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STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT ENVIRONMENTAL COMMISSION #5

RE: The Trust for Public Land
3 Shipman Place
Montpelier Vermont 05602
and
Angeles A. Zorzi
367 Barre Street
Montpelier Vermont 05602
and
Antonio & Virginia Aja
1206 Oak Leaf Boulevard
Bradenton Florida 34208

Application #5W1509
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER
10 V.S.A., §§ 6001 - 6093

I. INTRODUCTION

On March 20, 2009, The Trust for Public Land, Angeles A. Zorzi and Antonio and Virginia Aja filed an application for an Act 250 permit for a project generally described as a request for a partial review of a master plan proposal involving the construction of 145 residential units and 8,000 square feet of commercial space, with related infrastructure, on a 100 acre tract known as "Sabin's Pasture" and located off Barre Street in the City of Montpelier. The tract of land consists of 100± acres with 100± acres involved in the project area. Co-applicants Zorzi and Aja's legal interests are ownership in fee simple described in a deed recorded in the land records of the City of Montpelier, Vermont.

II. JURISDICTION

Jurisdiction attaches to this project pursuant to the provisions of 10 V.S.A. 6001(3)(A)(i) and (iv).

III. PARTY STATUS

A. Party Status Determinations

Parties to this application who attended the hearings are:

1. The Applicants by Rodger Krussman, Peter Richardson, Michael Wisniewski, Roger Dickinson and Dave Grayck, Esq.

2. The City of Montpelier by Mayor Mary Hooper

3. The City of Montpelier Planning Commission by Gwendolyn Hallsmith and Clancy Desmet

4. The Central Vermont Regional Planning Commission by Chris Walsh

The following persons were admitted as provisional parties pursuant to 10 V.S.A. §6085(c)(1)(E), as discussed in more detail in the District Commission's Pre-Hearing Conference Report dated April 27, 2009*

5. Philip K. and Frances G. Dodd were granted status under criteria 5, 8 (aesthetics) and 10 (City plan).

6. June E. Bascom was granted status under criteria 5, 8 (aesthetics) and 10 (City plan).

7. Paul Carnahan was granted status under criterion 5.

8. Elliot Seigle was granted status under criterion 8 (aesthetics).

9. Kathryn Provost was granted status under criteria 5 and 8 (aesthetics).

10. Valerie Lewis was granted status under criteria 5 and 8 (aesthetics).

11. David and Kimberly Kidney were granted status under criteria 5, 8 (aesthetics) and 10 (City plan).

12. Peter and Mary Beth Watt were granted status under criteria 5, 8 (aesthetics) and 10 (City plan).

13. Donna Ackerman was granted status under criteria 5 and 8 (aesthetics)

14. Friends of Sabin's Pasture, by Stephanie Kaplan, Esq., was admitted under criteria 5, 8 (aesthetics only) and 10 (city plan)

B. Final Party Status Determinations

Pursuant to 10 V.S.A. §6085(c)(6) and Board Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. Prior to the completion of deliberations, the District Commission re-examined the preliminary party status determinations and found that the parties continue to qualify under the relevant criteria as stated above except as follows:

*For all of the party status rulings that follow the District Commission concluded that none of the persons demonstrated an affected particularized interest under criterion 9(K) because there is no existing public investment on the project tract and that inadequate showings were made relative to a particularized interest with respect to participation under criterion 10 for the regional plan. Should a public investment be made in the project tract prior to the filing of future amendment applications for the review of the actual proposed construction of improvements on the tract, party status requests may then be made under criterion 9(K) for consideration by the District Commission. Similarly, requests for party status may also be made at that time under criteria not reviewed in the 5W1509 master plan decision and/or under criteria not closed in the master plan decision.

The purpose of party status in Act 250 proceedings is to provide a person with the opportunity to participate in the District Commission's review of a development by providing direct evidence on the project's potential impacts on the person's particularized interest(s) and/or by cross examining the applicant's witnesses. At a minimum, a grant of provisional party status anticipates that a person will attend the evidentiary hearings for an application. Having reviewed the record in the present matter and being unable to discern any participation by the following three persons, the District Commission has determined that they do not remain eligible for party status.

1. Elliot Seigle is denied party status under criterion 8.
2. Kathryn Provost is denied party status under criteria 5 and 8.
3. Donna Ackerman is denied party status under criteria 5 and 8.

The District Commission's Pre-Hearing Conference Report dated April 27, 2009 discussed the "particularized interest" standard for party status that is established by the provisions of 10 V.S.A. 6085(c)(1)(E) and has been interpreted by the Environmental Court. Based upon a review of the record in this matter and careful consideration of each person's factual circumstances, the District Commission has determined that the following persons do not remain eligible for party status because the provisional grant of party status under criterion 8 is not supported by the record in this matter. The evidence indicates that these individuals will have extremely limited, if any, views of the proposed development on the project tract from their properties. Even if such views result, they will not be dissimilar from the existing setting for these provisional parties, being dense residential development in an urban location. The Commission is unable to conclude that these potential de minimis impacts are "particularized" and anchored in a substantive effect directly linked to the interests of these provisioned parties. These denials of party status under criterion 8 in this present matter are made without prejudice. The petitioners may reapply for status at such time as an amendment application is filed providing details for the use and development of the 80 acre portion of the tract.

1. Philip K. and Frances G. Dodd
2. June E. Bascom
3. Valerie Lewis
4. David and Kimberly Kidney
5. Peter and Mary Beth Watt

IV. PROCEDURAL HISTORY

Following the filing of the application on March 10, 2009, the District Commission circulated notice of the application on March 23, 2009. The Commission convened a pre-hearing conference on April 14, 2009 and then issued a pre-hearing conference report on April 27, 2009 in which rulings were made on requests for party status and a course of action was established for evidentiary hearings. Evidentiary hearings were held on June 2 and June 9, 2009. The Commission, in the company of the applicant and parties, visited the project site and its environs on June 2 and June 30, 2009. Proposed findings of fact were filed on July 2, 2009. The District Commission deliberated in this matter on August 3 and September 10 and October 7, 23 and 27, 2009.

IV. OVERVIEW

This application involved the review of a master plan proposal pursuant to the provisions of 10 V.S.A. 6086 (b) and Act 250 Rule 21. Further guidance was provided by the former Environmental Board's "Master Permit Policy" dated March 29, 2000. The applicants requested full affirmative findings under criteria 1(A), (C), (D), (F) and (G), 2, 3, 5, 6, 8 (archaeological and historic sites), 8(A), 9(B), (C), (D), (E), (F), (H), (K), (L) and 10 (local and regional plans). In addition, partial findings were requested under criteria 1(Air), 1(B), 4, 7, 8 (aesthetics) and 9(A). Findings were not initially requested under criteria 9(G) and 9(J). (See Exhibit 2 - Applicant) Evidence was subsequently provided under these two criteria. A summary of the District Commission's conclusions under all criteria is provided on page 26.

