



State of Vermont

LAND USE PERMIT

CASE NO: 3W1115

Eden Marceau-Piconi & Louis Piconi
d/b/a 5 Birds Farm and/or Garlic of
Eden, LLC
3300 Hartland Hill Road
Woodstock, VT 05091

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 3 Environmental Commission hereby issues Land Use Permit 3W1115, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit applies to the lands identified in Book 245, Pages 671-673, of the land records of the Town of Woodstock, Vermont, as the subject of a deed to Eden Marceau-Piconi and Louis Piconi, dba 5 Birds Farm and/or Garlic of Eden, LLC, the Permittees.

This permit specifically approves the previous construction of the approximate 74-foot by 32-foot barn. This permit also specifically authorizes the Permittees to: 1) operate a farm-based learning, education and wellness business and retreat; 2) use the barn for year 'round storage, preparation, processing and sale of agricultural crops; 3) use the barn and grounds seasonally for up to 28-event days per year for wellness education/yoga retreats, farm-based tours, lectures and farm-based education with up to 50 participants (a 3-day retreat will count as 3 event days); 4) The Permittees may hold up to ten farm dinners per year with up to 75 guests at each dinner. Each dinner will count as one of the 28-event days; and 5) construct a 62-foot by 15-foot, heated addition with rest rooms for use by farm employees only. The addition will be used as a prep kitchen to make and store farm products and support wellness education and not for preparation of meals or food to be served to guests.

The project is located at 3300 Hartland Hill Road in Woodstock, Vermont.

As determined in a jurisdictional opinion issued on June 12, 2017, jurisdiction attaches because the Project constitutes construction of improvements for commercial purposes on more than one acre of land within a municipality that has not adopted permanent zoning or subdivision bylaws, pursuant to 10 V.S.A. § 6001(3)(A)(ii).

The Permittees, and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 3 Environmental Commission (the "Commission") in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with the conditions of this permit, Findings of Fact and Conclusions of Law #3W1115, and the permit application, plans, and exhibits on file with the Commission and other material representations.
2. The Permittees shall comply with all conditions of Wastewater System and Potable Water Supply Permit #WW-3-2676 (the "WW permit") issued on July 14, 2017 by the Agency of Natural Resources ("ANR"), Drinking Water and Groundwater Protection. Any nonmaterial

changes to the WW permit listed in the preceding condition may be automatically incorporated herein upon issuance by the Agency of Natural Resources.

3. 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.
4. A copy of this permit and plans shall be on the site at all times throughout the construction process.
5. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
6. No further subdivision, alteration, and/or development on the tract/tracts of land approved herein shall be permitted without a permit amendment issued by the 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 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 Permittees and their successors and assigns.
9. Construction hours shall be limited to Monday through Friday, 7:00 a.m. to 5:00 p.m.
10. The farm-wellness events and activities shall not start before 8:00 a.m. and shall end by 10:00 p.m. including cleanup.
11. Any amplified music or sound shall not start before 10:00 a.m. with a maximum of three hours of amplified music or sound on any day.
12. The Permittees shall amend this permit prior to any interior or exterior renovations to the old farm house and/or prior to using the farm house as any part of the farm-wellness business, including guest stay-overs, or as a shop for selling farm products.
13. The property is an historic site. As such, any future work on the grounds or the historic building (the Dorphin Dennis House, so-called) shall be reviewed by the Division for Historic Preservation ("VDHP") and approved by the Commission. No VDHP review is required for proposed changes to the Piconi residence or the barn (see Exhibit 047), however, an amendment may be required.
14. The building approved herein is not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittees 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. At a minimum, for constructing the addition on to the barn, the Permittees shall comply with the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
https://dec.vermont.gov/sites/dec/files/wsm/stormwater/docs/StormwaterConstructionDischargePermits/sw_low_risk_site_handbook.pdf.
16. The Permittees 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 Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.

17. The Permittees shall control the noise levels of activities related to the farm-wellness and retreats and farm dinners to not exceed 70 decibels Lmax at any property line and not exceed 55 decibels Lmax at areas of frequent outdoor human use.
18. 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.
19. The Permittees shall not erect 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.
20. Pursuant to 30 V.S.A. § 53, the energy design and construction of the barn addition shall comply with Vermont's Commercial Building Energy Standards (CBES) in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this update can be found at (http://publicservice.vermont.gov/energy_efficiency/cbes, <http://nrb.vermont.gov/sites/nrb/files/documents/9fprocedure.pdf> and <http://nrb.vermont.gov/sites/nrb/files/documents/cbesstretch.pdf>).
21. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
22. The Permittees, upon completion of the construction of the commercial building addition 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).
23. 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 Permittees have not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
24. All construction of the barn addition 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 a public hearing.
25. The Permittees 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 Permittees 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 8th day of December 2020.

By 

Tim Taylor, Chair
District 3 Environmental Commission

Members participating in this decision: Linda Gray and Clotilde Hryshko

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 #3W1115

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit and Findings of Fact and Conclusions of Law and Order on December 8, 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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By: 

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

RE: Eden Marceau-Piconi & Louis Piconi
3300 Hartland Hill Road
Woodstock, VT 05091

Application #3W1115
**Findings of Fact
Conclusions of Law, and Order**
10 V.S.A. §§ 6001-6111 (Act 250)

I. INTRODUCTION

On November 25, 2019, Eden Marceau-Piconi and Louis Piconi aka 5 Birds Farm/Garlic of Eden, LLC, filed an application for an Act 250 permit seeking approval for the previous construction and commercial use of the 72-foot by 32-foot barn and proposed continuation of the use of the barn for seasonal educational, recreational and social events. The application also includes proposing the construction of an addition onto the barn for storage and processing of products grown on the farm and employee restrooms. The project is located at 3300 Hartland Hill Road, Woodstock, Vermont. The tract of land consists of 14.1 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on June 10, 2014, in the land records of Woodstock, Vermont.

