



State of Vermont

LAND USE PERMIT

CASE NO: 3R1113

FARM Developing, LLC
22 North Main Street
Randolph, VT 05060

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #3 hereby issues Land Use Permit #3R1113, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit applies to the lands identified in Book 206, Page 631, of the land records of Randolph, Vermont, as the subject of a deed to FARM Developing, LLC, the Permittee.

This permit specifically authorizes the construction of a 47,975 square foot, three-story hotel and a 14,730 square foot restaurant and conference center, with associated utilities and infrastructure, and a 135-foot by 75-foot outdoor tent/event area with adjacent gazebo.

The project is located off Route 66 in Randolph, Vermont.

Jurisdiction attaches because the Project constitutes construction of improvements for a commercial purpose on a tract of land involving more than 10 acres in a municipality that has adopted permanent zoning and subdivision bylaws, pursuant to 10 V.S.A. § 6001(3)(A)(i).

The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District Commission in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law #3R1113, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

Sheet C1.02 - "Overall Site Plan," dated 4/26/19, last revision 9/27/19 (Exhibit 035);

Sheet C1.05 - "Utility Plan," dated 4/26/19, last revision 9/27/19 (Exhibit 036);

Sheet C2.01 - "Entrance Plan and Profile," dated 4/26/19 (Exhibit 015);

Sheet C0.01 - "Legend and General Notes," dated 4/26/19, last revision 8/14/19 (Exhibit 022);

Sheet AG - "Agricultural Soils Disturbance," dated 8/28/19 (Exhibit 021);

Sheets L1.1 and L1.2 - "Landscape Plan" and "Landscape Details," dated 4/24/19, last revision 6/14/19 (Exhibits 005 and 006); and

Sheet SE1.1 - "Site Lighting Photometric Plan," dated 4/24/19 (Exhibit 011).

2. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources (ANR) Permits:
 - a. Public Non-Transient Non-Community Water System Source Permit #S-3733-19.0, WSID #VT0021654 issued on March 17, 2020, by the Drinking Water and Groundwater Protection Division (Exhibit 042);
 - b. Public Water System Construction Permit #C-3733-20.0, issued on April 3, 2020, by the Drinking Water and Groundwater Protection Division (Exhibit 044);
 - c. Wastewater System and Potable Water Supply Permit #WW-3-11241 issued on April 6, 2020 by the Drinking Water and Groundwater Protection Division (Exhibit 043).
 - d. Authorization of Notice of Intent #8868-9020 under Construction General Permit #3-9020 issued on February 7, 2020, by the Watershed Management Division (Exhibit 041); and
 - e. Individual Stormwater Discharge Permit # 8868-INDS issued on February 24, 2020, by the Watershed Management Division (Exhibit 040).
3. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. A copy of this permit and plans shall be on the site at all times throughout the construction process.
6. No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
7. Pursuant to 10 V.S.A. § 8005(c), the District Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
8. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
9. Prior to site preparation, construction, and maintenance involving earth disturbance, the Permittee shall install a continuous line of visible flagging or fencing outside the 50-foot wetland buffer zone boundaries identifying the wetlands and buffers as protected areas. (Exhibit 025).
10. The Permittee shall maintain an undisturbed, naturally vegetated, unmowed 50-foot buffer from the edge of Class 2 wetlands. Storage of materials, including snow, within this buffer is prohibited. (Exhibit 025).
11. The Permittee shall maintain an undisturbed, naturally vegetated riparian zone along the unnamed tributary to Adams Brook as identified in Exhibit 035 except for temporary disturbances associated with installation and repairs of the sewer pipe in Exhibit 036. The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the top-of-bank and extend to the water's edge. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or

- canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing. (Exhibit 034).
12. There shall be no outside construction on Sundays or holidays that generates noise and/or dust, except that which is associated with workers arriving and departing.
 13. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until permanently surfaced and/or vegetation is fully established to control dust.
 14. The buildings approved herein are not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittee shall apply and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
 15. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
 16. The Permittee shall implement the Construction Waste Reduction Plan (Exhibit 017).
 17. The Permittee shall comply with Exhibits 001 (Schedule B of Application), 022, 040, and 041 for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
 18. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
 19. All conditions of the Highway Access Permit to be issued by the Agency of Transportation are incorporated herein.
 20. The Permittee shall place portable "watch for turning traffic" signs along Route 66 when 200 or more people are anticipated to be arriving and/or leaving the facility in a short period of time. The sign style shall comply with the VT Agency of Transportation's warning sign details, Standard T-82, sign VW-205.
 21. Pursuant to the Commission's findings of fact and conclusions of law under Criterion 9(B), the loss of 7.24 acres of primary agricultural soils will require a combination of on-site and off-site mitigation in order to compensate for the acreage of primary agricultural soils whose agricultural potential has been reduced or eliminated as a result of the project. The Permittee shall protect 5.87 acres of primary agricultural soils through on-site mitigation, as depicted on Exhibit 021.
 22. For the required off-site mitigation of 10.89 acres, the Permittee shall, prior to commencement of construction, submit the calculated off-site mitigation fee payment of **\$39,585.15** to the Vermont Housing and Conservation Board (VHCB, General Counsel, 58 East State Street, Montpelier, VT 05602). The off-site mitigation fee is calculated as follows: 10.89 acres X \$3,635/acre = \$39,585.15.
 23. The protected primary agricultural soils as depicted in Exhibit 021 (the designated mitigation area) shall be maintained in a manner ensuring that they will be available for

economic or commercial agriculture, in perpetuity. Only activities designated as "farming" pursuant to 10 V.S.A. § 6001(22) shall be permissible in the designated mitigation area. All other activities, development, construction, or improvements shall be prohibited. If, at any time, a designated and open mitigation area is not used for an economic or commercial agricultural purpose, the Permittee shall ensure that the soils remain open and unobstructed by haying or brush hogging the area a minimum of once every two years. A Rule 34(E) hearing, otherwise known as Stowe Club Highlands Analysis, is required if any activity, other than those defined as farming by 10 V.S.A. § 6001(22), is proposed in the designated mitigation area. (Exhibit 023).