V. FINDINGS OF FACT

Under Act 250, projects are reviewed based on the 10 criteria of 10 V.S.A., Section 6086(a) (1)-(10). Before granting a permit, the District Commission must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare. Evidentiary burdens of proof, production and persuasion under the various criteria were defined in the District Commission's Pre-Hearing Conference Report.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file as identified on the attached exhibit list and the evidence received at the hearings.

To the extent that proposed findings of fact filed by the applicant and parties are included below, they are granted; otherwise, they are denied. See Petition of Village of Hardwick Electric Department 143 Vt. 437 (1983).

In making the following findings, the Commission has summarized the statutory language of the 10 criteria of 10 V.S.A., Section 6086(a):

GENERAL FINDINGS

1. The 100 acre tract is located off Barre Street in the City of Montpelier at the edge of the developed city core. (Exhibits 1, 3 and 4 - Applicant)

2. The master plan proposal consists of 145 housing units and 8,000 square feet of commercial space in two buildings. (Exhibits 3 and 5 - Applicant) The development will be situated on the tract as depicted on Exhibit 7 - Applicant.

3. The housing units will include a mix of dwellings:
   - 18 multi family units in the three storied commercial building "A"
   - 24 multi family units in ths three storied commercial building "B"
   - 24 multi family units in the two storied building "C"
   - 10 units in 5 two storied duplex structures
   - 69 single family structures

   (Exhibit 7 - Applicant)

4. Structures A, B and C will be in close proximity to the Barre Street corridor. Parking garages will be included in the designs for buildings A, B and C with a total capacity for 98 vehicles (Exhibit 7 - Applicant)

5. The master plan design anticipates 30 "on street' parking spaces along Barre Street. (Exhibit 7 - Applicant).

6. The aforementioned development will utilize the land mass of 20 acres that the applicant has designated as "parcels A and B" on the overall tract. (Exhibits 7 and 8 - Applicant)

7. The balance of the tract - 80 acres - was materially represented to be retained as undeveloped land which may be conveyed to the City of Montpelier for a use yet to be determined. The particular legal mechanism for the protection of the 80 acres of open space will be pursued by the actual developer(s) of the tract when the ultimate owner of the protected land has been determined. (Exhibit 25 - Applicant)

8. Co-applicant Trust for Public Land (TPL) has an option to purchase the tract from co-applicants Zorzi and Aja. Following issuance of master plan findings by the District Commission, TPL will seek a development partner, exercise the option to acquire the tract and pursue arrangements, including funding commitments for possible public parkland, with the City relative to the conservation land. (Exhibit 30 - Applicant)

9. TPL's development partners will complete engineering and architectural designs and file amendment applications for land use permits authorizing the phased construction of the master plan. (Exhibit 2 - Applicant)

SECTION 6086(a)(1) AIR POLLUTION:

10. There will be no process emissions or noxious odors from this project. (Exhibit 5 - Applicant).

11. During construction dust will be controlled through the use of stabilized construction entrances and through the use of water and/or calcium chloride on disturbed surfaces until pavement is applied and/or vegetation is re-established. (Exhibit 5 - Applicant).

Therefore, the Commission concludes that the master plan build out will not result in undue air pollution.

SECTION 6086(a)(1)(A) HEADWATERS:

12. The project is not situated in a drainage area of 20 square miles or less, is not above the elevation of 1,500 feet, is not in the watershed of a public water supply, and is not in an aquifer recharge area. (Exhibits 5 and 8 - Applicant)

Therefore, the Commission concludes that the master plan build out is not located in a headwaters area as defined by this section.

SECTION 6086 (a)(1)(B) WASTE DISPOSAL:

13. The applicant estimates that, at full build out of the master plan, wastewater flows will be 32,620 gpd. (Exhibit 11 - Applicant)

14. The applicant has not yet designed a wastewater collection system for the tract, nor have applications for technical permits been filed with the Department of Environmental Conservation. The District Commission references related findings below under criterion 7.

15. The foot print of the master plan development will result in combined impervious surfaces of approximately 9 acres. (Exhibits 5 and 7 - Applicant)

16. The master plan design contemplates a stormwater collection system utilizing catch basins and treatment by means of grass lined swales, a retention pond and/or underground structures. (Exhibits 5 and 7 - Applicant)

17. The applicant has not yet designed a stormwater collection and treatment system for the tract, nor have applications for technical permits been filed with the Department of Environmental Conservation.

CONCLUSIONS

Absent the submittal of engineering plans and details for the sewerage and stormwater collection/treatment systems for the components of the proposed master plan development, as well as the requisite technical permits from the Department of Environmental Conservation, consistent with Act 250 Rule 19, the District Commission is unable to reach positive conclusions under criterion 1(B). The Commission anticipates that these submittals will be forthcoming as part of the content of amendment applications for the phased build out of the master plan.

SECTION 6086(a)(1)(C) WATER CONSERVATION:

18. The applicant proposed that low flow plumbing fixtures will be utilized in all units/homes and commercial space. (Exhibit 5 - Applicant)

Therefore, the Commission concludes that the master plan build out will utilize the best available technology for water conservation.

SECTION 6086(a)(1)(D) FLOODWAYS:

19. A portion of the tract along Blanchard Brook and Barre Street are within the 100 year floodplain. (Exhibits 5 and 12 - Applicant).

20. A portion of the stream channel was relocated and armored when the City of Montpelier installed the existing plate arch culvert under Barre Street. (Exhibit 5 - Applicant)

21. The applicant anticipates that there will be some utility work, and possibly a component of the stormwater system, constructed within the flood plain. All building foundations will be constructed at elevations greater than the base flood elevation of 536 feet. (Exhibit 5 - Applicant) The District Commission further observes that the parking garages under buildings A, B & C will be at least partially in the flood plain.

The Commission concludes that this project will be located in a floodway fringe. However, the Commission concludes that the project will not restrict or divert the flow of flood waters nor significantly increase the peak discharge of a river or stream.

SECTION 6086 (a)(1)(E) STREAMS:

22. Blanchard Brook runs along the western portion of the tract. (Exhibits 5, 6 and 8 - Applicant)

23. As depicted on Exhibit 7 - Applicant, buildings B & C will be constructed on the two sides of the stream corridor and the master plan access road will also run along the corridor.

24. The master plan design acknowledges an undisturbed riparian buffer zone of 50 feet in width along both banks of Blanchard Brook. (Exhibits 5 and 7 - Applicant)

25. The Department of Fish and Wildlife concurred with the proposed riparian buffer. (Exhibit 18 - Applicant)

CONCLUSIONS

Based upon the project design which will maintain the natural condition of the stream and maintain an undisturbed naturally vegetated buffer along its banks, the District Commission concludes that the master plan build out satisfies criterion 1(E).

SECTION 6086(a)(1)(F) SHORELINES:

26. The project tract is not located on a shoreline. (Exhibits 5 and 8 - Applicant)

The District Commission reaches positive conclusions under criterion 1(F) for the master plan build out.

