315. The Rutland Regional Plan provides in part, under (F) Natural Resources; (2) Agricultural and Forest Resources:

Goal 1

“Protect significant agricultural and forest resources from threats to their sustainable economic use.”

Policy 2

“Encourage the appropriate use and sustainable management of the region’s agricultural and forest resources.”

Implementation Statement 4

“Encourage forest landowners to develop objectives and multi-use management plans for their forests. If forestry management objectives are not established, clear cuts shall be less than 10 acres, have irregular margins and be appropriate for the site.” (Section 3, Page 79).

Policy 3

“Encourage efforts to direct incompatible development away from agricultural and forest resource areas. Public and private development should be planned and designed to avoid undue impacts on agricultural and forest resources.” (Section 3, Page 80)

Policy 4

“Encourage actions that would maintain the size and concentration of agricultural and forest resources and do not pose a threat to their continued economic viability. Cumulative impacts as well as individual impacts should be considered.” (Section 3, Page 80).

316. The Rutland Regional Plan provides in part, under (F) Natural Resources; (3) Water Resources:

Goal 2

“Protect, preserve, and improve the quality and quantity of surface waters for a variety of uses.”

Policy 1

“Encourage reduction of non-point source pollution.”

Implementation Statement 2

“Encourage erosion management practices such as those specified in Erosion Control: Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites.” (Section 3, Page 85).

Policy 2

“Encourage protection of pristine waters including all streams above 2500 feet. Discourage water reclassification to lower classes.”

Implementation Statement 1

“Encourage greater awareness of the need for and benefit of using best land management practices in areas adjacent to water resources.” (Section 3, page 85).

Policy 8

“Support protection of wetlands and encourage upgrading of wetland classification where appropriate. There shall be no loss of Class 1 Wetland or Class 2 Wetland quality or extent.”

Implementation Statement 2

“Encourage continuing inventory and delineation of wetlands” (Section 3, Page 86).

317. The Rutland Regional Plan provides in part, under (F) Natural Resources; (4) Natural Features:

Goal 1

“Protect natural features in the Rutland Region.”

Policy 2

“Identify all natural features including natural areas, fragile areas, wildlife habitats, rare, endangered and threatened species, rare plant and animal communities and sites.” (Section 3, Page 91).

318. Okemo has undertaken a number of investigations and studies in an effort to identify natural areas, wildlife habitats, rare, endangered and threatened species, rare plant and animal communities and sites. No rare, threatened or endangered species or plants were identified in a natural habitat on the Jackson Gore Phase I Project site. Nor was there any evidence of use of the site by any rare, threatened, or endangered species.
319. Outside of the Jackson Gore Phase I Project site a Black Bear travel corridor is believed to exist on the western side of Okemo Mountain. Okemo Mountain Resort, working with the Department of Fish and Wildlife and a private citizen, Nancy Bell of Shrewsbury, Vermont, has designed the Jackson Gore Phase I Project to maintain a vegetative buffer utilizing the topographic relief afforded by the ridge line at the project site to protect this corridor. In addition, human activity in this upper area of the project will be limited during the non-ski season to minimize disturbance to the corridor.
320. Field reconnaissance was also undertaken for the presence of Bicknell's thrush and Bicknell's thrush habitat within the Phase I project area since there is a presence of Bicknell's thrush on Okemo. The reconnaissance did not identify any Bicknell's thrush or thrush habitat within the project area. However, Okemo in cooperation with the Department of Fish and Wildlife and the Vermont Institute of Natural Science, have established a habitat management program for the other areas on Okemo Mountain where habitat exists.
321. The Rutland Regional Plan provides in part, under (G) Recreation and Open Space:

Introduction

“Open space and recreational programs serve three functions: they provide leisure time activities for people; protect and enhance natural resources; and expand the economic potential of an area by increasing its attractiveness to home buyers, tourists and businessmen.”

“The various types of recreation facilities which the Rutland Region provides include:” (Section 3, Page 99-100)

9. “Ski Areas”

Goal 1

“Promote the maintenance and enhancement of recreation opportunities.”

Policy 2

“Support the use of recreation areas for multiple recreation purposes (“multiple use management”).” (Section 3, Page 102).

Goal 3

“Support the retention of areas providing outdoor and other wilderness recreation experiences.”

Policy 3

“Encourage maintenance, development and protection of recreational trail networks (foot, snowmobile, horse, bike, ski, etc.) and their co-existence with the natural, social and economic environment.” (Section 3, page 103).

322. The Rutland Regional Plan provides in part, under (H) Cultural Resources;

Goal 1

“To identify and protect existing cultural resources.”

Policy 3

“Encourage the evaluation and stewardship of archaeological and cultural sites identified in the course of private development activity.” (Section 3, page 105).

323. The Okemo Mountain Road is an historic site within the area covered by the Rutland Regional Plan. The Jackson Gore Phase I Project includes the construction of three ski trails that are proposed to intersect with the Okemo

Mountain Road. The ski trail construction will not affect the roadbed or any features associated with the road including culverts or headwalls.

324. The Rutland Regional Plan provides in part, under Section 4 - Future Land Use Policies:

Resort/Recreation Centers

“Areas that have been developed into mixed use, primarily seasonal centers associated with ski area and lake shore development. These centers are usually located in relatively close proximity to features, such as wildlife habitats, that have considerable sensitivity to development. Larger resort/recreation centers provide or have access to public services such as wastewater treatment. Virtually all resort/recreation centers are served by major highways.

- (1) *New resort and recreation-related development in the region should be encouraged to locate in the vicinity of existing resort/recreation centers, and where designated in town plans;*
- (2) *The development of sewage treatment infrastructure in the vicinity of resort/recreation centers should be encouraged so as to allow for clustered or concentrated development*
- (3) *Management which maintains or enhances land within resort/recreation centers, particularly lands that are valued for trails, open space, scenery, water quality maintenance, wildlife habitat, or human enjoyment, should be encouraged.*
- (4) *The development and maintenance of efficient transportation to and from resort/recreation centers is encouraged.”* (Section 4, Page 4).

V. CONCLUSIONS OF LAW

A. Jurisdiction, Scope of Review and Burden of Proof

The Jackson Gore Phase I and Master Plan Projects are subject to Act 250 jurisdiction under 10 V.S.A. § 6001(3) because each is a substantial change to a permitted project, and because each involves the construction of improvements for a commercial purpose, or "development" pursuant to EBR 2(A)(2), on more than ten acres of land. The Solitude Village Project is subject to Act 250 jurisdiction because it is a material change to an existing project and involves the creation of more than ten lots. Environmental Board Rules 2(A)(5) and 2(B).

When a party appeals from a Commission determination, the Board provides a “*de novo* hearing on all findings requested by any party that files an appeal or cross-appeal, according to the rules of the board.” 10 V.S.A. § 6089(a)(3). Board rules also provide for the *de novo* review of a Commission’s findings of fact, conclusions of law, and permit conditions. EBR 40(A). Thus, the Board cannot rely upon the facts stated, conclusions drawn, or conditions issued by the Commission regarding the criteria on appeal in this matter.

The burden of proof is on the applicant, Okemo, for several of the criteria on appeal, Criteria 1(A), 1(B), 1(E), 4, 9(H), 9(K), 9(L), and 10. 10 V.S.A. § 6088(a). The appellant, MHMW, bears the burden of proof on the remaining criteria, Criteria 5, 6, 8 (aesthetics), and 9(A). See, 10 V.S.A. § 6086(a)(9)(A)(where town has no duly adopted capital improvement program, the burden is on the party opposing the application).

**B. Criterion 1(A) (Headwaters) - Jackson Gore Phase I Project;
Criterion 1(E)(Streams) - Jackson Gore Phase I & Solitude Village
Projects**

Criterion 1(A) ensures that development of sensitive headwaters areas complies with all applicable Department of Health and Department of Environmental Conservation regulations. Criterion 1(E) is intended to protect streams over 1,500 feet in elevation or with low flow rates.

Criterion 1(A)

Criterion 1(A) applies to lands which are not already devoted to intensive development, and which constitute headwaters under Act 250. Criterion 1(A) provides that:

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

1. headwaters of watersheds characterized by steep slopes and shallow soils; or
2. drainage areas of 20 square miles or less; or
3. above 1,500 feet elevation; or
4. watersheds of public water supplies designated by the Vermont department of health; or

5. areas supplying significant amounts of recharge waters to aquifers.

10 V.S.A. § 6086(a)(1)(A).

Criterion 1(A) applies here because the Jackson Gore Phase I Project site is not developed, and it is in the Coleman Brook watershed, a headwaters area under Act 250. Thus, the question is whether the Jackson Gore Phase I Project will comply with applicable water quality regulations, the VWQS. Okemo bears the burden of proof. 10 V.S.A. § 6088(a).

Vermont Water Quality Standards

Section 1-02 of the VWQS states, in part, that the VWQS are intended to "restore and maintain the chemical, physical, and biological integrity" of waters in Vermont, in accordance with the federal Clean Water Act, 33 U.S.C. § 1251 et. seq., and to achieve state policy goals, including the following state water quality policies:

- (1) Protect and enhance the quality, character, and usefulness of its surface waters and to assure the public health;
- (2) Maintain the purity of drinking water;
- (3) Control the discharge of wastes to the waters of the State, prevent degradation of high quality waters and prevent, abate, or control all activities harmful to water quality;
- (4) Assure the maintenance of water quality necessary to sustain existing aquatic communities;
- (5) Provide clear, consistent, and enforceable standards for the permitting and management of discharges;
- (6) Protect from risk and preserve in their natural state certain high quality waters including fragile high-altitude waters, and the ecosystems they sustain;
- (7) Manage the waters of the State to promote a healthy and prosperous agricultural community, to increase the opportunities for use of the state's forests, parks, and recreational facilities and to allow beneficial and environmentally sound development.