24. Pursuant to 10 V.S.A. § 6081(s), no permit amendment is required for farming that will occur on primary agricultural soils preserved in accordance with 10 V.S.A. § 6093 or will not conflict with any condition in this permit.
25. The following "right to farm" covenant shall be included in any declaration of covenants for the project and in each deed conveying any portion of the project tract:
 - i. Notice is given of the existence of preserved agricultural lands located in the vicinity of the lands conveyed herein. Current or future agricultural operations on these lands may include, without limitation: plowing; planting; fertilizing; spraying; the use of agricultural chemicals, pesticides and herbicides in the course of cultivating, harvesting, storing and transporting agricultural products; and the raising, feeding and management of livestock. Consistent with this notice, the lands are conveyed subject to a perpetual easement for any noise, odors, dust, and/or byproducts and impacts that may occur in the course of conducting accepted agricultural and best-management practices on these nearby agricultural lands. Grantees, by the acceptance of this deed, waive any objection to impacts arising from required agricultural and best-management practices, and are further notified that existing agricultural activities which are consistent with required agricultural and best-management practices do not constitute a nuisance or a trespass.
26. Prior to commencement of the project or within three months of permit issuance, whichever occurs first, the Permittee shall provide to the Vermont Agency of Agriculture, Food and Markets and the District Commission a geo-referenced field boundary file depicting the location of onsite mitigation as outlined in condition #21, above.
27. Pursuant to 10 V.S.A. § 6081(s), no permit amendment is required for farming that will occur on primary agricultural soils preserved in accordance with 10 V.S.A. § 6093 or will not conflict with any condition in this permit.
28. Farming is permitted on lands exempt from amendment jurisdiction pursuant to 10 V.S.A. § 6081(s).
29. Any extracted stumps shall be disposed of on-site above the seasonal highwater table and not in any wetland, or at a State approved landfill, so as to prevent groundwater pollution.
30. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits 005 and 006 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
31. The installation of exterior light fixtures is limited to those approved in Exhibits 011 and 031, and shall be mounted no higher than 20 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces

- from view beyond the perimeter of the area to be illuminated. The 16 pole lights around the perimeter of the Project shall be dimmed by a minimum of 50% power by midnight.
32. For the upper two floors of the hotel, the Permittee shall install blackout shades on the windows and deploy them to prevent light glow from emanating out from the common areas and corridors.
 33. The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
 34. All amplified sound and music at the outdoor event area shall cease by 10:00 p.m.
 35. Sound levels from the event area shall not exceed 70 decibels at the property line and 55 decibels at areas of frequent human use, including adjacent residences.
 36. The Permittee shall monitor and record sound levels from the event area for each event and shall make the readings available if requested by a representative of the Natural Resources Board.
 37. The Permittee shall provide a phone number or email address to any neighbor who requests contact information so that excessive noise can be reported and resolved.
 38. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards (CBES) and the CBES Stretch Guidelines in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction.
 39. The Permittee, upon completion of the construction of each commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
 40. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 3R1113 in all deeds of conveyance and leases.
 41. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit and the Findings of Fact before any written contract of sale is entered into.
 42. Except for the removal of unsafe trees, as determined by a licensed arborist, the Permittee shall not cut any trees between the Project site and Interstate 89.e
 43. Pursuant to 10 V.S.A. § 6090(b)(1) this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
 44. All construction shall be completed in accordance with the approved plans by **October 15, 2023** unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
 45. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a

supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Springfield, Vermont, this 15th day of April 2020.

By 

Tim Taylor, Chair
District #3 Environmental Commission

Members participating in this decision: Roderick J. Maclay and Suzanne Butterfield

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

E-Notification CERTIFICATE OF SERVICE #3R1113

I hereby certify that I, the undersigned, sent the Land Use Permit and Findings of Fact on April 15, 2020, by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Springfield@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify the District Office of any email address changes.**

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FOR INFORMATION ONLY

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**State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 3 ENVIRONMENTAL COMMISSION
100 Mineral Street, Suite 305
Springfield, VT 05156-3168**

RE: FARM Developing, LLC
22 North Main Street
Randolph, VT
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Application #3R1113
**Findings of Fact
Conclusions of Law, and Order**
10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On August 30, 2019, FARM Developing, LLC filed an application for an Act 250 permit for a project generally described as the construction of a 47,975 square foot, three-story hotel and a 14,730 square foot restaurant and conference center, with associated utilities and infrastructure. The tract of land consists of 25.9 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on January 19, 2018 in the land records of Randolph, Vermont.

The Commission held a hearing on this application on October 4, 2019. The Commission also conducted a site visit on October 4, 2019 and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on April 15, 2020 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project constitutes construction of improvements for a commercial purpose on a tract of land involving more than 10 acres in a municipality that has adopted permanent zoning and subdivision bylaws, pursuant to 10 V.S.A. § 6001(3)(A)(i).

III. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) are:

The Applicants, by Tom Appel, Paul Rea, Steven Roy, and Brian Lane-Karnas;

The municipality of Randolph;

The Randolph Planning Commission;

The Two Rivers-Ottawaquechee Regional Commission, by Pete Fellows;

The Vermont Agency of Natural Resources (ANR) through an entry of appearance by Jennifer Mojo, Regulatory Planning Analyst, ANR Office of Planning and Legal Affairs, dated October 3, 2019 (Exhibit 025);

The Vermont Agency of Agriculture, Food & Markets, by Ari Rockland-Miller, Act 250 Coordinator AAFM (Exhibit 023);

The Vermont Agency of Transportation through an entry of appearance by Christopher Clow, Transportation Engineer (Exhibit 024); and

The Vermont Division for Historic Preservation (Exhibit 027).

