



LAND USE PERMIT AMENDMENT

State of Vermont
Natural Resources Board
District 3 Environmental Commission
310 Mineral Street, Suite 305
Springfield, VT 05156-3168
<https://nrb.vermont.gov/>

CASE NO: 3R0805-2

Vermont Permanency Initiative, Inc.
663 NH Route 10
Orford, NH 03777
and
State of Vermont
Agency of Human Services
Division for Children and Families (“DCF”)
280 State Drive, HC 1 North
Waterbury, VT 05671-1080

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 3 Environmental Commission hereby issues Land Use Permit Amendment #3R0805-2, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 80, Page 571, of the land records of the Town of Newbury, Vermont, as the subject of a deed to Vermont Permanency Initiative, Inc. and an eventual lease agreement with the State of Vermont, DCF, the Permittees.

This permit specifically authorizes the Permittees to remodel an existing youth education and treatment center into a secure treatment and educational center for up to six boys ages 12-17 whose treatment needs require a higher level of support and security than the facility currently offers.

The project is located at 487 Stevens Place in Newbury, Vermont.

Jurisdiction attaches because the Project is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

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

2. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law and Order 3R0805-2, and (c) the permit application, plans, and relevant exhibits on file with the Commission and other material representations. In the event of any conflict, the terms and conditions of this permit and the conclusions in the findings shall supersede the approved plans and exhibits.

The approved plans are:

- Sheet C-1 - "Notes and Legend," dated July 20, 2021 (Exhibit 006);
 - Sheet C-2 - "Existing Conditions and Demolition Plan," dated July 20, 2021 (Exhibit 006);
 - Sheet C-3 - "Overall Site Grading Plan," dated July 20, 2021 (Exhibit 006);
 - Sheet C-4 - "Detailed Site Grading Plan," dated July 20, 2021 (Exhibit 006);
 - Sheets C-5, C-6 and C-7 - "Details," dated July 20, 2021 (Exhibit 006);
 - Sheet C-8 - "Erosion Prevention and Sedimentation Control," dated July 20, 2021 (Exhibit 006);
 - Sheet C-9 - "Erosion Prevention and Sedimentation Control Details," dated July 20, 2021 (Exhibit 006);
 - Sheets LS-1 and LS-2 - "Landscaping Plan" and "Landscaping Details," dated July 20, 2021 (Exhibit 007);
 - Sheet C-12 - "Fire Truck Turn-Outs," dated September 10, 2021 (Exhibit 111);
 - Sheet ES-1 - "Electrical Site Plan and Details," dated September 10, 2021 (Exhibit 108);
 - Sheet ES-2 - "Electrical Photometric Plan and Details," Dated September 10, 2021 (Exhibit 108);
3. All conditions of Land Use Permit #3R0805 and the amendment, #3R0805-1, are in full force and effect except as further amended herein.
 4. This permit specifically authorizes remodeling the previously permitted existing youth education and treatment center to accommodate up to six boys ages 12-17 whose treatment needs require a higher level of support and security than the facility currently offers. Limiting the number of boys to six and their ages to 12-17 are critical conditions as it relates to the Stowe Club Highlands analysis (Act 250 Rule 34(E)).
 5. The Permittees shall comply with all of the conditions of Wastewater System and Potable Water Supply Permit #WW-3-9246-1 ("the WW permit") issued on February 7, 2014 by the Agency of Natural Resources ("ANR") Drinking Water and Groundwater Protection Division. Any nonmaterial changes to the WW permit shall be automatically incorporated herein upon issuance by the ANR. (Exhibit 026).

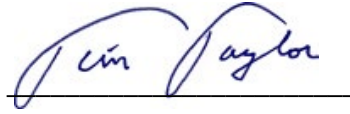
6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
7. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. No further subdivision, alteration, and/or development on the tracts of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. Construction hours shall be limited to Monday through Friday, 6:00 AM to 6:00 PM with limited work on weekends if needed. There shall be no construction on Sundays or National holidays.
12. The Permittees shall apply and maintain water and/or other agents approved by the Watershed Management Division on all roadways or disturbed areas within the project during construction and until permanently surfaced and/or vegetation is fully established to control dust.
13. The building approved herein is not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittees shall apply and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
14. No new floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation and review and approval by the Commission.
15. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
16. The Permittees shall be obligated to implement the Construction Site Waste Reduction Plan approved by the Agency of Natural Resources Solid Waste Management Program and included as Exhibit #029.

17. At a minimum, the Permittees shall comply with the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
18. The Permittees shall comply with Exhibits #001 (Application, Schedule B) and #006 (Sheet C-8) for erosion prevention and sediment control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
19. In addition to conformance with all erosion prevention and sediment control conditions, the Permittees shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
20. The Permittees shall maintain an undisturbed, naturally vegetated riparian zone along streams and wetlands, except as identified in Site Plan C-3 (dated July 7, 2021). The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the top-of-bank or, in areas where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and extend to the water's edge. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing.
21. The Permittees shall implement the Road Maintenance Plan and shall maintain Stevens Place and the associated driveway serving the facility as a year 'round road described in Exhibit 028.
22. The Permittees and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit #007 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
23. The installation of exterior light fixtures is limited to those approved in Exhibits #108 and #118. The pole lights shall be mounted no higher than 20-feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated and shall be Dark Sky compliant. The light fixtures shall be 3000 Kelvin (Color Temperature).
24. The exterior lights around the basketball court/recreation area shall be extinguished when not occupied.

25. Pursuant to 30 V.S.A. Section 51(e), the Permittees shall construct residential addition 500 square feet or greater in accordance with Vermont's Residential Building Energy Standards (RBES) effective at the time of construction.
26. The installation and/or use of electric resistance space heat is specifically prohibited unless (i) it is approved in writing by the District Commission and/or (ii) it specifically qualifies as an exception to the prohibition of electric-resistance building heating, pursuant to Section R404.2 of the 2020 Vermont Residential Building Energy Standards.
27. If a certification is required to be submitted to the Public Service Department as described under 30 V.S.A. § 51(f), the Permittees, upon completion of the construction of the addition to the building and prior to use or occupancy, shall submit a copy of the certification to the District Commission.
28. The Permittees shall reference the requirements and conditions imposed by Land Use Permit #3R0805-2 in all deeds of conveyance and leases.
29. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
30. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2024** unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
31. The Permittees shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittees shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
32. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 27th day of January 2022.

By



Tim Taylor, Chair
District 3 Environmental Commission

Members participating in this decision: Clotilde Hryshko
Linda Gray

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

Documents associated with this decision can be viewed on the Natural Resources Board's website at <https://nrb.vermont.gov/> select Act 250 Database, enter 3R0805-2 as the Project Number and follow the prompts.

E-Notification CERTIFICATE OF SERVICE # 3R0805-2

I hereby certify that I, the undersigned, sent a copy of the foregoing Act 250 Findings of Fact and Conclusions of Law and Order and Land Use Permit on January 27, 2022 by electronic mail to the following. All email replies should be sent to NRB.Act250Springfield@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify the District Office of any email address changes.**

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By: 

Natural Resources Board Technician



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Natural Resources Board
Districts 2 & 3 Environmental Commission
310 Mineral Street, Suite 305
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LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On August 6, 2021, Vermont Permanency Initiative, Inc. (“VPI”, “Beckett” or “Covered Bridge Treatment Center”) and State of Vermont, Division for Children & Families (“DCF”) filed an application for an Act 250 permit for a project generally described as remodeling an existing youth education and treatment center to accommodate up to six boys ages 12-17 whose treatment needs require a higher level of support and security than the facility currently offers. The project is located at 487 Stevens Place, in Newbury, Vermont. The tract of land consists of 278 acres. The Applicant’s legal interest is ownership in fee simple described in a deed recorded in Book 80, Page 571 of the land records of Newbury, Vermont and an eventual lease arrangement with the State of Vermont, Agency of Human Services, Division for Children & Families, the Applicants.

The application was first submitted on July 26, 2021. The application was deemed complete on August 6, 2021 upon receipt of the required signatures by the co-applicants.

The Commission held a hearing on this application on August 25, 2021. The Commission also conducted a site visit on August 25, 2021 and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on January 26, 2022 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. OFFICIAL NOTICE

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

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). The Commission takes official notice of previous Land Use Permits (“LUP”) #3R0805 and #3R0805-1 and the Newbury Town Plan.

Accordingly, official notice is hereby taken of LUP #3R0805, #3R0805-1 and the Newbury Town Plan subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

IV. AMENDMENT APPLICATION - RULE 34(E)

The threshold question on an amendment application is “whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1).

In this application, the Applicants do not seek to amend such a critical permit condition, so the Commission may consider the merits of the amendment application without conducting the rest of the Rule 34(E) analysis.

V. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) are:

1. The Applicants, by James Wasser, Doug Sonsalla, Jay Wolter, Commissioner Sean Brown, Jon Anderson, Esq., Judith Rex, Jeff Caron, Lara Saffo, Jennifer Herbert, Penny Sampson and Corey Mack.

2. The Agency of Natural Resources through an Entry of Appearance dated August 24, 2021, by Jennifer Mojo, Senior Planner, Office of Planning (see Exhibit 068).
3. The Vermont Agency of Transportation through an Entry of Appearance dated August 25, 2021 by Christopher Clow, Transportation Engineer (see Exhibit 071).

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

1. Laura Austin lives at 410 Jefferson Hill Road, Newbury (South Ryegate mailing address), is a member of C4N, and requested party status under Criteria 1(B) related to Stormwater runoff with potential for impacting wetlands and wildlife habitats; 8 Aesthetics; 8(A) Wildlife; 9(A) Impact of Growth; and 10 Conformance with the Town Plan. Ms. Austin's property is approximately 1.5 miles northwest of the project site. The Commission granted preliminary party status under Criteria 8 and 10 and denied under Criteria 1B, 8(A) and 9(A) because it was not demonstrated that the impacts on Ms. Austin's particular interests are any different than that of the general public. Preliminary party status is granted under Criteria 8 and 10 and denied under 1B, 8(A) and 9(A). See Exhibit 074.
2. Walter and Carol Cottrell, 3373 Wrights Mountain Road, Newbury, VT requested party status under Criteria 7 Municipal Services, 8(A) Necessary Wildlife Habitat and Endangered Species, 9 (A) Impact of Growth, and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 7, 8(A) and 10 and denied under 9(A). See Exhibit 057.
3. Susan Culp resides at 3010 Wallace Hill Road, Newbury and requested party status under Criteria 7 Municipal Services, 8 Aesthetics, and 10 Conformance with the Town Plan. Lighting from the project may be visible from her house that is situated near the height of land and looks west across Interstate 91 toward the project site. The Commission granted preliminary party status under Criteria 7, 8 and 10. See Exhibits 044 and 059.
4. Kelley and Tristan Escalada, 298 Pleasant Street, Dunstable, MA with a home located at 1705 Bears Den Road, Newbury, are members of C4N, and requested party status under Criteria 1G Wetlands, 3 Burden on an Existing Water Supply, 8 Aesthetics as it relates to lighting, and 10 Conformance with the Town Plan. The Escaladas believe that the project

will be visible from their property. They are concerned that the project will have an impact on their existing shallow well and lighting will adversely impact their enjoyment of stargazing and long-exposure Astro photography. The Commission granted preliminary party status under 3, 8 and 10 and denied under 1G. See Exhibit 050.

5. Gerald Estell resides at 2061 Fish Pond Road, Newbury, is a member of C4N, and requested party status under Criteria 1(B) Stormwater, 5 Traffic, 7 Municipal Services, 8 Aesthetics, 9 Public Investments, and 10 Conformance with the Town Plan. His property abuts the Applicant's property to the south. He is concerned that the increased traffic and lighting, including lights from vehicles, will adversely impact his enjoyment of his home. He is also concerned that the runoff from the property may adversely impact the stream and wetland on his property because the project is at a higher elevation. The Commission granted preliminary party status under Criteria 1(B), 5, 7, 8, and 9(K). See Exhibit 049.
6. Andrea Franklin resides and operates a business at 9340 Scotch Hollow Road, Newbury, is a member of C4N. In written the Party Status Petition she submitted prior to the hearing, she requested party status under Criteria 5 Traffic and 7 Municipal Services. At the hearing, she also requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. She believes she will be negatively impacted by the increased traffic and that there will be an increased demand on the local first responders. The Commission granted preliminary party status under Criteria 5, 7, 8 and 10. See Exhibit 064.
7. Andrew George, 931 Lakeside Road, Southbury, CT 06488, owns and enjoys abutting property to the project at 2205 Fish Pond Road, Newbury. Mr. George submitted a written petition for party status but was unable to attend the hearing. He requested party status under Criteria 5 Traffic, 8 Aesthetics and 10 Conformance with the Town Plan. The increased traffic will adversely impact the serenity of his and his wife's daily walks on Fish Pond Road. He is concerned that further development of the treatment center will adversely affect the character of the area. The Commission granted him preliminary party status under Criteria 5, 8 and 10. See Exhibit 053.
8. Tina Heywood resides at 2787 Leighton Hill Road, Newbury, is a member of C4N, and requested party status under Criteria 5 Traffic, 7 Municipal Services, 9(K) Public Investments, 9(L) Settlement Patterns, and 10 Conformance with the Town Plan. Her home is located at the junction of Leighton Hill Road and Fish Pond Road. She is concerned the added traffic will create unsafe conditions on the road that she walks on often, the project will endanger the public's use of the town roads, and that the project is not compatible with the character of the area. The Commission granted preliminary party status under Criteria 5, 7, 9(K), 9(L) and 10. See Exhibit 051.
9. Susan Kowalenko, 224 Charles Street, Westfield, NJ 07090, owns and enjoys property located at 1143 Fish Pond Road in Newbury, approximately a half mile south of the

intersection of Stevens Place. She is a member of the C4N and submitted a written Party Status Petition prior to the hearing requesting party status under Criteria 1 Water Quality, 5 Traffic, 7 Municipal Services, 9(A) Impact of Growth, and 10 Conformance with the Town Plan. She is concerned with the potential reduction in the quality and quantity of ground and surface waters that flow through or upon the lands due to the on-site fire water storage tank. There are four ponds on her property below the current Stevens Place. She is concerned that increased traffic will adversely impact her enjoyment of her land and walking on the local roads. She is also concerned with the additional emergency services and the cost to Newbury taxpayers. She was unable to attend the hearing, however, the Commission granted preliminary party status under 1 Water Quality, 5, 7, 9(A) and 10. See Exhibit 046.

10. Jette Mandl-Abramson and Caudel Chery reside and operate a saffron farm at 1831 Fish Pond Road, Newbury and are members of C4N. They requested party status under Criteria 5 Traffic, 8 Aesthetics, 9(A) Impact of Growth, 9(K) Public Investments, and 10 Conformance with the Town Plan. Their property is located at the intersection of Fish Pond Road and Stevens Place that leads to the project site. They are concerned that the increased traffic and associated noise and dust will adversely impact the bucolic setting and enjoyment of their property. They are also concerned about light pollution and the potential increased use of salt on the road could impact their organic farming practices. The Commission granted preliminary party status under Criteria 5, 8, 9(A), 9(K) and 10. See Exhibit 060.
11. Emily Maxfield and her family, 65 Freestone Avenue, Portland, CT 06480 own and is building a home on property at 6 Bears Den Road in Newbury, an adjacent property to the project site. Ms. Maxfield requested party status under Criteria 1 Air Pollution, 1(E) Streams, 1(G) Wetlands, 5 Traffic, 7 Municipal Services, 9(A) Impact of Growth, and 10 Conformance with the Town Plan. Until the house is built, the family often camps on the property. One of the children has a severe aversion to noise, potentially impacting his health. The Maxfield's wetland and stream is connected to the Applicant's wetlands. The increased traffic will affect the safety and serenity of the family's walks and enjoyment of their property. The Commission granted preliminary party status under Criteria 1 Air, 1E, 1G, 5, 7, 9(A) and 10. See Exhibit 052.
12. Susan Monica and Christopher Jones reside at 40 Fish Pond Road in Newbury and are members of C4N. Ms. Monica submitted a Party Status Petition and requested party status under Criteria 5 Traffic, 7 Municipal Services, 9(A) Impact of Growth, 9(L) Settlement Patterns and 10 Conformance with the Town Plan. They will experience increased noise, dust and traffic from the increased activity of turning traffic accessing the facility from the south as their house is at the corner of Fish Pond Road and Scotch Hollow Road. The Commission granted preliminary party status under Criteria 5, 7, 9(A), 9(L) and 10. See Exhibit 045.