It is further the policy of the state to seek over the long term to upgrade the quality of waters and to reduce existing risks to water quality.

VWQS, Section 1-02 General Policy (citing 10 V.S.A. § 1250).

The VWQS contain specific standards which implement these and other policies (namely, water conservation, riparian, basin planning, hydrology, and water classification policies). These standards include the General Standards specified in Section 3-01, applicable to all waters in Vermont, and standards specific to certain classifications of water, which are enumerated in Sections 3-02 through 3-04 of the VWQS.

Waters above 2,500 feet in elevation are Class A waters. 10 V.S.A. § 1253(a). The VWQS distinguish between Class A(1) waters, which are ecological waters managed to maintain their natural condition, Section 3-02, and Class A(2) waters, which are public water supplies. The waters of the Coleman Brook above 2,500 feet in elevation are Class A(1) waters. These Class A(1) waters extend down the Coleman Brook from above the Jackson Gore Phase I Project site, to just below the proposed Bridge #1 at the 2,500-foot elevation point. All other waters within the Jackson Gore Phase I Project area are Class B waters under the VWQS. Consistent with its policy of protecting "fragile, high-quality waters and the ecosystems they sustain," the VWQS regulates Class A(1) waters more stringently than Class B waters.

Compliance with VWQS

Okemo has developed an extensive water quality management plan, which has been approved by ANR. As conditioned by the Board, this plan requires continuous monitoring of water quality for compliance with applicable VWQS. Should any water quality issue arise, Okemo will work with ANR to re-mediate the problem immediately.

Okemo has also developed an iron seep management plan, also approved by ANR, and has designed or redesigned the Jackson Gore Phase I Project to mitigate effects on water quality and streams. These mitigation efforts include the elimination of all stream culverting in the upper Jackson Gore Phase I Project area; increasing stream buffers; keeping infrastructure away from sensitive areas; keeping ski trails near streams and bridges as narrow as possible; designing bridges to minimize impacts to stream channels; and elimination of two previously proposed stream crossings.

The Jackson Gore Phase I Project will entail expansion of snowmaking at Okemo. Okemo completed a snowmaking water supply needs and alternatives analysis, examining water source and storage options to identify reasonable and feasible alternatives to minimize any impacts to the Black River and the West Hill Reservoir. ANR's Water Quality Division reviewed Okemo's analysis and

recommended the addition of several permit conditions, including a condition providing ANR with continued jurisdiction to ensure that Okemo's snowmaking activities continue to comply with the VWQS.

In addition, as explained in the Criterion 1(B) analysis, the Board presumes that no undue water pollution will result from wastewater disposal and discharge from the Jackson Gore condominium hotel and for the Solitude Village Project. See, e.g., *Re: Barre Granite Quarries, LLC, # 7C1079 (Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 70 (Dec. 8, 2000)*(proposed quarry complies with Criterion 1(A) where there would be no erosion of the existing stream channel and ANR issued a discharge permit).

Erosion and resulting turbidity are also regulated by the VWQS. In *Kiesel*, the Board found that a proposed project did not comply with Criterion 1(A) because it would cause erosion which would increase turbidity of streams: "the Board concludes that the erosion caused by the Project will put this fragile headwaters area at increased risk by increasing discharges into the streams, thereby increasing turbidity." *Re: Kiesel, Findings, Conclusions and Order at 25*. In *Kiesel*, the applicant had failed to provide background water quality data from which the Board could gauge the project's impact. *Id.*

Unlike the applicant in *Kiesel*, Okemo has provided the Board with background testing information on the Coleman Brook. Also, Okemo will use comprehensive soil erosion measures, approved and monitored by ANR, for the construction of skier bridges and other crossings. Based on these and other findings, the Board concludes that the Jackson Gore Phase I Project will not cause erosion into the Coleman Brook or its unnamed tributaries. *Accord, Barre Granite, Findings, Conclusions and Order at 70*. Also, as discussed under Criterion 4, the Board concludes that there will be no undue soil erosion from the Solitude Village Project.

Should any water quality issue arise, the monitoring plan will ensure early detection, and the permit conditions will ensure rapid remediation by Okemo, at the direction of ANR. Based on the findings, the Board is persuaded that the Jackson Gore Phase I Project as conditioned herein complies with the VWQS and Criterion 1(A).

Criterion 1(E)

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

V.S.A. § 6086(a)(1)(E). Act 250 defines “stream” as “a current of water which is above an elevation of 1,500 feet above sea level or which flows at any time at a rate of less than 1.5 cubic feet per second.” *Id.* § 6001(18). The applicant bears the burden of proving compliance with Criterion 1(E). *Id.* § 6088(a).

Under Criterion 1(E), the Board first determines whether the project will disrupt the natural condition of a stream, and if so, whether the applicant has considered “all reasonable alternatives” which would allow the stream to remain in its natural condition, both during and after construction. *Re: Mark and Pauline Kiesel*, 5W1270-EB, Findings of Fact, Conclusions of Law and Order (Altered) at 26-27 (August 7, 1998), *rev'd on other grounds, In re Kiesel*, 11 Vt.L.W. 401 (Dec. 29, 2000)(motion for reargument denied, March 22, 2001)(citing *Re: Okemo Mountain, Inc.*, #2S0351-12A-EB, Findings of Fact, Conclusions of Law, and Order (Revised) at 14 (July 23, 1992)). The natural condition of a stream includes its "volume, depth, velocity of water flow, physical features, aesthetic values, bank stability, water quality, and habitat for fish and a variety of other life forms." *Okemo*, #2S0351-12A-EB, Findings, Conclusions and Order at 4 (Jul. 23, 1992).

Thus, compliance with applicable VWQS provisions which pertain to the stream's "volume, depth, velocity of water flow, physical features, aesthetic values, bank stability, water quality, and habitat for fish and a variety of other life forms," *Okemo*, #2S0351-12A-EB, Findings, Conclusions and Order at 4 (Jul. 23, 1992), is relevant to whether a stream will remain in its natural condition under Criterion 1(E).

Natural Condition of Streams

Although the Jackson Gore Phase I Project complies with the Criterion 1(A) and the VWQS, it will have impacts on the natural condition of streams which require further consideration under Criterion 1(E). Specifically, one of the project's bridge crossings will have an impact on the aesthetic values of the Coleman Brook, and the utility crossings will disturb the physical flow of the Coleman Brook. See, *Okemo*, #2S0351-12A-EB, Findings, Conclusions and Order at 4 (Jul. 23, 1992)(the natural condition of a stream includes its "volume, depth, velocity of water flow, physical features, aesthetic values, bank stability, water quality, and habitat for fish and a variety of other life forms"). No other Jackson Gore Phase I Project component rises to the level of affecting the natural condition of streams. With respect to the Solitude Village Project, based on the findings, the Board concludes that the Solitude Village Project will maintain the natural condition of streams. Accordingly, the Solitude Village Project complies with Criterion 1(E).

Utility Crossings

There are two utility crossings proposed for the Jackson Gore Phase I Project, which consist of a water main and a sewer main, across the lower portion of the Coleman Brook. These crossings will be buried and will disrupt the natural condition of the stream, particularly during construction. However, the Department of Environmental Conservation has reviewed Okemo's plans for the crossings and has issued a Stream Alteration Permit. The permit requires that Okemo install and maintain the crossings in the manner with the least impact possible on the natural condition of the Coleman Brook. For instance, the permit imposes an affirmative obligation on Okemo to build the crossings in the manner "which presents the least disturbance of stream flow and results in minimal discharge of turbidity or sediment downstream," and requires that Okemo strictly limit the extent of stream bank disturbance and maintain all established vegetation possible. Furthermore, there is no evidence that relocating these utility crossings from their positions in the lower Coleman Brook could further reduce the impact on the stream's natural condition. The Board concludes, therefore, that the utility crossings comply with Criterion 1(E).

Bridge #1

An aesthetic impact on a stream is a change in its natural condition. *Okemo*, #2S0351-12A-EB, Findings, Conclusions and Order at 4 (Jul. 23, 1992). Okemo has reduced the size and number of its bridge crossings, and has taken numerous additional steps to minimize the impact on the natural conditions of the Coleman Brook and other streams on the Jackson Gore Phase I and Solitude Village Project sites. Nevertheless, further consideration of Bridge #1 in Jackson Gore Phase I is warranted given the concerns raised at the hearing and given its location in a fragile headwaters area. See *Re: Quechee Lakes Corp.*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order (Nov. 4, 1985)(Board should give "special attention" to sensitive areas in reviewing aesthetic impacts). In this case, the area immediately surrounding Bridge #1 is in its natural and undisturbed state, but there is development – the Okemo Mountain Road – in close proximity. As set forth under Criterion 8, Bridge #1 will not have an unduly adverse aesthetic effect. Still, it is the only bridge crossing located in a high-altitude headwaters area.

The question, then, is whether Okemo has considered all reasonable alternatives to minimize impacts to the streams. *Re: Mark and Pauline Kiesel*, 5W1270-EB, Findings of Fact, Conclusions of Law and Order (Altered) at 26-27 (August 7, 1998), *rev'd on other grounds, In re Kiesel*, 11 Vt.L.W. 401 (Dec. 29, 2000)(motion for reargument denied, March 22, 2001)(citing *Re: Okemo Mountain, Inc.*, #2S0351-12A-EB, Findings of Fact, Conclusions of Law, and Order (Revised) at 14 (July 23, 1992)(alternatives analysis required where project disrupts the natural condition of a stream)). As set forth below, the Board is persuaded that Okemo has considered all reasonable and feasible alternatives to minimize impacts to streams.