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

1. Linda LaFrance, 35 Kurt Road, Pittsford, NY 14534, owns and recreates on an adjoining parcel that is uphill and east of the proposed project. She requested party status under Criteria 3 Existing Water Supply, 5 Traffic Safety, and 8 Aesthetics. There were no objections. The Commission granted preliminary party status under Criteria 3, 5 and 8.
2. Joan Sax, PO Box 185, Randolph Center, VT 05061, resides at 4142 VT Route 66, at the top of the hill and approximately 1.5 miles from the project site. Brooke Dingledine, Esq., represents Ms. Sax. Ms. Sax is concerned about the impact of the water withdrawal on the aquifer, as well as traffic and aesthetics, and requested party status under Criteria 3 Existing Water Supply, 5 Traffic Safety and 8 Aesthetics. There was no objection. The Commission granted preliminary party status under Criteria 3, 5 and 8.
3. Nancy Rice, PO Box 4, Randolph Center, VT 05061, resides at 539 South Randolph Road, approximately one mile, as the crow flies, from the project site. Ms. Rice, also, is represented by Brooke Dingledine, Esq. Ms. Rice is concerned about the impact of the project on the aquifer and continued supply of water to her house, as well as traffic and aesthetics. She requested party status under Criteria 3 Existing Water Supply, 5 Traffic Safety, and 8 Aesthetics. There were no objections. The Commission granted preliminary party status under Criteria 3, 5 and 8.
4. Dwain Chabot, 195 Oak Ridge Lane, Randolph Center, VT 05061, adjoins the project site to the south and has a right-of-way easement over the FARM property to access the house. Mr. Chabot requested party status under Criteria 3 Water Supply, 5 Traffic Safety and 8 Aesthetics, particularly as it relates to noise. There were no objections. The Commission granted preliminary party status under Criteria 3, 5 and 8.
5. Exit 4 Open Space (Open Space) is a "grassroots" citizen's group made up of residents from the towns of Randolph and Braintree, dedicated to preserving the working landscape at and around Exit 4. Open Space participated in preserving 22 acres in the southwest quadrant of Exit 4 and has a particularized interest in protecting that parcel from impacts related to the proposed development. At the hearing the organization was represented by members, Joan Sax, Nancy Rice, and Brooke Dingledine, Esq. Members of the group have water supply wells in the area, travel Route 66 by the proposed project location, and are concerned about the potential light pollution from the project. Open Space requested party status under Criteria 3 Existing Water Supply, 5 Traffic Safety, and 8 Aesthetics. The Commission granted preliminary party status to Open Space under Criteria 3, 5, and 8.

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and revised the status of the following parties:

Nancy Rice: Preliminary Party Status granted under Criteria 3, 5 and 8; at her request, on April 14, 2020, Ms. Rice withdrew her appearance, therefore, Final Party Status is denied under Criteria 3, 5 and 8.

Exit 4 Open Space: Preliminary Party Status granted under Criteria 3, 5 and 8; at E4OS' request, on April 14, 2020, E4OS withdrew its' appearance under Criteria 3 and 5, therefore, Final Party Status is denied under Criteria 3 and 5 and granted under Criterion 8.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|--|---------------------------------------|
| 1 - Air Pollution | 9(A) - Impact of Growth |
| Water Pollution | 9(C) - Productive Forest Soils |
| 1(B) - Waste Disposal | 9(D) - Earth Resources |
| 1(C) - Water Conservation | 9(E) - Extraction of Earth Resources |
| 1(D) - Floodways | 9(F) - Energy Conservation |
| 1(F) - Shorelines | 9(G) - Private Utility Services |
| 4 - Soil Erosion | 9(H) - Costs of Scattered Development |
| 6 - Educational Services | 9(J) - Public Utility Services |
| 7 - Municipal Services | 9(K) - Effects on Public Investments |
| 8 - Natural Areas | 9(L) - Settlement Patterns |
| 8 - Historic Sites | 10 - Local Plans |
| 8(A) - Wildlife Habitat & Endangered Species | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits 001 - 044, and other evidence in the record. Criteria addressed in these Findings include: 1(A) Headwaters; 1(E) Streams; 1(G) Wetlands; 2 Water Supply; 3 Impact on Existing Water Supplies; 5 Transportation; 8 Aesthetics; 9(B) Agricultural Soils; and 10 Conformance with the Regional Plan.

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

General Findings:

1. The Applicant proposes to construct a three-story, 79 room hotel (47,856 gross square feet) and an adjacent 152-seat restaurant/400-seat convention center (14,982 gross square feet), on an existing parcel located on the south side of VT Route 66 between I-89 Exit 4 and Randolph Center. A tent/event area will be created to allow outside events. The project

also includes the access drive, internal roads, parking, sidewalks, stormwater treatment, utilities and landscaping. Exhibits 001, 007 and 009.

Criterion 1(A) - Headwaters:

Findings of Fact

2. The Project falls within the Royalton Fire District 1 surface water Source Protection Area (WSID 0005330). The project is within the Zone 2 (the area within the watershed located within 200 feet of perennial surface water and limited to 17,000 acres) and the Zone 3 (the remaining watershed area beyond Zones 1 and 2). Exhibits 025 and 026.
3. There are two water sources for the Randolph Center Water System. One is a spring directly north of the Vermont State Laboratory, and the other is a drilled well along Pinney Brook. The ground elevation at the Pinney Brook well is about the same as the ground surface elevation of the well proposed for the hotel site, which is approximately one mile from the Pinney Brook well. Testimony.
4. The Applicant has received Wastewater System and Potable Water Supply Permit #WW-3-11241; Stormwater permit 8868-INDS; Stormwater permit #8868-9020; Water Source Permit S-3773-19.0; and Water Source Permit to Construct from the ANR Department of Environmental Conservation. Exhibits #040, 041, 042, 043 and 044.

Conclusions of Law

The Commission concludes that the Project will meet applicable Department of Health and Department of Environmental Conservation regulations regarding the reduction of the quality of the ground or surface waters in headwaters areas.