SECTION 6086(a)(1)(G) WETLANDS

27. Five Class 3 wetlands are located within the portion of the tract to be developed. Other wetlands are situated contiguous to Blanchard Brook and in the meadow area of the tract. (Exhibits 5 and 9 - Applicant)

28. Four of the five aforementioned Class 3 wetlands will be removed during site construction and the fifth wetland area will be partially removed. (Exhibit 5 and cf Exhibits 7 and 9 - Applicant)

29. The project will require approval from the Army Corps of Engineers prior to any physical actions involving the Class 3 wetlands. The applicant proposes that detailed analyses and site plans will be prepared in order to address the "avoidance and minimization" design standards utilized by the Corps. (Exhibit 26 - Applicant)

30. At the time of this master plan review, the Corps has not provided an affirmative stance for the conceptual design of the project. (Exhibit 2 - State)

CONCLUSIONS

The District Commission concludes that the master plan build out will not violate the wetland rules adopted by the Water Panel of the Natural Resources Board and therefore reaches positive conclusions under criterion 1(G).

SECTION 6086(a)(2 & 3) WATER AVAILABILITY AND IMPACT ON EXISTING SUPPLY:

31. The applicant estimates that, at full build out of the master plan, water supply flows will be 49,050 gpd. (Exhibit 11 - Applicant)

32. The applicant has not yet designed a water supply system for the tract, nor have applications for technical permits been filed with the Department of Environmental Conservation. The District Commission references related findings below under Criterion 7.

CONCLUSIONS

Absent the submittal of engineering plans and details for the water supply distribution system for the components of the proposed master plan development, as well as the requisite technical permits from the Department of Environmental Conservation, consistent with Act 250 Rule 19, the District Commission is unable to reach positive conclusions under criteria 2 and 3. The Commission anticipates that these submittals will be forthcoming as part of the content of the amendment applications for the phased build out of the master plan.

SECTION 6086 (a)(4) SOIL EROSION AND THE CAPACITY OF THE LAND TO HOLD WATER:

33. As found above, approximately 20 acres of the tract will be involved in the eventual construction of improvements. The 20 acres are mostly open meadow with some tree cover on the eastern third of the site. Slopes range generally from 8% to 15% with some areas have slopes as much as 20%. (Exhibits 5 and 8 - Applicant)

34. Site preparation will require both cut and fill. (Exhibit 5 - Applicant)

35. The applicant has not yet prepared detailed erosion prevention and sediment control plans for the development site, nor have applications for technical permits been filed with the Department of Environmental Conservation. (Exhibit 5 - Applicant)

36. Stormwater analyses (pre and post development flows) have not yet been prepared, nor have applications for technical permits been filed with the Department of Environmental Conservation.

CONCLUSIONS

Absent the submittal of erosion prevention and sediment control plans and stormwater analyses for the components of the proposed master plan development, as well as the requisite technical permits from the Department of Environmental Conservation, consistent with Act 250 Rule 19, the District Commission is unable to reach positive conclusions under criterion 4. The Commission anticipates that these submittals will be forthcoming as part of the content of the amendment applications for the phased build out of the master plan.

SECTION 6086 (a)(5) TRANSPORTATION:

37. The project will have access onto Barre Street. Two accesses are proposed into the interior of the site. However, the easterly access may be eliminated from the project design due to grade issues. (Exhibits 3 and 7 - Applicant)

38. Buildings A, B and C, which will also include housing units as found above, will front onto Barre Street. All three buildings will have parking beneath them with a total capacity of 98 vehicles and will have access onto Barre Street. (Exhibits 5 and 7 - Applicant)

39. The posted speed limit on Barre Street is 30 mph. Specific existing sight distances at the two proposed accesses onto the city street were not provided in the traffic impact assessment. Design intersection sight distances of 335 feet are required. Sight distances will need to be/can be improved by cutting back the bank along the north side of Barre Street. (Exhibit 16 - Applicant)

40. At full build out, the trip generation rates for the 145 housing units are estimated as 96 vehicle trip ends (vte) during the AM peak hour and 123 vte during the PM peak hour. (Exhibit 16 - Applicant)

41. The specific commercial uses of the combined 8,000 square feet in buildings A and B has not been finalized. For purposes of assessing traffic volumes, the applicant utilized the "general office" and "specialty retail" categories from data published by the Institute of Transportation Engineers (ITE). (Exhibits 16 and 27 - Applicant)

42. "Specialty retail" uses are described by the ITE as being "generally small strip shopping centers that contain a variety of retail shops and specialize in quality apparel, hard goods and services, such as real estate offices, dance studios, florists and small restaurants". (Exhibit 28 - Applicant)

43. At full build out, the trip generation rates for the 8,000 square feet of commercial space are estimated as 14 vte during the AM peak hour and 17 during the PM peak hour. (Exhibit 16 - Applicant)

44. Actual peak hour traffic generation rates for the project may be less than found above due to local non-vehicular travel patterns, such as walking or bicycling. However, the project tract currently lacks connectivity to the city's existing sidewalk and bike path systems. (Exhibit 16 - Applicant)

45. The City plans an extension of its bike path system through the southern limits of the project tract and parallel to Barre Street. (Exhibits 3 and 7 - Applicant)

46. Figures 3 and 4 in Exhibit 16 - Applicant reflect the PM peak hour trip distributions, and total background traffic volumes, for the project at build out. The directional patterns for project-generated traffic were premised on US Census Bureau "journey to work" data for Montpelier City residents. Project traffic will journey through five intersections before entering the overall regional road network.

47. The five affected intersections are: I) Barre Street/Granite Street, ii) Barre Street/Sibley Avenue, iii) Barre Street/Main Street, iv) Granite Street/River Street/Berlin Street and v) Pioneer Street/River Street. (Exhibit 16 - Applicant)

48. Traffic congestion conditions are identified by "levels of service" (LOS), ranging from "A" (no congestion) to "F" (severe congestion). The table that follows is taken from Exhibit 16 - Applicant and summarizes the effects of master plan build out traffic on the intersections. Detailed capacity analyses for the intersections are found in Exhibit 29 - Applicant).

