

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

Re: Okemo Limited Liability Company

Land Use Permit Amendment
#2S0351-34-EB [859]

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This appeal concerns a proposed expansion of the Okemo ski area in Ludlow, Vermont. The proposed expansion, Jackson Gore Phase II, consists of three residential buildings with 104 units and underground parking, a 20,000-square foot conference center with underground parking; a 17,000-square foot recreation/health club facility; an 800-foot extension of a permitted beginner ski trail with snowmaking; relocation of a permitted but unconstructed quad chair lift; relocation of a permitted parking lot; an increase in total parking to 988 spaces; and expansion of utilities including water lines, sewer lines and pump station storage capacity, power lines and stormwater drainage pipes (Project). As set forth below, the Project as conditioned complies with the criteria on appeal, and a permit is issued with this decision.

I. PROCEDURAL SUMMARY

On September 22, 2004, the District 2 Environmental Commission (Commission) issued Land Use Permit #2S0351-34 (Permit) and accompanying Findings of Fact, Conclusions of Law, and Order (Decision) to Okemo Limited Liability Company (Okemo) for the Project.

On October 13, 2004, Mount Holly Mountain Watch (MHMW) filed an appeal with the Environmental Board (Board) alleging that the Commission erred in denying MHMW party status with respect to 10 V.S.A. § 6086(a)(1), (1)(A), (1)(B), (1)(E), (2), (3), (5), (6), (7), (8)(natural areas), (8)(A), (9)(A), (9)(F), (9)(K), and (10)(Town and Regional Plans).

The Board issued a Memorandum of Decision on January 7, 2004, granting MHMW's petition for party status under Environmental Board Rule (EBR) 14(A)(6) as to 10 V.S.A. § 6086(a)(1)(B), (1)(E), (5) and (6), denying the petition as to 10 V.S.A. § 6086(a)(1), (1)(A), (2), (3), (7), (8)(natural areas) (8)(A), (9)(A), (9)(F), (9)(K), and (10)(Town and Regional Plans) and remanding jurisdiction to the Commission.

On January 21, 2005, MHMW and Okemo each filed timely motions to alter the Board's decision. The Board deliberated on February 23, 2005. On March 21, 2005, the Board issued a Memorandum of Decision granting Okemo's Motion to Alter, requiring that the case be set for another prehearing conference at the Board and not be remanded to the Commission, and denying MHMW's Motion to Alter.

A second prehearing conference was held on April 14, 2005, Acting Chair A. Gregory Rainville presiding. Okemo was present, represented by Lawrence Slason, Esq., with David M. Wilcox. Peter Berg participated on behalf of MHMW. The

prehearing conference was held to set this matter for hearing.

On April 15, 2005, the Chair issued a Scheduling Order setting deadlines for pre-filing evidence, and scheduling a hearing and a third prehearing conference.

On April 21, 2005, MHMW filed a letter objecting to the Scheduling Order.

On April 25, 2005, MHMW filed a letter requesting an extension of time in which to take an appeal to the Vermont Supreme Court.

The Board deliberated on April 27, 2005, and denied MHMW's request and objection by Memorandum of Decision issued the same day.

On May 16, 2005, MHMW requested that the Board subpoena three witnesses on its behalf. The Board deliberated on May 16, 2005 and issued an Order granting the subpoena requests on May 24, 2005.

The Board held a public hearing and site visit on July 13, 2005, Acting Chair A. Gregory Rainville presiding. The parties were given until July 25, 2005, to submit supplemental proposed findings of fact and conclusions of law. The Board deliberated on July 20, 2005, July 27, 2005 and September 7, 2005. Based on the record, related argument, and the parties' proposed findings of fact and conclusions of law, the Board declared the record complete and adjourned.

II. OFFICIAL NOTICE

At the hearing, the Board took official notice of the Commission's Permit and Decision, pursuant to Vermont's Administrative Procedures Act, and no party objected. 3 V.S.A. § 810(4); *see also*, 3 V.S.A. § 801(b)(2)(contested cases). Thus, the Commission's Permit and Decision are part of the record in this *de novo* appeal.