The Commission held a public hearing on this application on December 16, 2019. The Commission also conducted a site visit on December 16, 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. A second Recess Order was issued on August 10, 2020 requesting additional information for clarification. The Commission adjourned the hearing on December 7, 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

As determined in a jurisdictional opinion issued on June 12, 2017, jurisdiction attaches because the Project constitutes construction of improvements for commercial purposes on more than one acre of land within a municipality that has not adopted both permanent zoning and subdivision bylaws, pursuant to 10 V.S.A. § 6001(3)(A)(ii).

III. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the Administrative Procedure Act ("APA"), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, "[t]he rules of evidence as applied in civil cases shall be followed" in contested cases. Under the Vermont Rules of Evidence, "(a) judicially noticed fact must be one not subject to reasonable dispute in that it is ... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." V.R.E. 201(b); See *In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). The Commission takes official

notice of the Woodstock Town Plan, and Subdivision Permit #EC-3-1773, issued on April 1, 1993 by the ANR, Department of Environmental Conservation and the Agency of Agriculture, Food & Market's ("AAFMM") Required Agricultural Practices ("RAP").

Accordingly, official notice is hereby taken of the Woodstock Town Plan, Subdivision Permit #EC-3-1773 and the RAPs subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

IV. 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 Eden Marceau-Piconi and Louis Piconi;

The municipality of Woodstock, not represented;

The Woodstock Planning Commission, by Lynn Beach and Sally Miller;

The State of Vermont Agency of Natural Resources (ANR), Office of Planning and Legal Affairs;

The State of Vermont, Agency of Agriculture, Food & Markets, by Ari Rockland-Miller;

The State of Vermont, Division for Historic Preservation, through comments dated December 20, 2019 (Exhibit 047); and

The Two Rivers-Ottawaquechee Regional Commission, not represented.

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. Adjoining landowner Eric Lang, represented by David Grayck, Esq., through an Entry of Appearance, dated December 13, 2019 (Exhibit 020), requested party status under Criteria 1 Air and Water; 1B Waste Disposal; 2 Sufficient Water Supply; 3 Impact on Existing Water Supplies; 4 Erosion; 5 Traffic; 7 Municipal Services; 8 Scenic and Natural Beauty of the area, Aesthetics, and Historic Sites, 9B Primary Agricultural Soils; 9C Productive Forest Soils; 9H Scattered Development; 9K Public Investments; 9L Settlement Patterns; and 10 Compliance with Local and Regional Plans. Eric Lang's property is in Vermont's Current Use Program (land is managed according to an approved forest management plan) and 40.8 acres of his land is subject to a "Scenic Easement Area (SEA)." The Commission granted preliminary party status under Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9H, 9K, 9L, and 10. There were no objections.
2. Christopher Lang, a neighbor on Hartland Hill Road, represented by David Grayck, Esq. for the hearing, requested party status under Criteria 1 Air and Water; 1B Waste Disposal; 2 Sufficient Water Supply; 3 Impact on Existing Water Supplies; 4 Erosion; 5 Traffic; 7 Municipal Services; 8 Scenic and Natural Beauty of the area, Aesthetics, and Historic Sites,

9B Primary Agricultural Soils; 9C Productive Forest Soils; 9H Scattered Development; 9K Public Investments; 9L Settlement Patterns; and 10 Compliance with Local and Regional Plans. The Commission granted preliminary party status under Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9H, 9K, 9L, and 10. There were no objections.

3. Jerome Morgan, an adjoining landowner residing downhill of the project site at 3371 Garvin Hill Road, Woodstock, represented by David Grayck, Esq. for the hearing, requested party status under Criteria 1 Air and Water; 1B Waste Disposal; 2 Sufficient Water Supply; 3 Impact on Existing Water Supplies; 4 Erosion; 5 Traffic; 7 Municipal Services; 8 Scenic and Natural Beauty of the area, Aesthetics, and Historic Sites, 9B Primary Agricultural Soils; 9C Productive Forest Soils; 9H Scattered Development; 9K Public Investments; 9L Settlement Patterns; and 10 Compliance with Local and Regional Plans. The Commission granted preliminary party status under Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9H, 9K, 9L, and 10. There were no objections.
4. Lina Hristova, a neighbor residing at 3695 Hartland Hill Road, has the same concerns as those expressed by the neighbors noted above. She was not sure of what she wanted to request party status under. The Commission granted preliminary party status under Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9H, 9K, 9L, and 10. There were no objections.

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:

Eric Lang: Final Party Status granted on Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9K, and 10 Town Plan; Denied Final Party Status on: Criteria 9(H) Scattered Development and 9(L) Settlement Patterns because no evidence was submitted or testimony given related to these criteria.

Christopher Lang: Final Party Status granted on Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9K, and 10 Town Plan; Denied Final Party Status on: Criteria 9(H) Scattered Development and 9(L) Settlement Patterns because no evidence was submitted or testimony given related to these criteria.

Jerome Morgan: Final Party Status granted on Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9K, and 10 Town Plan; Denied Final Party Status on: Criteria 9(H) Scattered Development and 9(L) Settlement Patterns because no evidence was submitted or testimony given related to these criteria.