The Project complies with Criterion 1(A).

Criterion 1(E) - Streams:

Findings of Fact

5. An unnamed, perennial tributary to Adams Brook crosses under Route 66 just west of the proposed access into the Project area and runs along the edge of Route 66 along the project frontage. Exhibits 001, 025, and 035.
6. The existing pavement of Route 66 is immediately north and adjacent to the top of the stream bank. Exhibits 001 and 035.
7. The 50-foot, top-of-bank riparian zone has been identified on the revised overall site plan. There will be some disturbance in the riparian zone associated with installation and connection associated with the stormwater management system. The disturbed area will be allowed to naturally revegetate post construction. Exhibit 034.
8. The ANR requested the following condition be included in any permit that may issue:

The Permittee shall maintain an undisturbed, naturally vegetated riparian zone along the unnamed tributary to Adams Brook as identified in Exhibit 035 (Overall Site Plan, Sheet C1.02, revised 9/27/19) except for temporary disturbances associated with installation and repairs of the sewer pipe in Exhibit 036 (Utility Plan,

Sheet C1.05, revised 9/27/19). The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the top-of-bank and extend to the water's edge. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing.

Exhibits 034, 035, and 036.

Conclusions of Law

The Commission concludes that, with the inclusion of the ANR's proposed permit condition, the Applicant will maintain the natural condition of any stream, and will not endanger the health, safety or welfare of the public or of adjoining landowners.

The Project complies with Criterion 1(E).

Criterion 1(G) - Wetlands:

Findings of Fact

9. A Class 2 wetland is located in the northeast corner of the property. The wetland boundaries have been delineated. The Project has been designed to maintain a 50-foot undisturbed buffer around the wetland. Exhibits 001, 035, and 036.
10. Activities adjacent to the wetland buffer are proposed. To ensure there are no impacts to the wetlands, the ANR has requested that the following conditions be included in any permit that may issue:

Prior to site preparation, construction, and maintenance involving earth disturbance, the Permittee shall install a continuous line of visible flagging outside the 50-foot wetland buffer zone boundaries identifying the wetlands and buffers as protected areas.

The Permittee shall maintain an undisturbed, naturally vegetated, unmowed 50-foot buffer from the edge of Class 2 wetlands. Storage of materials, including snow, within this buffer is prohibited. Exhibits 035 and 036.

Conclusions of Law

The Commission concludes that, with the inclusion of the ANR proposed permit conditions, the project will comply with this Criterion.

The Project complies with Criterion 1(G).

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

Findings of Fact

11. The average daily water demand for this project is 19,062 gallons per day. Water will be provided by a private, on-site water system from bedrock wells. One of the drilled wells yields approximately 150 gallons per minute. Exhibits 001, 003, 044 and Testimony.

12. There is sufficient water available for the Project.
13. Adjacent water supplies include residential wells on the abutting Chabot, Armstrong and Bass properties. As part of the Public Water Source Permit, test wells have been drilled. Each well will be tested with a 72 hour draw down test. Exhibit 001 and Testimony.
14. The Project will not decrease the yield of neighboring wells. Exhibit 042.
15. With the construction of three large projects in Randolph Center over the last 3 to 4 years (State Lab, Assisted Living and Nursing Home), neighbors are concerned about the cumulative impact of this project on the aquifer that they rely on to provide water for their own use. Testimony.
16. The ANR Department of Environmental Conservation, Drinking Water and Groundwater Protection Division, issued Public Non-Transient Non-Community Water System Source Permit #S-3733-19.0 on March 17, 2020 and Public Water System Construction Permit, Project #C-3733.20.0, WSID #VT0021654 on April 3, 2020. Exhibits 042 and 044.
17. The ANR Department of Environmental Conservation, Drinking Water and Groundwater Protection Division, issued Wastewater System and Potable Water Supply Permit #WW-3-11241 on April 6, 2020. Exhibit 043.

Conclusions of Law

The ANR Drinking Water and Groundwater Protection Division issued Permit #WW-3-11241 and Public Water Source Permit #S-3773-19.0 which create presumptions pursuant to Act 250 Rule 19 that the Project has sufficient water available for its reasonably foreseeable needs and complies with Criteria 2 and 3. The Commission allows substantial deference to the ANR permits. No evidence was presented to rebut the presumptions or challenge the technical determinations made by ANR.

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

The Project complies with Criterion 2.

The Project will not place an unreasonable burden on an existing supply.

The Project complies with Criterion 3.

Criterion 5 - Transportation:

Findings of Fact

18. The Project is not in a Transportation Improvement District (TID).
19. Vehicular access will be via a single new curb cut onto VT Route 66. An existing access onto the property off Route 66 located along the western property line, known as Oak Ridge Lane, serves residences located south and west of the project site. Exhibits 001, 009, and 035.
20. The annual average daily traffic volume (AADT) on Route 66 in the area of the Project site is 3,500 vehicles per day (vpd). Exhibit 009.