	2010 No-Build	2020 No-Build	2020 Build
Main St/Barre St	F	F	F
Barre St/Sibley Ave	C	D	D
Barre St/Granite St	D	E	F
Barre St/Project Access	--	--	B
Berlin St/River St/Granite St	D	E	E
River St/Pioneer St	B	B	B

49. Three of the intersections currently experience significant levels of traffic congestion. The intersection of Barre and Main Streets is LOS F at present. The intersection of Barre and Granite Streets will drop to LOS F with the introduction of traffic from the project. (Exhibit 16 - Applicant)

50. Two high crash locations were identified within the area of the project: I) the section of Barre Street between Main Street and Putnam Street and ii) the length of State and Main Streets between Taylor Street and the Barre Street intersection. (Exhibit 16 - Applicant)

51. The relevant section of Barre Street has urban street geometrics (ie on-street parking, sidewalks, flat grade, straight alignment and 34 foot curb-to-curb width). The two most common crash types on Barre Street between 2003-2007 were same direction sideswipe and rear end collisions. (Exhibit 16 - Applicant)

52. The following traffic improvements were proposed as components of the master plan's design and permitting:

    A) Construction of new sidewalk links between the project site and existing sidewalks on Barre and Pioneer Streets

    B) Installation of traffic calming measures (eg curb extensions, raised sidewalks, and/or speed tables) along Barre Street

    C) Addition of a full right turn lane on Barre Street at the Main Street intersection. With the improvement, the LOS at this intersection under "2020 Build" conditions will remain F.

    D) Conversion of the Sibley and Granite Streets' intersections with Barre Street from two-way stop control to all-way stop control. With these improvements, the LOS at these intersections under "2020 Build" conditions will be C at the Sibley Street intersection and D at the Granite Street intersection.

    E) Widening of the northbound Berlin Street approach to the River/Granite Streets' intersection to provide an exclusive lane for Berlin Street through traffic plus an outer right-turn lane for Granite Street and River Street right-turn movements. With these improvements, the LOS at this intersection under "2020 Build" conditions will be D.

    F) Restriction of through truck traffic from using Barre Street between Main and Granite Streets in favor of an alternate truck route via Pioneer Street

53. The City of Montpelier has not yet reviewed or authorized any of the possible traffic improvements described in finding 52. (See Exhibits 1, 2 and 3 - City)

54. The applicant did not represent that it, or subsequent developers of the master plan, will design and/or fund the improvements described in finding 52 as measures to mitigate increased traffic burdens from the master plan. (See Exhibit 30 - Applicant)

55. The record does not reflect estimates of traffic volumes, and related evidence, from future proposed land uses, such as a park, on the 80 acres of proposed conservation land.

56. City zoning regulations require 210 parking spaces to accommodate all land uses proposed in the master plan. The master plan design proposes a total of 357 parking spaces. (Exhibit 5 - Applicant)

57. The 357 parking spaces will be distributed throughout the tract. The residences in the interior of parcels A & B will have a total of 154 parking spaces among driveways and

garages. Garages under buildings A, B and C will have 98 parking spaces. "On street" parking for 30 spaces will be allocated along Barre Street with another 75 spaces along the internal roadways. (Exhibits 5 and 7 - Applicant)

CONCLUSIONS

Criterion 5 reads as follows:

> *[The development] will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.*

The evidentiary burden of proof to show an unreasonable effect under criterion 5 is upon an opposing party [10 V.S.A. 6088(b)]. Nevertheless, the applicant bears the evidentiary burden of production under all criteria and the District Commission is charged with performing adequate fact finding even absent parties in opposition. If the record reveals that a project will cause unreasonable burdens under criterion 5, a permit may not be denied but reasonable permit conditions and requirements may be attached to alleviate said burdens [10 V.S.A. 6087(c)]. The Environmental Board and Vermont Supreme Court have held, in interpreting the provisions of criterion 5, that:

> *Criterion 5 does not require that proposed development be the principal cause or original source of traffic problems. Several causes may contribute to a particular effect or result... It would be absurd to permit a hazardous condition to become more hazardous. (In re Pilgrim Partnership 153 Vt 594 (1990)].*

While the Commission can impose reasonable permit conditions, the Commission is not "empowered to make the [Applicant] single-handedly resolve traffic flow and design problems that are not of its making" Re: Springfield Hospital 2S0776-2-EB Memorandum of Decision at 10 (August 14 1997)]

As a preliminary matter, as found above in finding 39, the Commission was not provided sight distance details for the intersections of the project roads and Barre Street. This information must be forthcoming in the subsequent amendment application filing for phase one.

The record before the District Commission demonstrates that there is one intersection, through which master plan traffic will travel, that is presently operating at LOS F and that a second intersection will drop to LOS F with the introduction of master plan traffic - albeit it is unclear at what level of traffic volume from the master plan this will occur. The record further demonstrates that traffic from the project will pass through lengths of streets currently experiencing high crash rates. These LOS and high crash factors present substantive and material impacts that require mitigation under criterion 5, consistent with the provisions of 10 V.S.A. 6087(b).

Although the City of Montpelier was a participating party in the District Commission proceedings, it did not provide a perspective on these traffic impacts, nor did it state positions on the possible mitigation measures which will involve physical changes to city streets (See Exhibits 2 and 3 - City). Similarly, the Central Vermont Regional Planning Commission provided no position on traffic issues (See Exhibit 1 - CVRPC). While, arguably, traffic on the

city's streets are within the limits of the municipality, as the location of significant employers, retail businesses and social services, residents of the region do travel the affected streets.

The District Commission concludes that a strengthened record is necessary under criterion 5 before definitive conclusions may be stated. The specific input of the City with respect to the implementation of the proposed mitigation measures will be integral. The Commission will also need to have a better understanding of how the actual developers of the master plan will share in the responsibilities for constructing and funding the necessary road improvements as a result of the incremental and cumulative impacts from the master plan build out.

The Commission is not yet convinced that the creation of all-way stops at the Sibley and Granite Street intersections, in such close proximity to each other, will improve traffic flow - and the Commission has concerns that these changes to the intersections may potentially worsen traffic flow.

It is further observed that some of the possible mitigation measures, if they are to be pursued by the developers as "involved land" [See Act 250 Rule 2(C)(5)], will require adequate notice to adjoining property owners of subsequent amendment applications pursuant to 10 V.S.A. 6085 and Rule 10(F). As an example, the Commission notes the intersection of Barre Street and Main Street, which will lose on street parking spaces if the turning lane is pursued.

The District Commission concludes that the build out of this master plan will cause unreasonable congestion and safety traffic impacts. However, the Commission is not yet able to define the content, scope and responsibilities for necessary mitigation measures and will pursue these issues during the review and subsequent amendment applications consistent with the discussion above and making note of the holding in the Springfield Hospital precedent.

SECTION 6086(a)(6) EDUCATIONAL SERVICES:

58. At build out, the project may result in approximately 61 K-12 school aged children. (Exhibit 13 - Applicant)

59. The superintendent of schools for the City of Montpelier indicated that the school system has the capacity to accept these additional students. (Exhibit 21 - Applicant)

Therefore, the Commission concludes that the build out of the master plan will not place an unreasonable burden on the ability of the municipality to provide educational services.