Lina Hristova: Final Party Status granted on Criteria 1, 1B, 2, 3, 4, 5, 7, 8, 9B, 9C, 9K, and 10 Town Plan; Denied Final Party Status on: Criteria 9(H) Scattered Development and 9(L) Settlement Patterns because no evidence was submitted or testimony given related to these criteria.

C. Friends of the Commission

The District Commission allowed the following nonparties to participate as Friends of the Commission pursuant to 10 V.S.A § 6085(c)(5). Unless otherwise noted below, each was granted the rights of full participation allowed under 10 V.S.A § 6085(c)(5):

1. Adjoining landowners Brian and Susanne Inglis reside at 3101 Hartland Hill Road, Woodstock, and are in support of the project. The Commission granted "Friend of the Commission" status to Brian and Susanne Inglis.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicants have met the burden of proving compliance with the following criteria through submittal of the application:

1(A) - Headwaters	9(A) - Impact of Growth
1(C) - Water Conservation	9(D) - Earth Resources
1(D) - Floodways	9(E) - Extraction of Earth Resources
1(E) - Streams	9(F) - Energy Conservation
1(F) - Shorelines	9(G) - Private Utility Services
1(G) - Wetlands	9(H) - Scattered Development
6 - Educational Services	9(L) - Settlement Patterns
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 - 061b, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision.

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 Piconis ("Applicants," "5 Birds Farm" or "Garlic of Eden, LLC") acquired the property located at 3300 Hartland Hill Road in Woodstock in 2014 and started farming in 2015 (i.e. planting garlic and lavender). The property consists of 14.1+/- acres with existing two single-family houses. Exhibits 001, 039, 044 and Testimony.
2. In 2018, the Piconi's moved an old barn from off site (Enfield, NH) and reconstructed it on their site. The Applicants hosted 14 weddings in the barn in 2018 and 2019 with up to 150 guests. Since initially submitting this application, the Applicants have revised their plans and will not be hosting large weddings or other celebratory events. Exhibits 012, 049 and Testimony.
3. The Natural Resources Board ("NRB") served a Notice of Alleged Violation ("NOAV") on the Applicants on September 10, 2019 asserting violation of 10 V.S.A. §6081(a) by commencing development without a Land Use Permit and 10 V.S.A. Chapter 64 by commencing development without a Wastewater Permit. Exhibit 022.
4. The Applicants plan to operate a farm-based learning, education and wellness business and retreat. They intend to grow crops designed to foster holistic wellness. Crops to be produced include lavender, garlic, hemp, apples, garden herbs, and maple syrup. They will produce lavender scrubs, balms, garlic pesto, and tinctures from crops grown at the farm. Exhibits 049 and 060.
5. The barn will be used for year 'round storage, preparation, processing and sale of agricultural crops, including: 1) growing, selling and curing garlic through traditional barn

hanging methods; 2) growing and selling fresh cut, drying (barn hanging method), and steam distilling lavender for essential oils; 3) preparing flower essences through sunlight distillation and artisan well water with garlic, hemp and lavender flowers; 4) growing, drying (barn hanging method), and processing hemp in traditional small batch, low heat electric oven baking and slow warming in crock pots to infuse a carrier oil. All products are handmade and made on the farm, from plant/seed, to final product. Exhibits 001 and 061.

6. The Applicants propose to offer up to 25 wellness education/yoga retreats annually at the farm with between one and 50 participants. They will offer farm-based tours, lectures, and farm-based education (e.g. how to grow and cultivate healing herbs and plants) designed to educate guests on natural ways to maintain health and wellness. Exhibits 001, 049 and 061.
7. The Applicants propose to host “farm dinners” for ten of the 28 event days between July and October. A “farm dinner” may be a community harvest dinner, a private wellness function, or fundraising dinner. Each dinner will feature products grown and produced on the farm and any food to be served will be catered and prepared off site. These “farm dinners” will have up to 75 attendees. Exhibits 049 and 061.
8. The application also includes constructing a 62-foot by 15-foot addition on to the east side of the barn. The heated addition will be used as a preparation kitchen to make farm products, store farm products, and support wellness education. Rest rooms in the addition will be for farm employees. Exhibits 001, 006 and 049.
9. Participants in the on-farm events would not be allowed to use the rest rooms in the proposed addition. Portable toilets and portable handwashing stations will be set up on site for each event and will be removed between events. Exhibits 001 and 049.
10. Until the COVID-19 Pandemic, Ms. Marceau-Piconi rented a space in Woodstock for a therapy business that provided bio-magnetic therapy, meditation, reiki, and other holistic modalities to clients. She intends to provide this bio-therapy to clients in a room in her residence and or in the barn during the warmer seasons. Exhibits 054 and 059.

Criterion 1 - Air Pollution:

Findings of Fact

11. The addition to the barn will incorporate radiant heating systems. Exhibit 001.
12. Retreats and farm dinners may involve amplified soothing music or speakers but will not exceed 70 decibels (Leq) at property lines. Exhibits 049 and 061.
13. The proposed events and activities will occur between March and October and typically will involve from one to three-day retreats. The hours of events will be between 8:00 a.m. and 10 p.m. Exhibit 049.

Conclusions of Law

The Applicants will not be hosting large wedding events with bands playing into the night as they did in 2018 and 2019. Noises associated with the proposed retreats, farm dinners and typical farming noises do not rise to the level of causing adverse health effects. Prior to allowing any

renovations to the farmhouse, the Applicants will amend the permit. There is insufficient information related to the construction and use of the farmhouse and the impacts on the ten criteria. With a permit condition requiring amending the permit prior to converting and or using the farmhouse for the 5 Birds business, the Commission concludes that this Project will not result in undue air pollution.