21. The posted speed limit on Route 66 at the new access to the Project is 40 miles per hour. VTrans Standard B-71 requires an intersection sight distance of 445 feet. Sight distances are 450 feet to the east (uphill, with minor tree clearing) and 600 feet to the west. Exhibits 001 and 009.
22. The new curb radii will be 40-feet in order to accommodate tractor trailer deliveries to the site. Exhibits 001 and 015.
23. The estimated traffic from the Project site is 1,320 total round trips per day and 59 PM/AM peak hour trips. Route 66 has the capacity to accommodate this additional traffic. Exhibits 001 and 009.
24. There are 238 parking spaces, including ten ADA accessible spaces. A grassy overflow parking area can accommodate approximately 40 cars. Exhibits 001 and 035.
25. The VAST snowmobile trail crosses the Project site. To accommodate snowmobilers needs, seven spaces will be provided for pickup trucks towing snowmobile trailers. Exhibits 001 and 035.
26. Two loading spaces – one for the hotel and one for the conference center - are located behind the buildings and away from Route 66. Exhibits 001 and 035.
27. A left-turn lane is not warranted. Exhibit 009.
28. Sidewalks and crosswalks will provide internal pedestrian circulation. There are no existing or planned pedestrian or bicycle facilities along Route 66 in the immediate area. Exhibit 009.
29. Stagecoach Transportation provides weekday local and regional transit service with the closest stop being at the Exit 4 Park and Ride. The Randolph Area Circulator connects Randolph Village and Randolph Center with the closest stops being located at Vermont Technical College and the Kingwood Health Center. Exhibit 009.
30. The Vermont Agency of Transportation (VTrans) has issued a Letter of Intent (LOI) to issue a highway permit to construct an access for a hotel, restaurant, and conference center and indicates that the review found that the project meets the requirements for work within the highway right-of-way. Exhibit 012.
31. The VTrans permit requires that “two-way traffic shall be maintained at all times unless permission is granted from the Transportation Administrator. Whenever two-way, one-lane controlled traffic is authorized to be maintained by the Applicant’s Contractor, the traveling public shall not be delayed more than 10 minutes.” Exhibit 012.
32. Upon issuance of the Act 250 permit, VTrans will issue a highway permit with Special Conditions as noted in the LOI. Those special conditions include:
 - The Permit Holder shall pave the access (drive) from the edge of paved shoulder to the State Highway right-of-way, a minimum of 25’ from the centerline of VT 66.
 - The Permit Holder shall remove trees / brush along VT 66 to provide maximum sight distance available. Exhibit 012.
33. It is estimated that 85% of the peak hour trips would travel to/from the west on Route 66 to/from the north and south I-89 Exit 4 ramps. Exhibit 009.

34. VTrans recommends that when 200 or more people are anticipated to leave the facility in a short period of time, portable “watch for turning vehicles” signs be placed along Route 66. The recommended sign style is VW-205. Exhibits 028 and 030.
35. A traffic officer may be needed during times when a conference with many attendees are either arriving or leaving during peak travel times. Many attendees will be turning right when arriving and turning left when leaving toward the Interstate. Testimony.
36. The four intersections analyzed will experience acceptable levels of service. Whether the project is built or not, the Level of Service (LOS) remains the same at these intersections in 2020 and 2025 for the design hour volumes (DHV). Exhibit 009.
37. The Traffic Impact Assessment concludes that the Project will not create undue levels of traffic congestion or unsafe conditions on the adjacent roadway network. However, removing several trees that presently partially obstruct the available intersection sight distance to the east is recommended. Exhibit 009.

Conclusions of Law

Criterion 5(A) requires that the Project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways.” See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

Criterion 5(B) requires that a project, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The Commission will incorporate the Agency of Transportation’s (VTrans) work-within-the-highway permit into the Act 250 permit. VTrans requires that the brush and trees along VT Route 66 be removed to “provide maximum sight distance available.” Also, the Commission will include conditions in the permit requiring that when 200 or more people are anticipated to leave the facility in a short period of time, portable “watch for turning vehicles” signs will be placed along Route 66.

With conditions, the Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

The Project complies with Criterion 5(A).

The access to the facility will not impact the adjacent landowners who rely on the existing Oak Ridge Lane to access their properties. The Project incorporates all appropriate transportation measures and complies with Criterion 5(B).

The Project complies with Criterion 5.

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

Findings of Fact

Aesthetics, Scenic or Natural Beauty

38. Previous relevant findings are incorporated herein.
39. The project site is located on the south side of VT Route 66 between I-89 Exit 4 and Randolph Center.
40. The present site is currently open agricultural land with a Class 2 wetland in the northeast corner. A small tributary to Adams Brook runs along the edge of Route 66 along the project frontage. Trees in the stream buffer will be retained as depicted on Exhibit 035. Exhibits 001, 035 and 036.
41. A large slope will be created along the northern edge of the northern (main) parking lot. Trees will remain along the Adams Brook buffer zone. Exhibit 035 and Testimony.
42. The buildings have been designed to complement each other and include similar quality materials typical of the New England vernacular. The 79-room hotel is the taller structure and is a 3-story building with a pitched roof and dormers. The adjacent 152 seat restaurant/400 seat convention center has a series of three dormers. Franchise elements have been minimized to allow for the building theme to fit the context of the site. Stepped pitched roofs, dormer elements, residential scaled windows and siding products will reduce the scale of the buildings, and earth tone colors will reduce the visual impact from Route 66. Exhibits 001 and 010.
43. The outside tent/event space is located behind and southeast of the restaurant/convention center. Exhibit 035.
44. The location of the buildings was chosen to minimize the visual impact of its height by being adjacent to the steepest slope of the hillside, and parallel to the view corridor from the east, minimizing the appearance and impact from adjacent properties. Exhibit 001.
45. Linda LaFrance owns a couple of lots that are up hill of the proposed Project. Ms. LaFrance picnics and recreates on the vacant, and mostly open, property. She plans on returning to Vermont and building a house on one of the lots someday. She is concerned that the Project's roofs will obstruct her view to the west. Testimony.
46. The view of the proposed Project from the LaFrance property will be similar to that from Morgan Orchards (residential facility on the north side of Route 66) except that the LaFrance lots are mostly open with no trees between the property and the Project site. The roof line of the project's buildings will be below the tree line from this elevation; however, the Project will be seen from the LaFrance property. Exhibit 008 (View A) and Testimony.
47. White Spruce and Maple trees will be planted in the back of the conference center building and the back of the associated parking lot. The tent/event site will be below LaFrance's future house site. Exhibits 005, 006 and Testimony.
48. Exit 4 Open Space (Open Space) participated in preserving 22 acres in the southwest quadrant of Exit 4 and has a particularized interest in protecting that parcel from impacts related to the proposed development. The 22 acres is now home to the bronze sculpture, "Whale Dance," by Jim Sardonis. Open Space is concerned about the impact of the proposed project on the natural beauty and aesthetics of the area, particularly to the 22 acres of conserved land and the public's enjoyment of the Whale Dance statue which is visited daily by local and visiting visitors. Exhibit 037.
49. Trees between the Project site and the Interstate will not be removed.

