

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

RE: Horizon Development Corporation  
Application #4C0841-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated August 21, 1992, pertains to an appeal filed by Horizon Development Corporation from the decision of the District #4 Environmental Commission which denied a permit for the proposed subdivision of 125 acres of land in Underhill, Vermont, into 11 residential lots and an 80-acre open space lot. The Environmental Board concludes that, as conditioned by this decision, the project complies with the following criteria of 10 V.S.A. § 6086(a): 5 (traffic), 6 (impact on schools), 8 (aesthetics, scenic or natural beauty), 8(A) (necessary wildlife habitat), 9(A) (impact of growth), 9(H) (costs of scattered development), 9(K) (public investments), 9(L) (rural growth areas) and 10 (conformance with regional and local plan).

I. BACKGROUND

In a decision dated March 22, 1991, the District #4 Environmental Commission denied the application of Horizon Development Corporation (Horizon) for a land use permit for the subdivision of a 125-acre tract of land into 11 residential lots and an 80-acre deeded open space lot. The application was denied under Criteria 9(H), 9(K) and 10. The District Commission would have imposed conditions under Criteria 5, 6, 8, 8(A), 9(A), and 9(L).

On April 19, 1991, Horizon filed an appeal from the District #4 Commission decision under Criteria 5, 9(H), 9(K) and 10, and with respect to the conditions that the District Commission would have imposed under Criteria 6, 8, 8(A), 9(A), and 9(L).

The Town of Underhill (Town) and the Underhill Planning Commission (Planning Commission) filed a Notice of Cross-Appeal on May 27, 1991. In a decision dated July 8, 1991, the Board determined that the Notice of Cross-appeal was not timely filed.

The Underhill Conservation Commission was granted party status under Criteria 8 and 8(A), pursuant to Board Rule 14 (B) (1) (A) and (B). The English Settlement Neighbors were granted party status under Criterion 5, pursuant to Board Rule 14(B)(1)(A) and (B).

The Board convened a hearing in this matter on December 18, 1991 and January 8, 1992, with the following parties participating:

Horizon by Charles **Finberg**, Esq. and Paul Arnot  
The Town by Ron Rodjenski and Robert Scudero  
The Planning Commission by Margaret **Parmelee** Hummell  
The Underhill Conservation Commission by Judy Bond  
The English Settlement Neighbors by Rita St. Germain  
The Chittenden County Regional Planning Commission (Regional Planning Commission) by Arthur Hogan

After taking a site visit and hearing testimony, the Board recessed the hearing pending filing of proposed findings of fact and conclusions of law on or before February 17, 1992, review of the record, deliberation, and decision. The Board deliberated concerning this matter on March 12, 1992. At that time it concluded that Horizon had provided insufficient information concerning the upgrade of Blakey Road for the Board to issue a decision under Criteria 5 and 9(K). The Board issued a Memorandum on April 10, 1992, requesting that Horizon submit additional information. The requested information was submitted by Horizon on May 7, 1992. The Board deliberated again on June 17 and August 12, 1992. On August 12, following a review of the proposed decision and the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise they are denied.

## II. ISSUES

Whether the proposed project complies with the following criteria of 10 V.S.A. § 6086(a): 5, 6, 8, 8(A), 9(A), 9(H), 9(K), 9(L) and 10.

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<sup>1</sup> The English Settlement Neighbors consist of the following persons, none of whom are adjoining landowners: Rita St. Germain, Phil and Cindy Jacobs, Bill and Christina **Phelan**, Tim and Gretchen Anderson, Reverend Bernard Spears, Alice Collins, Nancy and Ron Barker, Jim Driscoll, Gael and Judy Boardman, John and Vera **Finlay**, Tom and Judy Thomas, Dave and Alice Ward, Tom and June Hitchcock, and John **Finlay II**.

III. FINDINGS OF FACT

1. Horizon proposes to subdivide a **125-acre** tract of land into 11 residential lots for sale to individual purchasers. The tract, which is comprised of fields, a hillside and woodland, is adjacent to the northwest slope of Hedgehog Hill in Underhill. The 11 lots will be clustered on 45 acres in the northeastern portion of the tract. Horizon will also create an approximately 80-acre lot to be deeded as open space.
2. The only access to the subdivision will be from English Settlement Road and Blakey Road. Blakey Road intersects with English Settlement Road approximately 2,500 **feet** from the boundary of the subdivision. Blakey Road is a one-lane dirt road that will require reconstruction to accommodate traffic generated by the subdivision.

Criteria 5 - Traffic, 9(K) - Public Investment, and 9(A) - Impact of Growth.

English Settlement Road

3. English Settlement Road is a gravel road. From its intersection with Poker Hill Road, a paved road, to its intersection with Blakey Road, a distance of approximately 1.4 miles, English Settlement Road has a variable width of ten to 20 feet and grades of up to ten percent. Beyond the intersection with Blakey Road, English Settlement Road is, for the most part, one-lane wide, with minimal or non-existent drainage, considerable overgrowth of brush and trees, and steep grades. There are no speed limit signs posted on English Settlement Road.
4. English Settlement Road currently provides access to 15 homes. The 1988 weekday average daily traffic volume on English Settlement Road, according to traffic counts conducted by the Chittenden County Regional Planning Commission, was 89 vehicles per day.
5. Upon completion of the proposed subdivision, the average daily traffic volume on English Settlement Road is expected to be 217 to 233 vehicle trips per day. No evidence was presented concerning how many of these vehicle trips would be attributable to the proposed subdivision. The proposed project will likely generate approximately 12 trips during the AM Peak Hour and 14 trips during the PM Peak Hour.