III. ISSUES

At the hearing, MHMW withdrew its appeal on Criteria 1(B)(waste disposal) and 1(E)(streams), and no party objected. Therefore, the only issues remaining on appeal are whether the Project complies with Criterion 5(traffic) and Criterion 6(educational services).

IV. FINDINGS OF FACT

To the extent that any proposed findings of fact are included in this decision, 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). Facts stated and terms defined in the procedural summary are incorporated in the findings. Topic headings are used for organizational purposes only.

Jackson Gore Phase II Project

1. Okemo proposes to build three residential buildings with underground parking; a conference center with underground parking; a recreation/health club facility; an 800-foot beginner ski trail with snowmaking; relocation of a permitted quad chair lift; relocation of a permitted parking lot; an increase in total parking to 988 outdoor spaces; and expansion of utilities including waterlines, sewer lines and pump station storage capacity, power lines and stormwater drainage pipes, off Okemo Ridge Road in Ludlow, Vermont.
2. This Project is known as Jackson Gore Phase II.
3. The three residential buildings will contain a total of 104 common interest ownership units with underground parking below each building that will accommodate 131 automobiles.
4. Building E1 (Adams Building) is located on a 2.48-acre lot, and will have 39 units with a total of 78 bedrooms, ski locker rooms, and underground parking for 52 automobiles.
5. Building E2 (Bixby Building) is located on a 1.81-acre lot, and will have 30 units with a total of 57 bedrooms, ski locker rooms, and underground parking for 32 automobiles.
6. Building E3 (Coolidge Building) is located on a 2.21-acre lot, and will have 35 units with a total of 71 bedrooms, ski locker rooms and underground parking for 47 vehicles.
7. Ownership interests in the residential buildings will be sold on a quarter-share basis. Quarter-share owners may only reside in the unit approximately one week per month, for a total of thirteen weeks per year.
8. The residential buildings will contain a total of 90 lock-out units. A lock-out unit is portion of a residential unit that can be locked out from the main unit and used as a separate rental unit. With the 104 residential units and the 90 additional lock-out units, the maximum total number of residential units is 194.

9. The health club will be a 1-1/2-story building, with a gross area of 20,665 square feet and a capacity of 120 persons. It will have locker rooms, workout rooms, and an indoor/outdoor pool with slides and other amenities.
10. The conference center will be a single-story building with 23,468 square feet of finished floor space and underground parking for 38 automobiles. The capacity of the conference center will be 500 persons.
11. A beginner ski trail and its quad chairlift, authorized by the Phase I permit, #2S0351-30(2nd Revision)-EB (Master Plan), #2S0351-31-EB (Jackson Gore Phase I), and #2S0351-25R-EB (Solitude Village), will be moved closer to the new residential buildings. The ski trail will be extended approximately 800 feet, and a section of culvert approximately 500 feet long will be repositioned.

Criterion 5 (Traffic)

12. Vehicular access to the Project is from Okemo Ridge Road and Jackson Gore Road.
13. Jackson Gore Road will be extended approximately 1,300 feet to provide access to the three new residential buildings.
14. The main day use parking area has been moved closer to the Jackson Gore buildings and away from Route 103.
15. The Project will result in a cumulative total parking capacity of 1,253 vehicles. This is designed to allow two spaces per dwelling unit, one space per bedroom in the Jackson Gore Inn, and the remainder for skier day use, the health club, and the conference center.
16. Okemo's traffic consultant, John Bruno, has developed the following equation that relates the 30th Design Hour Volume (DHV) to the number of on-mountain lodging units and the Comfortable Carrying Capacity (CCC) of the resort, using regression analysis: $30^{\text{th}} \text{ DHV} = 0.687557 \times \# \text{ of lodging units} + 0.00233087 \times \text{CCC} + 40.63$. Mr. Bruno has used this equation in his traffic impact analyses since 1989 and it has been accepted by the Vermont Agency of Transportation (VTrans).
17. Traffic is already quite heavy in Ludlow during winter peak hours. It can take over an hour to drive through Ludlow during these times, even with traffic control officers at key intersections, and traffic being rerouted so

that ski traffic gets an extra lane. The current level of service for several intersections is already at LOS D during winter peak.