The Board rejects the suggestion that Bridge #1 is unnecessary, or that it could be relocated to some less sensitive area. Okemo argues that Bridge #1 is necessary for skier safety and circulation. Okemo acknowledges that ski patrol and other emergency personnel may be able to respond to an incident from within the same part of the ski area or pod (i.e., from within Jackson Gore or from within the existing ski terrain), and that such cross-access is available to skiers and safety personnel from the base area. However, Okemo maintains that the redundancy of access Bridge #1 will provide is essential for operational safety. Certainly for skiers and emergency workers high up on the mountain, the fastest and easiest route to the other side would be over Bridge #1. In the case of lift evacuations in severe weather, or other ski-related emergencies, speed of access by emergency personnel may be crucial. In addition, the access between ski terrain pods that Bridge #1 will provide minimizes the need for skiers to cross other trails, and minimizes mixing of ability levels. This access, in itself, will reduce opportunities for ski-related accidents. The Board agrees that Bridge #1 will likely provide significant safety benefits. However, it cannot be overlooked that many of these safety concerns could be alleviated by maintaining more emergency personnel and equipment in both areas. Bridge #1 is not essential to providing an appropriate level of skier safety.

Bridge #1 will also provide skiers the most convenient access between Jackson Gore and the existing ski terrain. This will enable skiers from one pod to ski to another with a minimum amount of crossing other trails and mixing of ability levels. It is likely that a significant percentage of skiers who presently live north of Okemo will use the Jackson Gore access and parking areas, and Bridge #1 will allow them to ski onto the existing ski terrain. Although perhaps less compelling than skier safety, cross-access is a recognized principle of sound ski resort planning, and is a legitimate reason to build a bridge over the Coleman Brook. The issue, then, is whether Okemo has explored all reasonable alternatives to putting Bridge #1 at the proposed location. The Board finds that it has. The existence of wetlands, bear habitat, and other natural resources at the top of the mountain, and the fact that no similar location provides such relatively shallow banks, which will minimize earth-moving and other disturbance during construction, are particularly persuasive on this issue. It is clear to the Board that Okemo has considered all reasonable alternatives to Bridge #1.

Therefore, the Jackson Gore Phase I Project and the Solitude Village Project comply with Criterion 1(E).

C. Criterion 1(B) (Waste Disposal) - Jackson Gore Phase I & Solitude Village Projects

Criterion 1(B) provides that:

A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

10 V.S.A. § 6086(a)(1)(B). The applicant bears the burden of proving compliance with Criterion 1(B). *Id.* § 6088(a).

To prevail on Criterion 1(B), the applicant must demonstrate that the projects will comply with applicable regulations issued by the Vermont Department of Health, and the Department of Environmental Conservation of ANR, governing disposal of wastes. Criterion 1(B) also requires the applicant to demonstrate that the project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Neither the Jackson Gore Phase I Project nor the Solitude Village Project will involve injection of wastes, toxic or otherwise, into groundwater or wells. The question, then, is one of compliance with applicable waste disposal regulations.

The Ludlow wastewater treatment facility has ample capacity to serve the Jackson Gore Phase I and the Solitude Village Projects. The watersheds in the Jackson Gore base area have been defined and evaluated for stormwater runoff. Generally, the size of the subwatersheds will decrease as some of the area is regraded and redirected to the stormwater detention basins proposed for the project. There will be no increase in the amount of stormwater runoff to Buttermilk Falls Road residences. The Board also recognizes that, while applicable waste disposal regulations do not mandate recycling of construction or other wastes, Okemo will recycle all cardboard, glass bottles and cans from the Jackson Gore Phase I and Solitude Village Projects. Also, Okemo is working with ANR to develop and implement a process for recycling Okemo's construction wastes.

ANR has issued water supply/wastewater disposal permits, subdivision permits, and stormwater discharge permits for the Solitude Village Project and the Jackson Gore condominium hotel. Under Board rules, receipt of these permits³

3

Other ANR permits and approvals that entitle the applicant to a presumption under EBR 19 include: a subdivision permit; mobile home park permit; campground permit; a certification of compliance that the project's use of a sewage treatment facility not owned or controlled by the applicant complies with the permit issued for that facility by ANR, under 10 V.S.A. Chapter 47 and rules adopted thereunder; a sewer lines extension permit; an underground injection

entitles Okemo to a presumption that "waste materials and wastewater can be disposed of through installation of wastewater and waste collection, treatment and disposal systems without resulting in undue water pollution," for the project components governed by the permits. EBR 19(E); see also, *Re: St. Albans Group and Wal-Mart Stores, Inc.*, #6F0471-EB, Findings of Fact, Conclusions of Law, and Order at 9-10 (Jun. 27, 1995)[hereinafter *St. Albans Wal-Mart*].

Board rules provide that this presumption is rebuttable, so the burden of proof shifts to the opponent to rebut the presumption as follows:

If . . . a preponderance of the evidence shows that undue water pollution . . . is likely to result, the . . . [B]oard shall rule that the presumption has been rebutted. Technical non-compliance with the applicable health, water resources, and Agency of Natural Resources rules shall be insufficient to rebut the presumption without a showing that the noncompliance will result in, or substantially increase the risk of, undue water pollution

Re: Mill Lane Development Co., Inc., #2W0942-2-EB, Findings of Fact, Conclusions of Law, and Order at 21 (Dec. 17, 1999)(citing EBR 19(F); *Re: Herbert and Patricia Clark*, # 1R0785-EB, Findings of Fact, Conclusions of Law, and Order at 26-27 (Apr. 3, 1997); *Re: James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership*, #8B0444-6-EB (Revised), Findings of Fact, Conclusions of Law, and Order at 22-23 (Aug. 19, 1996); see also, *St. Albans Wal-Mart*, Findings, Conclusions and Order at 9-10). Then, if the opponent rebuts the presumption, the applicant must be permitted the opportunity to submit additional evidence. *Mill Lane*, Findings, Conclusions and Order at 21 (citing EBR 19(F); *Re: MBL Associates*, # 4C0948-EB (Altered), Findings of Fact, Conclusions of Law, and Order at 35 (Jan. 30, 1996), *aff'd*, *In re MBL Associates*, 166 Vt. 606 (1997).

Therefore, EBR 19(F) shifts the burden of proof to MHMW to show that either: (a) the proposed project is likely to result in undue water pollution, or (b) there is technical non-compliance with applicable regulations and such non-compliance will result in or substantially increases the risk of undue water pollution.

permit for the discharge of non-sanitary waste into an injection well; and, a solid waste or hazardous waste certification; an underground storage tank permit with regard solely to the substance to be stored in the underground storage tank. EBR 19(E)(1). Okemo also has obtained from ANR for the Jackson Gore Phase I Project a Stormwater Discharge Permit, #1-1361, a Subdivision Permit, #EC-2-2418, and a Stream Alteration Permit, #WQ-1-0340. While these permits do not entitle Okemo to a presumption under EBR 19, they are relevant to the Board's analysis.

St. Albans Wal-Mart, Findings, Conclusions and Order at 9-10. MHMW has failed to rebut the presumption.

The Board concludes that the Jackson Gore Phase I and Solitude Village Projects, as designed and monitored, meet all applicable health and Environmental Conservation Department regulations regarding the disposal of waste and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

D. Criterion 4 (Soil Erosion/Capacity to Hold Water) - Solitude Village Project

Before issuing a permit, the Board must find that the Project, "[w]ill not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result." 10 V.S.A. §§ 6086(a)(4). The burden of proof is on the applicant under Criterion 4. *Id.* §§ 6088(a).

Erosion control plans used to satisfy Criterion 4 must be site-specific. *Re: Sherman Hollow, Inc.*, #4C0422-5-EB (Revised), Findings of Fact, Conclusions of Law, and Order at 37 (Feb. 17, 1989). The Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites (1982)[hereinafter, "Handbook"] is often used to demonstrate compliance with Criterion 4. In discussing factors influencing erosion, the Handbook states:

The size and steepness of slopes within a watershed influence the amount and rate of runoff. As the length and gradient (steepness) of a slope increase, the amount and rate of runoff increase and the potential for erosion is magnified. By limiting the length and gradient of slopes created or modified during development, one can reduce the volume and velocity of runoff and minimize erosion.

Barre Granite, supra, at 50 (quoting Handbook at 6 and *Kiesel, supra*, at 12-13).

Okemo's soil erosion control plan was approved by ANR when it issued the Stormwater Discharge Permit. The soil erosion control plan consists of measures that will adequately address site preparation, erosion control during construction, roadway erosion, clearing and grubbing, grading, vegetation, seeding and mulching, erosion control after completion of construction, and establishment of permanent vegetation.

The Board concludes that Okemo has met its burden to demonstrate that the Solitude Village Project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may

result. MHMW provided no credible evidence to the contrary. Therefore, the Solitude Village Project complies with Criterion 4.

E. Criterion 5 (Traffic Safety) - Jackson Gore Phase I Project

Before issuing a permit, the Board must find that the proposed Project, "[w]ill not cause unreasonable congestion or unsafe conditions with respect to the use of highways . . ." 10 V.S.A. §§ 6086(a)(5) (traffic). A permit may not be denied solely on the basis of Criterion 5, but the Board may attach reasonable conditions and requirements to the permit to alleviate the burden created. *Id.* § 6087(b). The burden of proof is on the opponent under Criterion 5, *id.* § 6088(b), but the applicant must provide sufficient information for the Board to make affirmative findings. *Barre Granite, supra*, at 50.