6. There is currently no congestion on English Settlement Road and there will be none upon completion of the proposed subdivision.
7. English Settlement Road is classified as a Class III Town Highway. Class III roads are highways that under normal conditions are negotiable in all seasons by a standard pleasure car. The Town is responsible for maintaining Class III Town Highways to a level adequate to provide year-round access.
8. During the spring mud season, rutting on English Settlement Road impedes traffic. During the winter, English Settlement Road is sometimes impassable due to slippery conditions. Vehicles traveling on English Settlement Road during the winter months often have minor accidents. These conditions are often of considerable inconvenience to the residents of English Settlement Road.
9. Road conditions on English Settlement Road during the winter and spring are not unlike many roads serving rural residential areas in Vermont. Although travel on English Settlement Road is sometimes hazardous due to weather conditions, the road is not unsafe. The roadway width, surface conditions and alignment are adequate for both current and projected traffic volumes, including the traffic that will be generated upon completion of the subdivision.

90-degree Turn.

10. There is a 90-degree turn on English Settlement Road that the Town and the Regional Planning Commission have designated as a high priority safety concern because of limited visibility and surface deterioration.
11. The Regional Planning Commission 1988 Evaluation of Town Highways suggested that the 90-degree curve be re-aligned. The Town Road Study Committee recommended against implementing the suggested re-alignment of the curve. The Town has placed signs that read "blind corner" at the 90-degree turn. It plans to improve the road surface and drainage at the 90-degree curve and to remove road side brush.
12. The American Association of State Highway and Transportation Officials (AASHTO) publishes guidelines for highway designs to achieve safe sight distances. Sight distances are calculated for safe stopping distance.

13. Stopping sight distances at the 90-degree turn are approximately 125 feet in both directions, which satisfies the recommended stopping sight distances for roads with a design speed of 20 mph.
14. Traffic conditions at the go-degree curve could be improved by: 1) posting a 20 mph advisory speed sign; 2) installing standard sharp curve and large arrow directional signs; and, 3) clearing the vegetation on the inside of the curve. Clearing of vegetation would significantly improve the stopping sight distance. Horizon has agreed to pay for the costs of installing the recommended signs.
15. With the implementation of these improvements, the additional vehicle trips per day that will be generated upon completion of the proposed subdivision will not create unsafe conditions or significantly affect the efficiency of English Settlement Road at this location.

One-lane Bridge.

16. There is a one-lane bridge over Roaring Brook on English Settlement Road approximately one-half mile from the project site. The bridge has been identified as a high priority safety concern by the Town and the Regional Planning Commission.
17. The bridge presently provides access to three residences. The weekday average daily traffic volume on the bridge is approximately 30 trips per day. With the construction of 11 residences in the proposed subdivision, the volume can be expected to increase by an additional 110 trips per day. The capacity of the bridge is 277 cars per hour.
18. There is a rise in the road to the west of the bridge which limits sight distances. Sight distance at this location is 205 feet, which satisfies the recommended stopping sight distance for roads with a design speed of 30 mph. 30 mph is a reasonable design speed for this unpaved local rural road.
19. The Town has installed guardrails and signs along the approach to the bridge. The installation of warning and yield signs at the bridge as recommended by Horizon's traffic expert, Dr. Joseph Oppenlander, will improve the safe operation of English Settlement Road at this location. Horizon has agreed to pay for the costs of installing the recommended signage.

20. Although the subdivision will increase traffic on the bridge, with the installation of the recommended signs, the increase in traffic will not create unsafe conditions or significantly affect the efficiency of the bridge.

Blakey Road.

21. All lots in the subdivision will have direct access to Blakey Road. At one time, Blakey Road served as a through road from English Settlement Road to Poker Hill Road; it is no longer a through road and experiences little, if any, traffic. Blakey Road is a Class III Town Road, but the Town provides no maintenance services for Blakey Road at present. There are no existing structures accessed by Blakey Road.

22. A recorded land deed dated October 30, 1920, provides for a two-rod (33-foot) right-of-way for Blakey Road from English Settlement Road to the subdivision boundary. The Town's Road Policy, as revised November 8, 1989, requires a minimum 60-foot right-of-way for any project that will serve two or more lots.

13. Horizon intends to upgrade Blakey Road from its intersection with English Settlement Road to the boundary of the proposed subdivision to provide a travelled width of 20 feet. The proposed upgrade of Blakey Road will also require ditching and clearing adjacent to the travelled way. Within the boundaries of the subdivision, Horizon will provide a 60-foot right of way for Blakey Road and provide a travelled width of 24 feet.

24. The Agency of Transportation has developed the A-21 standard for the construction of low volume rural roads. That standard provides that total roadway width should be 24 feet when the number of vehicles trips per day is 50-250. Eleven residences will generate more than 50 vehicle trips per day.

25. Construction of Blakey Road to A-21 standards, including a width of 24 feet, will best accommodate the traffic generated by the subdivision and ensure that all emergency vehicles and town maintenance vehicles will have safe access to the subdivision. If construction to a width of 24 feet is not possible, construction to the widest possible width, but not less than 20 feet, will accommodate the traffic and ensure safe access for emergency and maintenance vehicles.

Criteria 6 - Impact on Schools and 9(A) - Impact of Growth.

26. The Town of Underhill owns and operates the Underhill Town School, which provides public school services for kindergarten through grade 4. The Town belongs to the Chittenden East Supervisory District which provides public school services for grades 5-12 at the Browns River Middle School, the Camels Hump Middle School and the Mount Mansfield Union High School. The Town is assessed for these educational services. The proposed subdivision is within the boundaries of the Chittenden East Supervisory District.
27. The Underhill Town School has a capacity of approximately 180 students. The enrollment for grades K-4 for the 1991-92 school year was 220 students. Enrollment in that school has exceeded capacity since the 1988-89 school year.
28. Browns River Middle School has a capacity of approximately 400 and enrollment of 391 students. Camels Hump Middle School has a capacity of 400 and an enrollment of 400. Mount Mansfield Union High School has a capacity of 750 and an enrollment of 677.
29. Improvements to the Underhill Town School are needed to comply with public school standards established by the State of Vermont. The school lacks adequate classroom space, ventilation, acoustical separation, and storage space to accommodate the current student enrollment.
30. If 11 houses in the proposed subdivision were built and occupied within one school year, enrollment in the public schools that serve the residents of Underhill would increase by approximately eight students. It is estimated that the subdivision will generate 3.37 elementary students (K-4), 2.37 middle school students (grades 5-8) and 2.24 high school students (grades 9-12).
31. Because the Underhill Elementary School is already exceeding capacity, the addition of 3.37 students in any one year would place a burden on the ability of the Town to provide adequate space for the provision of educational services.
32. The average cost per student to the Town for fiscal year 1992 is estimated to be \$3,321. This dollar amount, which was stipulated to by the Town and Horizon, was arrived at by: 1) taking the 1990-91 operating budget for the Underhill Town School District of \$958,936; 2) adding to this amount the assessment of the Chittenden East Supervisory District of \$1,724,428; 3) subtracting from

the sum of these two amounts the amount of \$959,884 that is expected to be received as State aid to education; and, 4) dividing the resulting amount by 519, which is the number of students served by the Underhill Town School District.