SECTION 6086 (a)(7) MUNICIPAL SERVICES:

60. The project will require municipal police, fire, water supply, sewage disposal, road maintenance and rescue services. (Exhibit 5 - Applicant)

61. The city manager indicated that the municipality will be able to provide fire, police, rescue and road maintenance services. Fire protection service was premised upon the project's full compliance with the municipal sprinkler ordinance. (Exhibit 22 - Applicant)

62. The city has sufficient reserve capacity in its wastewater treatment plant to process flows from the project. Transmission of the flows to the treatment plant may require modifications to the existing infrastructure. An existing pump station will need to be evaluated to determine its daily discharge capacity and emergency storage capacity related to power outages. (Exhibit 1 - City and See Exhibit 11 - Applicant)

63. The city has sufficient reserve capacity to provide a potable water supply and to meet fire flow demands. The ability to meet fire flow demands may require the replacement of the 6" transmission line in the vicinity of the project tract. Area fire hydrant flow tests may be necessary and/or a computer simulation of projected fire flow demands utilizing the city's computer model. (Exhibit 1 - City)

64. The city typically requires that an applicant bear all costs for the review of capacity, determination of mitigation measures and construction of necessary upgrades. Proportional share of infrastructure costs are determined by the city during its formal review process. (Exhibit 1 - City)

CONCLUSIONS

The record demonstrates that the build out of the master plan will not place an unreasonable burden on the city's police, fire, road maintenance and rescue services. In conjunction with conclusions stated above for criteria 1(B), 2 and 3, the Commission will utilize subsequent amendment applications to complete review under criterion 7 with respect to municipal sewage disposal and water supply services.

SECTION 6086 (a)(8) AESTHETICS, SCENIC BEAUTY, HISTORIC SITES AND NATURAL AREAS:

65. The 100 acre tract is currently undeveloped. A former quarry was operated on a portion of the tract. The tract's physical characteristics are that of an open hilly meadow that rises up in elevation from Barre Street. Areas with tree cover are present along the perimeter and the eastern third of the site. These characteristics are reflected on the orthophoto which is Exhibit 6 - Applicant and in the photographs which are Exhibit 10 Applicant and 6 - FSP.

66. The properties across Barre Street from the tract are a mix of low density commercial and residential development. A more urban dense development pattern begins to the west of the tract along Barre Street. As shown on Exhibits 6 and 8 - Applicant, there are substantial undisturbed areas between the proposed development areas on the tract and the adjoining properties to the north. There is also an undeveloped intervening property owned by another entity to the northwest of the proposed development area, between it and residential properties along Sabin Street. The area to the east of the tract is undeveloped.

67. The City of Montpelier produced a study in 2002 of open space within the community. This study includes two references to the project tract. (Exhibit 4 - FSP)

68. The City's 2002 study described the tract as (at page 18):

> This is an extraordinary piece of property. It is a large open meadow with spectacular views within easy pedestrian access of downtown and Vermont College. It is visually important as seen from a distance and offers impressive views from the upper meadows. From a distance the property appears to contain the denser urban development of Montpelier, and provides pleasing visual diversity with its rolling terrain and mixture of field and forest. This visual diversity is even more apparent when one is on the property. There is a mix of vegetative types, streams and the dramatic old quarry site. Views from the high elevation meadow include the turrets of College Hall, the gold dome of the Statehouse, and the Green Mountains and Worcester Range to the west.

69. The City's 2002 study also stated:

> Informal footpaths over Sabin's pasture behind Vermont College lead to a high meadow with dramatic views of college Hall and the Statehouse Dome with a backdrop of distant mountains. The view extends about 180°, with the view to the west being the most dramatic portion. to the south and west are several high open meadows that also contribute to the scene. The foreground meadow is important to the overall view.

70. The layout of the proposed development is shown on Exhibit 7 - Applicant.

71. The two commercial structures, which will also include residential apartment units, will be three storied structures (buildings A and B). Building C will be a two storied apartment structure. These buildings will be situated at the lowest elevations of the tract along Barre Street. (Exhibit 7 - Applicant and Testimony of Wisniewski)

72. Development "parcel A" extends from approximate existing elevations 565' to 645'. the residential structures on this parcel will include 5 two storied duplexes and 44 single family residences which are typically two storied structures. (Exhibit 7 - Applicant)

73. Development "parcel B" ranges in approximate elevations from 665' to 695'. All structures on this parcel will be single family residences which are typically two storied structures. (Exhibit 7 - Applicant)

74. In 2008 a "working group" which included co-applicant TPL and some of the parties to this application, devised a conservation and development plan with specific recommendations for the project tract. (Exhibit 2 - FSP)

75. The "working group" plan recommended the preservation of 80± acres of the tract as a park. The applicant proposes that the 80 acres will be kept as undeveloped land [Cf Exhibit 7 - FSP and 25 - Applicant]

76. Street lighting for the master plan has not yet been determined. Exterior light fixtures on all structures will be specified by developers on future amendment applications. (Exhibit 5 - Applicant)

77. The tract contains several potentially sensitive archaeological areas. (Exhibits 14 and 15 - Applicant)

78. The applicant has agreed that specific measures will be implemented during phase one of the master plan in order to assess and mitigate any impacts on archaeological resources. (Exhibits 14 and 15 - Applicant)

CONCLUSIONS

In evaluating the potential impacts of projects on the values set out in criterion 8, the Environmental Board and District Commissions apply the protocol established by the Environmental Board in its 1985 Quechee Lakes decision (Findings of Fact 3W0411-EB and 3W0439-EB).

In Quechee, the Board framed a fundamental question to answer in determining if a project's impacts will be adverse: Will the project be in *"harmony"* with its surroundings and *"fit"* the context within which it will be located? Several specific features must be evaluated, according to Quechee, in answering this question.

1. *What is the nature of the project's surroundings? Is the project to be located in an urban, suburban, village, rural or recreational resort area? What land uses presently exist? What is the topography like? What structures exist in the area? What vegetation is prevalent? Does the area have particular scenic values?*

2. *Is the project's design compatible with its surroundings? Is the architectural style of the buildings compatible with other buildings in the area? Is the scale of the project appropriate to its surroundings? Is the mass of structures proposed for the site consistent with land use and density patterns in the vicinity?*

3. *Are the colors and materials selected for the project suitable for the context within which the project will be located?*

4. *Where can the project be seen from? Will the project be in the viewer's foreground, middleground or background? Is the viewer likely to be stationary so that the view is of long duration, or will the viewer be moving quickly by the site so that the length of view is short?*

5. *What is the project's impact on open space in the area? Will it maintain existing open areas, or will it contribute to a loss of open space?*

> *All of these factors must be weighed collectively in deciding whether the proposed project is in harmony with--i.e., "fits"--its surroundings. The land uses which surround a project are crucial to the analysis...*

The Board cited particular categories of land forms which are especially sensitive to change "*because these land forms tend to be visible from a wide area or they are seen by large numbers of people.*" These land forms include open space, ridgelines, steep slopes shorelines, flood plains, wetlands and natural areas.

All of the above factors must be applied in a collective analysis to see if the project impacts will be "adverse".