The Commission concludes that this Project complies with Criterion 1(air).

Criterion 1(B) - Waste Disposal:

Findings of Fact

14. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit #WW-3-2676 (the "WW permit") on July 14, 2017. The WW permit revises existing permit #EC-3-1773 (the "Subdivision Permit"), approving the construction of a barn with water and sewer services for three employees and relocating the water supply and building locations. The revised WW permit has an approved water and wastewater supply for a 4-bedroom single family residence (600 gpd design flow) and water and sewer services for a 3-employee barn. The previously approved wastewater disposal system will remain as is, but the water supply and building locations have been relocated. Exhibits 019 and 061a.
15. The Applicants will comply with the ANR, Environmental Protection Rules, Chapter 1, Wastewater System and Potable Water Supply Rules (April 2019), §1-304 as it relates to Permit Exemptions. Exhibits 001, 027 (pages 22-30), 049, 061 and Testimony.
16. Environmental Protection Rules §1-304 Permit Exemptions state, in part:

The following actions are exempt from the permitting requirements of this Subchapter, provided no other action is taken or caused to be taken that under these Rules requires the issuance of a permit or permit amendment:

(27) The construction and use of a building or structure that will be used for events, provided:

 - (A) the building or structure is not connected to a water service line, water service pipe, or sanitary sewer service;
 - (B) there are no more than 28 days of events per year;
 - (C) there is no food preparation or dishwashing on site for the events unless the food preparation or dish washing is:
 - (i) fully completed within a mobile unit licensed by the Vermont Department of Health as a Temporary Food Stand or motorized or pushcart type mobile unit; and
 - (ii) does not require on site water or waste disposal.
 - (D) the events do not require water, including for food preparation, dish washing, or clean-up, other than:
 - (i) for hand washing that is accommodated by alternative hand washing supplies; and
 - (ii) the disposal of wastewater that is accommodated by the use of alternative toilets.
 - (E) an adequate number of alternative toilets and alternative hand washing supplies are provided to accommodate everyone on site;
 - (F) there is no discharge of wastewater to the ground surface;

(G) the owner of the building or structure retains records of the following actions for at least 3 years following each event and provides them to the Secretary [of the ANR] if requested by the Secretary;

- (i) dates of each event;
- (ii) the frequency of the pumping of alternative toilets;
- (iii) the number of gallons pumped from the alternative toilets; and
- (iv) the dates on which alternative toilets and alternative hand washing supplies were delivered to the lot and removed from the lot.

Exhibit 027

17. The Applicants propose a maximum of 28 days of “events” per year. Events include wellness retreats and farm dinners. Portable toilets and portable handwashing stations will be provided as required per Environmental Protection Rules § 1-304(27). The retreats will be conducted between 8:00 a.m. and 10 p.m. and will last up to 3 days. The retreats may include yoga classes, farm education, group discussion and learning, and wellness activities. The retreats will have a maximum of 50 participants. Farm dinners will not exceed 75 guests. The guests will not overnight on the farm. Exhibits 049 and 061.
18. The Project does not have any floor drains. Exhibit 001.
19. There are no wastewater discharges associated with making balms, creams and tinctures. Any leftover oil or plant material from the process of making these products is composted. Nothing is washed down any drain. Exhibits 001 and 061.
20. The existing wastewater disposal system serving the Piconi residence was permitted and constructed in compliance with Subdivision Permit #EC-3-1773 (the “subdivision permit”), issued on April 1, 1993 by the ANR, Department of Environmental Conservation, Subdivision Permit #EC-3-1773. The subdivision permit describes the project, in part, as “consisting of a one lot subdivision Lot 1 (8.99 acres) with 5.11 acres remaining under Homestead Exemption. . .” The lot with the existing structure/dwelling on it was exempt from obtaining a subdivision permit from ANR prior to its sale or lease. Exhibit 061 and Official Notice of EC-3-1773.
21. The existing system can accommodate the production of creams, balms and tinctures. Exhibit 061.
22. Stormwater from the barn roof will be absorbed into the ground. Exhibit 001.
23. Construction debris was and will be disposed of at a legal landfill, reused or recycled. Exhibit 001.
24. A Construction General Permit is not required for the Project. Exhibit 001.
25. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Conclusions of Law

The ANR permit creates a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of wastewater and waste collection, treatment and disposal systems

authorized by the permit will not result in undue water pollution. Technical determinations made by ANR in issuing the permit is entitled to substantial deference. 10 V.S.A § 6086(d).

The WW permit approves the wastewater disposal system to be connected to the barn and the addition to the barn. There is insufficient information for the Commission to make positive findings with respect to waste disposal associated with the old farmhouse and the Piconi's residence if used in association with the farm-based business. The Commission would require evidence that the existing wastewater systems serving these buildings have not failed and the use of these buildings for the farm-business, including allowing event participants to overnight in the old farmhouse, will not result in undue water pollution. A condition will be included in the permit that will require that the permit be amended if and when the old farmhouse and/or residence is renovated for use or used in the farm-based business including selling products at the old farmhouse and/or renting the buildings for stay-overs. An amendment will be required when the use of the barn exceeds 28 event days per year.

With conditions, the Project will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. In addition, the Project will not cause undue water pollution.