Okemo argues that a 1998 study, which projected traffic volumes and impacts for a 113-unit project, is still valid despite the additional 4 units in the Jackson Gore Phase I Project. The Board agrees that conditions have not changed significantly in the intervening years and that the study analyzed nearly the identical number of units as the Jackson Gore Phase I Project. Therefore, its conclusions are valid for the Jackson Gore Phase I Project.

The Board found that the Jackson Gore Phase I Project will likely increase the design hourly volume of traffic by 90 vehicles. VTrans has reviewed and approved Okemo's traffic impact analysis and concluded that the key intersections will operate at an acceptable level of service with traffic control officers present during peak periods at Route 103/Route 100 North; Route 103/Okemo Access Road; and Route 103/Route 11.

Since 1987, Okemo has implemented several traffic mitigation measures within the Route 103 corridor such as paying for Ludlow Police Department traffic control during peak periods, setting up traffic cones, operating a shuttle bus, offering ski packages with Amtrak, and offering mid-week ski vacations.

The Commission imposed conditions requiring Okemo to install a street light at the intersection of Route 103/Okemo Ridge Road/Buttermilk Falls Road; a sign for the Jackson Gore Project; a traffic officer at the Okemo Ridge Road intersection during peak periods; ongoing traffic counting and monitoring; and a "Turning Vehicles Ahead" sign on Route 103.

Okemo has also proposed to institute additional traffic mitigating measures including Friday to Friday check-in and check-out procedure and requiring employees driving from north of Ludlow to park in the Jackson Gore parking lots in order not to contribute to additional traffic in Ludlow.

Okemo has provided sufficient information for the Board to make an affirmative finding. The Board concludes that with the mitigating measures, Jackson Gore Phase I Project will not cause unreasonable congestion or unsafe conditions with respect to use of the highways. MHMW provided no credible contrary evidence. Therefore, as conditioned, Jackson Gore Phase I Project complies with Criterion 5.

F. Criterion 6 - Master Plan, Jackson Gore Phase I & Solitude Village Projects

MHMW has appealed Criterion 6 for the Jackson Gore Phase I Project, Solitude Village Project, and the Master Plan Project. Act 250 requires that, before issuing a land use permit, the Board or district commission must find that the proposed project "[w]ill not cause an unreasonable burden on the ability of a municipality to provide educational services." 10 V.S.A. § 6086(a)(6). The burden of proof is on the opponents under Criterion 6. 10 V.S.A. § 6088(b) The applicant, however, must first provide sufficient information for the Board to make affirmative findings. See, e.g., *Re: Fair Haven Housing Limited Partnership*, #1R0639-2-EB, Findings of Fact, Conclusions of Law, and Order at 14 (Apr. 16, 1996); *Re: St. Albans Group and Wal*Mart Stores, Inc.*, #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 50 (June 27, 1995). A permit may not be denied under Criterion 6, but the Board may impose conditions to alleviate any burden created by the proposed project. 10 V.S.A. § 6087(b); *Re: Horizon Development Corporation*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Aug. 21, 1992) (finding that proposed subdivision will not create an unreasonable burden if residential construction is completed in phases).

If the applicant provides sufficient evidence to allow the Board to make a positive finding, the opponents must prove (i) that the project will impose a burden on the town; (ii) that this burden is unreasonable; and (iii) that an impact fee is an appropriate remedy for the burden. See, e.g., *Fair Haven Housing*, Findings, Conclusions and Order at 14; *Re: Clarence and Norma Hurteau*, #6F0369-EB, Findings of Fact, Conclusions of Law, and Order at 9 (Apr. 24, 1989, as corrected May 9, 1989)(town failed to meet burden of proof as to (i), (ii), and (iii) above).

First, the burden on the town can be ascertained by calculating what would be an appropriate impact fee. *Fair Haven*, Findings, Conclusions and Order at 14; *Hurteau*, Findings, Conclusions and Order at 9.

In assessing the burden or impact on [the town,] the central factors to consider are: (1) whether new facilities are necessary because of a proposed project; (2) if so, what the costs of these new facilities will be; and (3) whether credits should be given to the proposed project because of other revenues the proposed project will generate. In this

regard, it is important for the party with the burden of proof to provide a formula for assessing these factors.

Hurteau, Findings, Conclusions and Order at 10.

Second, whether an impact is reasonable is considered in light of (i) the ability of the community as a whole to absorb the burden, (ii) other burdens from developments which have been accepted or not accepted as reasonable by the town or other communities, and (iii) other measures which may be taken, or factors which may exist, to mitigate the burden. *Hurteau*, Findings, Conclusions and Order at 12.

Finally, an "impact fee must be fair and 'spent within a reasonable time and only to remedy the impacts for which they [sic] are levied.'" *Fair Haven Housing*, Findings, Conclusions and Order at 15 (quoting *Hurteau* at 12). Although a permit may not be denied under Criterion 6, "reasonable conditions and requirements . . . may be attached to alleviate the burdens created." 10 V.S.A. § 6087(b). Section 6087(b) does not address which party bears the burden with respect to fashioning a remedy. The Board has held, however, that the party affirmatively seeking such fees "must bear the burden of coming forward with adequate information for fair fee assessment." *Hurteau*, Findings, Conclusions and Order at 13.

Under Vermont's school financing system, non-capital cost of additional students would be financed by the State Education Fund. However, if the Project increased the number of students which resulted in the need for extra facilities, such costs would be the responsibility of local governments. Thus, in determining whether the development will cause an unreasonable burden on the municipalities ability to provide services, the first step is to determine whether the development will cause an increase in the number of students and whether the local schools can absorb any increase without additional capital expenditures.

Okemo and MHMW portray very different pictures of the state of the current schools. Students from Ludlow and Mt Holly attend the Black River High School. MHMW asserts that enrollment at Black River High School increased 15% (240-275) between 1992 and 1998 and another 15% (275-314) from 1998 to 2001. According to MHMW, Black River High School currently has 25 to 40 students in excess of capacity. MHMW argues that since the school is over capacity, any increase in students will require capital expenditures for either an expansion of the current facility or a new high school.

Okemo disputes that the schools are over capacity and asserts that the current high enrollment is due to the high birthrate of the 1980's and early 1990's. According to Okemo, this spike in students moved through the elementary schools

and are now attending secondary schools. Okemo predicts that enrollment for most elementary schools in most towns in the Okemo region are decreasing and will decrease in secondary schools in the coming years.

The Board agrees with Okemo that the current increase in students is due to trends in population dynamics. The spike in students attending secondary schools are the offspring of the baby boom generation. Therefore, there will likely be a spike in enrollment at Black River High School followed in a few years by a decrease in enrollment.

However, the Projects will still generate an increase in school age children. The primary generator of school age children from the Projects will be in-migration attributed to increased employment opportunities. The residential units will not likely result in increased students because the Solitude Village Project will likely be second homes and the Condominium Hotel Declaration prohibits year round occupancy.

Based on .5 students per household, the Jackson Gore Phase I Project and the Solitude Village Project will generate 13.6 students for the region. However, only 4 or 5 students will locate in the primary impact area of Ludlow, Cavendish, and Mt Holly.

Currently, the elementary and secondary schools have excess capacity. The Black River High School is close to, but not at full capacity as demonstrated by the fact that Black River High School has accepted 4 to 10 tuition students from outside the area. However, the number of students generated by Jackson Gore Phase I Project and the Solitude Village Project will not exceed the capacity level. The Master Plan Project is projected to increase the number of school age children by 30 for the Okemo region, but that only 10 or 11 will settle in the primary impact area. Moreover, by the time there is an increase in enrollment due to the Master Plan Project, the spike in enrollment projected to attend Black River High School in the next few years will have likely already passed through.

Okemo has provided sufficient evidence for the Board to make an affirmative finding. The burden then shifts to MHMW to prove (i) that the project will impose a burden on the town; (ii) that this burden is unreasonable; and (iii) that an impact fee is an appropriate remedy for the burden.

Since the Board concludes that population trends are the cause of the near capacity enrollment at the Black River High School, that the trends will soon reverse, that the Projects will not generate a significant number of school aged children, and that the Projects will not cause the local municipalities to expend capital for extra facilities, MHMW has not demonstrated that the Projects will

impose a burden under Criterion 6. Therefore, the Jackson Gore Phase I, Solitude Village, and Master Plan Project comply with Criterion 6.

G. Criterion 8 (Aesthetics and Scenic Beauty) - Jackson Gore Phase I Project

Before issuing a permit, the Board must find that the Jackson Gore Phase I 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. 10 V.S.A. § 6086(a)(8) (aesthetics). Historic sites are not at issue in this appeal. The burden of proof is on the opponents, MHMW, under Criterion 8, *id.* § 6088(b), but the applicant must provide sufficient information to allow the Board to make affirmative findings. *Re: The Home Depot U.S.A., Inc., Ann Juster and Homer and Ruth Sweet, #1R0048-12-EB*, Findings of Fact, Conclusions of Law, and Order at 31 (Aug. 20, 2001)(citing *Re: Black River Valley Rod & Gun Club, Inc., #2S1019-EB*, Findings of Fact, Conclusions of Law, and Order (Altered) at 19 (June 12, 1997), and cases cited therein).

To determine whether a project complies with Criterion 8 (aesthetics), the Board applies a two-part test. The first question is whether the project will have an adverse effect on aesthetics or natural or scenic beauty. *Re: Barre Granite Quarries, LLC, #7C1079 (Revised)-EB*, Findings of Fact, Conclusions of Law, and Order at 78 (Dec. 8, 2000)(citing *Re: James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership, #8B0444-6-EB (Revised)*, Findings of Fact, Conclusions of Law, and Order at 24-25 (Aug. 19, 1996); *Re: Quechee Lakes Corp., #3W0411-EB and #3W0439-EB*, Findings of Fact, Conclusions of Law, and Order (Nov. 4, 1985)). If there is no adverse effect, the inquiry ends. If there is an adverse effect, the second question is whether that adverse effect is undue. *Barre Granite*, Findings, Conclusions and Order at 79 (citing *Hand*, Findings, Conclusions and Order at 24; *Quechee Lakes*, Findings, Conclusions and Order, at 17-20). As set forth herein, the Board concludes that the adverse aesthetic effect of the Jackson Gore Phase I Project is not undue.