The project tract obviously represents a significant expanse of undeveloped open space that is visible to the large numbers of people who travel Barre Street and other nearby public thoroughfares. The tract is also visible to varying degrees from surrounding parcels. In this regard, the Commission notes there are intervening properties between the project tract and the lands of some of the provisional parties providing a visual buffering effect.

While the tract is undeveloped open space, it is situated within the limits of a city at the fringe of a urban development pattern. The District Commission is also mindful of the Environmental Board's holding in its Van Sicklen Limited Partnership decision [4C01013-EB (March 8, 2002)] - that the application of criterion 8 does not guarantee that a landscape will not change.

As proposed, the master plan will utilize only approximately 20% of the tract and the footprint of the development has been strategically placed in order to minimize adverse aesthetic effects. Likewise, steps have been integrated into the design standards to ensure that building heights will be limited to minimize disruption of any views from adjoining properties.

The Commission recognizes that the future use of the 80 acres of the tract remains largely undefined and that the potential for adverse impacts under criterion 8 is possible. An amendment application will serve as the mechanism and forum for the review under criterion 8, and all other applicable criteria, of proposed physical changes and land uses on the 80 acres.

Viewing the record as a whole, and specifically taking note of the collaborative efforts of the applicants, the City, some of the provisional parties and others that resulted in the master plan design now before the District Commission, the Commission concludes that the siting of the master plan development will "fit" the context within which it will be located. Accordingly, the Commission concludes that impacts under criterion 8 will not be adverse. Consistent with typical practices for master plans, amendment applications for the phased build out will be the means for ensuring that specific site plans, building architectural details and related aspects conform with material representations made in the present application and this decision.

Therefore, the Commission concludes that the siting of the master plan development 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.

SECTION 6086 (a)(8)(A) NECESSARY WILDLIFE HABITAT:

79. No necessary wildlife habitat or endangered species have been identified on or near the project tract. (Exhibits 5, 18 and 20 - Applicant)

Therefore, the Commission concludes that the master plan build out will not destroy or significantly imperil necessary wildlife or endangered species habitat.

SECTION 6086 (a)(9) CONFORMANCE WITH THE CAPABILITY AND DEVELOPMENT PLAN:

The Commission concludes that this project conforms to the capability and development plan.

SECTION 6086(a)(9)(A) IMPACT OF GROWTH:

80. At full build out, which will take place over a period of years, the additional population expected to reside at the 145 units is 303 people. (Exhibit 5 - Applicant)

81. The US Census Bureau estimated in 2005 that the City of Montpelier had a population of 7,940 persons. (Exhibit 5 - Applicant)

82. The City of Montpelier anticipates declines in the city's population to 6,854 by 2010. (Exhibit 5 - Applicant)

CONCLUSIONS

The District Commission recognizes that the master plan is a large residential proposal that will result in an eventual population increase of approximately 303 people in the city. The record would suggest that the rate of anticipated growth will not unduly affect the city or the region either directly or through any secondary growth impacts. The Commission is inclined to reach positive conclusions under criterion 9(A) for the master plan as proposed. However, supplemental threshold facts relative to the fiscal benefits and burdens of the development must be provided in the initial amendment application filing.

SECTION 6086(a)(9)(B) PRIMARY AGRICULTURAL SOILS:

83. The soils map attached to Exhibit 19 - Applicant depicts the soil categories present on the tract.

84. The table below summarizes the qualifying primary agricultural soils present on the tract. (Exhibit 19 - Applicant)

85. The table below summarizes the primary agricultural soils present within the footprint of the proposed master plan development. (Exhibit 19 - Applicant):

Summary of Soils on Project Parcel
(as mapped by USDA NRCS)

Soil Description	Agricultural value group	Area (acres)
Cabot silt loam, 3-8% slopes	6d	7.5
Vershire-Dummerston complex, 8-15% slopes	7	10.9
Vershire-Dummerston complex, 8-25% slopes	8	5.8
Vershire-Dummerston complex, 25-60% slopes	11	31.3
Glover-Vershire complex, 8-15% slopes	10	24.3
Glover-Vershire complex, 35-60% slopes	11	19.2

86. The Agency of Agriculture concurs with the applicant's analysis that 1.4 acres of the 16.8 acres of relevant primary agricultural soils on the tract will be impacted by the master plan development. (Exhibit 23 - Applicant)

87. The Agency of Agriculture agreed that 2.8 acres of on-site mitigation soils are required and that the 15.4 acres of primary agricultural soils to be undeveloped on the tract satisfy this requirement. The Agency requested inclusion of a "right to farm" condition in any eventual land use permit. (Exhibit 23 - Applicant)

Therefore, the Commission concludes that the master plan build out will not significantly reduce the agricultural potential of any primary agricultural soils.

SECTION 6086(a)(9)(C) FOREST AND SECONDARY AGRICULTURAL SOILS:

88. No secondary agricultural soils or forestry soils have been identified on the project site. (Exhibit 5 - Applicant]

Therefore, the Commission concludes that the master plan build out will not significantly reduce the potential of any secondary agricultural soils or forestry soils.

SECTION 6086(a)(9)(D & E) EARTH RESOURCES & EXTRACTION OF EARTH RESOURCES:

89. No mineral or earth resources will be extracted from the project site. It is anticipated that ledge will have to be blasted during site development. A suitable blasting protocol will be required in the amendment application for the relevant phase of the master plan. (Exhibit 5 - Applicant)

Therefore, the Commission concludes that the master plan build out will not involve the extraction of or processing of earth resources or interference with the subsequent extraction or processing of mineral or earth resources.

SECTION 6086(a)(9)(F) ENERGY CONSERVATION:

90. Pursuant to 21 V.S.A. § 266, et seq., the applicant, and its successors and assigns in interest, are required to construct the single family, duplex, and multi-family dwellings in accordance with Vermont's Residential Building Energy Standards (RBES) as well as ensuring compliance with the Vermont Guidelines for Energy Efficient Commercial Construction, pursuant to 21 V.S.A. 268 in effect at the time of construction. (Exhibit 5 - Applicant)

Therefore, the Commission concludes that the planning and design of the master plan reflects the principles of energy conservation and incorporates the best available technology for the efficient use or recovery of energy.

SECTION 6086(a)(9)(G) PRIVATE UTILITY SERVICES:

91. There are no private utilities proposed for the project. (Exhibit 5 - Applicant)

Therefore, the Commission concludes that the master plan build out will include no private utility services.

SECTION 6086(a)(9)(H) COSTS OF SCATTERED DEVELOPMENT:

92. The tract is located within the City of Montpelier, a community center which is compact in size and contains a mix of uses, including commercial and industrial, and, importantly, a significant residential component. (Exhibit 5 - Applicant)

The Commission concludes that the project is contiguous to an existing settlement.