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

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

Findings of Fact

26. Previous relevant findings are incorporated herein.
27. An existing well provides 15 gallons per minute and will adequately serve the Project. The on-farm events will comply with the Permit Exemptions described in the Environmental Protection Rules, Chapter 1, Subchapter 3, Wastewater System and Potable Water Supply Rules, effective April 12, 2019. Exhibit 001.
28. There is sufficient water available for the Project at the barn. Exhibits 001 and 060.
29. The ANR Department of Environmental Conservation, Drinking Water and Groundwater Protection Division, issued Wastewater System and Potable Water Supply Permit #WW-3-2676 on July 14, 2017. Exhibit 019.

Conclusions of Law

The ANR Drinking Water and Groundwater Protection Division issued Permit #WW-3-2676 which creates a presumption pursuant to Act 250 Rule 19 that the Project has sufficient water available for its reasonably foreseeable needs and complies with Criterion 2. The Project covered by the WW permit does not include use of the residence and/or the old farmhouse as part of the farm-based business. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

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

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

Criterion 4 - Soil Erosion:

Findings of Fact

30. Previous relevant findings are incorporated herein.
31. The barn has already been constructed on the site and the site has been stabilized. The addition to be constructed onto the back of the barn will temporarily displace minimal soil for the wastewater mound system, none of which is on a steep slope, close to any property lines, or waterways. Vegetation will be established on the disturbed areas. Exhibit 001 and Testimony.
32. The Project will not affect the capacity of soil on the Project site to hold water.
33. Approximately six acres will continue to be used for farming.
34. The Agency of Agriculture, Food & Market (“AAFM”) Required Agricultural Practices (“RAP”) has determined that 5 Birds Farm is considered a Small Farm Operation (“SFO”). The RAPs establish practices and management strategies to which all types of farms must be managed to reduce the impact of agricultural activities to water quality. Exhibits 011a, 011b and Official Notice of the RAPs.
35. Stormwater permits, such as the Construction General Permit and the Construction Individual Permit, from the ANR are not required. Exhibit 001.
36. During construction, seed and mulch will be used to stabilize soils. Exhibit 001.
37. Vegetation establishment will provide permanent erosion control. Exhibit 001.

Conclusions of Law

The Commission will include a permit condition that will require that, at a minimum, the Applicants shall comply with the Vermont Department of Environmental Conservation’s *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).

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

The Project complies with Criterion 4.

Criteria 5 - Transportation and 9(K) - Development Affecting Public Investments:

Findings of Fact

38. Previous relevant findings are incorporated herein.
39. The Project is not in a Transportation Improvement District (TID).

40. The Project is accessed off the Hartland Hill Road. The Village of Woodstock is a bit more than one mile north of the Project. Hartland Hill Road intersects with Garvin Hill Road approximately 200 feet south of the shared access to the barn and the Piconi residence and the old farmhouse. Hartland Hill Road turns easterly and the Garvin Hill Road continues in a southerly direction. Exhibits 008, 045 and Official Notice of Natural Resources Atlas.
41. The speed limit on Hartland Hill Road is 35 miles per hour. The sight distance to the north is more than .2 miles (greater than 1000 feet) and to the south is approximately 150 feet. Limited traffic will be generated by the proposed activities. At most, 50 to 75 trip ends will be generated into the property and 50 to 75 trip ends exiting the property on any given day for the largest of event, 28 event-days per year. There is minimal traffic on the adjoining road. Exhibits 001 and 049.
42. The driveway is visible from the road and vegetation along the road will be trimmed to improve and maintain lines of sight. Exhibit 049.
43. Larger gatherings will not generate more than 50 vehicles in any one hour. Shuttle service will be provided to limit additional peak hour trips. Exhibit 001.
44. Parking for up to 104 vehicles is available on site in two grassy areas. It is expected that there will be two people in each vehicle. Exhibits 061 and 061b.
45. The Applicants will eventually seek and obtain a WW permit for additional events. They are asking the Commission to approve up to 55 days of events upon issuance of a permit issued by the ANR Department of Environmental Conservation, Drinking Water and Groundwater Protection Division. Exhibit 061.
46. There are four options for guests to leave the Project site: 1) Northwest on Hartland Hill Road to Woodstock and VT Route 4; 2) West will take guests to South Woodstock via Garvin Hill Road to VT Route 106; 3) South on Hartland Hill Road to VT Route 12, VT Route 4 and Interstate 91 in Hartland; and 4) Hartland Hill Road to Happy Valley Road will take guests Northeast to VT Route 4 in Taftsville. Exhibit 001.
47. The wellness farm events will be small with not more than 50 guests. The farm dinners may have up to 75 guests. Due to the wastewater limitations in the Environmental Protection Rules, there will only be 28 event days per year. Exhibits 049, 061 and 061.
48. The Applicants plan on setting up a farm stand at the old farmhouse where they will offer the sale of products made from crops they have grown and processed on their farm. Exhibit 049. There is no evidence describing the parking situation for such a farm stand. Prior to allowing this use of the old farmhouse, the Commission will require an amendment to the permit.
49. The project is adjacent to the Hartland Hill Road, a public investment. Exhibit 001.
50. The Project will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of the Hartland Hill Road. No change to the access to the Project site is proposed. Exhibit 001.

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 Project involves up to 28 event days per year. An event day is considered to be any day, or portion of a day, that guests or participants are on site for a yoga class or retreat or for instruction related to wellness or farming.

As previously mentioned, a permit condition will require that an amendment be obtained prior to setting up a farm stand at the old farmhouse. Also, increasing the number of event days beyond 28 each year will require an amendment to the permit. With these 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 Project incorporates all appropriate transportation measures and complies with Criterion 5(B).