1. *Adverse Effect*

In determining whether a project will have an adverse effect, the Board determines whether the project will harmonize with, or “fit” the context within which it will be located. In making this determination, the Board considers a number of factors, including:

- a. the nature of the project's surroundings,
- b. the compatibility of the project's design with those surroundings,

- c. the suitability for the project's context of the colors and materials selected for the project,
- d. the locations from which the project can be viewed, and
- e. the potential impact of the project on open space.

Hand, supra at 25. If a project "fits" its context, it will not have an adverse effect. *Re: Talon Hill Gun Club and John Swinington*, #9A0192-2-EB, Findings of Fact, Conclusions of Law, and Order at 9 (June 7, 1995)(quoted in *Re: Josiah E. Lupton*, #3W0819 (Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 22 (May 18, 2001)); see also, *Re: McDonald's Corp., Rutland, Vermont*, Findings of Fact, Conclusions of Law, and Order at 18 (Dec. 7, 2000)(citing *Hand*, Findings, Conclusions and Order at 25).

The Jackson Gore Phase I Project site is largely undeveloped, and for the most part, consists of forested hillsides, with woodlands and meadows at the base area, and an occasional residence. The surrounding area contains a mix of land uses. These include ski slopes and lifts, some residential development and related roads, interspersed with forested areas, on the hills to the east; more undeveloped forest to the west; and shops, restaurants, other commercial and residential development eastward along Route 103 in Ludlow Village.

Okemo mountain is already developed with ski trails and lifts, and resort homes. Immediately to its west is the somewhat smaller peak on which the Jackson Gore development is proposed to occur. These mountains are easily viewed from some distance and provide a visual backdrop for Ludlow village, and for the more rural areas to the west and north. The portions of the Jackson Gore Phase I Project which will be visible on the side of the mountain are the new ski slopes and lifts. While not entirely out of context with all of the surrounding area (given the relative proximity of the existing Okemo mountain ski resort), these proposed ski trails and lifts constitute a highly visible departure from existing land uses on that part of mountain.

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from her property will remain the same forever." *Re: Okemo Mountain, Inc.*, #2S0351-8-EB, Findings of Fact, Conclusions of Law, and Order at 9 (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Re: Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Aug. 21, 1992). Nevertheless, projects that result in the loss of open space and the alteration of vistas can have an adverse effect on aesthetics and scenic beauty. See, e.g., *Re: Southwestern Vermont Health Care Corp.*, #8B0537-EB, Findings of Fact, Conclusions of Law,

and Order at 29 (Feb. 22, 2001)(citing *Re: Thomas W. Bryant and John P. Skinner*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 21 (June 26, 1991); see also *Re: Maple Tree Place Associates*, #4C0775-EB, Findings of Fact, Conclusions of Law, and Order at 48-49 (June 25, 1998); *Re: George, Mary, and Rene Boissoneault*, #6F0499-EB, Findings of Fact, Conclusions of Law, and Order at 19 (Jan. 29, 1998)).

Okemo's viewshed analysis indicates that the condominium hotel will be largely obscured from view from most points on Route 103 by a forested buffer. It will, however, be visible from within the project site, and it will be the largest structure in the surrounding area. This alone is enough to establish an adverse aesthetic impact. See, *Southwestern Vermont Health Care Corp.*, Findings, Conclusions and Order at 29-30 (finding adverse aesthetic effect where there is nothing comparable in size and scale of proposed project); *Re: John Kennedy and Jeffrey Kilburn*, #8B0370-2-EB, Findings, Conclusions and Order at 5 (Sept. 26, 1988)("The mass and scale of the project buildings will be greater than that of the majority of buildings in this neighborhood and, therefore, will be adverse."). The scale of proposed development in the base area, taken together with the increase in ski trails, crossings and lifts on the undeveloped mountain, which are more visible from offsite than the base area, constitute an adverse aesthetic impact under Criterion 8. In addition, the project will generate noise, which will have an adverse aesthetic impact.

2. *Undue Impact*

The next step in the *Quechee Lakes* test is to determine whether the adverse effect is "undue." An adverse aesthetic effect is undue if the Board reaches any of the following conclusions:

- a. The project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area;
- b. 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; or
- c. The project offends the sensibilities of the average person, is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area.

Home Depot, Findings, Conclusions and Order at 31 (citing *Black River*, *supra* at 19-20; *Hand*, *supra* at 25-29; *Quechee Lakes*, *supra* at 19-20). Each of these will be considered in turn.

a. *Clear, Written Community Standard*

Under this first factor, the Board must determine whether the proposed Jackson Gore Phase I Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty applicable to the area in which the project would be located. "In evaluating whether a project violates a clear written community standard, the Board routinely looks to town and regional plans, open land studies, and other municipal-generated documents to discern whether a clear, written community standard exists and should be applied in the review of the aesthetic impacts of a project." *Re: McDonald's Corporation*, No. 100012-2B-EB, Findings of Fact, Conclusions of Law, and Order at 14 (Mar. 22, 2001)(citing *Re: Herbert and Patricia Clark*, #1R0785-EB, Findings of Fact, Conclusions of Law, and Order at 35- 37 (Apr. 3, 1997); *Re: Thomas W. Bryant and John P. Skinner d/b/a J.O.T.O. Associates*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 22 (June 26, 1991); see also, *Re: Nile and Julie Dupstadt*, #4C1013 (corrected)-EB, Findings of Fact, Conclusions of Law, and Order at 23 (Apr. 30, 1999)). However, statements in town plans or zoning ordinances that express broad policy goals are not "clear, written community standards." See, e.g., *Re: McDonald's Corporation*, No. 100012-2B-EB, Findings, Conclusions and Order at 14 (Mar. 22, 2001)(citing *Re: Town of Barre*, #5W1167-EB, Findings, Conclusions and Order). In *Barre*, the Board held that a "broad statement of policy that applies generally to the community at large is not a clear, written community standard." *Barre*, Findings, Conclusions and Order at 21; cf *Re: The Mirkwood Group and Barry Randall*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 22-23 (Aug. 19, 1996) (Pittsford zoning ordinance constituted clear, written community standard where proposed radio tower was located within conservation district and the ordinance contained a clear statement of the community policy against use of conservation district lands for anything other than dwellings, forestry, and agriculture).

The Ludlow Zoning Regulations set a height restriction for residential development in the "Mountain Recreation District," which includes the site of the Jackson Gore Phase I Project. The height limit is "35 feet or 3 stories, whichever is less."⁴ The proposed Okemo Village Inn condominium hotel contains both residential and commercial uses. When measured in accordance with the Zoning Regulations, the complex is 60.5 feet, or 60' 6".

A 35-foot height restriction in a zoning ordinance has been held to constitute a clear, written community standard intended to preserve the aesthetics or scenic

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Ludlow Zoning Regulations, Section 570.

beauty of the area. See, e.g., *Re: The Mirkwood Group*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 14-15 (Aug. 19, 1996); *Re: Northshore Development, Inc.*, #4C0626-5-EB, Findings of Fact, Conclusions of Law, and Order at 8 (Dec. 29, 1988). In *Northshore*, the Board held that "the amended zoning ordinance that prohibits structures more than 35 feet tall along the lake in this area is a clear community standard intended to preserve the scenic beauty of the view from the lake." *Id.*

In *Mirkwood*, the Board found that several provisions in the zoning ordinance governing the conservation district in which the proposed project was to be located, including a 35-foot building height restriction, showed "a clear, written community standard against development of conservation district lands with any use other than single family detached dwellings, forestry or agriculture – particularly those which interrupt the skyline – to protect the unique scenic value of such lands." *Mirkwood*, Findings, Conclusions and Order at 14-15. Based on these provisions, the Board found the adverse aesthetic impact of the proposed project undue. *Id.* Because the zoning ordinance was violated, the Board declined to review the Town Plan or "any other Town ordinance, regulation, provision, etc. to determine if other relevant clear, written community standards exist." *Id.*

However, the instant case is different from *Mirkwood* and *Northshore* because the condominium hotel in question is a Planned Unit Development, as set forth below, and the 35' height restriction does not apply. The Ludlow Zoning Regulations provide that the DRB may modify height and other density restrictions for any PUD.⁵ This is consistent with Vermont statute, specifically, 24 V.S.A. § 4407(12), which authorizes Planned Unit Development regulations "to encourage new communities, innovation in design and layout, and more efficient use of land," subject to certain conditions. The statute also authorizes the modification of zoning

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"Planned Unit Development" is defined in the Ludlow Zoning Regulations as:

An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any, the plan for which does not correspond in lot size, bulk, or type of dwelling, commercial or industrial use density, lot coverage and required open space to the regulations established in any one or more districts created in this Zoning Regulation.

Ludlow Zoning Regulations, at 6. This definition is virtually identical to that in the statute. See 24 V.S.A. § 4403(14).

regulations by the appropriate zoning authority to allow for increased density in a PUD. *Id.*

In this case, the DRB determined that the Jackson Gore Phase I Project constitutes a PUD and that it meets the conditions necessary for modification of the height restriction. As a result, the DRB did modify the height restriction to allow the 60.5-foot-high condominium hotel:

The Board finds that the height modification to 60'6" meets the Standards of Review, page 15 of the Regulations, in particular, standards 1, 3 and 5, in that, the PUD project, by the density of the construction and the allowance for the tight clustering of units, which optimizes this density of construction, makes appropriate provision for preservation of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas, and unique natural and man-made features, and that adequate municipal facilities and services may be provided.