13. Anthony and Joanne O'Meara reside at 642 Fish Pond Road in Newbury and are members of the C4N. They requested party status under Criteria 5 Traffic, 7 Municipal Services, 9(A) Impact of Growth and 10 Conformance with the Town Plan. The O'Meara's home and business is approximately 1.1 miles south on Fish Pond Road from Stevens Place. They are concerned that the additional traffic will adversely impact their enjoyment of walking on Fish Pond Road. The Commission granted preliminary party status under Criteria 5, 7, 9(A) and 10. See Exhibit 054.
14. Christopher Rathburn, 259 Fairground Road, Bradford, VT 05033 owns property that abuts the project and requested party status under Criteria 5 Traffic, 8 Aesthetics and 8(A) Necessary Wildlife Habitat and Endangered Species. The Commission granted preliminary party status under 5, 8 and 8(A).
15. Joseph Schoenstein and Benny Rose, 519 First Street, Greenport, NY 11944, own adjoining property with a hunting camp at 6990 Scotch Hollow Road, Newbury, and are members of C4N. Through a written Party Status Petition, they requested party status under Criteria 5 Traffic, 7 Municipal Services, 9(A) Impact of Growth, and 10 Conformance with the Town Plan. They were not able to attend the hearing, however, the Commission granted preliminary party status under 5, 7 and 10 and denied under 9(A). See Exhibit 055.
16. Bruce and Kathryn Smith, own property at 1375 Bears Den Road, Newbury and are members of the C4N. They submitted a written Party Status Petition, but were unable to attend the hearing. The property is approximately 0.75 miles north of the project site on the same side of Interstate 91 at a higher elevation. They requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. They enjoy the beauty of the area and the ability to see so many stars at night. They believe that lighting from the project will negatively affect their enjoyment of their property and will violate a town policy to avoid illumination. The Commission granted preliminary party status under Criteria 8 and 10. See Exhibit 047.
17. Brad Vietje resides at 7262 Scotch Hollow Road, Newbury over the hill, to the west of the project site at a lower elevation. A historic road, expanded in 2010 to create a logging road, connects the properties. He requested party status under Criteria 7 Municipal Services, 9(A) Impact of Growth, and 10 Conformance with the Town Plan. He is particularly concerned about public safety and the lack of local law enforcement, potential expansion of the facility in the future and non-compliance with the Town Plan. The Commission granted preliminary party status under Criteria 7, 9(A) and 10. See Exhibit 056.
18. Todd and Lisa Wagner, 2289 Fish Pond Road, Newbury are members of C4N and requested party status under Criteria 5 Traffic, 7 Municipal Service, 9(K) Public Investments, and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 5, 7, 9(K) and 10. See Exhibit 048.

19. Concerned4Newbury, Inc. (“C4N”) is a Vermont non-profit organization representing property owners and residents of Newbury who are concerned about Vermont Permanency Initiative’s plan to open the proposed facility. C4N, represented by Nicholas Low, Esq., requested party status under Criteria 1B related to Stormwater Runoff; 1G Wetlands; 5 Traffic; 7 Municipal Services; 8 Aesthetics as it relates to lighting; 9K Impact on Public Investments; and 10 Conformance with the Town Plan. Some of C4Ns members may experience adverse impacts from this project under these criteria. The Commission granted preliminary party status under Criterion 1B, 1G, 5, 7, 8, 9K and 10. See Exhibit 070.

ii. Final Party Status Determinations

At the hearing the Applicants stipulated to granting preliminary party status to all of the above-listed parties under Criteria 5 Traffic, 7 Municipal Services, 8 Aesthetics as it relates to Noise and Lighting, and 10 Conformance with the Town Plan. The Applicants object to granting preliminary party status under other criteria and submitted written objections, dated September 10, 2021 (Exhibit 079). The Applicants objections have been reviewed by the Commission.

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and revised the status of the following parties:

1. Laura Austin: The Commission granted preliminary party status under Criteria 8 and 10 and denied under Criteria 1(B), 8(A) and 9(A). Exhibit 074. The Applicants objected to granting party status under Criteria 1(B), 8(A), 9(A) and 10 except as related to aesthetic concerns. Exhibit 079.

Final party status is unchanged from the preliminary party status determination which granted party status under Criteria 8 and 10 and denied under 1(B), 8(A) and 9(A) as explained above.

2. Walter and Carol Cottrell: The Commission granted preliminary party status under Criteria 7, 8(A) and 10 and denied under 9(A). Exhibits 057, 073, and Testimony. The Applicants objected to granting party status under 7, 8(A), 9(A) and 10. Exhibit 079.

Final party status is denied under Criteria 7, 8(A), 9(A) and 10 because the Cottrells did not demonstrate that the proposed Project would impact their interests any more than the general public.

3. Susan Culp: The Commission granted preliminary party status under Criteria 7, 8 and 10. Exhibits 044, 059, 069, 090, 091, 092, 093, 094, 095, 104 and Testimony. The Applicants objected to granting party status under 7 and 10 except for night sky lighting concerns. Exhibit 079.

Ms. Culp did not demonstrate a causal connection between the impact of the Project and any particularized interest she may have as it relates to Criteria 7 and 10 that is different than that on the general public.

Final party status is granted under Criterion 8 and denied under Criteria 7 and 10 because it was not demonstrated that the proposed Project would impact Ms. Culp's interests any more than the general public.

4. Kelley and Tristan Escalada: The Commission granted preliminary party status under 3, 8 and 10 and denied under 1(G). Exhibits 050, 103 and Testimony. The Applicants objected to granting party status under 1(G) and 3. Exhibit 079.

The proposed Project requires less water than what was previously permitted under Act 250 permit #3R0805-1 for a bed and breakfast. The Escaladas did not demonstrate that the use of less water by this proposed Project would have an impact on their water supply.

Final party status is granted under Criteria 8 and 10 and denied under Criteria 1(G) and 3 because no causal connection was demonstrated between these criteria and the Escaladas particularized interests.

5. Gerald Estell: The Commission granted preliminary party status under Criteria 1(B), 5, 7, 8, and 9(K). Exhibit 049 and Testimony. The Applicants objected to granting party status under these criteria. Exhibit 079.

Final party status is granted under Criterion 5 and 8 and denied under Criteria 1(B) because it was not demonstrated that there was a causal connection between stormwater runoff and impacts on Mr. Estell's interests. Final party status is denied under 7, and 9(K) because the impacts on his interests related to these criteria are no more than those on the general public.

6. Andrea Franklin: The Commission granted preliminary party status under Criteria 5, 7, 8 and 10. Exhibit 064 and Testimony. The Applicants object to granting final party status under Criteria 5, 7 and 10 except for concerns related to lighting. Exhibit 079.

Final party status is granted under Criterion 8 and denied under 5, 7 and 10 because she did not demonstrate that her interests would be impacted any more than the general public as it relates to 5, 7 and 10.

7. Andrew George: The Commission granted preliminary party status under Criteria 5, 8 and 10. Exhibit 053. The Applicants object to granting party status under Criterion 5. Exhibit 079.

Final party status is granted under Criteria 5 and 8 and denied under 10 because it was not demonstrated that the impacts on his interests related to the Town Plan are any more than those impacts on the general public.

8. Tina Heywood: The Commission granted preliminary party status under Criteria 5, 7, 9(K), 9(L) and 10. Exhibits 051, 089 and Testimony. The Applicants object to granting party status under all criteria. Exhibit 079.

Final party status is granted under Criteria 5 and denied under 7, 9(K), 9(L) and 10 because the Ms. Heywood did not demonstrate that the impacts on her interests related to these criteria are different from the impacts on the general public.

9. Susan Kowalenko: The Commission granted preliminary party status under 1 Water Quality, 5, 7, 9(A) and 10. Exhibit 046. The Applicants object to granting party status under 1(A), 7, 9(A), and 10. Exhibit 079.

Final party status is granted under Criterion 5 and denied under 1 Water Quality (no evidence with respect to impact on her ponds), 7, 9(A) and 10. Ms. Kowalenko did not demonstrate that the impacts on her interests related to 7, 9(A) and 10 are different than those on the general public.

10. Jette Mandl-Abramson and Caudel Chery: The Commission granted preliminary party status under Criteria 5, 8, 9(A), 9(K) and 10. Exhibits 060, 102 and Testimony. The Applicants object to granting party status under Criteria 5, 9(A) and 9(K). Exhibit 079.

Final party status is granted under Criteria 5 and 8 and denied under 9(A), 9(K), and 10 because it was not demonstrated that the proposed Project would impact their interests any more than the general public.

11. Emily Maxfield: The Commission granted preliminary party status under Criteria 1 Air, 1(E), 1(G), 5, 7, 9(A) and 10. Exhibit 052 and Testimony. The Applicants object to granting party status under Criteria 1 Air, 1(E), 1(G), 7, 9(A) and 10. Exhibit 079.

Final party status is denied under Criteria 1 Air as it relates to Noise, 1(E), 1(G) and 5 because a causal connection was not demonstrated between the proposed Project and impacts on the Maxfield's particularized interests related to noise, streams, wetlands, and traffic. Final party status is also denied under 7, 9(A) and 10 because it was not demonstrated that the proposed Project would impact her family's interests any more than that of the general public.

12. Susan Monica and Christopher Jones: The Commission granted preliminary party status under Criteria 5, 7, 9(A), 9(L) and 10. Exhibits 045, 045a, 086, 087, 088, 120 and

Testimony. The Applicants object to granting party status under all the criteria requested. Exhibit 079.

Final party status is granted under Criterion 5 and denied under Criteria 7, 9(A), 9(L) and 10 because it was not demonstrated that the proposed Project would impact their interests any more than the general public.

13. Anthony and Joanne O'Meara: The Commission granted preliminary party status under Criteria 5, 7, 9(A), 10. Exhibits 054, 098, 105, 125, 126, 133 and Testimony. The Applicants object to granting party status under 7, 9(A) and 10. Exhibit 079.