Conclusions of Law – Criterion 9(K)

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the Applicants bear the burden of proving that the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to the facility, service or lands.. 10 V.S.A § 6086(a)(9)(K).

There is insufficient information related to the use of the driveway off Hartland Hill Road to serve the old farmhouse or a farm stand located at the old farmhouse. Prior to approving the use of the old farmhouse for these purposes, the Commission will require an amendment to the permit.

The seasonal use of the access road off Hartland Hill Road to serve the 28 event days at the barn, with not more than 50 vehicle trips per hour occurring at the beginning and at the end of the event day will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to the facility, service or lands.

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

Criterion 7 - Municipal Services:

Findings of Fact

51. The Project will utilize municipal police, fire, and rescue services. Exhibit 001.
52. The access to the Project can accommodate emergency and service vehicles. Exhibit 061.

Conclusions of Law

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

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

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

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

Findings of Fact

Aesthetics, Scenic or Natural Beauty

53. Previous relevant findings are incorporated herein.
54. The Project site is in a rural area characterized by a mix of residential homes, open land, forested hillsides and a class 3 town road. The 14.1 acres is a small working farm with a 200-year-old, one and a half story, English barn reconstructed on top of a knoll with open fields slightly down slope and north and west of the barn. The barn is 74-feet by 32-feet, with sliding barn doors, large windows, lofts, and a cupola on the metal roof. The barn siding is unfinished wood. Approximately nine acres of hay fields, and crops such as garlic, lavender, and hemp are planted in the open fields. A mixed maple forest is along the eastern boundary with Mr. Lang's property. A sugar shack and shed are located along the forest edge. The Applicant's residence is located south of the barn. An access road off Hartland Hill Road provides access to the north and south of the property. Exhibits 001, 003, 006, 043, 044 and Testimony.
55. Vehicles in the parking areas will not be visible from the road. Exhibits 001 and 049.
56. The addition to be constructed on to the back of the barn will not be visible from the road. Siding for the addition will be unfinished barn boards and the roof will be metal. Exhibit 001.
57. The business will focus on small weekend farm-wellness retreats with 10 to 50 guests. The Applicants propose to operate a quiet farm-wellness retreat between the months of March

through October. The participants will not stay on the farm. Most of the retreats will occur between Thursday and Sunday (typically 1 to 3 days), from 8:00 a.m. to 10 p.m.

58. There will be up to ten farm dinners with up to 75 guests. Exhibits 049 and 061.
59. The closest neighbor to the barn is over 750 feet. Exhibit 001.
60. No signs are proposed for the project. Exhibit 001.
61. Exterior lighting on the barn consists of 75 watt, LED down facing lights. Exhibits 001 and 014.
62. Electric utility lines are underground and no trees will be removed. Exhibit 001.
63. Soothing type music may be played outside during yoga or other sessions or during a meal. Speakers may use minor amplification. No sound will be greater than 70 decibels (Lmax) at the property line. Exhibits 049 and 061.
64. Mr. Morgan has resided at 3371 Garvin Hill Road continuously since 1981. He enjoys the peace and quiet of his neighborhood and spends time working in his garden and being outside. He can hear normal volume conversations coming from the Piconi's porch when he is in his front yard. He also heard the noises from the construction of the barn. He can see the south gabled end of the barn from his bedroom window. The noises from the weddings that were held at the Piconi's barn included traffic, shouting, amplified music and screaming and prevented Mr. Morgan from resting and sleeping. The wedding events at the Piconi's property deprived him of the quiet enjoyment of his home and property. Exhibit 042.
65. The Lang family has owned land and lived on Hartland Hill Road since March 2004. The Lang property is contiguous to the Piconi property. Mr. Lang can see the barn from multiple locations on his land. Mr. Lang is concerned that the noise from the activities at the barn will interfere with the peace and serenity he enjoys while walking on his property and may interfere with his enjoyment of a future home to be built on the adjacent property. Exhibit 041.
66. The Applicants will not be hosting large weddings such as those they hosted in 2018 and 2019. They also will not be renting out the whole farm to others as they did in the past. They will be focusing on operating a "Wellness Farm." Exhibits 049, 050, 060 and 061.
67. The Piconi's five children may want to host their own wedding(s) on the farm. Testimony.
68. There are no clear, written community standards for the Project area.
69. The Action Program in the Woodstock Town Plan under the Agriculture section identifies, in part, the following goals, objectives and actions:
 - Goal 1 – Maintain a prominent presence for agriculture in the Woodstock community and landscape.
 - Objective 1.1. Reduce the economic pressure on landowners to convert their farmland to other uses.

Goal 2 – Create awareness, understanding, and support of farm, forestry and rural enterprise based within the Town.

Objective 2.1. Create new and lasting educational forums in public settings for residents and visitors alike to learn the extent, quality, and availability of Woodstock farm products services in the marketplace.

Goal 3 – Allow for and encourage greater farm related production, processing, and retailing operations.

Objective 3.1. Search for opportunities to expand the allowed uses, in a wider selection of commercial and residential zones, for retail sales of Woodstock farm produced merchandise.

Goal 4 – Enhance the vitality of farming and on-farm activities.

Objective 4.1. Create an environment which encourages the establishment of new agripreneurial activity, the re-establishment of former farm operations, or the expansion of existing farms.

Goal 5 – Minimize the difficulty in establishing new farming operations.

Official Notice, Woodstock Town Plan, pages 7-8.