SECTION 6086(a)(9)(J) PUBLIC UTILITY SERVICES:

93. The public utility services to be used by the project are municipal water supply and wastewater disposal, and electric supply by Green Mountain power. (Exhibit 5 - Applicant)

94. The Commission incorporates findings stated above under criterion 7.

95. The Green Mountain Power Corporation has indicated an ability to serve the master plan. This position is valid for a 2 year period, unless construction commences on the project. (Exhibit 24 - Applicant)

Therefore, the Commission concludes that utility service is available to serve the master plan until 2011 and that an excessive or uneconomic demand will not be placed on such facilities or services, and that the provision of such services has been planned on the basis of a projection of reasonable population increase and economic growth.

SECTION 6086(a)(9)(K) DEVELOPMENT AFFECTING PUBLIC INVESTMENTS:

96. The project is not located adjacent to any existing public investment. (Exhibit 5 - Applicant)

97. The District Commission incorporates by reference findings stated above for criterion 5.

CONCLUSIONS

Criterion 9(K) of Act 250 reads:

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, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision 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 facilities, service or lands.

The Environmental Board explained the higher threshold for review of impacts on highways under criterion 9(K) as compared with review under criterion 5 [See Swain Development Corp. and Philip Mans 3W0445-2-EB (August 10, 1990)]. Criterion 9(K) requires material interference with the function, safety or efficiency of the public investment, whereas criterion 5 only requires that traffic be unreasonable or unsafe. The evidentiary burdens of proof differ substantially, resting on opposing parties under criterion 5 but upon the applicant for criterion 9(K). Finally, permits must be conditioned to alleviate unreasonable impacts under criterion 5. Failure to satisfy criterion 9(K) must, as a matter of law, result in denial of a permit.

The Environmental Board precedents have examined the term "adjacent" as used in criterion 9(K) and have concluded that public investments are adjacent to development proposals when "contiguous" to previously constructed governmental facilities [In re Munson Earth Moving Corporation 4C0986-EB: April 4, 1997] and when "lying near or close to...the Board believes that 'adjacent' is a relative term that must be considered in the context of a scale of a project" [L&S Associates 2WL0434-8-EB: June 2, 1993)]. In the present matter, there can be no dispute that the five intersections discussed in our findings are "adjacent" to the proposed development in that they are the sole means of access from the tract to the regional road network.

As discussed above under criterion 5, the project will impact intersections with LOS F as well as lengths of streets with high crash rates. The Commission further notes that the projected LOS E at the intersection of Granite/Berlin/River Streets presents potential substantive and material impacts under both criteria 5 and 9(K).* Consistent with conclusions stated for criterion 5, the District Commission concludes under criterion 9(K) that a strengthened record is necessary before definitive conclusions may be stated.

* See Swain, supra, at page 30: "LOS E or worse conditions are likely to result in traffic safety problems. LOS E, in addition to being a condition where freedom to maneuver is extremely difficult, is described as a condition in which drivers are forced to make vehicles or pedestrians give way to accommodate maneuvers."

SECTION 6086(a)(9)(L) RURAL GROWTH AREAS:

98. The project is not located within a rural growth area. (Exhibit 5 - Applicant)

Therefore, the Commission concludes that this project is not located in a rural growth area as defined by the statute.

SECTION 6086(a)(10) CONFORMANCE WITH THE LOCAL OR REGIONAL PLAN*:

Local Plan

99. The City of Montpelier duly adopted a plan in 2005.

100. Section 2.4 of the plan ("Montpelier's Vision for the Future") states in pertinent part:

Preserve the natural and historic features that distinguish the City of Montpelier.
• Protect our ridge lines from development
• Encourage preservation of open space by carefully balancing the community need for open space and other land uses.
• Promote our natural and historic, as well as cultural, attractions as a tourist and regional resource.

101. Section 3.2 (Natural Features and the Environment Goals and Recommendations) states in pertinent part:

Natural Features and the Environment Goals and Recommendations
1. Preserve, enhance and maintain the natural features and the integration of built and natural settings which makes Montpelier unique.

102. Section 11.6 (Land Use and Development Goals and Recommendation) states in pertinent part:

Land Use and Development Goals and Recommendations

1. Future land use should preserve the primary qualities which make Montpelier unique. Among those qualities are a compact settlement pattern with a mixture of uses and human-scale development.

* The former Environmental Board's "Master Permit Policy" states "affirmative findings of fact and conclusions of law under criterion 10 can not be issued for any element of a complex project which has not been adequately described in a complete application. Therefore, applicant rights do not vest under the current town or regional plan for any particular phase until a complete application has been filed for that phase with the district commission or the town. The issue of "vested rights" under Criterion 10 needs to be explored within the context of the following Vermont Supreme Court decisions: Smith v. Winhall Planning Commission, 140 Vt. 178 (1981); In re McCormick Management Company, 149 Vt. 585 (1988); In re Raymond F. Ross, 151 Vt. 54 (1989) (which holds that no "vested rights" can be obtained under an existing town plan when the application is incomplete); and, In re Frank Molgano, Jr. 163 Vt. 25 (1994).

Recommendations:

Enact, through zoning, policies to protect hillsides and ridgelines, preserve and enhance river fronts, and existing neighborhoods.

103. In addition, the Master Plan notes, in a description of Montpelier's natural setting in section 3.1:

The city's open spaces provides important recreational, visual and environmental benefits (see Figure 11, Open Space Network and Figure 17, Sensitive Environmental Features).

The City has made an effort to protect outlying open areas, such as upper Elm Street, outer Terrace Street, Towne Hill Road, Sabin's Pasture, and Old Country Club Road. Generally they are not served by public infrastructure which would encourage development.

The District Commission concludes that the master plan build out, consisting of compact housing, strategically situated commercial development and preserved open space, is in conformance with the City plan. Nevertheless, this conclusion is tempered by the aforementioned master permit policy statement of the former Environmental Board.

Regional Plan

104. The Central Vermont Regional Planning Commission duly adopted a plan in 2008.

105. The regional plan directs (add cite) that "New development should be planned so as to respect the historic settlement pattern of compact villages, neighborhoods and urban centers separated by rural countryside"

106. The regional plan further states at (add cite) that it:

•Endorses "smart growth" planning principles as embodied in this Plan and supports the designation of "Growth Centers".
•Supports the appropriate expansion of existing settlements, particularly where excess infrastructural capacity exists. (The existing settlements within Central Vermont are those areas currently served by public water and/or sewer systems or characterized by higher densities of development).
• Encourages "in fill" development.... (page 2-22)

107. With specific reference to housing at (add cite), the regional plan reads:

Much of the recent housing growth in the Region is happening outside of town and village centers. The benefits of developing more dense, compact housing within or close to village and town centers at historic settlement densities are numerous and include:
• decreased land costs due to smaller lot sizes
• decreased development costs due to proximity to existing infrastructure
• increased opportunities to develop a variety of housing options for different lifestyles

• decreased automobile dependency due to proximity to amenities such as schools, shops, services and jobs
• increased viability of mass transportation
• preservation of natural resources such as agricultural land and water resources (pages 6-11)