Final party status is granted under Criteria 5 and 10 and denied under Criteria 7 and 9(A) because it was not demonstrated that the proposed Project would impact their interests any more than the general public.

14. Christopher Rathburn: The Commission granted preliminary party status under 5, 8 and 8(A). Testimony. The Applicants object to granting party status under Criteria 8(A). Exhibit 079.

Final party status is denied under Criteria 5 and 8 because Mr. Rathburn did not demonstrate a causal connection between the proposed Project and impacts on his particularized interests related to traffic and aesthetics and denied under Criterion 8(A) because there is no critical wildlife habitat identified near the proposed Project.

15. Joseph Schoenstein and Benny Rose: The Commission granted preliminary party status under 5, 7 and 10 and denied under 9(A). Exhibit 055. The Applicants object to granting party status under Criterion 8(A). Exhibit 079.

Final party status is denied under Criterion 5 because they did not demonstrate a causal connection between the proposed Project and impacts related to their particularized interests related to traffic and denied under Criteria 7, 9(A) and 10 because they did not demonstrate that the impacts would impact their interests any more than those on the general public.

16. Bruce and Kathryn Smith: The Commission granted preliminary party status under Criteria 8 and 10. Exhibit 047. The Applicants object to granting party status under Criteria 8 and 10. Exhibit 079.

Final party status is granted under Criterion 8 and denied under Criterion 10 because it was not demonstrated that the proposed Project would impact their interests any more than the general public.

17. Brad Vietje: The Commission granted preliminary party status under Criteria 7, 9(A) and 10. Exhibit 056 and Testimony. The Applicants object to granting party status under Criteria 7, 9(A) and 10. Exhibit 079.

Final party status is denied under Criteria 7, 9(A) and 10 because it was not demonstrated that the proposed Project would impact Mr. Vietje's interests any more than those impacts on the general public.

18. Todd and Lisa Wagner: The Commission granted preliminary party status under Criteria 5, 7, 9(K) and 10. Exhibit 048 and Testimony. The Applicants object to granting party status under Criteria 5, 7, 9(K) and 10. Exhibit 079.

Final party status is granted under Criteria 5 and 10 and denied under Criteria 7 and 9(K) because the Wagners did not demonstrate that the proposed Project would impact their interests any more than that of the general public.

19. Concerned4Newbury, Inc. ("C4N"): The Commission granted preliminary party status under Criteria 1(B), 1(G), 5, 7, 8, 9(K) and 10. In its brief to the Commission related to conformance of the Project to the Town Plan, C4N also commented on Criterion 9(A) Impact of Growth, however, party status under this criterion was not requested nor granted. Exhibits 070, 070a – 070g, 101 and Testimony. The Applicants object to granting party status under Criteria 1(B), 1(G), 7 and 9(K). Exhibit 079.

As cited above, the Commission granted final party status to individual members of C4N under Criteria 5, 8 and 10. In addition to the Commission granting preliminary party status to C4N under Criteria 5, 8 and 10, C4N requested party status under Criteria 1 Water Quality related to Stormwater Runoff, 1(G) Wetlands and 7 Municipal Services and 9(K) Public Interests.

C4N requested party status under Criterion 1 Water Quality as it relates to potential impacts "on surface water runoff to properties owned by individuals who are members of Concerned4Newbury." No member of C4N that attended the hearing and/or requested party status under Criteria 1 Water Quality, 1(B) Waste Disposal, or 1(G) Wetlands was granted final party status under these criteria.

Final party status is granted under Criteria 5, 8 and 10 and denied under Criteria 1, 1(B) and 1(G) because no causal connection between the proposed Project and the particularized interest of any member was demonstrated and denied under Criteria 7 and 9(K) because it was not demonstrated that the proposed Project would impact the interests of the organization or the individual members of C4N any more than the general public.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

- | | |
|-----------------------------------|---------------------------------------|
| 1(A) - Headwaters | 9(D) - Earth Resources |
| 1(C) - Water Conservation | 9(E) - Extraction of Earth Resources |
| 1(D) - Floodways | 9(F) - Energy Conservation |
| 1(F) - Shorelines | 9(G) - Private Utility Services |
| 2 - Water Supply | 9(H) - Costs of Scattered Development |
| 6 - Educational Services | 9(J) - Public Utility Services |
| 9(B) - Primary Agricultural Soils | 10 - Regional Plans |
| 9(C) - Productive Forest Soils | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits 001 - 137, and other evidence in the record.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and the burden is on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. Land Use Permit ("LUP") #3R0805, issued on May 19, 1998, authorized the construction of a six-bedroom bed and breakfast serving 12 guests, one additional room for the owner on ten acres and one bedroom apartment and private workshop on 479 acres. Official Notice of LUP #3R0805.
2. LUP #3R0805-1, issued on April 18, 2014, authorized the use of an existing bed and breakfast property as a pre-vocational outdoor education/experiential learning center for up to 12 students. This project was known as the Vermont Assessment Center Newbury ("VACN") and was operated by Becket Family of Services. Official Notice of LUP #3R0805-1.
3. This proposed Project is to remodel the previously permitted and existing youth education and treatment center, to accommodate up to six boys ages 12-17 whose treatment needs require a higher level of support and security than the facility currently offers. Construction will include adding 500 square-feet of interior space by enclosing the existing porch on both the main and basement levels of the facility. Also, an

approximate 4,500 square-foot outside recreational area will be fenced in. A 300 square-foot patio will be added on the southern side of the facility. The parking area will be reconfigured to provide parking for up to 21 cars. The individuals will reside in-house and receive on-site treatment until they can be transitioned home or to another community placement. The property will be owned by Vermont Permanency Initiative, Inc. ("VPI") and leased to the State of Vermont, DCF, which is providing funding for the construction of the project and the operations of the facility. DCF's current intent is to enter into a contract with Becket Family of Services, a nonprofit behavioral health care alliance. Exhibits 001 and 123.

Criterion 1 - Air Pollution:

Findings of Fact

4. The lower and main levels of the treatment facility will be primarily heated and cooled with several electric powered, multi-split air-to-air heat pump systems consisting of ducted indoor units. An existing, high efficiency propane boiler will be reused and the hot water system will be reconfigured to provide auxiliary heating to the heat pumps. Ventilation will be provided through a central system served by one energy recovery ventilation unit. Exhibits 001 and 013.
5. The upper level will be served by the existing hot water boiler. There will be no mechanical modifications to the upper level. Exhibit 001.
6. There will be no fire pits and there will be no burning of forest or construction debris. Exhibit 001.
7. There will be no blasting. Exhibit 001.
8. Construction will occur, Monday through Friday, 6:00 AM to 6:00 PM. There will be limited work on weekends if needed. The majority of work is interior renovations. Exhibit 001.
9. One of the adjoining landowners who camps on their land, has a special needs child a severe aversion to noise. Exhibit 052.
10. An Air Pollution Permit is not required.

Conclusions of Law

Before granting a permit, the Commission must find that the development will not result in undue water or air pollution.

The Commission is not persuaded that the noise levels from the Project rise to the level of causing health effects. The effects of noise that amount to annoyance and aggravation are analyzed under Criterion 8 Aesthetics. This includes effects from demolition, construction, and traffic.

The Commission concludes that this Project will not result in undue air pollution.

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

Criteria 1 Water Pollution, 1(B)Waste Disposal and 4 Soil Erosion

Findings of Fact

11. There will not be an increase in design flows, therefore, an amendment to the existing Wastewater System and Potable Water Supply Permit #WW-3-9246-1 (the "WW Permit"), issued by the Agency of Natural Resources on February 7, 2014 is not needed. Exhibits 009, 026 and 041.
12. The WW Permit approved a maximum design flow of 1,190 gallons per day for water supply and for onsite wastewater disposal. Exhibits 009 and 026.
13. The design flow to the main building (the facility) is being reduced from 1,050 gpd to 732 gpd. The flow demands for the apartment and out building are not changing (140 gpd). The overall demands on the water supply and wastewater disposal systems will be less than the current permitted 1,190 gpd. Exhibits 026 and 041.
14. There are two existing on-site wastewater disposal systems that serve the site. One serves the one-bedroom apartment (140 gpd) and the other serves the main building (1,050 gpd). There will be no change or modifications to the water supply or wastewater disposal systems. Exhibit 041.
15. The existing floor drains and the proposed floor drains to be installed in the showers and mechanical room will discharge to the existing wastewater system and not subsurface. Exhibit 068.
16. A Construction General Permit or Stormwater Discharge Permit is not required for the Project. Exhibit 001.
17. Stormwater will be treated through surface run-off. Exhibit 001.
18. Most of the earth disturbance will be on existing disturbed areas. Erosion prevention measures will include straw mulch for flat areas, erosion control mats will be used on steeper slopes, silt fences will be installed across slopes, around catch basins, stock piles, borrow areas and at toes of slopes, check dams will be installed in ditches around catch basins and across slopes and sediment basins will be installed in ditches and prior to discharge into any bodies of water. Exhibits 001 and 006.
19. Some of the neighbors are concerned that surface water runoff from Stevens Place may adversely impact their properties. Exhibit 070.
20. An existing stone retaining wall and concrete wall will be removed from the southeastern corner of the main building. A modular block retaining wall will be constructed along the southern edge of the patio. The patio is made of permeable pavers. Exhibits 001 and 006.