18. There will be limited demand for the conference center during peak ski periods. Experience at other resorts has shown that conference centers have highest demands during the summer and fall, followed by spring. Although the conference center will be available during the winter, most conferences will be scheduled during mid-week.
19. In the winter, the Project will increase the 30th Design Hourly Volume (DHV), which is the 30th highest hour traffic experienced during the year, from 965 to 1,069, resulting in 104 additional trips.
20. This finding of 104 additional trips is based on the assumption that use of the conference center and health club on winter peak weekends will be limited to persons already staying at the Okemo resort.
21. Whether any given weekend is a peak winter weekend depends on weather, snow conditions and other factors, so it is not possible to predict which winter weekends will be peak ski weekends.
22. In the winter peak hour, the Project will decrease the Level of Service (LOS) at the following intersections from LOS D to LOS E: the eastbound and southbound approaches on Depot Street in the Village of Ludlow, and the left turn from Route 131 to Route 103 southbound.
23. The Route 131 left turn to Route 103 involves fewer than 20 vehicles per hour.
24. Peak summer traffic generally occurs on Sundays in August from 12:00 p.m. noon to 1:00 p.m.
25. During the summer peak hour, the Project will increase the summer 30th DHV by 319 additional trips. The recreation/health club facility will generate approximately 40 peak hour trips, based on its capacity of 120 users and an assumption of three occupants per vehicle, and the conference center will generate approximately 279 vehicle trips if both facilities are used at maximum capacity.
26. During the summer peak hour, the Project will cause the level of service at the left turn from Route 103 in Chester onto Route 11 eastbound, to drop from LOS C to LOS E during peak periods. However, a LOS C can be achieved at this intersection with a traffic control officer during peak

periods, especially those peak periods in which the convention center has an activity that ends on a Sunday afternoon. Okemo will continue to monitor and analyze traffic and turning movements at this intersection, and will provide traffic control if the LOS drops below C.

27. The Project will cause the level of service during summer peak hour at the intersection of Route 100 and Route 103 (Route 100 SB Left turning movement) to drop from a LOS B in 2005 and LOS C in 2010, to a LOS D.
28. The LOS at several intersections during current winter peak hours is at D, including: Route 103/Access Road eastbound right turning movement; Route 103/Depot Street all turning movements from Depot Street eastbound and westbound, and Route 103 southbound through and right turning traffic; Route 103/Route 131, Route 131 left turning movement.
29. Given the current levels of traffic congestion and intersections with a LOS below C, it is clear that there are traffic problems in the area that preexist the Project.
30. Sources other than the Okemo resort, such as the Killington ski area and an increase in the number of homes, contribute traffic to the area.
31. Okemo will take a morning traffic count at the Route 103/Okemo Ridge Road intersection. The data will be used to evaluate the need for a left-turn lane from a safety standpoint. Okemo will develop a left-turn lane plan for the Route 103 easterly approach to the Okemo Ridge Road intersection for review with VTrans.
32. VTrans performed a left-turn lane warrant analysis for the Route 103/Okemo Ridge Road/Buttermilk Falls intersection for the 2010 no-build and build scenarios, using the winter peak hour volumes projected by Okemo. VTrans did not find that a left turn lane was warranted under either scenario.
33. Okemo had its own consultant, John Bruno, perform a left-turn lane warrant analysis for the Route 103/Okemo Ridge Road/Buttermilk Falls intersection, using the 2005 and 2010 no-build and build summer peak hour volumes. Mr. Bruno did not find that a left-turn lane was warranted under either scenario. Actual 2005 summer and winter peak traffic counts were not available at the time Mr. Bruno performed this analysis.
34. Okemo will reduce Sunday afternoon peak hour traffic by at least 129

trips by changing its Vermont/New Hampshire half-day discount ticket from an afternoon ticket to a morning ticket. The ticket has been popular with Vermont and New Hampshire residents. With this change, the ticket will allow the ticket holder to ski from 8 a.m. to no later than 2:00 p.m. at the discounted price.