50. Trees within the wetland and stream buffers will not be removed. Testimony.
51. The parking area has been broken up into five sections to reduce the visual impact of the parking area. Parking lot landscaping will also enhance the aesthetics and screen the parking area from Route 66. Exhibits 001, 005 and 035.
52. The Applicant's viewshed analysis includes views of the project site from six different sites. The project will be visible from the Morgan Orchard's facility and along Route 66 heading west. The project will not be visible from I-89, the park and ride at Exit 4, or the area of the former driving range and now occupied by the Whale's Dance sculpture. Exhibit 008 and Testimony.
53. The Project will be landscaped as outlined on Exhibits 005 and 006.
54. A cedar split-rail fence will be erected along both sides of the entrance road. Exhibit 005.
55. Exterior lighting will consist of twenty-five 20-foot pole lights, thirteen 14-foot pole lights, four sconce lights on the gazebo, recessed lighting under the canopies and porte cochere, two wall packs at the east entrance to the restaurant/conference center, and a down light on the flag pole. The lights will be installed as depicted on Exhibit 011. All fixtures will have concealed light sources. Exhibits 001 and 011.
56. The exterior lights are dimmable and could be reduced to 50%. Exterior lighting is required for security purposes. Testimony.
57. The cut sheets for the pole lights and wall packs indicate that dimming is available. Special wiring leads may be requested from the factory. Exhibit 011, Sheets SE1.2 and SE1.3.
58. The distribution of light is forward, toward the parking lot. Testimony.
59. There will be no "showcasing" of the buildings with exterior lighting. The lighting under the porte cochere provides the most foot candles of light. Exhibit 010 and Testimony.
60. Parties are concerned that the hotel will create a glow at night from light emanating from the windows on the second and third floors. Testimony.
61. Mr. Chabot's house is oriented to view the mountains to the west. His house is approximately 600 feet from the tent/event site and 355 feet from the parking lot. Testimony.
62. The hotel windows are on the north and south sides of the building. Windows on the end of each floor may be visible from outside. Exhibits 008, 010 and Testimony.
63. The monument sign will be erected on the west side of the entrance off Route 66 and will be externally lit with goose neck down lights. The illumination from the 38-watt LED fixture will not be visible from Route 66. The sign will be approximately 12 ½ -feet above ground level and 9-feet wide. The stone base will match the hotel façade and will have plantings at the base. The "Hampton Inn" sign will be visible on both sides of the sign. Exhibits 018, 028 and 035.
64. There is light glow from Vermont Technical College that is above the Project site. Commercial businesses west of Exit 4 on Route 66, such as McDonald's and the convenience store with gas pumps, also create night lighting. Testimony.

65. Traffic noise from I-89 is more pronounced when the leaves are off the trees. Testimony.
66. Outdoor events will be held in the event space when weather permits between April 15th and November 1st. The event space is located southeast of the restaurant/conference center building. Tents will be provided to house the events. Exhibit 029.
67. The Noise Mitigation Plan includes stopping all amplified sound and music at the event/tent site by 10 P.M. The sound and music will be monitored by hotel staff using a sound measuring device which will allow both instant readings and historic records to be maintained. Sound levels will not exceed 70 decibels at the property line and 55 decibels at adjacent residences where access to the property is granted. Exhibits 028 and 029.
68. A sound check of equipment will be conducted after final setup and prior to each event. Adjustments will be made to ensure compliance with the standards. Exhibit 029.
69. The monitoring equipment will remain active during the entire event providing a record of all sound and music levels. This record will be available to the neighbors affected. Exhibit 029.
70. Abutting property owners will be provided with contact information to reach hotel staff responsible for monitoring. Exhibit 029.
71. The loading areas are not typical loading docks, but areas where truck deliveries are unloaded. Deliveries will not be happening into the night. Exhibit 035 and Testimony.
72. The Randolph Town Plan, under the Land Use chapter, includes the following policy:

D. Consider areas of town important for open space, natural resource and recreational purposes, in capital investment decisions and town planning, particularly along our major water courses.

Town Plan, page 8.
73. Also, under the Land Use chapter of the Town Plan, an "Action to Implement Policies" includes, in part: "the Randolph sign ordinance should be amended to regulate LED signage and consider provisions to reduce total lighting and energy use, eliminate off-site glare, avoid degradation of the night sky and limit illumination to hours of public operation." Town Plan, page 9.
74. Under the Natural Resources chapter of the Town Plan, related to the Scenic Resources, the policy is to "protect from development, without imposing undue burdens, scenic viewsheds which have been identified and/or mapped as important resources." Town Plan, page 25.
75. There are no historic sites or rare and irreplaceable natural areas which will be affected by this Project. Exhibits 001 and 027.

Conclusions of Law

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

AESTHETICS and NATURAL AND SCENIC BEAUTY

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

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

1. Adverse Effect

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

The Project is in an area that is currently an open field. The construction and operation of a hotel and conference center with an outdoor event area, will have an impact on traffic (Criterion 5) and aesthetics as it relates to scenic beauty and noise (Criterion 8).

This Project will have an adverse aesthetic impact related to night lighting and noise. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project.

Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. 4/9/02). A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action*, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. 12/21/00).

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

The Commission has reviewed relevant portions of the Randolph Town Plan and the Two Rivers-Ottawquechee Regional Plan. There are no specific goals or objectives that identify clear community standards relevant to the proposed Project's impacts on aesthetics, whether related to open space or noise, in the area in which the Project is located.