21. Artificial fill and existing asphalt will be removed from the wetland buffer on the north side of the existing parking lot. The wetland will be restored. Exhibits 006 (Sheet C-3) and 007.
22. As required by the State Fire Marshalls, three water storage tanks will be buried in an area north and west of the facility in the current overflow parking area. Exhibits 006 (Sheet C-3) and 111.
23. The existing above-ground propane storage tanks will be relocated further north and buried. Exhibits 001 and 006.
24. The Applicants will implement the Construction Site Waste Reduction Plan as described in Exhibit 029.
25. The applicant will use erosion prevention and sediment control measures contained in the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*, Vermont ANR, February 2020.
26. Permanent erosion controls consist of seed and sod, plantings, or wetland buffer vegetation at all disturbed, non-hardscaped areas. Exhibits 001 and 007.

Conclusions of Law

The WW Permit issued by the Agency of Natural Resources creates a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of wastewater and waste collection, treatment and disposal systems authorized by the permit will not result in undue water pollution. Technical determinations made by ANR in issuing the permit are entitled to substantial deference. 10 V.S.A § 6086(d).

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

The Project complies with Criterion 1(B) (Waste Disposal).

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

The Project complies with Criterion 4.

Criteria 1(E) Streams and 1(G) Wetlands:

Findings of Fact

27. A Class 2 wetland is located north and adjacent to the Project area. The wetland has been delineated. Exhibits 001 and 014.

28. The Project does not require a wetland permit because it avoids new Class 2 wetland and buffer impacts, and proposes to restore portions of the Class 2 wetland buffer adjacent to the parking area. Exhibits 001, 007, 014 and 068.
29. There is a stream in the wetland. The Natural Resources Atlas identifies streams elsewhere on the property. Exhibit 014.
30. The Agency of Natural Resources supports the inclusion of the following permit condition for protection of streams and wetlands with provisions for previous impacts identified on the site plans:

The Permittee shall maintain an undisturbed, naturally vegetated riparian zone along streams and wetlands, except as identified in Site Plan C-3 (dated 7/20/21). The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the top-of-bank or, in areas where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and extend to the water's edge. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing.

Conclusions of Law

The Project includes restoring a portion of the Class 2 wetland buffer adjacent to the parking lot. With the addition of the condition recommended by the ANR, the Commission finds that the Project complies with Criteria 1(E) Streams and 1(G) Wetlands.

The Project complies with Criteria 1(E) and 1(G).

Criterion 3 – Impact on Existing Water Supply:

Findings of Fact

31. Previous relevant findings are incorporated herein.
32. An existing private well will provide water for the Project. Water usage will be less than what was required and/or permitted for the previous uses. Exhibits 001, 114 and 041.
33. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit #WW-3-9246-1. Exhibit 026
34. Kelley and Tristain Escalada, adjoining landowners to the north of the Project site, rely on a shallow well for their water supply. Exhibits 051, 103 and Testimony.
35. The water tanks will be filled with water from off site. Exhibits 114.

Conclusions of Law

Under Criterion 3, a project must not cause unreasonable burdens on an existing water supply.

The Commission is not persuaded that this project will adversely impact the neighbor's well because the water use will be less than that which has already been permitted for past use and the 81,000 gallons of water needed to fill the three storage tanks will come from off site.

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

Criteria 5A Transportation Congestion and Safety, 5B Transportation Demand Management and 9(K) Development Affecting Public Investments:

Findings of Fact

36. The Project is not located in a Transportation Improvement District (TID). Exhibit 001.
37. The Project is located at the end of Stevens Place, a narrow, 16-foot-wide, gravel surface Class 4 Town Highway with no outlet. The four to five existing widened areas will be improved and maintained. A steep portion of the access from the end of Stevens Place to the facility is paved. Exhibits 001, 027, 043 and 071.
38. The site is located approximately three miles south and west of US Route 302 and Interstate 91 (Wells River Exit 17), to Leighton Hill Road then to Fish Hill Road to Stevens Place. The majority of traffic will be coming from Route 302 and I-91. Exhibits 001, 004 and Testimony.
39. From the south, another route to the Project site is from Newbury Village, Route 5 to Pine Street or Chapel Street, to Scotch Hollow Road, to Fish Pond Road and then to Stevens Place. Natural Resources Atlas.
40. There are no changes to the sight distances at the existing intersection of Stevens Place (a Class 4 town highway) and Fish Pond Road or at the intersection of Fish Pond Road and Leighton Hill Road. Fish Pond Road and Leighton Hill Road are gravel-surface Class 3 town highways except for a short section that crosses I-91 on the approach to US Route 302. The available sight distances exceed the required design standard minimums at these intersections. Exhibit 027.
41. Onsite staff is expected to total 24 employees per day on a typical weekday, with up to 35 employees per day on peak, all-staff, training days. Weekend staff is expected to be 18 employees per day on Saturday and Sunday. Shift changes are expected to occur from 7:00 AM to 8:00 AM, 3:00 PM to 4:00 PM, and 10:00 to 11:00 PM. Exhibit 027.
42. Non-employee trips will include maintenance workers, family visitations, student advocates, service deliveries, student transportation, and other administrative and operational demands. These trips are expected to occur five times per day outside of the peak travel hours. Exhibit 027.
43. The estimated trip generation on weekdays is:

AM Peak Hour 27 (22 entering/5 exiting)

PM Peak Hour 31 (9 entering/22 exiting)

Evening Peak Hour 12 (4 entering/8 exiting)

Daily Peak 80 (40 entering/40 exiting)

Exhibit 027.

44. The posted speed limit on Stevens Place is 10 MPH; 35 MPH on Leighton Hill Road; and 50 MPH on US Route 302. The speed limit on Fish Pond Road is not posted. Exhibits 001 and 027.
45. The desired intersection sight distance and required stopping sight distances are achieved at all intersections on the most direct route from the site to US Route 302, except that existing trees and vegetation along the inside edge of Fish Pond Road looking south (right) from Stevens Place prevent meeting the desired minimum intersection sight distance. This is not considered a safety hazard or operational issue because the stopping sight distance is met and the low volume of traffic on Fish Pond Road. Exhibit 027.
46. The Transportation Assessment did not provide intersection information for traffic coming from the south from Newbury Village. Exhibit 027.
47. Along a 3-mile route between the Project site and Route 302 six crashes were reported between January 1, 2016 and December 31, 2020. One of those crashes resulted in an injury. The other crashes were noted as “property damage only” or not defined. No patterns were identified as being associated with the crashes. Exhibits 027 and 085.
48. The VT Agency of Transportation (“VTrans”) concurs with the trip generation and recommendations of the RSG assessment and has no concerns relative to the impact of this project on local traffic congestion or safety. Exhibit 085.
49. There are no state designated high crash locations near the Project site. Exhibit 027.
50. The Newbury selectboard and highway department approved a road maintenance plan for Stevens Place, a Class 4 Town Highway, and the driveway serving the proposed facility. Flexible guidelines are described related to winter maintenance operations, annual roadway grading, seasonal culvert and ditch inspection, landscape mowing and tree maintenance, and asphalt surface maintenance. Exhibits 028 and 043.
51. The Applicants, in collaboration with the Newbury Highway Department, will maintain Stevens Place road year ‘round. Exhibits 001, 028 and 123.
52. Neighbors frequently walk along Fish Pond Road and Leighton Hill Road and are concerned that the increased traffic from this Project will adversely impact the safety and enjoyment of the town roads by their families and their animals. Exhibits Testimony, 088, 102 and written petitions for party status from many of the neighbors.

53. The 21 parking spaces are adequate for the demands of the Project. Exhibit 001.
54. The Project is at the end of (and adjacent to) Stevens Place, a Class 4 Town Highway.
55. The Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the facility, service or lands. Stevens Place has served the previously permitted six-room bed and breakfast serving 12 guests, one additional room for the owner, and a one-bedroom apartment and private workshop. Also, Stevens Road has served the previously permitted pre-vocational outdoor education/experiential learning center for up to 12 students. Official Notice, Land Use Permit #3R0805 and Findings of Fact, Conclusions of Law, and Order #3R0805 and Land Use Permit #3R0805-1.
56. The Project will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to Stevens Place. The Applicants will actively maintain the Class 4 Town Highway for year 'round use according to the recommend Transportation Assessment. Exhibits 001, 027 and Testimony.

Conclusions of Law

Criterion 5(A) requires that the Project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways." See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens created. 10 V.S.A. §6087(b).