33. At an average cost per student of \$3,321 per year, the total school operating costs to the Town for educating the estimated eight new students from the proposed subdivision would be approximately \$26,600 per year.
34. The construction of an addition to both the Underhill Town School and the Browns River Middle School will be necessary in the near future. Capital construction costs attributable to the new students expected to be generated by the proposed subdivision are estimated to be approximately \$13,600.
35. The Town assesses property taxes on 732 residential units in the Underhill School District. Property taxes are assessed separately for educational purposes. Estimated property tax revenue from the proposed subdivision will be approximately \$27,000 per year upon construction of 11 residences with an average fair market value of approximately \$194,000. This amount of tax revenues will cover the school operating costs attributable to the proposed subdivision, but will not cover projected capital costs attributable to the subdivision for the construction of an addition to both the Underhill Town School and the Browns River Middle School.
36. If the capital construction costs of approximately \$13,600 attributable to the subdivision are assessed against the 732 residential units in the Underhill School district, each unit would pay approximately \$19 per year in additional property taxes to finance that portion of the construction costs.
37. If no more than three houses in the proposed subdivision are built and occupied per 12-month period, the Town will have time to provide additional space to accommodate the existing enrollment as well as the new students that will be generated by the proposed subdivision.

Criterion 8 - Aesthetics, Scenic or Natural Beauty.

38. The proposed subdivision is located on the northwest slope of Hedgehog Hill, in the foothills of Mount Mansfield. The site is less than five miles from the center of the Town of Underhill.

39. The area surrounding the project site is rural and includes a variety of undeveloped landscapes, including open and wooded hillside, meadows, hayfields, wetlands and unbroken tracts of mature and immature soft and hardwoods. The site offers panoramic views southwest to Lake Champlain and north and east to Mount Mansfield.
40. The site is to the northeast of, and adjacent to, the Maple Ridge and Homestead Acres subdivisions. The proposed 11-house lots will be separated from these adjacent subdivisions by the 80-acre open space lot.
41. As shown in plans submitted by Horizon, houses constructed on Lots #1 and #9 will be in young hardwoods; houses on Lots #2 and #3 will be surrounded by shrubs; houses on Lots #4, #5, #6 and #8 will be in an open area; the house on Lot #7 will be near a ridgeline at the edge of hardwoods and uphill of houses on Lots #4-#8; houses on Lots #19 and #11 will be at the base of a stand of softwoods.
42. The elevations of the proposed house locations will range from 1,185 to 1,300 feet; these elevations are higher than most, but not all, of the other houses in the area. One or more of the houses will be partially or entirely visible from various locations to persons who live and travel on English Settlement Road and Poker Hill Road.
43. If any of the residences are built at higher elevations than shown in plans submitted by Horizon, their visibility will be increased. Residences must be built at the locations shown in the engineering drawings submitted by Horizon in order to minimize their visibility.
44. The average lot size of residences along English Settlement Road is approximately 80 acres. The average lot size in the Homestead Acres' subdivision is two acres. The average lot size in the Maple Acres' subdivision is five acres. The density of the proposed subdivision is one home per 11.40 acres. However, the proposed house sites are clustered to maximize the preservation of open space resulting in an average lot size per house of approximately four acres.
45. All lots within the proposed subdivision will be purchased subject to a covenant that requires that house exteriors shall blend into the surroundings and that homes will exhibit a traditional New England architectural style. As proposed by Horizon, the covenant requires that the proposed design and location of each house must be submitted for approval to an architectural control committee. However, the covenant provides that

upon failure of that committee to approve or disapprove of the proposed design and location within 30 days after submission of the proposed design, no approval is required.

46. In order to ensure that the design of residences will be aesthetically pleasing, the designs should be subject to approval by the architectural control committee. The covenant should provide that that committee must approve all designs prior to construction, without regard to whether action is taken to approve or disapprove a proposed design within 30 days.

Criteria 8(A) - Necessary Wildlife Habitat and Endangered Species and 9(L) - Rural Growth Areas.

47. The proposed subdivision is in the vicinity of three areas that have been identified by the Vermont Department of Fish and Wildlife as wintering areas for white-tailed deer. The southern portion of the 80-acre open space lot encompasses a portion of one of those areas, the North Hedgehog Hill deer wintering area. Deer wintering areas are a type of habitat that is critical to the survival of deer.
48. The boundaries of Lot #3 are within 300 feet of a portion of the North Hedgehog Hill deer wintering area that contains softwood cover. Softwood cover provides necessary shelter for deer during the winter months.
49. Human disturbance in a wintering area diminishes the value of the habitat for deer. To minimize the consequences of contact between people and wintering deer, there should be a buffer of at least 300 feet between all house locations within the subdivision and the deer wintering area.
50. The construction of residences may limit deer access to the wintering area through the developed portion of the project site. However, deer will still be able to access this wintering area from other directions.
51. Domestic dogs can harass and run-down deer. The presence of domestic dogs may diminish the value of a deer wintering area. Domestic dog activity must be restricted in order to ensure that dogs do not run free in either the residential area or the open space lot.
52. Human activities in the open space lot must be restricted in order to preserve the value of the deer wintering habitat which comprises a portion of the open space lot.