35. In the long run, there may be more effective transportation management approaches, such as development of alternate routes or widening one or more of the roads. These questions are the subject of an ongoing ski corridor traffic management study, which is a cooperative regional transportation planning initiative which currently involves the Southern Windsor County Regional Planning Commission, the Vermont Agency of Transportation, and Okemo, with assistance from consultants at RSG Group to quantify the corridor-wide traffic impacts of development projects along the Route 103 corridor, including but not limited to the Okemo ski area.
36. The ski corridor traffic management study has resulted in the preliminary development of a ski corridor travel time model. The model estimates travel time along a corridor by adding delay encountered at intersections to the travel time along road segments which are affected by traffic volumes and highway/intersection operations and physical characteristics of the road. The travel time model supplements the standard intersection LOS analysis by putting individual intersection delays into context within the larger segment of travel time.
37. Okemo will continue to participate actively in the ski corridor traffic management study.
38. Since 1987, Okemo has implemented a variety of traffic mitigation measures, including:
 - a. A traffic control program which redirects traffic through the Village of Ludlow on weekends and holiday weeks with the assistance of professionally trained traffic control officers at all key intersections.
 - b. Operation of a shuttle bus service in the Village of Ludlow, with four buses.
 - c. Operation of an employee shuttle program.
 - d. Implementation of early check-in and departure lodging from Friday to Friday, instead of Sundays.
 - e. Other expenditures for road improvement, traffic safety equipment and numerous traffic studies.

39. Okemo proposes to add the following traffic mitigation measures with this Project:
 - a. Encourage drivers traveling to Okemo from the north, south and southwest to use the Okemo Ridge Road and Jackson Gore base area instead of the main Okemo base area, through Okemo's website, marketing brochures and other materials, reservations and other personnel, and other reasonable means.
 - b. Change the Sunday half-day discount ticket for Vermont/New Hampshire residents to a morning ticket ending by 2:00 p.m.
 - c. Provide skier services and schedule rental package pick-ups and returns to avoid peak traffic periods.
 - d. Promote the shuttle service.
 - e. Provide additional traffic control officers at key intersections as needed to maintain acceptable levels of service.
 - f. Continue monitoring and analyzing traffic to better identify traffic needs, patterns and mitigation strategies.
 - g. Conduct summer traffic counts at key intersections during peak summer periods.
 - h. Continue working with the Southern Windsor County Regional Planning Commission, and other interested parties, on the ski corridor traffic issue.

40. VTrans accident data for Route 103 from Okemo Ridge Road southbound to I-91, Exit 6, shows three accidents occurring during the winter months of 1997 through 2001. VTrans is in the process of updating statewide accident data.

41. In addition, there was one accident in the vicinity of the Route 103/Okemo Ridge Road intersection, and one accident at the Route 103/100 north intersection, between 2004 to the present. Both of those accidents involved single cars sliding off the road.

Criterion 6 (Educational Services)

42. The residential units will be occupied on a part-time basis only. No one can use any of the units as a full-time, year-round residence.

43. All unit owners will be members of the Jackson Gore Inn Homeowners Association, a Vermont non-profit association. The Declaration and Restrictive Covenants prohibit the units from being occupied or used by the owner or any other persons as a full time, year-round place of residence. Owners are expressly prohibited from claiming units as a

place of residency. Any long-term lease of a unit will explicitly prohibit use or occupancy of the unit as a full-time, year-round residence.

44. The only increase in local school enrollments will be from the households of employees who move into the area to take jobs generated directly or indirectly by the Project. As a result, there will be approximately fifteen new households in the Ludlow, Cavendish and Mt. Holly area, for a total of seven new children in the area schools.
45. School enrollments are declining in Ludlow, Cavendish and Mt. Holly, and in most schools in the state of Vermont outside of Chittenden County.
46. The schools in Ludlow, Cavendish and Mt. Holly have an excess capacity of at least forty students.
47. The Project will contribute property tax funds to Ludlow. To the extent that homes in other towns are purchased by individuals moving into the region because of Project-related jobs, the Project will add to the tax bases in those towns.
48. The Project will not necessitate capital expenditures at any local school because the schools have more than enough room for the additional children the Project will cause to move into the area.