Even though the sight distance looking south from Stevens Place at the Fish Pond Road intersection does not meet the standards, the stopping distance is met. This same condition existed for the operation of the previous facility operation with twelve students and others. This proposed project is not creating an unsafe condition nor is it exacerbating an already congested and unsafe condition. Also, there are no high crash locations near the Project site.

The Applicants have agreed to implement the recommendations described in the Transportation Assessment (Exhibit 027), including improving and maintaining the pullouts along Stevens Place providing safe passage of vehicles on the narrow Class 4 road. The road will be maintained as a year 'round road.

Traffic associated with the proposed project does not rise to the level of creating a burden. Noise associated with the potential increased traffic and types of traffic is addressed under Criterion 8 Aesthetics. The Commission finds that the potential increase in the number of vehicles using Leighton Hill Road and Fish Pond Road will not cause unreasonable congestion or unsafe conditions.

The Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

With conditions requiring implementing the Roadway Maintenance Plan, the Commission finds that the Project complies with Criterion 5(A).

Criterion 5(B) requires that a project, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether the measure is reasonable, “given the type, scale and transportation impacts” of the proposed project.

Given the type, scale and transportation impacts of this Project, no appropriate strategies are needed. The Project complies with Criterion 5(B).

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

Other than Stevens Place that will be maintained collaboratively with the Town, the Project complies with Criterion 9(K).

The Commission concludes that the Project complies with Criteria 5A, 5B and 9(K).

Criterion 7 - Municipal Services:

Findings of Fact

57. Previous relevant findings are incorporated herein.
58. The Project will use municipal, State and regional services for fire, rescue and police protection and road maintenance. Exhibit 001 and Testimony.
59. There are three fire stations in Newbury: one in West Newbury, one in Newbury Village and one in Wells River Village. No fire fighters are on duty at the stations, but they respond when called. They receive pay for responding to calls and for training. Response time is related to the availability of firefighters. Exhibit 125.
60. The treatment facility will be fully covered with a sprinkler system. Water for the sprinkler system will be stored in three underground tanks with a total of 81,000 gallons of water available. The water tanks will be filled with water trucked in from off site. After construction, approximately one truckload of water will be needed at the site each year. Exhibits 110 and 114.
61. As an alternative to meeting the site requirements of a 24-foot-wide access road, the code baseline required by the State Fire Marshals for both the sprinkler and fire department draft storage will be doubled. Exhibit 110.
62. Two vehicle turnouts within the right-of-way of Stevens Place, a Class 4 town highway, will be regraded to allow fire trucks and ambulances to pull over and allow others to

- pass. An additional turnout exists on the Becket driveway. The Applicants will maintain the turn out areas on the access road. The Applicants will reimburse the Town to maintain the pullouts on Stevens Place. Exhibits 001, 110 and 114.
63. The steepest part of the driveway will be paved. Exhibit 114.
 64. During the winter months, the Applicants will maintain a plowed access to the pond to provide additional fire suppression capacity, if needed, by the Newbury Fire Department. Exhibit 114.
 65. A firetruck turnaround area will be provided. Exhibits 001 and 111.
 66. The Applicants will implement the Road Maintenance Plan such that the Class 4 road and the facility's access road are sufficiently maintained for access year 'round. The Town is satisfied with the plan. Exhibits 028 and 043.
 67. The Newbury Emergency Medical Services squad consists of volunteers. Response time is related to availability of the volunteers in the time of need. Newbury also contracts with the Woodsville, NH Ambulance Service. Exhibit 125.
 68. Woodsville Ambulance Service ("WAS") serves eight (8) towns. If the crew is already dispatched and a Newbury resident needs assistance, WAS calls for a backup crew from home. If there is no backup crew response, they call for mutual aid. Exhibits 066 and 070a.
 69. Newbury does not have a police department, but contracts with the Orange County Sheriff's Department for "extra law enforcement services." Response times could depend on lack of coverage due to available officers and/or budgetary limits. Exhibit 125.
 70. The Vermont State Police ("VSP") Barracks is 22.7 miles from the Project site. Exhibit 027 (page 11).
 71. The VSP Bradford Outpost is an extension of the St. Johnsbury barracks. There is no administrative assistance at the Bradford Outpost, and is only open if a Trooper is there. VSP Officers may use the Bradford Outpost to process people that are in custody and gives Troopers a place to do paperwork. Exhibit 070b.
 72. There are between 4 and 6 Troopers on any given shift to cover all 26 towns that are covered by the St. Johnsbury Barracks. On August 20, 2021, the Barracks had four vacancies. Exhibits 070b and 070e.
 73. The VSP is not a 24-hour department. Response time to Newbury depends on the level of the call, the location of the Trooper, and other calls they are responding to. Response time can vary from 5 minutes to 45 minutes. Exhibit 070b.

74. Between July 1, 2018 and August 31, 2020, the VACN documented 321 separate behavioral incidents that resulted in administrative level reports. Twenty of those reported incidents involved the VSP. Exhibits 070d, 070g, and 127.
75. The Newbury Selectboard and the Highway Department have a long-standing policy of providing Emergency Services if needed. Response time is related to the crew getting to the garage and how the rest of the Town may be affected by such an emergency. Exhibits 001, 027, 066 and 125.
76. Security features include site and interior spaces to be monitored with cameras and audio; site lighting for the perimeter of the facility and the recreational area; 12-foot high security fencing around the outdoor recreation area; access control outside the secured area; a 24/7 staffed operational office within the residential area; resident doors will be electronically controlled and connected to the monitoring and security system; windows will be fixed and non-operable; placement of fire alarms will be inaccessible to residents; generator for back-up power will be provided for the entire building, including all security systems and there will be no lag time; the facility is 900-feet from the end of Stevens Place and 2,500-feet to Fish Pond Road allowing time to retrieve an eloper. Exhibits 070c, 082, and 083.
77. For the proposed secure treatment facility, the residents will not have access to fire alarms or telephones. Exhibit 127.
78. The facility will be well staffed and the staff will receive training in therapeutic crisis intervention (“tci”) protocols to physically control the residents, if needed. The Applicants have discussed this with the VSP. Testimony.

Conclusions of Law

Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 7. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate the burdens created.

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

The burden of proof is on the opponents under Criterion 7, but the burden of production is on the Applicants.

There will only be 6 children at any one time. They will be securely locked in their rooms with 24-hour surveillance. A generator will provide instant power in order that doors will not unlock. In the case of fire, the residents may be moved outside to a securely fenced in area. As a result of this very tight security, there should be no need for the Town of Newbury to hire police. The facility has a fire sprinkler system unlike most private residences. As such, the burden on the Newbury Volunteer fire company should not be increased. The Commission

concludes that this Project will not place an unreasonable burden on the ability of the municipality to provide municipal or governmental services.

The Project complies with Criterion 7.

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

FINDINGS OF FACT

Findings of Fact: Aesthetics, Scenic or Natural Beauty

79. The site consists of approximately 278 acres of mostly wooded, steep-sloped land. The existing buildings are wood-framed, wood-sided with pitched roofs and dormers. The main building is stained brown with gray standing seam metal roofing. Exhibits 001, 030, 031 and 032.
80. The Project will be landscaped as outlined on Exhibit 007 and will consist of a combination of trees, shrubs, perennials and ornamental grasses to shield the fencing of the outdoor recreation area, to restore the wetland buffer, and landscape the entry side of the main building. No trees will be removed. Exhibits 001 and 007.
81. Construction will take approximately 12 months and will occur during normal business hours, Monday through Friday, 6:00 AM to 6:00 PM, with some limited work on weekends. Exhibit 001.
82. A directional sign may be added on Stevens Place on the project's property. Exhibit 001.
83. Currently lighting from the building is visible to some of the neighbors. Testimony.
84. The existing wall mounted exterior light located on the east side of the building will be removed and not replaced. Lighting on the east side is not necessary. The bedroom windows for the residents are on the east side. Exhibit 108 and Testimony.
85. All other existing wall mounted fixtures will be replaced with full cutoff fixtures and will be fully shielded. Exhibits 018, 108 and Testimony.
86. There will be a total of 10 wall packs on two buildings above the doors. Four 20-foot pole lights will be installed around the outdoor basketball court area. Three 20-foot pole lights will be installed in the parking area. The pole mounted light fixtures will be full cutoff, fully shielded fixtures. The lights are dark sky compliant and will have dimming controls, and not motion activated. Exhibits 001, 118 and 108.
87. Even though the lighting cut sheets indicate a color temperature of 4000K, the fixtures can be modified to 3000K minimizing the amount of light in the blue spectrum and using a much softer light in the yellow spectrum. Exhibits 001, 108, 118 and Testimony.
88. The light source may be visible at a distance depending on the line-of-sight angles. Exhibit 018.