108. The regional plan articulates the following pertinent goals and policies at (add cite)

1. To promote the development of housing opportunities for all residents of the Region, including and especially, affordable, elderly, and special needs housing.
2. To encourage innovative planning, design, and development of housing which minimizes its costs, energy consumption, and environmental impacts.
3. To promote preservation of the existing housing stock and the development of future housing in the village/town and employment centers of the Region, or those areas designated as Growth Centers.
4. To support the coordination between public, private, and non-profit agencies involved with planning, financing, and developing affordable housing.
Policies:
1. The Regions towns, non-profits, and state agencies should work collaboratively to address the Region's housing needs
3. Municipalities should encourage housing at the maximum densities allowed by local plans and regulations and at densities at or above those of their traditional/ existing neighborhoods.
5. The majority of new housing should be constructed in town centers and designated growth centers.
7. Housing units that are affordable to households below the area median income and housing near employment centers should be encouraged. (pages 6-20, 21)

The District Commission concludes that the master plan build out, consisting of compact housing, strategically situated commercial development and preserved open space, is in conformance with the Regional Plan. Nevertheless, this conclusion is tempered by the aforementioned master permit policy statement of the former Environmental Board.

VI. SUMMARY CONCLUSIONS OF LAW

Pursuant to Act 250 Rule 21(C) and the former Environmental Board's master permit policy dated March 29, 2000, the District 5 Environmental Commission issues the above-referenced Findings of Fact with Conclusions of Law stated under the criteria of Act 250.

In summary, the District Commission reached positive conclusions of law under criteria 1 (Air), 1(A), 1(C), 1(D), 1(E), 1(F), 1(G), 6, 8(A), 9(B), 9(C), 9(D), 9(E), 9(F), 9(G), 9(H), 9(J) and 9(L).

The Commission reached preliminary conclusions of law under criteria 1(B), 2, 3, 4, 5, 7, 8, 9(A), 9(K) and 10.

TERMS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RENEWAL

Consistent with Act 250 Rules 21(D) and (E), and the former Environmental Board's master permit policy dated March 29, 2009, these Findings of Fact and Conclusions of Law shall

remain in effect for a five year period running until October 31, 2014. These Findings of Fact and Conclusions of Law may be renewed and updated prior to the expiration date, consistent with Rules 21(D) and 35 and the Board policy. Amendment applications, along with requisite fees pursuant to 10 V.S.A. 6083a supplementing fees paid in the present matter (See Schedule A attached to Exhibit 1 - Applicant), will be required in order to complete review under the criteria and result in the issuance of land use permits authorizing the phased construction of this overall development.

Dated at Barre, Vermont, this 30th day of October, 2009.

By *\/s/ Karl Johnson*
Karl Johnson, Chair
District #5 Environmental Commission

Commissioners participating in this decision:

Burtt McIntire, Member
Brad Towne, Member

A motion to alter may be filed with the District Commission within 15 days of this decision, pursuant to Act 250 Rule 31(A).

The former Environmental Board's "Master Permit Policy" states, with respect to appeals of District Commission master plan decisions: "Under current law, partial findings of fact can be appealed immediately or upon issuance of a final decision on a complete application. Rule 21 contemplates that partial findings of fact and conclusions of law are considered final for the purposes of appeal only and shall be binding for a reasonable period of time or until a final decision is issued based upon a complete application unless there is a "material" or "substantial change" or if the background facts have changed significantly. Parties may elect to reserve their appeal rights until final action on the complete application. Therefore, findings of fact and conclusions of law do not achieve true finality with vested rights until there has been final action on a complete application and all appeal issues have been fully litigated, if appeal rights are exercised. See 10 V.S.A., Section 6086(b), Rule 21(D), Rule 34(B) and (C)".

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APPLICATION 5W1509 TRUST FOR PUBLIC LAND EXHIBIT LIST

Applicant

1. Application
2. Applicant March 2, 2009 letter Requesting Master Plan Review under Specific Criteria
3. Master Plan Overview
4. Location Map
5. Schedule B
6. Master Plan Site Context Map
7. Master Plan Sketch
8. Existing Site Plan with Context
9. Existing Site Plan
10. Site Context Photographs
11. Water Supply/Sewer Flow Estimates
12. Floodplain Maps
13. Estimate of School Aged Children
14. Archaeological/Historic Sites: Proposed Permit Conditions
15. Supplemental Archaeological/Historic Sites Position, Includes Base Plan
16. Traffic Impact Assessment
17. Position on Wetland Impacts
18. Department of Fish and Wildlife December 18, 2008 Fisheries Biologist Comments
19. Site Soils' Data and Maps
20. Department of Fish and Wildlife March 18, 2008 Habitat Comments
21. School Impact Questionnaire
22. Municipal Impact Questionnaire
23. Agency of Agriculture March 26, 2009 Position
24. Green Mountain Power March 31, 2009 Ability to Serve Letter
25. Applicant April 9, 2009 Supplemental Positions re Party Status and Proposed Conservation/Undeveloped Portion of Tract
26. Applicant April 17, 2009 Supplemental Position re Wetland Impacts
27. ITE PM Peak Hour Trip Generation Estimates
28. ITE "Specialty Retail Center" Definition
29. Traffic Impact Assessment Worksheets (Attachments A-D)
30. Proposed Findings of Fact and Conclusions of Law

Parties

City of Montpelier

1. Department of Public Works (April 14, 2009 Position re Wastewater Disposal and Water Supply)
2. Director, Planning and Community Development June 1, 2009 Perspectives from City Plan
3. City Planning Commission June 9, 2009 Positions re City Plan

State

1. VTRANS March 26 and April 8, 2009 Comments
2. Agency of Natural Resources April 13, 2009 Comments

CVRPC

1. June 1, 2009 Position

FSP

1. Party Status Petition
2. Recommended Conservation and Development Plan for Sabin's Pasture (June 2008)
3. Oman Resume
4. "Montpelier Open Space Plan: Views and Vistas" (Draft June 12, 2002)
5. "Sabin's Pasture: A vision for Development and Construction" (March 2003)
6. None Photographs of Project Site, Includes "Image Locations" Map and "Site Context" Site Plan (6 Sheets)
7. Proposed Findings of Fact and Conclusions of Law

Dodd

1. Petition for Party Status

Watt

1. Petition for Party Status

Kidney

1. Petition for Party Status

Bascom

1. Petition for Party Status

Carnahan

1. Proposed Findings of Fact and Conclusions of Law
2. June 22, 2009 Ackerman Request for Party Status Reconsideration

Provost & Ackerman

1. June 9, 2009 Party Status Petition

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER REGARDING 5W1509 (THE TRUST FOR PUBLIC LAND)** by U.S. Mail, postage prepaid, on this 30th day of October, 2009, to the individuals without email addresses and by electronic mail, to the following with email addresses:

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the 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 our office of any email address changes.

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BY/s/ Lori Grenier
Lori Grenier
Administrative Secretary