53. The lots will be sold subject to a protective covenant that provides that the common open space lot shall be used only for recreational purposes. The covenant prohibits the operation of any motorized vehicle in the open space lot. It also prohibits the placement of any structure on the open space lot without an affirmative vote of the members of the Homeowners Association. The placement of a structure on the open space lot would diminish the value of the deer wintering area within the open space lot because the use of a structure will create human disturbance.
54. In order to ensure that the portion of the deer wintering area that is within the open space lot will continue to provide necessary habitat for deer, any trails proposed for the open space area should first be reviewed and approved in writing by the Vermont Fish and Wildlife Department. This will minimize human disturbance in areas that are critical to the survival of deer.
55. The site is not in the vicinity of any area that provides critical habitat for black bears.

Criterion 9(A) - Impact of Growth.

56. The Town of Underhill has a duly adopted Capital Improvement Plan, dated March 15, 1989. The Capital Improvement Plan states that the Town is planning for a maximum growth rate of three percent per year.
57. The population of the Town, according to the 1990 U.S. Census, is 2,799. Population growth in the Town from 1981-1990 averaged 2.89 percent per year. The State of Vermont Office of Policy Research and Coordination has projected an annual growth rate for the Town of 1.57 percent for the decade of the 1990s.
58. The issuance of approximately 24 building permits per year would result in a approximate rate of growth of three percent per year. The issuance of 11 building permits for residences to be constructed in the proposed subdivision phased over four years at not more than three per 12-month period, will not place a burden on the ability of the Town or the region to accommodate growth.
59. The Capital Improvement Plan provides that, because all Capital road funds are earmarked to reconstruct roads and bridges that serve the existing population, there is no provision for upgrading low-use town roads for new development, or for adding new roads to the existing road network. The Capital Improvement Plan further provides

that all such projects will need to be funded by impact fees or undertaken by the developer.

50. Upgrades to English Settlement Road, beyond the installation of additional signs at the 90-degree curve and the one-lane bridge, will not be necessitated by the traffic from the subdivision. Increased traffic from the proposed project will result in only modest increases in the cost of snowplowing, sanding, grading and other maintenance activities on English Settlement Road.
51. Horizon will be responsible for the costs of the upgrade of Blakey Road, which, although it has not been maintained by the Town for many years, is an existing Town road. Once the upgrade of Blakey Road is completed, the Town will be responsible for the maintenance of Blakey Road from English Settlement Road through the subdivision.
52. The Town tax, as opposed to the separate school tax, is used for roads, solid waste and Town personnel. The Town tax generated annually from 11 homes, based on the Town tax rate of \$0.46/100 and 100 percent valuation, would range from approximately \$9,700 for homes with an average value of 194,000 to \$11,334 for homes with an average value of \$224,000.
63. The public works' budget for roads accounts for 53 percent of the Town budget. Therefore, based on an estimated value of \$194,000 per house, an estimated \$5,135 per year of the Town tax generated by the subdivision would be contributed to the Town budget for roads.
64. The length of Blakey Road will be approximately 3,000 feet. Maintenance of Town roads is estimated to cost \$1.20 per lineal foot per year. The expense to the Town for maintaining this section of Blakey Road will therefore be approximately \$3,600 per year. However, the Town receives State aid for Blakey Road of approximately \$780 per year which will reduce the costs to the Town to approximately \$2,800 per year.
55. The Town taxes generated by the project will exceed the combined costs to the Town for: (1) the maintenance of Blakey Road; and, (2) the modest increase in maintenance of English Settlement Road that will be attributable to traffic generated by the subdivision.

66. The reconstruction of Blakey Road to a width of between 20 and 24 feet will allow the Town to provide adequate municipal services to the subdivision.

Criterion 9(H) - Scattered Development

67. The tract is physically contiguous to Blakey Road and to the existing subdivisions of Maple Ridge and Homestead Acres.

Criterion 10 - Conformance with Regional or Local Plan.

68. Horizon filed its application for an Act 250 permit on February 20, 1990. The Underhill Town Plan in effect on that date had been adopted on March 15, 1989.
69. The Town Plan includes the following objectives:
1. To plan for the future growth and development of land (emphasis in original), so that the natural heritage of Underhill is maintained and the tax burden is not beyond the ability of the taxpayers to support Town services.
  2. To provide for adequate public services and utilities (emphasis in original), including roads, educational, municipal, solid waste and recreational facilities.
  3. To preserve the natural resources (emphasis in original) of the Town.
70. The Town Plan sets forth policies and programs to implement these objectives. With respect to Objective #1, the Town Plan recommends the adoption of certain initiatives including the following:
- 1.3 The Planning Commission should consider a policy of phasing in subdivisions.
71. With respect to Objective #2, the Town Plan provides as follows:

In addition to applying the current road policy of the Selectman (Appendix D), the following new policies and programs would be adopted in this Town Plan:

. . . .

2.3 Subdivision applicants seeking to build a sufficient number of housing units to significantly increase the use of Town roads beyond the existing levels would be asked to upgrade all such roads sufficiently to meet the increased use brought about by the subdivision.

. . . .

2.7 The Planning Commission should meet on regular intervals with the School Districts to review enrollment projections and plans for adapting educational facilities to meet the needs of the Town; the Underhill Capital Plan should serve as the reference for planning for growth in the Town.

72. With respect to Objective #3, the Town Plan provides:

3.2 The Planning Commission should ensure that subdivision of land does not infringe upon wildlife, wetlands, deer yards, stream beds, and rivers. It will preserve and conserve forests and wildlife habitat (including mammals, birds, fish and amphibians).

73. The Chittenden County Regional Plan entitled, "We Are Not the Last Generation" was adopted on December 22, 1986, and is currently in effect. The Regional Plan establishes land use classifications, which include "Rural Areas" and "Conservation Areas."