V. CONCLUSIONS OF LAW

A. Criterion 5

The question under Criterion 5 is whether the Project will "cause unreasonable congestion or unsafe conditions with respect to the use of highways . . ." 10 V.S.A. § 6086(a)(5). As the opponent, MHMW bears the burden of proof under Criterion 5, *id.* § 6088(b), but Okemo must provide sufficient information for the Board to make affirmative findings. *Re: Barre Granite Quarries, LLC, #7C1079 (Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 50 (Dec. 8, 2000).* A permit may not be denied solely on the basis of Criterion 5, but the Board may attach reasonable conditions and requirements to alleviate any traffic burdens caused or exacerbated by the project. 10 V.S.A. § 6087(b); *see also, Re: Nile and Julie Dupstadt and John and Debra Alden, #4C1013-EB, Findings of Fact, Conclusions of Law, and Order (Apr. 30, 1999).*

As set forth in the findings of fact, peak traffic in Ludlow is very heavy at current levels. Okemo proposes to mitigate the entire traffic impact of the Project,

primarily by changing its Sunday discount ticket to end at 1 p.m., well before the Sunday afternoon peak, by promoting shuttle service and alternate approaches to the resort, by continuing to monitor and study local and regional traffic, and by paying for traffic control officers when the level of service at any local intersection falls below a level of service C.

Maintaining a level of service C is consistent with current law and policy. In the *St. Albans Wal-Mart* case, the Court upheld the Board's determination that "traffic flow below LOS C at intersections outside compact urban areas is 'unreasonable'" under Criterion 5. *In re Wal-Mart Stores, Inc.*, 167 Vt. 75, 86 (1997)(citing *In re Agency of Transp.*, 157 Vt. 203, 206 (1991)(*St. Albans Wal-Mart*)). Ludlow is not a compact urban area. Moreover, the Board has found that it is VTrans policy to have a minimum LOS of C at all intersections with state highways, with exceptions made only on a case-by-case basis. *Re: Pittsford Enterprises, LLP*, #1R0877-EB, Findings of Fact, Conclusions of Law, and Order at 15 (Dec. 31, 2002). In short, a LOS below C is generally inconsistent with Criterion 5. Okemo's proposal to provide traffic control officers at all intersections that drop below acceptable service levels during peak hours is necessary under Criterion 5 to maintain a minimum LOS C.

The current LOS at some intersections during peak hours is already a D and is expected to drop to LOS E after the Project is built. The Board cannot permit the Project to make this situation worse. As the Vermont Supreme Court has stated, under Criterion 5 "[i]t would be absurd to permit a hazardous condition to become more hazardous." *In re Pilgrim Partnership*, 153 Vt. 594, 596 (1990).

Okemo points out that Ludlow voted to accept a level of service "E," and to use a 50th design hourly volume to determine level of service. However, this has no bearing on the Criterion 5 analysis. "Under Criterion 5, the Board must make its own determination as to the nature of the area and the level of service appropriate for that area." *In re Wal-Mart Stores, Inc.*, 167 Vt. 75, 86 (1997)(citing *In re Agency of Transp.*, 157 Vt. 203, 206 (1991)(*St. Albans Wal-Mart*)). The Board has determined that a level of service (LOS) E means very long delays at the affected intersection, which can cause driver frustration and risky driving behavior, particularly in intersections without signals where drivers have to wait for and work their way into gaps in the traffic stream. *Pittsford Enterprises*, Findings, Conclusions, and Order at 15. Provision of traffic control officers during peak hours is needed to prevent the LOS from declining as a result of the Project, and to maintain a LOS of C at intersections that currently have LOS C or better.

Although the broader traffic issue exceeds the scope of this appeal, the Board is encouraged that Okemo is taking an active role in the Southern Windsor Regional Planning Commission's ski corridor traffic management study, and that

VTrans, which did not participate in this appeal, is also directly involved. There may be more effective transportation management approaches in the long run, such as providing mass transportation to Okemo from train stations, bus stations, airports, and other mass transportation hubs in the area. It may also be necessary to develop alternate routes or widen one or more of the existing roads in or around Ludlow. Analyzing transportation issues and planning for the entire ski corridor is an immense but important undertaking, and it will be very helpful to those who travel to, from, or through Ludlow.

