

AN ACT 250 PERMIT IS REQUIRED:

YES

NO

BASIS FOR DECISION:

For purposes of Act 250, Middlebury College is an existing, permitted development.

Act 250 Rule 34(A) states that, “A permit amendment shall be required for any material change to a permitted development.” The Vermont Supreme Court has adopted a two-part test for determining when a proposed project constitutes a material change: (a) whether the proposed project will make a cognizable change (physical change or change in use); and (b) whether that change has a significant impact on any finding, conclusion, term or condition of the project’s permit, or may have an adverse effect under one or more Act 250 criteria. It is clear that the Munroe Hall project proposes physical changes, so the question is whether those changes *may* have an adverse effect under one or more Act 250 criteria – an adverse impact doesn’t necessarily have to result from a project, but the mere possibility of one is what part 2 of this test looks at.

As noted above, the Vermont Division for Historic Preservation reviewed the project under Act 250 Criterion 8 and concluded that the project will result in an “Adverse Effect not Undue on historic sites.” It should also be noted that there are only two ways in which DHP review of a project is triggered: (1) energy projects that require a Section 248 Certificate of Public Good (CPG) from the Public Utility Commission and (2) land use projects either requiring a new Act 250 permit or an amendment to an existing Act 250 permit.

Taken together, the need for a WW permit and DHP approval inherently imply the potential for adverse effects under Criteria 1B (Waste Disposal) and 8 (Historic Sites) – and in one instance an adverse effect was indeed identified. Given that the project presents potential adverse impacts under Criteria 1B and 8, the project as proposed constitutes a “material change to a permitted development” pursuant to Act 250 Rule 34(A) and therefore an Act 250 permit is required.

Dated at Montpelier, Vermont this 9th day of July 2019.



BY: _____

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This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) 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 (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must 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.