* * *

The Board finds that the modification of the Mountain Recreation District, Building Height Maximum of 35 feet or 3 stories whichever is less should be permitted, and it is hereby permitted to be modified as proposed to 60'6", which promotes the purposes of the Municipal Plan, the Mountain Recreation District and PUD.

DRB Notice of Decision, at 21.

This is not inconsistent with the general rule that a zoning decision is not determinative of related issues under Act 250. *See, e.g., Re: John A. Russell Corporation, #1R0489-6-EB (Remand)-EB, Findings of Fact, Conclusions of Law, and Order at 46-49 (Jan. 17, 2002)*(issuance of a conditional use determination is not determinative of compliance with town plan under Criterion 10)(citations omitted); *see also, Re: Charles and Barbara Bickford, #5W1186-EB, Findings of Fact, Conclusions of Law, and Order at 4 (Sept. 12, 1995)*(receipt of a zoning permit is not determinative of whether a zoning ordinance contains an aesthetic standard, or the project's compliance therewith). The Board still retains independent authority to determine compliance with Act 250. In this case, however, nothing in the record persuades the Board that the 35' height limit, which has been modified to allow for this planned unit development, should apply to the condominium hotel.

Modification of zoning requirements to allow for planned unit development is a unique feature of Vermont's land use regulatory scheme intended to encourage

innovative and efficient development. Moreover, this is consistent with the intent of the Ludlow Zoning Regulations to encourage clustering of buildings to maintain open space and fragile areas in the Mountain Recreation District. Where, as here, a height restriction has been modified in a manner consistent with the zoning ordinance and applicable law, the clear, written community applicable to the project is changed. The 35-foot height restriction simply does not apply to the condominium hotel.

No applicable clear, written community standard would be violated by the Jackson Gore Phase I Project.

b. Generally Available Mitigating Steps

To determine whether there has been sufficient mitigation, "the Board looks to the steps that the applicant has taken to reduce the aesthetic impacts of a project on the character of the area where it is proposed; the Board asks whether the applicant has taken generally available mitigating steps to improve the harmony of the project with its surroundings." *Re: McDonald's Corp. and Murphy Realty Company, Inc.*, #100012-2B-EB, Findings, Conclusions, and Order at 22 (Mar. 22, 2001)(citing *Re: Thomas W. Bryant and John P. Skinner d/b/a J.O.T.O. Associates*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 21-22 (June 26, 1991)(sufficient mitigation found where an applicant placed height restrictions on homes and trees, proposed plantings to screen the development, proposed covenants to govern future construction and activities on the site, placed limits on exterior house colors, and retained open space to alleviate the adverse effects of the subdivision on the surrounding area)). This is a fact-specific inquiry. See, *McDonald's*, Findings, Conclusions and Order at 22 ("what may be required to aesthetically mitigate a project is a highly case and context-specific inquiry"). In *McDonald's*, the Board held that re-painting a McDonald's restaurant bright red, yellow and white without landscaping or other screening to reduce the visual prominence of the restaurant, and, in particular, of its bright red roof, constituted a failure to mitigate an adverse aesthetic effect. *Id.*

Here, by contrast, the applicants have taken great care to minimize the aesthetic impacts of the Jackson Gore Phase I Project. From the design and screening of the large condominium hotel, to the landscape and lighting plan, to the overall layout of the project, and the redesigning of several trails and bridges, as set forth in the findings of fact. The Board concludes that Okemo satisfies this requirement of the *Quechee* analysis.

c. Sensibilities of the Average Person

Finally, the Board must determine whether the Jackson Gore Phase I Project "would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person." *Re: McDonald's Corp. and Murphy Realty*, #100012-2B-EB, Findings, Conclusions, and Order at 22 (Mar. 22, 2001)(citing *Re: Pike Industries, Inc. and William E. Dailey, Inc.*, #1R0807-EB, Findings of Fact, Conclusions of Law, and Order at 18-19 (June 25, 1998)). While there is an adverse aesthetic effect, as discussed above, the aesthetic impact of the project as conditioned will not be substantial or significant enough to be shocking and offensive to the average person. See, e.g., *Re: Pike Industries*, #1R0807-EB (Jun. 25, 1998)(noise, including that from back-up alarms on vehicles and equipment, would be adverse, but not so out of context with its surroundings as to be offensive or shocking to the ordinary person); *Re: Raymond F. Duff*, #5W0952-2-EB (Jan. 29, 1998)(residential subdivision not offensive or shocking); *Re: Mirkwood Group*, #1R0780-EB (Aug. 19, 1996)(radio tower is an aesthetic intrusion, but is not shocking or offensive); *Re: John Gross Sand and Gravel*, #5W1198-EB (Apr. 27, 1995)(noise from earth extraction project not offensive or shocking, as limited by permit conditions). The proposed development is generally consistent with what one would expect to see and hear at a large ski resort. Those who will be exposed to the most adverse aesthetic impact will be those who intentionally come to Okemo to enjoy skiing and the other recreational opportunities the resort offers. The proposed development is consistent with, and an expansion of, existing development at the resort. Also, as stated above, Okemo has undertaken extensive aesthetic mitigation efforts, which include substantial redesign of several Jackson Gore Phase I Project components, such as bridges and ski trails. Thus, the proposed expansion of this existing ski resort is neither shocking nor offensive.

The Board concludes that the Jackson Gore Phase I Project complies with Criterion 8.

H. Criterion 9(A) - Jackson Gore Phase I Project

Criterion 9(A) is only on appeal for the Jackson Gore Phase I Project. Criterion 9(A) requires the Board to review the impact that the proposed project will have on the ability of the town and region to accommodate two separate items: (a) growth that will occur generally regardless of the proposed project; and (b) growth that will occur specifically because of the proposed project. *Maple Tree Place Associates*, #4C0775-EB, Findings of Facts, Conclusions of Law, and Order at 49 (June 25, 1998). Criterion 9(A) provides:

In considering an application, the District Commission or the Board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed

development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

The Towns of Ludlow, Cavendish, and Mt Holly do not have duly adopted capital improvement programs. Therefore the burden of proof under Criterion 9(A) is on any party opposing the application. (10 V.S.A. 6088.)

In *Re: St. Albans Group and Wal*Mart Stores, Inc.*, Application #6F0471-EB, Findings of Fact and Conclusions of Law, and Order (Altered)(June 27, 1995), the Board held it will address the following factors for Criterion 9(A).

- a. The growth in population experienced by the town and region in question.
- b. The *total* growth and *rate* of growth which is otherwise expected for the town and region.
- c. The *total* growth and *rate* of growth for the town and region which will result from the proposed project if approved.
- d. The anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to public health, safety, and welfare.
- e. Based on (a) through (d), that the proposed project will not cause an undue burden on the existing and potential financial capacity of the town and region in accommodating growth caused by the proposed project.

Id. at 30.

From 1980 to 2000, the Board found that Ludlow grew at a rate of 2.1%. The three town primary impact area grew at a rate of 10% during the same period. The Board projects that Ludlow will grow at 3% and the primary impact area at 4.3%

from 2000 to 2005 without the Jackson Gore Phase I Project. The Board projects that from 2000 to 2005 with the Jackson Gore Phase I Project, Ludlow will grow at 3.6% and the primary impact area will grow at 4.7%.

The Board predicts that the Jackson Gore Phase I Project will result in 27 new households moving to the region, 9 or 10 (24 persons) of which will move to the primary impact area. According to Okemo, it will spend \$50,000,000 over a two year period for construction. The Board estimates that this will create 350 full time equivalent (FTE) jobs during the two year construction period and 115-120 permanent FTE jobs in the region.

In 2000, the peak population of Ludlow was 8,467 and the peak population of the primary impact area was 13,335. Okemo projects that the Jackson Gore Phase I Project will increase the peak population of the primary impact area by 385 persons or 2.9%.

Okemo argues that the Board should consider not only the actual and peak populations but the "effective population". According to Okemo the effective population combines year round residences and estimates of average occupancies of second homes and lodging beds to derive an estimate of the average number of persons residing in the community during the course of the year. Okemo argues that effective population offers a more realistic estimate of the real population of resort communities. The Board declines to use effective population because it simply averages various times of the year and flattens out low and peak impact periods. For the fiscal criteria, actual and peak populations are the relevant considerations.

Importantly, Okemo plans on paying for the costs of a significant part of the infrastructure of the Jackson Gore Phase I Project which will minimize any adverse financial impacts to the municipalities in the area. Okemo will pay for significant parts of the costs of roads, traffic control, waste disposal, water supply, and fire protection.

The main access road to the Jackson Gore Phase I Project base area is the Okemo Ridge Road. The road was constructed by Okemo and is maintained by the Okemo Ridge Association. Therefore, the municipalities will not incur any future costs to maintain the road.

Conditions in prior Act 250 permits require Okemo to pay for traffic control during peak ski season periods. In addition, as part of this permit application, Okemo proposed permit conditions requiring it to pay for traffic control at the intersection of Okemo Ridge Road and Route 103 and Routes 100 and 103 during peak traffic during the ski season so that municipalities will not incur any expense due to traffic.

Okemo will construct and maintain pump stations, pay an annual operating fee, and pay a sewer allocation and hook-on fee of \$751,548 which is designed to cover costs of future capital improvements, and the annual operating fee. Okemo will construct and maintain the water supply. Ludlow would not incur any additional expense for water supply.