89. The basketball court/recreation area lights will only be on when the area is active. This area is located behind the facility looking from the east. Trees surround the parking area. Exhibit 018 and Testimony.
90. The main area that is lighted at night is behind the building, away from the view of the neighbors. Neighbors indicated that the exterior light on the east side of the building can be seen from off site from Fish Pond Road. This light is being removed. Exhibit 108 and Testimony.
91. The property will remain in the Current Use Appraisal Program. The forest management plan will continue to be implemented. Exhibits 123.
92. An emergency generator will be installed approximately 665-feet from the property line and will generate approximately 29 decibels of sound at the property line, not accounting for terrain or vegetation. Exhibits 006 and 123.
93. Traffic exiting the Project site traveling south on Fish Pond Road descend to a stop sign at the Scotch Hollow Road intersection. Ms. Monica's residence is located at this intersection. She is concerned that additional traffic will adversely impact her enjoyment of her home with the noise from the increased stopping and turning traffic. Exhibits 045, 088 and Testimony.
94. In addition to safety and congestion concerns, the neighbors are concerned that the increased traffic along Fish Pond Road and Leighton Hill Road will impact enjoyment of their homes by the noise generated from the traffic. Testimony.

Findings of Fact: Historic Sites

95. There are no historic sites or rare and irreplaceable natural areas which will be affected by this Project. Exhibit 001.

Findings of Fact: Rare and Irreplaceable Natural Areas

96. There are none. Exhibit 001.

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to aesthetics.

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)* (citations omitted); see also, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB,*

Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Envtl. Bd. Nov. 4, 1985); In re Halnon, 174 Vt. 514 (mem.) (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Envtl. Ct. May 17, 2010) (citing Re: Susan Dollenmaier, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt Envtl. Bd. Feb. 7, 2005); In re Eastview at Middlebury, Inc., No. 256-11-06 Vtec, slip op. at 5 (Vt. Envtl. Ct. Feb. 15, 2008), aff'd, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses" In re McShinsky, 153 Vt. 586, 589 (1990) (quoting In re Quechee Lakes Corp., 154 Vt. 543, 553-54 (1990)).*

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including the following: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al. #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Envtl. Bd., Nov. 4, 1985) (cited in Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13).*

The building was constructed to be a bed and breakfast. The brown, wooden clapboarded building blends into the surroundings. The project, in fact, fits the area it is located. There are no changes to the exterior of the building. The one light on the east side of the house, which the neighbors object to because they can see it from off site, will be removed. All exterior lighting is designed to be dark sky compliant.

The Commission is not persuaded that the possible increase in traffic rises to the level of being adverse.

We conclude that the Project is compatible with its surroundings and will have no adverse aesthetic impact. Accordingly, it complies with Criterion 8.

SUMMARY CONCLUSIONS OF LAW: Aesthetics, Historic Sites and Rare & Irreplaceable Natural Areas

The Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

The Project complies with Criterion 8.

Criterion 8(A) - Wildlife Habitat and Endangered Species:

Findings of Fact

97. No necessary wildlife habitat or endangered species have been identified on or near the Project site.

Conclusions of Law

Criterion 8(A) requires that the Commission not grant a permit if it the proposed Project will destroy or significantly 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 reasonable 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).

The burden of proof is on the opponent under Criterion 8(A). *Id.* § 6088(b).

Necessary wildlife habitat is defined by Act 250 as “concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species or wildlife at any period in its life including breeding and migratory periods.” 10 V.S.A § 6001(12).

Criterion 8(A) involves a three-part test:

- (1) whether the Project will impact any “necessary wildlife habitat” or endangered species;
- (2) if so, whether the Project will destroy or significantly imperil such habitat or species; and
- (3) if so, whether one or more of sub-criteria (i) through (iii) is satisfied.

Re: Gary Savoie d/b/a WLPL and Eleanor Bemis, #2W0991-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Envtl Bd. October 11, 1995). If the Project will destroy or significantly imperil necessary wildlife habitat, and if any of the sub-criteria apply, then the permit must be denied. *Southview Associates, 153 Vt. 171 (1989).*

Some of the neighbors were granted preliminary party status under Criterion 8A, however, no evidence was presented that established that “necessary wildlife habitat” or endangered species is present on or near the Project site. Parts (2) and (3) of the test are superfluous. The Project complies with Criterion 8A, Wildlife Habitat.

Conclusion

The Project complies with Criterion 8A.

Criterion 9(A) - Impact of Growth:

Findings of Fact

98. Previous relevant findings are incorporated herein.
99. The Town does not have a duly adopted capital improvement plan. Testimony.
100. The neighbors are concerned that this project will lead to rapid growth of similar treatment facilities and will change the town's rural character. Exhibits 087 and 098 (page 45).
101. Becket has acquired two other properties in the area. They are projecting that they may provide staff housing. Exhibit 098, page 51 and Testimony.
102. Six youth, ages 12 to 17, will reside in-house and receive on-site treatment until they can be transitioned home or to another community placement, for what is expected at no more than six months at a time. Exhibit 001.
103. The operation of the program will be on a nonprofit basis. Exhibit 001.
104. Becket has committed to paying property taxes for as long as they own the property. Exhibit 098, page 7.
105. The State is anticipating on negotiating a 10-year lease with renewal or purchase options. If the State purchases the property, the town would be reimbursed by the State's Payment in Lieu of Taxes ("PILOT") program. Exhibit 098, page 7.
106. The Applicants have agreed that property taxes, as determined based on the standard assessment practices of the Town of Newbury, will continue to be paid. Upon completion of the project, an updated assessment is likely to be completed. The current tax rate for the property is \$17,500+/. Exhibit 001.
107. A significant number of personnel (38+/-) will be paid \$20/hour or more. The staffing budget for the Project exceeds \$2,000,000. It is likely that taxes paid to the State will approach or exceed \$100,000 annually. Exhibit 001.

Conclusions of Law

To make an affirmative finding under Criterion 9(A), the Commission must determine that the proposed development will not significantly affect the municipality's and the region's ability to accommodate two separate items: (i) growth that will occur generally, regardless of the proposed project, and (ii) growth that will occur specifically because of the project. *Re: Town of Stowe, #100035-9-EB, Findings of Fact, Conclusions of Law, and Order at 52 (Vt. Env'tl. Bd. May 22, 1998); Re: St. Albans Group and Wal*Mart Store. Inc., #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 29 (Vt. Env'tl. Bd. June 27, 1995), affd., In re Wal*Mart Stores. Inc., No. 95-398 (Vt. Sup. Ct. Aug. 29, 1997).* The analysis under this criterion differs from that under Criterion 7 in that here we consider the experienced growth, expected growth and project

growth of the municipality. See *Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet, 1R0048-12-EB Findings of Fact, Conclusions of Law, and Order at 49 (Vt. Envtl. Bd. August 20, 2001)*.

Newbury does not have a duly adopted capital improvement plan.

As previously described, the Applicants will be mitigating financial burdens on the Town of Newbury by implementing a road maintenance plan for Stevens Place, a Class 4 Town Highway; providing fire prevention measures such as sprinklers for the building and tanks for water storage for fire suppression needs; maintaining access to the pond for additional fire suppression needs; implementing security measures as previously described under Criterion 7 reducing the need for VSP to respond to incidents; and will continue to pay property taxes to the Town of Newbury.

If the Applicants develop nearby properties to provide housing for staff, it is likely that Act 250 jurisdiction would attach to those properties and an Act 250 permit would be required. Staff housing is not part of this application.

The Commission concludes that the Project will not significantly affect the municipality's and the region's ability to accommodate growth that will occur generally nor will it significantly affect growth that will occur specifically because of the project.

The Project will not cause an undue burden on the existing and potential financial capability of the Town of Newbury and the region to accommodate growth caused by the Project.

Therefore, the Commission concludes that the Project complies with Criterion 9(A).

Criterion 9(L) – Settlement Patterns:

Findings of Fact

Existing Settlement

108. The Project Tract is not in a village center, downtown development district, growth center, new town center, Vermont neighborhood or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.
109. The area surrounding the Project Tract is not a compact, walkable, community center with a mix of uses and substantial residential component, that has significantly higher densities than outside that center.

Efficient Use

110. The Project makes efficient use of land, energy, roads, utilities, and other supporting infrastructure as follows:

The Project proposes to convert a 12-bed voluntary treatment center to a 6-bed secure treatment facility.

Strip Development

111. The Project is not strip development. No new structure is being built. A portion of the existing building is being closed in to create an additional living space. Exhibit 001.
112. There is no evidence that the Project will establish or contribute to a pattern of strip development along Stevens Place or Fish Pond Road.
113. The Project is located at the end of Stevens Place, a Class 4 Town Highway. An approximate 900 feet of driveway extending from the end of Stevens Place serves the Project. Exhibit 001.

Conclusions of Law

Criterion 9(L) is intended to “promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside” by requiring that projects outside an existing settlement: (1) make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and (2) not contribute to a pattern of strip development; or, if confined to existing strip development, the project must infill and minimize strip characteristics. 10 V.S.A § 6086(a)(9)(L).

