

Project Review Sheet

Date Initiated	<input type="text" value="4/20/2020"/>	ANR PIN#	<input type="text" value="SJ07-0061"/>	WW Project#	<input type="text" value="WW-7-2120-1"/>	Pre-application Review	<input type="checkbox"/>
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Project Information

General Information

PROJECT NAME (if applicable)	PROJECT TOWN Burke
PROJECT LOCATION (911 address if available) 135 Sweetwater Ln.	SPAN(S) (if available) 111-034-10262, 111-034-10936

Contact(s)

CONTACT TYPE Applicant	NAME David & Karen Kennedy	ORGANIZATION NAME (if applicable)		
ADDRESS 135 Sweetwater Ln.		TOWN East Burke	STATE VT	ZIP 05832
PHONE 802-274-8500	CELL PHONE	EMAIL dkennedyvt@gmail.com		
CONTACT TYPE Applicant	NAME John & Jean Davis	ORGANIZATION NAME (if applicable) John E. Davis Sr and Jean Z. Davis Revocable Family Trust		
ADDRESS 268 Sweetwater Ln.		TOWN East Burke	STATE VT	ZIP 05832
PHONE	CELL PHONE	EMAIL		
CONTACT TYPE Consultant	NAME Philo Marcotte	ORGANIZATION NAME (if applicable) Earth Surveys, LLC		
ADDRESS 215 Rockledge Ln.		TOWN Barnet	STATE VT	ZIP 05821
PHONE 802-473-0204	CELL PHONE	EMAIL earthsurveysllc@gmail.com		

Project Description

ENTERED BY Peter Kopsco	INFORMATION SOURCE Wastewater System & Potable Water Supply	DATE ENTERED
PROJECT DESCRIPTION Divide 48.33 acre lot A into two lots. Lot A will now be 41.23 acres with an existing three bedroom single family residence. Lot C: will be 7.1 acres merged with 1 acre lot D with an existing three bedroom single family residence plus a new yoga studio (2 instructors. 22 patrons) and a one bedroom apartment.		

ENTERED BY Kirsten Sultan	INFORMATION SOURCE Individual	DATE ENTERED
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PROJECT DESCRIPTION
As identified by David Kennedy in communications with Kirsten Sultan:

David and Karen Kennedy, husband and wife, own and occupy a single family residence on Lot D (1 acre), which adjoins Lot C (7.1 acres). They took ownership of Lot C in around 2011 when a town permit was obtained for the present subdivision; they now own total 8.1 acres (Lot C-D) where the commercial yoga studio with apartment will be constructed.

Lots A, C, and D are accessed, and will continue to be accessed, via the private right of way, located through Lot A, C, and D, where an existing shared private access road (Sweetwater Lane) is located. David and Karen Kennedy use Sweetwater Lane, where located across Lot A (owned by John E. Davis Sr and Jean Z. Davis Revocable Family Trust, the "Trust") to access their 8 acres of land. John and Jean Davis use Sweetwater Lane to access their residence on Lot A. The location of Sweetwater Lane, through Lot A, C, and D is depicted as "approximate centerline of drive" on a plan titled "Sketch of Lands of Kennedy and Davis, April 2020" by Earth Surveys LLC, filed in support of pending permit WW-7-2120.

The commercial yoga studio will be a detached structure, to include the one bedroom apartment, with exterior business signage, and has been designed for up to 22 patrons. Karen Kennedy teaches yoga and will be the primary instructor.

Karen Kennedy is the daughter of John and Jean Davis, and one of four adult beneficiaries of the Trust. The Trust is controlled by John and Jean Davis.

Also:

The Town of Burke has adopted permanent zoning and subdivision bylaws and is a so-called "10 acre town" for purpose of determining Act 250 jurisdiction.

There are no other known lots created by David and Karen Kennedy, or the Trust, in the NEK (Act 250 District 7) in the last 5 years.

DEC Prior Permits	
PERMIT TYPE Wastewater System & Potable Water Supply	PERMIT NUMBER WW-7-2120

*Jurisdictional Opinion(s) for permits that may be needed from the District Environmental Office **PRIOR TO COMMENCEMENT OF CONSTRUCTION***

Act 250 Jurisdictional Opinion

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Effective May 31, 2016, 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.

PERSON REQUESTING JURISDICTIONAL OPINION Pete Kopsco	REQUESTOR TYPE Permit Specialist	ACT 250 PERMIT NUMBER (if any) None identified	HAS THE LANDOWNER SUBDIVIDED BEFORE? <input type="checkbox"/> Yes <input type="checkbox"/> No
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TYPE OF PROJECT (check all that apply)					
<input checked="" type="checkbox"/> Commercial	<input checked="" type="checkbox"/> Residential	<input type="checkbox"/> Agricultural	<input type="checkbox"/> Municipal	<input type="checkbox"/> State	<input type="checkbox"/> Federal

IS AN ACT 250 PERMIT REQUIRED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	COPIES SENT TO STATUTORY PARTIES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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BASIS FOR DECISION

Rule 2(C)(1)(a) "Person" means: (a) For the purposes of a "development," person means an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership; a municipality or state agency; and, individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the "development" of land.

Rule 2(C)(5) "Involved land" includes: (a) The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction.