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

(b) Offensive or Shocking Character

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

The Applicant chose the location of the buildings to minimize visual impact of its height by being adjacent to the steepest slope and parallel to the view corridor from the east; will not be visible from I-89 or the Whale Dance statue; the parking lots will be in five sections and landscaping will screen the parking area from Route 66; landscaping and downlighting has been designed to enhance the site; existing trees will remain in the stream and wetland buffers; and the Applicants will comply with the Noise Mitigation plan that includes stopping all amplified sounds and music by 10:00 p.m., will monitor the sound levels, and provide the neighbors with contact information to address noise if/when it's a problem.

Given all of these considerations and conditions, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicant has "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)). A generally available mitigating step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."

In addition to the considerations mentioned above, the Commission will include a condition requiring the installation of shades on the windows to prevent light glow from emanating out of the upper floors and will require that the parking lot lighting be dimmed or extinguished after 10:00 p.m.

Given all of these considerations and the addition of permit conditions, we find that the Applicant has taken the available mitigating step to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

(d) Conclusion

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

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

Criterion 9(B) - Primary Agricultural Soils:

Findings of Fact

76. Of the total 25.9 acres, the Project will impact, directly or indirectly, 7.24 acres of primary agricultural soils (PAS), including 4.57 acres of Buckland Loam (BuB) and 2.67 acres of Cabot Silt Loam (CaB). Exhibits 001, 014 and 023.
77. The development will not interfere with or jeopardize the continuation of agricultural or forestry activities on adjoining lands. Exhibit 001.
78. The Project is not located in a designated downtown, growth center, new town center or a neighborhood development area associated with a designated downtown referenced in 10 V.S.A. § 6093(a). Exhibit 001.
79. The Applicant does not own or control other lands, other than primary agricultural soils, that are reasonably suited to the purpose of development. Exhibit 001.
80. The Project has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns so that the remaining primary agricultural soils on the Project tract are capable of supporting or contributing to an economic or commercial agricultural operation. Exhibit 001.
81. The Agency of Agriculture, Food & Markets (AAFM) has determined that 16.76 acres is necessary to mitigate the impacts of the development of 7.24 acres of PAS. This includes 5.87 acres of PAS to be preserved on-site and 10.89 acres proposed for off-site mitigation. Exhibits 001, 014 and 023.
82. The structures and parking areas are clustered on one end of the site. The Applicant worked with the AAFM to develop a mitigation plan involving on-site and off-site mitigation. Exhibit 001.
83. The Project will result in a reduction in the agricultural potential of 7.24 acres of primary agricultural soils.

84. The Secretary of AAFM has determined that the appropriate mitigation ratio for the primary agricultural soils affected by the project is 2.5:1 for the 4.57 acres of "Prime" soils of agricultural group 3 and 2:1 for the 2.67 acres of impact to "Statewide" soils in value group 6d. Exhibit 023.
85. The Secretary of AAFM has determined that, as of December 31, 2020, the per-acre cost to acquire conservation easements for primary agricultural soils in the geographic region of the project (District 3) is \$3,635.00.
86. The Applicant proposes to mitigate impacts to primary agricultural soils with a combination of on-site and off-site mitigation if appropriate circumstances are found by the Commission (Exhibit 001). The Project will require 10.89 acres of off-site mitigation because of statutory multipliers (Exhibit 023). The off-site mitigation fee will total \$39,585.15 (10.89 acres X \$3,635/acre = \$39,585.15).

Conclusions of Law

Presence of Primary Agricultural Soils

Under criterion 9(B) a subdivision or development may not result in any reduction in the agricultural potential of the primary agricultural soils or significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. Act 250 defines primary agricultural soil as either (1) important farmland soils map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture (NRCS) as prime, statewide, or local importance, or (2) "soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities..." 10 V.S.A. § 6001(15).

The Commission finds that the Project will result in a reduction in the potential of 7.24 acres of primary agricultural soils through direct impacts to the soils. Because there will be a reduction in the agricultural potential of 7.24 acres of primary agricultural soils, the District Commission must conduct a review under the Sub-criteria (i), (ii), (iii), and (iv) of Criterion 9(B).

Sub-criterion (i)

Sub-criterion (i) is met through a representation that the proposed Project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. The project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential for the following reasons. Therefore, the Commission concludes that the Applicant has met sub-criterion (i).

Sub-criterion (ii)

Sub-criterion (ii) is met if the Applicant does not own or control any non-agricultural soils which are reasonably suited for this Project. The Applicant does not own or control lands other than primary agricultural soils which are reasonably suited to the purpose of the development or subdivision. Therefore, the Commission concludes that the Applicant has met sub-criterion (ii).

Sub-criterion (iii)

Sub-criterion (iii) requires that, except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use

design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation.

The project is located outside a designated growth center. The project will result in the reduction of the agricultural potential of 7.24 acres of soils. The Project has been clustered so that an additional 5.87 acres of primary agricultural soils can be preserved on site enabling their use for agriculture. The Commission finds that the Project has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in a compact development pattern, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation.

The Commission concludes that the Project satisfies sub-criterion (iii).

Mitigation Flexibility

The Commission has the flexibility to approve alternate mitigation proposals both inside and outside of designated centers in appropriate circumstances. In appropriate circumstances, the Commission may, in lieu of the provisions of 10 V.S.A § 6093(a)(1) or (2), require payment of an off-site mitigation fee; or, in the alternative, the Commission may require a combination of on-site or off-site mitigation. In all instances, however, the Applicant must demonstrate that the Project has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns. If the Commission concludes that the Applicant has used such innovative design, it must also find that the remaining primary agricultural soils on the Project tract are capable of supporting or contributing to an economic or commercial agricultural operation or that the Applicant qualifies for mitigation flexibility based on appropriate circumstances.

The Applicant has clustered the buildings and infrastructure on 7.24 acres of primary agricultural soils in such a manner as to be able to preserve 5.87 acres of additional primary agricultural soils on site.