74. Section III of the Regional Plan describes "Rural Areas," in pertinent part, as follows:

Rural Areas include all lands not within Growth Units 1, 2 or 3, New Growth Units, Growth Centers, Regional Growth Center, Resource or Conservation Areas, Roadside Areas, Shoreline Areas, Industrial Areas, or Special Conservation Areas and which are generally close to existing communities, or are otherwise convenient to employment and shopping, have few apparent physical limitations for development, and can be developed consistent with the balance of this Plan and the land's capability, . . . . The purpose of Rural Areas is to provide for the development of housing to meet the needs of the Region's residents on land which are suitable for such development and conveniently accessible to Growth Units and new Growth Areas.

75. Section III of the Regional Plan defines "Conservation Areas," in pertinent part, as follows:

The Conservation Area includes areas of land generally of a size of five square miles or more which are essentially undeveloped and predominantly forested and generally do not have direct access to an improved public road, and are important for wildlife and wildlife habitat; and, in addition, have one or more of the following characteristics: they have potential for development; they are generally in excess of 1,000-foot elevation; they have a high probability of providing significant recharge to ground water supplies; or they include irreplaceable, limited or significant natural, recreational, scenic, historic, or other resources. . . . [T]he purpose of the Conservation Area is to protect this Region's backlands because they are valuable natural resources, including wildlife and wildlife habitat. In addition, there are ample lands available elsewhere which are more suitable for intensive development and which can be provided with governmental and public utility facilities and services are far lower cost. We recommend that those lands located within the Conservation Area not be developed until there is a public need for development and governmental and public utility facilities and services can be provided at reasonable cost. This Plan has delineated the Conservation Area based on the adopted Vermont Capability and Development Plan.

76. Section V(B)(II)(1) of the Regional Plan (page 182) provides:

Recognizing technology and change are a part of our society and in those limited instances where law required a development proposed to be consistent with this regional Plan and a specific development proposal is outside an area recommended for that type of proposal, the Commission establishes the following magnitudes of development standards for its review in an effort to expedite consideration of development (emphasis in original):

1. Residential Development: Applications for development of a residential project proposing a number of dwelling units equal to one percent of the population of the community based on the 1970 Census. See

table, p. 186, Magnitude of Development Standards.

. . .

Development of a lesser magnitude than these standards and outside an area recommended for that type of development will be deemed consistent with this Plan.

77. The "Magnitude of Development Standards" table establishes 12 as a threshold number of dwelling units for the Town. Therefore, according to the Regional Plan, a development proposal for construction in the Town of fewer than 12 dwelling units is deemed consistent with the Regional Plan.

#### IV. CONCLUSIONS OF LAW

##### Criterion 5 - Traffic Safety and Consetion.

10 V.S.A. § 6086(a)(5) provides that, prior to issuing a permit, the Board must find that the proposed project "[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways ...." The Board may not deny a permit under Criterion 5, but may issue conditions to alleviate any burdens created by the proposed project. The burden of proof under this criteria is on the opponents of a project. 10 V.S.A. § 6088(b).

The opponents contend that there are four principal areas of concern with respect to traffic safety: generally unsafe conditions of travel on English Settlement Road during winter and spring months; the YO-degree turn on English Settlement Road; the one-lane bridge on English Settlement Road; and an insufficient right-of-way and an inadequate upgrade of Blakey Road. The Board believes that the Town and the English Settlement Neighbors have not proven that the proposed subdivision will create unsafe conditions with respect to any of these four areas of concern, provided that the conditions imposed by this decision are met.

##### Seasonal Conditions on English Settlement Road.

The Board concludes that, while the proposed project will increase the number of vehicle trips per day on English Settlement Road, the volume of traffic on English Settlement Road after completion of the project will still be small. This small volume of traffic will not cause or exacerbate congestion or unsafe road conditions on English Settlement Road.

The 90-degree Turn.

The Board concludes that with the installation of 20 MPH speed advisory signs and a directional arrow sign, as recommended by Horizon, the increased vehicle trips per day that will be generated by the project will not cause or exacerbate congestion or unsafe traffic conditions at the 90-degree turn on English Settlement Road. There is an adequate road width of 23 feet at the curve and sight distances of 125 feet from both directions, which are adequate for vehicles traveling at 20 miles per hour. Furthermore, the Town can clear additional vegetation in the right-of-way in order to improve sight distances at the curve.

The One-lane Bridge.

The Board concludes that with the installation of Warning and yield signs at the approaches to the bridge, the increased use of the bridge by vehicles from the subdivision will not cause or exacerbate congestion or unsafe conditions at the bridge. The capacity of the one-lane bridge is far in excess of the total vehicle trips per day that will be generated by the three residences to which the bridge currently provides access, combined with the 11 new residences. Sight distances at both approaches to the bridge are more than adequate. The previous addition of guardrails and signs at the approach to the bridge have enhanced the safety of the bridge. The addition of signs at the approaches to the bridge, as recommended by Dr. Oppenlander, will further enhance safety at the bridge.

Blakey Road.

The Town argues that the Town road policy requires that any newly constructed or reconstructed town roads have a 60-foot right-of-way and that individual driveways meet certain minimum requirements for width and slope. However, there is no evidence that failure to conform with the Town road policy standards in these respects will cause unsafe conditions or unreasonable congestion on Blakey Road. Criterion 5 does not require conformance with standards contained in the Town road policy.

Horizon has submitted an upgrade plan that calls for construction of Blakey Road to conform to A-21 standards, except with respect to road width. The road upgrade plan submitted by Horizon shows the construction of a 20-foot roadway width; the A-21 standard provides for a 24-foot width.

The Board recognizes that it may be impossible for Horizon to comply with the A-21 road width standard. However, the Board believes that in order to minimize the possibility of unsafe conditions on Blakey Road, it should be constructed

to a width of more than 20 feet, wherever possible. The upgrade plans submitted by Horizon are not detailed enough for the Board to determine whether it is possible for Horizon to construct Blakey Road to a width of more than the proposed 20 feet. Therefore, prior to the sale of any of the lots or the commencement of construction, Horizon shall submit to the Board final plans for the upgrade of Blakey Road showing a travelled roadway width of 24 feet. If Horizon is physically unable to construct a 24-foot roadway in the existing 33-foot right-of-way, it should submit plans showing construction of the maximum possible roadway width within the 33-foot right-of-way, but no less than 20 feet.