Historic Sites

70. There are three buildings on the property: a late twentieth century house; the barn that has been recently constructed; and a c.1814 house known as the Dorphin Dennis House that is listed on the State Register of Historic Places (Survey #1424-87). The property meets the definition of a “historic site.” Exhibit 047.
71. The barn constructed with historic timbers is not considered historic as it has lost integrity of location and feeling. Exhibit 047.
72. The farmhouse is not currently in use and there are no specific plans for the house at this time. Exhibit 047.
73. In the future, the Applicants intend to renovate the historic farmhouse and allow guests to stay overnight in the farmhouse. The Applicants also plan on using the old farmhouse as a farm stand to sell the products they produce to the general public. They realize that any changes to the building will require review by the Vermont Division for Historic Preservation (“VDHP”). Exhibit 049.
74. The southwest portion of the parcel is sensitive both for Precontact and Historic archaeology, primarily in and around the Historic Dorphin Dennis House. The barn and parking areas are unlikely to contain important intact archaeological sites. Exhibit 047.
75. To ensure that this project and proposed use of the property will have no adverse effect on the historic site and that future work will be developed in consultation with VDHP to consider the effects of proposed undertakings on historic sites, the VDHP recommends including the following condition in the permit:

The property is a historic site. As such, any future work on the grounds or the historic buildings should be reviewed by the Division for Historic Preservation. No

change shall be made to the design, operation or use of this project without first obtaining a jurisdictional opinion.

Exhibit 047.

76. The Applicants believe that the condition recommended by the VDHP is too broad. They believe they are entitled to make changes and “work” on the grounds for agricultural purposes. Also, they believe that changes to the family residence should not require review by the VDHP. Exhibit 049.
77. The Woodstock Town Plan, under the Historic Preservation and Visual Environment section includes, in part, the following Goals and Objectives:
- Goal 1 – Protect historical resources in the Town and Village.
Objective 1.2. Promote historic preservation efforts within the Town and Village.
- Goal 4 – Improve Design Review procedures.
Objective 4.1.1. Disseminate information to prospective applicants in a timely manner.
- Goal 5 – Ensure that Design Review and the Conservation Commission work hand in hand for the overall preservation and appropriate development of Woodstock.

Official Notice, Woodstock Town Plan, pages 57-58.

Rare and Irreplaceable Natural Areas

78. There are no rare and irreplaceable natural areas on the property. Exhibit 001.

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). This Project involves concerns under Criterion 8 related to aesthetics, noise, and historic sites.

AESTHETICS and NATURAL AND SCENIC BEAUTY

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)(citations omitted); see also, *Re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985); *In re 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 applicants 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 a quiet rural area with residences, open land, forests and forested hillsides and is served by a class 3 town road. The barn and farming operations fit in with the rural character of the area. The Applicants will not be hosting or allowing weddings on the property, except possibly for their own five children. The commercial use of the barn for wellness retreats, on-farm educational activities and for chiropractic and other alternative health treatments may be adverse to the neighbors because of the noise associated with increased traffic and the participants at the events and activities.

This Project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. *Undue Adverse Effect*

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

(a) *Clear, Written Community Standard*

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env’tl. Bd. April 4, 2002). 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. Dec. 21, 2000).

The Commission has reviewed relevant portions of the Woodstock Town and Village Plan and found no specific standard relating to the aesthetics of the area in which the Project is located.

However, several goals or objectives are relevant to this Project, particularly related to the Agriculture section of the Town Plan - see Finding of Fact #69.

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).

If the Applicants continued to host large weddings with amplified music, it could be considered offensive and shocking as the neighbors testified having experienced the impact of the weddings on their enjoyment of their homes in 2018 and 2019. However, the Applicants will not be hosting these types of events and intend to operate a rather quiet farm-based wellness retreat. The noise level at the property line will not exceed 70 decibels Lmax. There will be 28 event days and ten of those may be farm dinners. The events and activities will be terminated by 10:00 p.m.

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

(c) Generally Available Mitigating steps

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

To mitigate the aesthetic impacts of the Project, the Applicants have limited the number event days to 28 days per year; activity will be limited to between 8:00 a.m. and 10:00 p.m.; the number of participants will be limited to not more than 50 for the wellness education/yoga retreats; participants for the ten farm dinners will be limited to not more than 75 guests; parking will be in areas that are not visible to the road; and the majority of the farm-wellness events will be quiet with no loud music.

Given all of these considerations, the Commission finds that the Applicants have taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area. In addition, the Commission will include a permit condition requiring that any amplified music or sound not start before 10:00 a.m. and that there not be more than a total of three hours of amplified music or sound on any event day.

(d) Conclusion

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

HISTORIC SITES

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

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

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

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

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

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

The Dorphin Dennis House is listed as a state historic site; therefore, the site does contain a historic site.

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

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

Important guidelines in evaluating this fit include: (1) whether there will be physical destruction, damage, or alteration of those qualities which make the site historic, such as an existing structure, landscape, or setting; and (2) whether the proposed project will have other effects on the historic structure, landscape, or setting which are incongruous or incompatible with the site's historic qualities, including, but not limited to, such effects as isolation of an historic structure from its historic setting, new property uses, or new visual, audible or atmospheric elements. *Re: Middlebury College, #9AO177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env'tl. Bd. Jan. 26, 1990); cited in Re: OMYA, Inc. and Foster Brothers Farm, Inc., #9A0107-2-EB, Findings of*

Fact, Conclusions of Law, and Order at 39 (Vt. Env'tl. Bd. May 25, 1999), *aff'd*, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).