Okemo will pay the impact fee of \$.35/foot. Okemo has agreed to make an advance payment of \$259,000 to enable the Ludlow Fire department to purchase a new pumper truck.

Okemo has also entered into a Development Agreement with the Ludlow Village Trustees and Board of Selectman to create the Ludlow Enterprise Fund (LEF). The LEF will be funded by a charge on day ski lift tickets and will be used to mitigate effects of resort related demands on municipal services. Okemo projects that the Jackson Gore Phase I Project will generate \$292,000 over a three year period. The Board concludes that Okemo's projections are reasonable and that its contributions towards infrastructure costs will significantly minimize if not eliminate any adverse effects of the Jackson Gore Phase I Project on municipal services.

In addition, the Jackson Gore Phase I Project will increase annual area spending by approximately \$9,000,000. Approximately 63% of the spending will occur at Okemo, and 37% outside the resort. This spending will provide additional revenues to Ludlow and the surrounding villages.

Okemo has met its burden of production by demonstrating that the Jackson Gore Phase I Project will result in limited growth for Ludlow and the surrounding communities and by Okemo's contributions to the infrastructure costs and the LEF to minimize impacts to municipal services.

The Okemo Formula has been used in recent years as a method for estimating the affordable housing need generated by mountain resort master plans. Under the Okemo Formula, Okemo estimates that 7 households will need affordable housing. Okemo proposes a fixed subsidy to the Vermont Housing and Conservation Board (VHCB) of \$503 per marketable unit. The Board approves of Okemo's analysis and figures. Okemo should meet its affordable housing obligation in conjunction with the VHCB.

As noted previously, MHMW has the burden of proof for Criterion 9(A). MHMW asserts that while growth to date has been nominal, the Jackson Gore Phase I Project would result in excessive growth. According to MHMW, there is a current labor shortage in the area. However, MHMW relies on figures from the Master Plan Project which involves construction costs of \$133,000,000 spent over 5 years versus the Jackson Gore Phase I Project which involves \$50,000,000 of

construction costs spent over 2 years. The Master Plan Project is not on appeal for Criterion 9(A). As a result MHMW provides no support for its broad contention that significant growth will result because of employment needs.

MHMW also questions whether the Board has sufficient information to perform a Criterion 9(A) analysis. Specifically, MHMW suggests that the Board needs a schedule of anticipated construction activity, inputs and other data used for the IMPLAN model to determine construction employment, and construction costs for the Sewage Treatment Plant. Once again MHMW's arguments are based on the Master Plan Project, not the Jackson Gore Phase I Project. Okemo has stated that construction for the Jackson Gore Phase I Project will occur over a two year period. MHMW has provided no credible arguments and has not met its burden of proof. The Jackson Gore Phase I Project complies with Criterion 9(A).

I. Criterion 9(H) - Master Plan, Jackson Gore Phase I & Solitude Village Projects

Criterion 9(H) is on appeal for the Jackson Gore Phase I Project, the Solitude Village Project, and the Master Plan Project. Criterion 9(H) recognizes that scattered development not related to an existing settlement can have adverse primary and secondary impacts and therefore, requires a stricter review than development that occurs within and adjacent to existing communities. Criterion 9(H) is intended to "preserve the viability of the traditional community centers of Vermont, to channel growth into such centers, to keep the growth proportionate to the existing sizes of Vermont's towns and villages unless a locality seeks otherwise, and to ensure that any growth outside of the traditional centers would not have an adverse financial impact on state and local government." *Re: St. Albans Group and Wal*Mart Stores, Inc.*, #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 40-41 (June 27, 1995), affirmed on other grounds, *In re Wal*Mart*, 167 Vt. 75 (1997).

Under 10 V.S.A. 6086(a)(9)(H), the Board must first determine whether the proposed project is physically contiguous to an existing settlement. Some developments such as for ski resorts, can be so comprehensive that they arguably could create an existing settlement out of a ski resort. If the proposed project is not its own existing settlement nor physically contiguous to such a settlement, then the applicant must demonstrate that the project's tax revenues and other public benefits outweigh the additional costs of public services and facilities caused by the project. The statute provides:

The district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused

directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

In *Re: St. Albans Group and Wal*Mart Stores, Inc.*, the Board defined an "existing settlement" as follows:

[T]he phrase 'existing settlement' . . . means an extant community center similar to the traditional Vermont center in that it is compact in size and contains a mix of uses, including commercial and industrial uses, and, importantly, a significant residential component. It is a place in which people may live and work and in which the uses largely are within walking distance of each other.

The Board recently elaborated upon the meaning of "existing settlement" in Killington's and Stratton's proposed master plan projects where the issue was whether the ski resort qualified as an existing settlement. *Re: Killington, Ltd., et al. (Master Plan)*, Application #1R0835-EB, Findings of Fact, Conclusions of Law, and Order at 12, 16-17 (July 20, 2000) and *Stratton Corporation 2W0519-10-EB* Findings of Fact, Conclusions of Law, and Order (May 8, 2001). In *Killington*, the Board held:

The Board does not agree with VNRC that *Town of Stowe* precludes the possibility that ski area development can be an 'existing settlement.' Although the Board determined in *Town of Stowe* that the Mountain Road area through which the proposed sewer extension would run lacked sufficient indicia of an 'existing settlement,' it by no means foreclosed the possibility that such a settlement (or several of them) could materialize in this location in the future. Indeed, the Board specifically noted that appropriate in-fill along a certain broad, flat portion of the third segment of the Mountain Road could one day transform the existing low density sprawl found there into more of a traditional village settlement. Neither *Town of Stowe*, nor *Wal*Mart*, nor any other Criterion 9(H) case reviewed by the Board to date either states or implies that ski area development is by definition incompatible with the concept of an 'existing settlement.' With an appropriate balance of uses, a compact settlement pattern and other indicia of a community center, almost any kind of development may be an 'existing settlement.' The determination must be made on a case-by-case basis.

Killington, supra at 16 (internal citations omitted).

Therefore, the Board must determine whether the area is as the Board stated in *Killington*, a "mere collection of hotels, lodges, condominiums, ski trails and

associated commercial buildings" which does not qualify as an existing settlement or a compact area containing a mix of uses including commercial, industrial, and residential, which the Board held in *Wal*Mart* would qualify as an existing settlement.

Both *Killington* and *Stratton* held that the residential component does not include short-stay hotels or seasonal housing units such as condominiums. In both of these cases, the Board held that there was no existing settlement because of the lack of a significant year round residential population. Likewise, neither the Master Plan Project, Solitude Village Project, nor Jackson Gore Phase I Project qualifies as an existing settlement because of the lack of a residential component.

Since the three Projects are not existing settlements by themselves, the next question is whether the Projects are physically contiguous to an existing settlement. MHMW correctly points out that the nearest existing settlement is located two miles away in Ludlow. Therefore, none of the Projects are physically contiguous to Ludlow.

Since the Projects are neither existing settlements nor physically contiguous to an existing settlement, the next question is whether the additional costs of public services and facilities caused directly or indirectly by the project outweigh the tax revenue and other public benefits.

Okemo argues that the revenues and public benefits outweigh the costs since Okemo is paying for a significant part of the infrastructure for Jackson Gore Phase I Project, the Master Plan Project, and Solitude Village Project. For example, as discussed in more detail in the section on Criterion 9(A), Okemo is paying for a new fire engine, has made significant contributions to the LEF, and is building and maintaining the roads to serve the Projects. The Board concludes that the additional costs of public facilities caused directly or indirectly by the Projects will be minimal. Therefore, the significant tax revenues and other public benefits such as increased recreational opportunities outweigh the costs.

J. Criterion 9(K) - Jackson Gore Phase I & Solitude Village Projects

MHMW and Lysobey have appealed Criterion 9(K) for the Jackson Gore Phase I Project and the Solitude Village Project. 10 V.S.A. § 6086(a)(9)(K) provides that:

A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, airports, waste disposal facilities,

office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.

The burden of proof to show that the proposed development will satisfy Criterion 9(K) is on Okemo. 10 V.S.A. § 6088(a). A failure to meet that burden may result in a denial of an Act 250 application. 10 V.S.A. §§ 6087.

The Board conducts two separate inquiries under Criterion 9(K) with respect to governmental and public facilities. First, the Board examines whether a proposed project will unnecessarily or unreasonably endanger the public investment in such facilities. Second, the Board is to examine whether a proposed project will materially jeopardize or interfere with (a) the function, efficiency or safety of such facilities, or (b) the public's use or enjoyment of or access to such facilities. *Swain Development Corp.*, #3W0445-2-EB, Findings of Fact, Conclusions of Law, and Order at 33 (Aug. 10, 1990).

MHMW argues that the public investments near the Jackson Gore Phase I and Solitude Village Projects will be impacted such as rivers, brooks, lands owned by the Vermont Department of Forests, Parks and recreation, public highways, Green Mountain Rail Road, CVPS transmission lines, telephone lines, Ludlow Sewage Treatment Plant, transfer station, solid waste landfills, incinerators, libraries, town offices, schools, and hospitals.

MHMW does not argue that the Projects will unnecessarily or unreasonably endanger the public investment in any of the above public investments. Therefore, the Board will not consider that prong of Criterion 9(K). Instead, MHMW argues that the Projects will result in increased costs which the Board interprets as affecting the public's use and enjoyment of the facilities or the function, efficiency, or safety of the facilities.

However, MHMW has not provided sufficient evidence for the Board to make a determination on the Projects' impacts. Simply listing the facilities without articulating the impact to such facilities is insufficient to demonstrate that the

Projects will interfere with the public's use and enjoyment of the facilities or the function, efficiency, or safety of the facilities.