Criterion 6 - Educational Services.

Prior to issuing an Act 250 permit, the Board must find that a proposed project will not cause an unreasonable burden on the ability of a municipality to provide educational services. 10 V.S.A. § 6086(a)(6). The burden of showing an unreasonable burden under this criterion is on the opponent of a project. 10 V.S.A. § 6088(b). A permit may not be denied under Criterion 6, but the Board may impose conditions to alleviate any burden created by the proposed project. 10 V.S.A. § 6087(b). The Board concludes that the proposed subdivision will not create an unreasonable burden on the Town's ability to provide educational services provided that the construction of residences in the subdivision is phased over a four-year period.

Horizon and the Town agree that the estimated annual operating costs attributable to the estimated eight students per year that will be generated by the proposed subdivision is approximately \$26,600. Horizon contends that the capital costs of the planned addition to the elementary school that will be attributable to the proposed subdivision is \$9,965. The Town argues that the projected capital costs attributable to the eight students are approximately \$13,600.

With respect to tax revenues, Horizon contends that the estimated property tax revenues that will be generated for educational purposes by the proposed subdivision at the 1991 tax rate would be \$3,298 per house per year based on an assumed fair market value of \$224,000 per house. The Town argues that a more realistic value for the homes that will be constructed at the site is approximately \$194,000. The Town estimates that projected school tax revenues from the project when it is completed will be approximately \$27,000 per year. Therefore, the Town argues that while tax revenues will be sufficient to cover operating costs attributable to the project, tax revenues will not cover the estimated \$13,600 in capital costs attributable to the project. The Town argues that payment of approximately \$13,600 per year will result in the imposition on an unreasonable additional tax burden on the

732 residential units in the Underhill Central School District. The Town has not presented any evidence regarding the appropriateness of the imposition of an impact fee for the subdivision.

The Board finds the Town's projections with respect to tax revenues based on the lower projected fair market value to be more credible than the fair market value of the homes estimated by Horizon. It therefore concludes that the subdivision is likely to create an additional tax burden of approximately \$19 per residential unit in the school district (\$13,600/732).

In addition to this financial burden, the Board believes that if all of the projected number of students from the subdivision were to enter the elementary school within one year of the issuance of a permit, this would impose a burden on the practical ability of the Town to provide physical space in the existing school facility, given the already crowded conditions of the elementary school.

In order to alleviate both the financial and practical burden on the Town's ability to provide educational services, the Board will require that the project be phased to allow for construction of no more than three residences per year following issuance of this permit. The burden on the Town's ability to provide educational services will not be unreasonable if construction is phased in this manner.

Criterion 8 - Aesthetics, Scenic or Natural Beauty or Rare and Irreplaceable Natural Areas.

10 V.S.A. § 6086(a)(8) requires that, prior to issuing a permit, the Board find that the project "[w]ill not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, . . . or rare and irreplaceable natural areas." The Board uses a two-part test to determine whether a project meets Criterion 8. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. Re: Quechee Lakes Corn Application #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-19 (Nov. 4, 1985). The burden of proof under the Criterion is on the opponents of a project. 10 V.S.A. § 6088(b).

1. Adverse Effect.

In considering whether a project will have an adverse effect on aesthetics and scenic beauty, the Board looks at whether a proposed project will be in harmony with its surroundings and will "fit within the context within which it

will be located." In making this determination, the Board considers the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the colors and materials proposed for the project, the locations from which the project can be viewed, and the potential impact of the project on open space." Quechee, supra, at 18.

The existing context of the proposed subdivision is a rural area in the scenic foothills of Mount Mansfield. The site is adjacent to residential development along English Settlement Road and the subdivisions of Maple Ridge and Homestead Acres. The Board believes that the creation of an 11-lot subdivision is not out of context with the surrounding area.

The development will have architectural controls and protective covenants designed to insure that the homes will be aesthetically pleasing and of suitable colors and materials. Some of the residences constructed in the subdivision will be visible from Poker Hill Road, English Settlement Road and a number of other locations, but visibility will not create an adverse impact provided that the residences are built as the locations shown on the engineering plans and in accordance with the covenants.

As the Board has previously held:

Criterion #8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever. Change must and will come, and Criterion #8 will not be an impediment. Criterion #8 was intended to ensure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont.

Re: Okemo Mountain, Inc., #25051-8-EB, Findings Of Fact, Conclusions of Law, and Order at 9 (Dec. 18, 1986).

The Board's conclusion is based, in part, on the restriction contained in the proposed covenants regarding the structures that may be constructed on the residential lots. The Board will therefore incorporate the covenants as a condition of the permit. Furthermore, the Board believes that in order to insure that the architectural control committee referred to in the covenants does approve all designs, it will require Horizon to revise the covenant which provides that if

the architectural control committee fails to act within 30 days, then approval is not required. Rather, approval or disapproval by the architectural control committee will be necessary in every instance and the covenants must so state. This will ensure that the structures that are constructed are aesthetically pleasing and of suitable colors and materials.

With respect to open space, the residential lots will be clustered on a 45-acre portion of the tract which is currently open space. The project therefore will have an adverse impact on open space.

2. Undue Adverse Effect.

In evaluating whether an adverse effect is undue, the Board analyzes the following three factors and concludes that a project has an undue adverse effect if it reaches a positive conclusion with respect to any one of these factors:

- a. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
- b. Does the project violate a clear, written community standard intended to present the aesthetics or scenic beauty of the area?
- c. Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings?

As to the first question, the Board concludes that the project will not offend the sensibilities of the average person. Although the project will diminish the open space at the project location, it will not do so to a degree that can be considered offensive or shocking.

With regard to the second question, the Town Plan and Regional Plan provide written community standards intended to preserve the scenic beauty of the area. However, as discussed below under the discussion of Criterion 10, the Board concludes that the project is in conformance with the Town and Regional Plans.