Under this Criterion, the threshold question is whether the proposed Project is in an “existing settlement.” Act 250 defines “existing settlement” as any designated center pursuant to 24 V.S.A. Chapter 76A, or:

An existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens. 10 V.S.A § 6001(16).

Strip development outside a designated center is not an existing settlement. *Id.*

Strip development is “linear commercial development along a public highway” that, considering topographic constraints of the area, includes three or more of the following characteristics:

- broad road frontage
- predominance of single-story buildings
- limited reliance on shared highway access
- lack of connection to any existing settlement except by highway
- lack of connection to surrounding land uses except by highway
- lack of coordination with surrounding land uses
- limited accessibility for pedestrians.

10 V.S.A § 6001(36).

If the Project is outside an existing settlement, it must meet the requirements of Criterion 9(L).

Criterion 9(L) requires that projects:

1. make efficient use of land, energy, roads, utilities, and other supporting infrastructure;
2. not contribute to a pattern of strip development; and
3. if confined to existing strip development in a built-up area, infill and minimize the characteristics of strip development.

This Criterion doesn't really apply to this project, but some of the neighbors were granted preliminary party status under this criterion. The Project makes efficient use of land, energy, roads, utilities and other supporting infrastructure by converting an existing building and using existing roads and utilities. The Project does not contribute to a pattern of strip development in that it is at the end of a Class 4 road of which the Applicants control 900+/- feet. Therefore, there can be no further strip-type development. This is a rural area and will continue to be rural.

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

Criterion 10 – Town Plan:

Findings of Fact

114. Previous relevant findings are incorporated herein.
115. The municipal plan that applies to this application is the Newbury Town Plan ("Town Plan") adopted on August 19, 2015. Exhibit 001 and Official Notice.
116. The Project is located in a "Conservation and Natural Resources Area." Exhibits 001, 016, 017 and 018.
117. In Section XI. Town Plan Implementation, under A. Regulatory Implementation, Act 250, the plan states in relevant part:

For a Town Plan to be given serious weight under Act 250, the Plan must contain specific and unambiguous language. If a community is serious that a policy be recognized by the District Environmental Commission during Act 250 review, it must use firm language such as "shall" or "must" instead of "should" or "could". **The Planning Commission has been selective about where strong language is used in policy throughout this document, as it is important to recognize that the Town Plan should have some flexibility. In instances where flexibility was not wanted, the Planning Commission wrote policy with appropriately strong language.** [Emphasis added.]

Official Notice, Town Plan, page 68.

118. In Section IV. Natural, Cultural, Scenic and Historic Resources, F. Outdoor Lighting and Scenic Impacts, under Policies, it states in relevant part:

1. Illumination that will adversely impact the night sky shall employ mitigating steps to improve harmony with the surroundings, taking into consideration the type and density of present land use, topography, and whether the area has scenic value.
2. Nighttime ambiance and aesthetic qualities of the village and rural areas shall be preserved by illuminating them for safety and convenience in ways that enhance the streets, buildings, and public spaces.

Official Notice, Town Plan, page 18.

119. In Section V. Land Use, A. Future Land Use Areas, Rural Areas, Policies, the Town Plan states in relevant part:

1. Maintenance or enhancement of the rural environment or setting is the primary goal for rural areas. Dispersal of residential growth into rural areas **should** be avoided. Where residential growth does occur, it should be sited to cause minimum intrusion and impact.
6. Rural areas **should** support primarily residential, agricultural forestry, home businesses and recreational uses. Primary retail establishments are not appropriate in rural area.

Official Notice, Town Plan, page 26.

120. In Section V. Land Use, A. Future Land Use Areas, Conservation and Natural Resource Areas, the town plan in relevant part states:

The purpose of the Conservation and Natural Resources area is to allow limited low-density development that is primarily agricultural, forestry or residential in nature. Density in this area **should not** be greater than ten acres.

Official Notice, Town Plan, page 27.

121. Recommendations for the Conservation and Natural Resource Areas include in relevant part:

1. Conservation and Natural Resource areas **should** be all lands that front on Class IV Roads or legal trails, or are greater than 1,000 feet from other public roads.
2. **Significant commercial or residential development is not appropriate in Conservation and Natural Resource areas. Residential density should not exceed one dwelling unit per 10 acres. [Con 10].** [Emphasis added].
3. As a means to mitigate potential financial hardship such a density might cause to landowners, a density bonus percentage for Planned Unit Developments (PUD) **should** be included in the zoning regulations. This would reward developers using PUDs with the bonus of additional, above what is defined by the density requirements of the district, but with smaller lot size requirements, thereby allowing

for both development and preservation of open space or actively farmed areas. Instead of a ten-acre requirement per dwelling, a Planned Unit Development density bonus would allow for a recommended lot size of 1 acre leaving the 9 remaining acres in open land.

4. It is in the interest of the Town of Newbury to control scattered residential or commercial development in areas now used primarily for traditional forest uses. Development **should** instead be directed towards established villages and hamlets. [Emphasis added].

Official Notice, Town Plan, page 28.

122. In Chapter IX. Energy, under H. Energy and Transportation Policy, the Town Plan states in relevant part:

6. It is the policy of the Town that new, significant public investments (including schools, public recreational areas, municipal facilities, and major commercial or residential developments) should be located within or in close proximity to the village areas, and shall utilize existing roads whenever possible.

Official Notice, Town Plan, page 63

123. The project will comply with the applicable building energy standards at the time of construction. All lighting on the basement, main floors and renovated areas on the second floor and on the exterior will be new high-efficiency LED. Mechanical equipment will be high efficiency. All new kitchen equipment and appliances will be energy star rated where available. Exhibits 001 and 013.
124. The Regional Plan that applies to this application is the Two Rivers-Ottauquechee Regional Plan adopted on July 15, 2020.
125. Act 250 Rule 2(C)(4) defines “commercial purpose” as “the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object or service having value.” Official Notice of Act 250 Rules.

Conclusions of Law

Before issuing a permit, the District Commission must find that the Project is in conformance with any duly adopted local or regional plan or capital program. 10 V.S.A § 6086(a)(10). The burden of proof is on the applicant. The Commission understands that “weak language in a plan cannot serve as a bar to deny a project.” Words like “strongly encourages,” and “should focus. . .” are not mandatory language. Enforceable verbs include only “shall” and “must.” Not only must mandatory language be used but the language must be specific.

A provision of a town plan evinces a specific policy if the provision: (a) pertains to the area or district in which the project is located; (b) is intended to guide or proscribe conduct or land use within the area or district in which the project is located; and (c) is sufficiently clear to guide the

conduct of an average person, using common sense and understanding. *Re: Times and Seasons, LLC and Hubert K. Benoit, #3W0839-2-EB(Altered)*, Findings of Fact, Conclusions of Law, and Order at 59 (Nov. 4, 2005), affirmed in part and reversed in part, *In re: Appeal of Times and Seasons, LLC*, 2008 VT 7 (Vt.S.Ct.); *The Mirkwood Group and Barry Randall, #1R0780-EB*, Findings of Fact, Conclusions of Law, and Order at 29 (Aug. 19, 1996).

The plan as it relates to land use in Newbury's Town Plan contains only weak, unenforceable language. The use of the word "should" is used throughout the Land Use section of the plan to permit flexibility in decision making. This is intentional on the part of the Planning Commission. The Planning Commission clearly states in Section XI. Town Plan Implementation, under A. Regulatory Implementation, Act 250, that they have been "selective" where "strong language is used in policy throughout the document." They were intentionally "selective" so as to maintain "flexibility."

Nowhere is this "flexibility" more evident than in the Conservation and Use Area where the Planning Commission realized that there might be a burden to the landowner if the residential density did not exceed one dwelling unit per 10 acres. Density in the Conservation area may be increased through the use of Planned Unit Developments.

Whether you characterize the proposed project, a small, six-person juvenile treatment center, as commercial or residential does not matter because development in the Conservation and Natural Resource Area as well as other Rural Areas of town is only discouraged by the use of the word "should" and never denied by the use of the words "shall not" or "must not." Also, the project is a State project and not commercial as defined by the Act 250 Rules.

"Development **should** instead be directed towards established villages and hamlets."

The use of the word "should" throughout the plan is non-mandatory, weak language and cannot serve as a bar to deny the project.

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

The project complies with the Newbury Town Plan.

The Project complies with Criterion 10.


VII. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicants, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit #3R0805-2, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #3R0805-2 is hereby issued.

Dated this 27th day of January, 2022.

By 

Tim Taylor, Chair
District 3 Environmental Commission

Commissioners participating in this decision: Clotilde Hryshko
Linda Gray

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

Documents associated with this decision can be viewed on the Natural Resources Board's website at <https://nrb.vermont.gov/> select Act 250 Database, enter 3R0805-2 as the Project Number and follow the prompts.