Okemo has also undertaken continued monitoring and analysis of traffic in and around the resort, and has been through the turn-lane warrant analysis for at least two intersections. These warrant analyses were based on projections before real data on the 2005 no-build scenario became available. If actual traffic levels exceed the projections, it would be prudent for Okemo to have the analyses run again with the actual numbers. While the projections based on the equation are generally accurate, in one location the actual numbers were significantly higher than projected. Given the current levels of traffic in the Project area, and the inability of this area to accommodate significant additional traffic from the Project, it is appropriate that Okemo provide its monitoring data and analyses to the Commission, and to the Southern Windsor Regional Planning Commission and VTrans, within a reasonable time as this information becomes available. At a minimum, these data and analyses should be provided on an annual basis. Should any issue related to the Project arise, appropriate steps can be taken to ensure compliance with the permit.

The Board is persuaded that the mitigation and monitoring strategy set forth in this decision and permit will negate virtually all of the traffic generated by the Project. With these conditions, the Project complies with Criterion 5.

B. Criterion 6

Under Criterion 6, the Board must determine whether the Project will "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 produce enough evidence for the Board to decide the issue. 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); *St. Albans Wal*Mart*, Findings, Conclusions and Order at 50. 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).

To determine whether a proposed project will have impacts under Criterion 6, the Board must examine whether the Project will cause an increase in the number of students and whether the local schools can absorb the new students without additional capital expenditures. *In re CVPS (Guilford), #2W1154-1-EB*, Findings of Fact, Conclusions of Law, and Order (Altered), at 16 (Dec. 19, 2003). An impact fee may be assessed to mitigate any increase in a local municipality's capital expenditures attributable to the Project. 10 V.S.A. § 6086(a)(6)(requiring imposition of impact fees to mitigate impacts of growth on educational services).

In this case, the only increase in student population will be from the people who move into the area to take new jobs generated directly and indirectly by the Project. This is because the owners of the Project's residential units will not live there full-time, year-round, and cannot send children to the local schools. Okemo's consultant, Douglas Kennedy, estimates that 38 households will move into the region as a result of the Project. Mr. Kennedy estimates that 15 of these households will move into the Ludlow, Cavendish and Mt. Holly area, and that each new household will contribute approximately 0.47 school-age children to the local schools. Thus, the Project is expected to add seven children to the schools in Ludlow, Cavendish and Mt. Holly.

School enrollments are declining in Ludlow, Cavendish and Mt. Holly, and each public school in that area has a current excess capacity of 40 or more children. It is clear that the Project will not increase student populations enough to require capital expenditures at any of the local schools. Given this, Okemo prevails on Criterion 6 unless MHMW proves: (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). MHMW does not meet its burden of proving that the Project will cause any impact under Criterion 6.

MHMW does not argue that the Project will add children to the local schools and require capital expenditures. To the contrary, MHMW complains that the Project will not contribute enough students to the local schools. According to MHMW, at least one of the local schools will have to close as a result of declining student populations, and that the Project will not contribute enough students to keep the schools sufficiently full. Many local school districts face declining school populations and related issues. However, it is difficult to see how Criterion 6 of Act

250 could require that an impact fee be required of new development in these districts. Criterion 6 was intended to assist municipal governments with funding school expansions and other capital improvements necessitated by a development or subdivision. While MHMW may have legitimate concerns about declining school enrollment and possible school closings, these concerns cannot be addressed under Criterion 6.

No impact fees are warranted. The Project complies with Criterion 6.

VI. ORDER

1. The Project, as conditioned, complies with Criterion 5(traffic) and Criterion 6(educational services). Land Use Permit #2S0351-34-EB is issued herewith.

2. Jurisdiction is returned to the District 2 Environmental Commission.

DATED at Montpelier, Vermont this 8th day of September, 2005.

ENVIRONMENTAL BOARD

/s/ A. Gregory Rainville

A. Gregory Rainville, Acting Chair

George Holland

W. William Martinez

Patricia Nowak

Alice Olenick

Richard C. Pembroke, Sr.