For example, MHMW makes vague claims about the unknown costs from the Jackson Gore Phase I and Solitude Village Projects such as increased solid waste, electric and phone service, fire, police, and health care, but without any substantiation of how the public's use or enjoyment will be impacted or how the Projects will interfere with the function, efficiency, or safety of those public investments. MHMW also does not take into account the fact that increased uses of services may be offset by increased user fees. Okemo argues that the Jackson Gore Phase I and Solitude Village Projects were planned to minimize any impacts to the public investments. The Board agrees and concludes that the Jackson Gore Phase I and Solitude Village Projects will not interfere with the public's use and enjoyment of the facilities listed by MHMW.

John Lysobey argues that the public's use and enjoyment of Okemo State Forest and the Okemo Mountain Road will be impacted by bridge #1 of the Jackson Gore Phase I Project. Lysobey does not argue that the Jackson Gore Phase I Project will endanger the public investment in Okemo State Forest or the Okemo Mountain Road. Instead Lysobey asserts that Okemo State Forest was acquired in 1935 for the purpose of maintaining its natural beauty. Lysobey claims that the Jackson Gore Phase I Project will diminish the public's use and enjoyment of these public investments by detracting from the natural beauty of the Okemo State Forest.

However, the Board notes that state forests are managed for more purposes than maintaining their natural beauty. Pursuant to 10 V.S.A. 2601(a):

It is the policy of the state to encourage economic management of its forests and woodlands , to maintain, conserve and improve its soil resources and to control forest pests to the end that forest benefits including maple sugar production, are preserved for its people, floods and soil erosion are alleviated, hazards of forest fires are lessened, its natural beauty is preserved, its wildlife is protected, the development of its recreational interests is encouraged, the fertility and productivity of its soils are maintained, the impairment of its dams and reservoirs is prevented, its tax base is protected, and the health, safety, and general welfare of its people are sustained and promoted.

Pursuant to 10 V.S.A. 2603(b), the Commissioner of the Department of Forests, Parks, and Recreation shall "... promote and protect the natural , productive, and recreational values of such lands, and provide for multiple uses of the lands in the public interest."

More specifically, the Board takes official notice of the Department of Forests, Parks, and Recreation Stewardship Plan for Okemo State Forest (1990) which states that "Okemo State Forest was originally acquired to provide broad based recreational opportunities to the general public." *Id* at 25. Thus, Okemo State Forest is an important public investment for its substantial recreational potential as well as for its natural beauty. Okemo has demonstrated that the Jackson Gore Phase I Project will not endanger the public's use and enjoyment of Okemo State Forest and Okemo Mountain Road. In fact, Okemo also demonstrated that the Jackson Gore Phase I Project will increase the public's use and enjoyment through enhanced recreational opportunities. Therefore, Okemo has met its burden and the Jackson Gore Phase I Project complies with Criterion 9(K).

K. Criterion 9(L) - Master Plan, Jackson Gore Phase I & Solitude Village Projects

Criterion 9(L) is under appeal for the Jackson Gore Phase I Project, the Solitude Village Project, and the Master Plan Project. The purpose of Criterion 9(L) is to promote orderly and well-planned growth in rural growth areas by providing for reasonable population densities and rates of growth, using clustered development and new community planning techniques to conserve land and the costs of services that stem from development. See *Re: New England Land Ventures*, Findings of Fact, Conclusions of Law, and Order at 2-3 (December 6, 1991).

10 V.S.A. § 6086(a)(9)(L) provides that:

A permit will be granted for the development or subdivision of growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivision (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

Under this Criterion, the Board must determine as a threshold matter whether the proposed development is in a "rural growth area." Act 250 defines rural growth areas as:

lands which are not natural resources referred to in section 6086(a)(1)(A) through (F), section 6086(a)(8)(A) and section 6086(a)(9)(B), (C), (D), (E) and (K) of [Title 10].

10 V.S.A. § 6001(16).

In addition to the above statutory definition, the Board held in *New England Ventures*, that to be a rural growth area, the area must be predominantly rural in character. *Id.* at 3. The term "rural" is not defined in the statute. The Board concluded that the word "rural" describes areas which are not densely settled and which may consist of small villages surrounded by mostly open, farmed, or undeveloped country. *Id.* The Board concluded that an area may be rural even if it is contiguous to an existing settlement. *Id.* There is no dispute that the area in question is rural because it is not densely settled and is surrounded with mostly open undeveloped country.

In *Stratton*, the Board clarified its analysis in determining whether a particular area meets the statutory definition of a rural growth area. The correct inquiry is not whether there is a referenced natural resource located anywhere on the Project site. The correct inquiry is first to delineate the area on which the proposed development will occur. Second, determine what part of that area, if any, is one or more of the referenced natural resources. Third, determine whether such land that is not one or more of the referenced natural resources is of sufficient acreage that it is possible to carve out a meaningful and usable rural growth area.⁶ *Id.* at 33-34.

Okemo argues that under *Stratton*, the entire area where construction will occur for all three Projects is comprised of one or more natural resources including headwaters, streams, earth resources, prime agricultural soil, and public investments (Okemo State Forest). The Board found that the vast majority of the areas proposed for construction for all the Projects is a headwaters area. The Board also found that the other referenced natural resources listed above are present in the area proposed for development. In light of the fact that the vast majority of the area proposed for development is headwaters, a large part is in the Okemo State Forest, and other referenced natural resources are present and spread throughout, the Board concludes that it is not possible to carve out a meaningful rural growth area in the area proposed for development. Therefore, since there are no rural growth areas in the area proposed for development for any of the three Projects, Okemo satisfies Criterion 9(L).

L. Criterion 10 (Rutland Regional Plan) - Jackson Gore Phase I Project

Before granting a permit, the Board must find that the project "is in conformance with any duly adopted local or regional plan or capital program of Title 24." 10 V.S.A. § 6086(a)(10). The only Criterion 10 issue on appeal is whether the

⁶ This language clarifies the test for Criterion 9(L) set forth in *Stratton*.

Jackson Gore Phase I Project complies with the Rutland Regional Plan. The burden of production and the burden of persuasion are on the applicant, Okemo. *Id.* § 6088(a).

Under Criterion 10, the Board reviews projects for compliance with specific regional plan policies, not ambiguous ones. *Re: Mill Lane Development Co., Inc.*, #2W0942-2-EB, Findings of Fact, Conclusions of Law, and Order at 35 (Dec. 17, 1999)(citing *Re: Nile and Julie Duppstadt and John and Debra Alden*, #4C1013 (Corrected)-EB, Findings of Fact, Conclusions of Law, and Order at 44 (April 30, 1999); *In re Green Peak Estates*, 154 Vt. 363, 369-70 (1990)(project was not in compliance with regional plan that contained a specific policy against the type of development at issue); *In re Molgano*, 163 Vt. 25, 31 (1994)(project was in compliance with broad and vague regional plan that had no specific prohibitions against type of development at issue); *Re: The Mirkwood Group and Barry Randall*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order (August 19, 1996)).

"For a regional plan's provisions to be deemed a specific policy, the applicable provisions must (a) pertain to the area or district in which the project is located; (b) intend to guide or proscribe conduct or land use within the area or district in which the project is located; and (c) be sufficiently clear to guide the conduct of an average person, using common sense and understanding." *Mill Lane*, Findings, Conclusions and Order at 35 (citing *Duppstadt*, Findings, Conclusions and Order at 45; *Re: Herbert and Patricia Clark*, #1R0785-EB, Findings of Fact, Conclusions of Law, and Order at 40 (April 3, 1997); *Mirkwood*, Findings, Conclusions and Order at 29). The Rutland Regional Plan does not apply to Ludlow, which is in Windsor County. Only a small part of the Jackson Gore Phase I Project is in Rutland County.

There is no applicable provision in the Rutland Regional Plan which prohibits the proposed development, and no clear guiding principle in the plan which would be violated. Okemo has provided sufficient evidence to meet its burden of proof under Criterion 10. The Board concludes, therefore, that the Jackson Gore Phase I Project complies with Criterion 10.

VI. ORDER

1. The Board takes official notice of certain documents as described in the Conclusions of Law, in Section J, Criterion 9(K).
2. Land Use Permit Amendments #2S0351-31-EB, and #2S0351-25R-EB are issued.
3. MHMW's Motion to Strike is DENIED.

4. John Lysobey's "Motion to Accept the Following Evidence and Conclusions of Law in this Case" is DENIED.
5. John Lysobey's Motion to Hold a Hearing on the issue of co-applicancy is DENIED.
6. Jurisdiction is returned to the District #2 Environmental Commission.

DATED at Montpelier, Vermont this 22nd day of February, 2002.

ENVIRONMENTAL BOARD*

/s/Marcy Harding

Marcy Harding, Chair

Jill Broderick*

John Drake

George Holland

W. William Martinez**

Rebecca M. Nawrath***

Alice Olenick[†]

Don Sargent[‡]

* Alternate Board member Jill Broderick did not participate in the November 7, 2001 hearing and the January 16 and February 20, 2002 deliberations, but has reviewed and joins in the Board's decision.

** Board member W. William Martinez did not participate in the November 7, 2001 hearing and the December 19, 2001 deliberations, but has reviewed and joins in the Board's decision.

*** Board member Rebecca M. Nawrath did not participate in the December 19, 2001, February 13, 2002, and February 20, 2002 deliberations, but has reviewed and joins in the Board's decision.

[†] Board member Alice Olenick did not participate in the February 13 and 20, 2002 deliberations, but has reviewed and joins in the Board's decision.

[‡] Board member Don Sargent did not participate in the March 28, April 25 or August 15, 2001 deliberations on preliminary issues.