The Applicants intend to renovate the old farmhouse and allow guests to stay overnight in the house. They also plan on setting up a farm stand at the old farmhouse to sell products they produce on their farm. Interior and exterior renovations may adversely impact the historic elements of the site. The application does not include any plans that show or describe the renovations for the farmhouse. No plans have been submitted addressing the historic elements and how they would be preserved.

Jurisdiction attaches to the property, whether changes to the property are related to an agricultural use, an amendment to the permit may be required. If the house that the Piconi's reside in is used in any way in the business of the farm-wellness business, any material change to the house will require a permit amendment. Act 250 Rule 2(C)(6) defines "material change," in part, as any cognizable change to a development or subdivision subject to a permit under Act 250 which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §6086(a)(1) through (10) (the 10 criteria and subcriteria).

Prior to the use of the old farmhouse in any part of the farm-wellness business, including selling products from the old farmhouse or allowing guests to stay overnight in the farmhouse, the permit will require an amendment prior to any improvements or change in use.

Expanding the fields for growing crops or planting additional orchard crops into existing open areas will not require an amendment.

3. *Whether the adverse effect will be undue.*

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

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

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

The Applicants have indicated that any changes to the building would need to be reviewed by the VDHP. While this statement does not sufficiently address mitigating steps that a reasonable person would take to preserve the character of the historic house, it is a start. The Commission will include a permit condition that will require the permit to be amended prior to any renovations, interior or exterior, to the old farmhouse.

There are no mandatory, clear, written community standards that are intended to preserve the historic qualities of the site.

The Commission will revise the permit condition recommended by the VDHP to exclude VDHP review for changes proposed for the Piconi residence or the barn, however, VDHP, being a statutory party, may participate and comment on any proposed change to the Project. With permit conditions the Commission concludes that the Project will not have an undue adverse effect on historic sites.

With conditions, the Project complies with Criterion 8. 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

79. The project tract does not contain any soils mapped by United States Department of Agriculture's Natural Resource Conservation Service (NRCS) as prime, statewide, or soils of local importance. Exhibits 001 and 010.
80. The Applicants grow, harvest, and sell lavender and garlic; are planting an apple orchard, haying fields, and tapping maple trees to gather sap, and preparing and storing agricultural products grown on the property in the barn. Farm equipment is also stored in the barn. Exhibit 011b.
81. The Agency of Agriculture, Food & Markets has determined that the cultivation of six acres of land, storage and preparation of agricultural products grown on the property in an existing building, and storage of equipment in the same building are agricultural practices governed by the Required Agricultural Practices ("RAP"). Exhibit 011b.
82. Six of the 8.99 acres are cultivated to support the agricultural component of the parcel. Exhibit 011b.

Conclusion of Law

Under criterion 9(B) a subdivision or development may not result in any reduction in the agricultural potential of the primary agricultural soils or significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. Act 250 defines primary agricultural soil as either (1) important farmland soils map unit identified by the NRCS as prime, statewide, or local importance or (2) "soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities..." Based on the facts presented indicating there are no prime, statewide, or soils of local importance on the property, the District Commission concludes that the project does not contain primary agricultural soils as defined by Act 250 (10 V.S.A. § 6001(15)) and, therefore, will not result in any reduction in the agricultural potential of primary agricultural soils.

The Project complies with Criterion 9(B).

Criterion 9(C) - Productive Forest Soils:

Findings of Fact

83. The forested area is not being managed for commercial timber harvesting. The maple trees may be tapped for sap. Exhibit 001.
84. The Project will not disturb any productive forest soils on the Project tract.

Conclusions of Law

The Commission concludes that the Project will not result in any reduction in the potential of productive forest soils.

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

Criterion 10 – Town and Regional Plans:

Findings of Fact

85. Previous relevant findings are incorporated herein. Particularly, findings under Criterion 8 related to Town Plan goals established under the Agriculture section.
86. The Comprehensive Plan for the Town and Village of Woodstock was adopted on September 17, 2019.
87. The Future Land Use map designates the project area as being in the Residential Five-Acre area. The property is not part of the Scenic Ridgeline District. Official Notice, Town Plan.
88. Agriculture and the continued use of the landscape is critically important to the overall image, vitality and character of Woodstock. Official Notice, Town Plan, page 4.
89. The Town should actively encourage the maintenance, protection, and expansion of existing farms and all aspects of its working landscape. It must not inhibit the formation of new agricultural operations. Official Notice, Town Plan, page 4.
90. Development in the Residential Five-Acre Area must be of a type and scale that is consistent with the purpose of this land use area. Retail development of any scale is not appropriate for this land use area. Official Notice, Town Plan, Land Use Section, Page 110.
91. There are no mandatory provisions in the Town Plan that apply to the operation of this farm-wellness business.
92. The Project will not have substantial regional impacts.
93. The regional plan that applies to this application is the Two Rivers-Ottawaquechee Regional Plan, adopted on July 15, 2020.

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 has reviewed the Town Plan and has determined that the Town Plan is sufficiently specific. See, *Re: The Mirkwood Group #1R0780-EB*, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Env'tl. Bd. August 19, 1996). Because the Town Plan is clear and unambiguous it is unnecessary to review the zoning bylaws. See *In re Frank A. Molgano Jr.* 163 Vt. 25 (1994).

The Project complies with Criterion 10.

VII. 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 Applicants, and in accordance with in the findings and conclusions of this decision and the conditions of Land Use Permit #3W1115, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #3W1115 is hereby issued.

Dated at Springfield, Vermont, this 8th day of December 2020.

By 

Tim Taylor, Chair
District 3 Environmental Commission

Members participating in this decision: Linda Gray and Clotilde Hryshko

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date of this decision, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the 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.