The Commission concludes that the Applicant has used innovative design to minimize the impact of the project on the primary agricultural soils on the site. 5.87 acres of remaining primary agricultural soils will be capable of supporting or contributing to an economic agricultural operation.

The Applicant has asked for a finding of “appropriate circumstances,” so that a combination of on-site and off-site mitigation can be applied. The Commission discusses below.

Appropriate Circumstances

In accordance with the Statement of Procedure on Protection of Primary Agricultural Soils adopted by the Land Use Panel of the Natural Resources Board on September 11, 2012, appropriate circumstances may be based on a finding of the following:

- a) the tract of land containing primary agricultural soils is of limited value in terms of contributing to an economic or commercial agricultural operation and devoting the land to agricultural uses is considered impracticable based on the size of the land or its location in relationship to other agricultural and nonagricultural uses; or
- b) the project tract is surrounded by or adjacent to other high-density development with supporting infrastructure and, as a result of good land design, the project will contribute to the existing compact development patterns in the area; or
- c) the area contains a mixture of uses, including commercial and industrial uses and a significant residential component, supported by municipal infrastructure, and

- d) the District Commission determines that payment of an off-site mitigation fee, or some combination of on-site or off-site mitigation, will best further the goal of preserving Primary Agricultural soils for present and future agricultural use with special emphasis on protecting Prime Agricultural soils thus serving to strengthen the long-term economic viability of Vermont's agricultural resources.

Regarding c) above, the area contains a mixture of uses or a significant residential component supported by municipal infrastructure. The area includes Morgan Orchards, an independent living facility, a nursing home, and residences. The area is served by a municipal wastewater disposal system and State Highway Route 66. Also, the site is located in the Interchange district.

Regarding d) above, the Commission concludes that a combination of on-site and off-site mitigation will best further the goal of preserving primary agricultural soils for present and future agricultural use with special emphasis on protecting prime agricultural soils thus serving to strengthen the long-term economic viability of Vermont's agricultural resources. The Commission also concludes that such action is consistent with the agricultural elements of local and regional plans, as well as the goals of section 4302 of Title 24.

The Commission concludes that the Applicant qualifies for mitigation flexibility based on appropriate circumstances.

Sub-criterion (iv)

Sub-criterion (iv) is met through a representation that suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision in accordance 10 V.S.A § 6093.

The project is located outside a designated area and suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with 10 V.S.A § 6093. The findings under sub-criterion 9(B)(iii) above are hereby incorporated by reference.

Summary

The Commission finds that 7.24 acres of PAS will be impacted, and an additional 5.87 acres of PAS will be preserved on site. Along with the off-site mitigation fee of \$39,585.15, the Commission concludes that the Applicant has satisfied the applicable provisions of sub-criteria (i) – (iv).

The Commission concludes that the Project will result in the reduction in the agricultural potential of primary agricultural soils on the Project site, however, the Applicant has satisfied the applicable provisions of sub-criteria (i) – (iv). The Commission also concludes that appropriate circumstances exist to allow for flexibility for a combination of on-site and off-site mitigation to further the goal of preserving primary agricultural soils for present and future agricultural use. Conditions will be included in the Land Use Permit requiring preservation of 5.87 acres of PAS on site and an off-site mitigation payment of \$39,585.15 to be made to the Vermont Housing and Conservation Trust prior to construction.

Criterion 9(B) is satisfied.

Criterion 10 - Regional Plans:

Findings of Fact

87. Previous relevant findings are incorporated herein.

88. On July 17, 2019, the Town of Randolph's Development Review Board issued a Memorandum of Decision concluding that the Project meets the locally reviewed Act 250 Criteria (Criteria 6, 7 and 10). Exhibit 007.
89. The Two Rivers-Ottawaquechee Regional Plan (TROR Plan), adopted on July 26, 2017, applies to this application. Exhibit 001.
90. If a proposed project constitutes a "substantial regional impact," then the Regional Plan is the controlling planning document under Act 250 review. Official Notice, TROR Plan, page 377.
91. The Project qualifies as a development resulting in "substantial regional impact" because it is commercial development that exceeds 20,000 square feet of gross floor area. Official Notice, TROR Plan, page 377-379.
92. The "substantial regional impact" threshold does not mean that a project is not desirable; it simply acknowledges that a proposed development may have an effect that will be felt in a wider area. Official Notice, TROR Plan, page 377.
93. The Future Land Use Map identifies the Project site as located in the Randolph Interchange Area, I-89, Exit 4, SE quadrant. Exhibit 001 and Official Notice, TROR Plan, page 69.
94. The TROR Plan identifies the following Interchange Policy, in part:
 2. Land uses planned for interchange areas should be of a type, scale, and design that complement rather than compete with uses that exist in Designated Downtowns, Designated Village Centers, Designated Growth Centers, and other regional growth areas. Appropriate uses include highway-oriented lodging and service facilities, trucking terminals, truck-dependent manufacturing, and park-and-ride commuter lots.Exhibit 001 and TROR Plan, pages 61-62.
95. At the hearing, Pete Fellows, representing the TROR Commission, testified that the Project complies with the Regional Plan. Testimony.
96. The Commission reviewed the TROR Plan and the Town Plan.
97. The Town does not have a capital plan. Exhibit 001.

Conclusions of Law

Before issuing a permit, the District Commission must find that the Project is in conformance with any duly adopted local or regional plan or capital program. 10 V.S.A § 6086(a)(10).

The Commission reviewed the TROR Plan and the Town Plan and found that the provisions of the regional plan are not in conflict with the provisions of the duly adopted Town Plan.

With conditions, the Commission concludes that the Project complies with the Regional Plan.

The Project complies with Criterion 10.

V. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with in the findings and conclusions of this decision and the conditions of Land Use Permit #3R1113, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #3R1113 is hereby issued.

Dated at Springfield, Vermont, this 15th day of April 2020.

By 

Tim Taylor, Chair
District #3 Environmental Commission

Commissioners participating in this decision: Roderick J. Maclay and Suzanne Butterfield

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.