As to the third question, the Board believes that by clustering the residential lots on a 45-acre portion of the site, and by creating an 80-acre open space lot, Horizon has taken generally available mitigating steps to improve the harmony of the project with its surroundings. Accordingly, the Board concludes that the project meets Criterion 8.

**Criterion 8(A) - Necessary Wildlife Habitat.**

Under 10 V.S.A. § 6086(a)(8)(A), a permit will not be issued if any party opposing an application demonstrates that the project will destroy or imperil necessary wildlife habitat or any endangered species, and:

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species, or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied, or

(iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

10 V.S.A. § 6086(a) (8) (A).

"Necessary wildlife habitat" is defined at 10 V.S.A. § 6001(12) as "concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods." The Vermont Supreme Court upheld the Environmental Board's application of this definition to deer wintering areas in In Re Southview Associates, 153 Vt. 171, 175-78 (1989).

The Underhill Conservation Commission and the Town contend that the project contains necessary wildlife habitat for both deer and black bear and that the habitat will be imperiled by the project. Horizon does not dispute the existence of a deer wintering area on the project site or that the deer wintering area is "necessary wildlife habitat."

**However**, it argues that the project will not destroy or imperil the habitat.

The Board concludes that the project site contains necessary deer habitat. The North Hedgehog Hill deer wintering area, which has been mapped by the State as a designated deer wintering area, is "necessary wildlife habitat" within the meaning of this criterion. However, the Town and the Underhill Conservation Commission have not proven that the project will destroy or significantly imperil the deer habitat. With respect to black bear habitat, there is no evidence that the project site contains any habitat decisive to the survival of black bear.

The Board concludes that development of the approximately 45 acres that will comprise the house sites will not imperil this "necessary wildlife habitat" for deer provided that a 300-foot buffer is maintained between all house locations and the wintering area. As proposed by Horizon, the boundaries of Lot #3 will fall within 300 feet of the North Hedgehog Hill deer wintering area. Therefore, the Board will impose a condition that no house or other building may be constructed on Lot #3 within 300 feet of the edge of the softwood cover that is part of the deer wintering area.

The southern end of the approximately 80 acres that will be designated as open space encompasses part of the North Hedgehog Hill deer wintering area. However, the Board believes that because the 80-acre portion of the project site will remain as open space that the habitat will not be imperiled provided that certain conditions are met. The Board will require that: 1) no structure may be constructed or placed in the open space area; 2) that domestic dog activity be restricted; and, 3) that any trails proposed for the open space first be subject to review and approval of the Fish and Wildlife Department.

Criterion 9(A) - Impact of Growth.

Criterion 9(A) provides:

In considering an application, the district commission of the board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate

of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision.

10 V.S.A. § 6086(a)(9)(A).

If a town has a duly adopted capital improvement plan, the burden of proof under this criterion is on an applicant to prove that the proposed development will not significantly affect existing or potential financial capacity of the town and region to accommodate growth. 10 V.S.A. § 6086(a)(9)(A). The Town contends that the proposed subdivision will significantly affect the financial ability of the Town to accommodate growth because of the costs for education and road construction, road maintenance, and fire and emergency services that the project will generate.

With respect to education, the Board has discussed the financial impact of the project above under Criterion 6. For the reasons noted, the Board concludes that, if the project is phased to allow for the construction of no more than three residences per year, it will not significantly affect the financial capacity of the Town to reasonably accommodate the growth generated by this project with respect to education.

With respect to highway access and maintenance, the Town contends that the growth generated by the proposed subdivision will significantly increase highway maintenance costs for English Settlement Road and Blakey Road. As noted above under Criterion 5, the Board believes that the project will not necessitate upgrading of English Settlement Road. Reconstruction of Blakey Road will be paid for by Horizon and, therefore, is not a financial burden on the Town. With respect to both English Settlement Road and Blakey Road, the Board concludes Horizon has met its burden of proving that tax revenues from the project will adequately compensate the Town for routine maintenance costs for Blakey Road and for additional maintenance services for English Settlement road.

The Board concludes that Horizon has met its burden of proving that the subdivision and the proposed construction of 11 housing units at this location will not significantly affect the existing and potential financial capacity of the

Town and the region to accommodate both total growth and the rate of growth, provided that the project conforms to the conditions imposed by this decision with respect to Criterion 6.

Criterion 9(H) - Costs of Scattered Development.

10 V.S.A. § 6086(a)(9)(H) provides:

The district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.

The Board concludes that the proposed subdivision is physically contiguous to the existing Maple Ridge and Homestead Acres subdivisions. Therefore, it will not balance the additional costs of public services and facilities against the tax revenue and other benefits of the project as called **for** under this criterion if a project is not physically contiguous to an existing settlement.

Criterion 9(L) - Rural Growth Areas.

10 V.S.A. § 6086(a)(9)(L) provides:

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

on the cost of roads, utilities and land usage.

Further, 10 V.S.A. § 6001(16) provides:

"Rural growth areas" means lands which are not natural resources referred to in section 6086(a)(1)(A) through (F), section 6086(a)(8)(A) and section 6086(a)(9)(B), (C), (D), (E), and (K) of this title.

The Board has previously concluded that to be a rural growth area, the area must be predominantly rural in character and be an area in which the resources referenced in 10 V.S.A. § 6001(16) are absent. Re: New England Ventures, Memorandum of Decision at 3 (Dec. 6, 1991). Since the Board has concluded that the project site contains necessary wildlife habitat, the Board concludes that the project site is not a rural growth area. Re: Luce Hill Partnershin, Application #5L1055-EB, Findings of Fact, Conclusions of Law, and Order at 13 (July 7, 1992).

Criterion 9(K) - Public Investments and Facilities.

10 V.S.A. 6086(9)(K) provides that:

A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited, to highways, . . . when it is demonstrated that ... the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, services or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, of the public's use or enjoyment of or access to the facility, service or lands.

Under this criterion, the inquiry into traffic safety involves a higher threshold of material jeopardy or material interference than that considered under Criterion 5. In contrast to Criterion 5, a proposed project may be denied a permit under this criterion. Re: Swain Development Corp., #3W0445-2-EB, Findings of Fact, Conclusions of Law, and Order at 34 (August 10, 1990). The burden of proof under Criterion 3(K) is on an applicant. 10 V.S.A. § 6088(b).