Rule 2(C)(12) "Tract of land" means one or more physically contiguous parcels of land owned or controlled by the same person or persons.

Rule 2(C)(17): "Home occupation," solely for purposes of Rule 2(C)(3), means the use, by a resident, of a minor portion of the residence, including ancillary buildings, for an occupation or business:

- (a) that is customary in residential areas; and
- (b) that does not have a potential for significant impact under the criteria of 10 V.S.A. §§ 6086(a)(1) through (10).

10 V.S.A. § 6001(3)(A)(i) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes in a municipality that has adopted permanent zoning and subdivision bylaws.

Jurisdictional Analysis:

David and Karen Kennedy, and the John E. Davis Sr and Jean Z. Davis Revocable Family Trust (the "Trust"), may qualify as a "Person" in that Karen has a close family relationship to the Trust and is a beneficiary of the Trust. Regardless, even if not the same Person, David and Karen Kennedy own a controlling interest in a right of way (ROW) across the Trust's 40+ acre tract, which will be used for their commercial project, i.e. the yoga studio with apartment (the "Project"); as such, Lot A (40.3 acres, owned by the Trust, with ROW owned by David and Karen Kennedy, to be used for the Project) and Lot C-D (8.1 acres) are involved land and comprise the Project tract, total 48+ acres. Construction of improvements involving more than 10 acres of land, for a commercial purpose, is a "development" subject to Act 250 jurisdiction pursuant to 10 V.S.A. § 6001(3)(A)(i), therefore an Act 250 permit is required for the Project.

It is noted that the Project involves clientele parking area(s) which will generate stormwater runoff (Act 250 Criterion 1B), will generate vehicle traffic corresponding to clientele (and staff?) traveling to and from the Project site for yoga classes (hence impacts under Criterion 5 traffic); impacts attributable to the exterior signage (Criterion 8, aesthetics), energy conservation (Criterion 9F) and consideration of Town Plan conformance (Criterion 10); as such, the Project has potential for significant impact under the criteria of 10 V.S.A. §§ 6086(a)(1) through (10), and thus does not qualify as a "Home Occupation" as defined in Rule 2C(17).

Also, if and when an Act 250 application is filed for the Project, David and Karen Kennedy can request waiver of co-applicancy of the Trust as tract landowner, supported by a demonstration of their control of the ROW; also, such application can request a Stonbybrook determination that the Project is Lot C-D (8.1 acres) plus the ROW (portion of Trust land) owned by David and Karen Kennedy; if so requested, and granted by the Commission upon review of such application, the balance of the Trust's land would not be subject to Act 250 regulation.

Concerning the subdivision component of the project, there being no other known lot creation attributable to David and Karen Kennedy and the Trust, in the last 5 years, in the NEK, the project is not a "subdivision" as defined by Act 250, pursuant to 10 V.S.A. § 6001(19).

DISTRICT COORDINATOR SIGNATURE



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Kirsten Sultan, P.E., District Coordinator



[phone] 802-751-0126 [email] kirsten.sultan@vermont.gov

Natural Resources Board

District 7 Environmental Commission
374 Emerson Falls Road, Suite 4, St. Johnsbury, VT 05819

Wastewater System & Potable Water Supply Permit Jurisdictional Opinion

IS A WASTEWATER SYSTEM & POTABLE WATER SUPPLY PERMIT/APPROVAL REQUIRED?

- Yes
- Permit application currently under review
- No
- Permit issued on _____

The following are preliminary, non-binding determinations made by DEC Permit Specialists identifying other permits that may be needed
PRIOR TO COMMENCEMENT OF CONSTRUCTION

SPECIAL WETLANDS DISCLAIMER

A desktop review cannot definitively confirm the presence or absence of a wetland in or within fifty feet of your project site. This review sheet is the result of a desktop review that included reviewing the project site with these mapping tools available at <https://anr.vermont.gov/maps>. Many wetlands do not appear on these maps. You are advised to review the site on the ground for wetlands, regardless of whether this box is checked or not (<https://dec.vermont.gov/watershed/wetlands/what/guide>). To confirm the presence/absence of wetlands, contact a qualified environmental consultant (<https://dec.vermont.gov/watershed/wetlands/what/id/wetland-consultant-list>) or the State Wetlands Program (<https://dec.vermont.gov/watershed/wetlands>).

Preliminary, Non-binding Determination of the Applicability of Other State Permits

Note: Fact Sheet numbers below refer to permit fact sheets available at: <http://dec.vermont.gov/permits/handbook/info-sheets>

Department of Public Safety

- Construction Permit Fire Prevention, Electrical, Plumbing, Accessibility (ADA) [Fact Sheets #49, 50, 50.1, & 50.2]
- Barre: 802-479-4434

Vermont Energy Code Assistance Center

Vermont Building Energy Standards [Fact Sheet #47.2]Contact: [Kelly Launder](#)Email: kelly.launder@vermont.gov

Phone: 802-828-4039

Local Permits See your Town Clerk, Zoning Administrator, Planning Commission or Public Works

PERMIT SPECIALIST SIGNATURE



2020.04.20

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Peter Kopsco, Permit Specialist[phone] 802-505-5367 [email] pete.kopsco@vermont.gov**Department of Environmental Conservation**

Environmental Assistance Office

1 National Life Drive, Main 2, Montpelier, VT 05620-3804