The Board concludes that the proposed subdivision, as conditioned by this decision, will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of, or access to English Settlement Road, as discussed above under Criterion 5.

The traffic added by the development will not increase traffic volumes above the levels which can be accommodated by English Settlement Road. Major improvements to that road will not be required as a result of the additional traffic generated by the subdivision. The major improvements required for the upgrade of Blakey Road will be made at Horizon's expense and therefore will not have an impact on any public investment in this road.

Criterion 10 - Conformance with Regional or Local Plans.

Prior to issuing a permit, the Board must find that the proposed project "is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24." 10 V.S.A. § 6086(a)(10). The burden of proof under this Criterion is on an applicant. 10 V.S.A. § 6088(a).

10 V.S.A. § 4348(h) provides that in Act 250 proceedings:

(1) [T]he provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;

2) to the extent such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact.

In keeping with this statutory requirement, the Board determines whether a proposed project is in conformance with both the local and regional plans unless there is a conflict between the plans; in which case, the regional plan controls if the project has regional impacts. Re: Richard and Deborah Provencher, #8B0389-EB, Findings of Fact, Conclusions of Law, and Order at 13 (Oct. 19, 1988). There are no conflicts between the Town Plan and the Regional Plan at issue here.

Projects are reviewed for conformance with the plans in effect on the date a complete application is filed. In re Raymond F. Ross, 151 Vt. 54 (1989). The Town Plan that was in effect on February 20, 1990, the date that Horizon filed its application for the proposed project, is the plan dated March 15, 1989.

Town Plan.

The Town contends that the project is not in keeping with the overall objectives of the Town Plan and the policies and programs identified in the Town Plan as means to implement these objectives.

With respect to the general objectives of the Plan, the Board finds that this project is in conformance with those objectives. The Board believes that the project maintains the natural heritage and scenic beauty of the Town and does not impose a tax burden for services beyond the ability of the taxpayers to support. The proposed subdivision does not impair the ability of the Town to provide adequate public services and utilities or to preserve the natural resources of the Town.

With respect to the policies and programs designed to implement these objectives, the Board finds that the project, as conditioned by this decision, requires phasing and therefore conforms with Section 1.3 of the Plan.

With respect to Section 2.3 of the Plan, which requires that applicants seeking to build housing units that will significantly increase road use upgrade all roads to meet the increased use, as discussed above under Criteria 5 and 9(K), the Board finds that Blakey Road will be upgraded to meet the increased use and that the increased use of English Settlement Road attributable to this subdivision will not necessitate an upgrade.

With respect to Section 2.7 of the Plan, which concerns educational facilities, the Board believes that section lacks specific standards against which to assess conformance. The Board cannot conclude, as the Town argues, that the project is not in conformance with that provision which calls only for the regular review of enrollment projections and plans and the use of the Underhill Capital Plan as "reference for planning for growth." That standard is too vague for the Board to make a determination that the project is not in conformance with this section.

With respect to Section 3.2, which provides that the Planning Commission should ensure that subdivision of land does not infringe upon wildlife and deeryards, as discussed above under Criterion 8(A), the Board believes that the project, as conditioned by this decision, does not infringe upon wildlife and deeryards. The definition of the word "infringe" is "to go beyond the boundaries or limits of." The American Heritage Dictionary of the English Language at 675. The Board believes that the term "infringe upon" in the

Town Plan calls for a higher level of protection of deeryards than Criterion 8(A), which requires an opponent of a project to prove that a project will destroy or significantly imperil necessary wildlife habitat. Nevertheless, it concludes that, because of the requirement for a 300-foot buffer zone, restrictions on domestic dogs, and the preservation of the open space area, the subdivision will not intrude beyond the boundaries or limits of the mapped deeryards in the vicinity of the subdivision. The conditions imposed under Criterion 8(A) are also conditions of approval under Criterion 10. Therefore, the subdivision will not "infringe upon" the deeryard.

The Town argues that the Subdivision Regulations, Zoning Ordinances, and the Town Road Policy all have been adopted as a means of implementing the Town Plan and that the specific and detailed requirements of each of these documents must therefore be met in order to satisfy Criterion 10. The Board does not believe that Criterion 10 requires that in order to determine whether a project conforms to a Town Plan, the Board must make a determination with respect to the detailed requirements of all ordinances, regulations and policies adopted in furtherance of a Plan. The Board therefore declines to make findings **with respect** to the conformance of the proposed subdivision with those standards. It does conclude that the proposed subdivision, as conditioned, is in conformance with the relevant provisions of the Town Plan dated March 15, 1989.

#### Regional Plan.

The Regional Planning Commission and the Town contend that the project is in a designated Conservation Area and therefore does not conform to the Regional Plan. The Applicant contends that the proposed subdivision is in a "Rural Area" based on the characteristics of "Rural Areas" set forth in the Plan.

The Board finds it unnecessary to resolve the issue of whether the area of the proposed subdivision is a "Conservation Area" in which development would be prohibited because it finds that the creation of fewer than 12 lots in a Conservation Area is allowed under Section V(B)(II)(1) of the Regional Plan (p. 182). That provision provides a specific exemption for projects that are of less than specified magnitudes. It states that residential development in the Town of Underhill in an area otherwise not within an area recommended for development is deemed consistent with the Regional Plan if the development is for 12 or fewer units. On this basis, the Board concludes that the proposed project is in conformance with the Regional Plan.

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V. O R D E R

1. Land Use Permit #4C0841-EB is hereby issued.
2. Jurisdiction over this matter shall remain with the Environmental Board, pending the satisfaction of Condition #19 of the Permit relating to plans for the upgrade of Blakey Road.

Dated at Montpelier, Vermont, this 21st day of August, 1992.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair  
Ferdinand Bongartz

Terry Ehrich  
Lixi Fortna  
Arthur Gibb  
Samuel Lloyd

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