



LAND USE PERMIT

CASE NO: 7C0600-9-3

Hanus Realty, LLC
(Susan S. Hanus)
P.O. Box 72
East Buke, VT 05832

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #7 hereby issues Land Use Permit #7C0600-9-3, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit applies to the ±10.2 acres of land identified in Book 231 Pages 371-372 of the land records of the Town of Lyndon, Vermont, as the subject of a deed to Susan Hanus, located at 1563 Darling Hill Road in Lyndon.

This permit specifically authorizes the Permittee to establish and operate three (3) seasonal campsites, and a seasonal outdoor food and beverage area, at the existing Inn-Café-Spa. The Project expands on-site parking, for new total 56 spaces (34 seasonal, and 22 year-round, of which 9 spaces were previously permitted) and includes portable toilets, updated exterior signage, and landscaping.

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

1. The Permittee, and its assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 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 #7C0600-9-3, and (c) the permit application, plans, and exhibits on file with the District Commission and other material representations.
3. All conditions of Land Use Permit #7C0600 and amendments are in full force and effect except as further amended herein.
4. 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.
5. Any nonmaterial changes to the permit listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
6. A copy of this permit and plans shall be on the site at all times throughout the construction process.
7. No change shall be made to the design, operation or use of this project without a permit amendment issued by the District 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 tract of land approved herein shall be permitted without a permit amendment issued by the District 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 District Commission 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 its successors and assigns.

Following condition number 11 replaces condition number 15 of permit #7C0600-9:

11. The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs
12. The Permittee and all assigns and successors in interest shall continually maintain the landscaping by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
13. The food truck is to support the existing café and its hours of operation shall not extend beyond the café hours of operation. The food truck will not be operated when the indoor café kitchen is operated.
14. Each campsite shall not be occupied by more than total eight (8) persons. Each campsite shall not be occupied by more than two (2) vehicles (i.e. cars, trucks, vans, small campers etc.). All vehicles shall not exceed 22 feet in length. Vehicle(s) in excess of two per campsite, if any, must park in one of the designated 56 parking spaces. Campers shall park such excess vehicle(s) in the designated 56 space parking areas, but may not occupy these parking spaces for any camping activities; overnight camping (occupancy, by people) in any of the 56 space parking areas is strictly prohibited.
15. Use of generators, loud music, and/or loud fireworks are all prohibited at the Project. Loud means nuisance noise beyond the property line of the tract. Questions of nuisance noise, if any, shall be decided by the Coordinator and/or the District Commission.
16. Permittee's on-site parking areas shall serve the needs of the Project only, and shall not be operated, used, or marketed as a recreation trail (e.g. Kingdom Trails) parking lot or trailhead. Permittee shall take all reasonable, necessary measures to prevent such unauthorized use. Notwithstanding this restriction, if so elected by Permittee, Project clientele (guests) visiting the Project tract to access permitted services (i.e. Inn-Café-Spa, campsites, outdoor food and beverage area) may also access the recreation trails (e.g. Kingdom Trails) as a component of their visit to the tract for such permitted Project service(s), on a given day. If Project services are discontinued or terminated, in whole or in part, temporarily or permanently, the parking spaces allocated to such discontinued or terminated use(s) shall also be discontinued (abandoned), i.e. usage of the number of parking spaces allocated to guests and staff, as identified in Finding 13, for the

discontinued use, shall cease, and Permittee shall take all reasonable necessary measures to prevent unauthorized use of the discontinued parking spaces; for example: if, and at any time, the outdoor food and beverage area ceases operation or is otherwise not in operation, 25 of the seasonal parking spaces shall be closed and abandoned.

17. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee 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.
18. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the approved plan and the Land Use Permit before any written contract of sale is entered into.
19. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #7C0600-9-3 in all deeds of conveyance and leases.
20. 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).
21. All site work and construction shall be completed in accordance with the approved plans by October 15, 2020, 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 public hearing.
22. The Permittee 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 or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. 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 «Permittee» 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.
23. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at St. Johnsbury, Vermont, this 10th day of January, 2020.

By: /s/ Eugene Reid
Eugene Reid, Chair
District #7 Commission

Members participating in this decision: Keith Johnson, Nicole Davignon

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.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

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.

CERTIFICATE OF SERVICE

I hereby certify that I, Gina St Sauveur, sent a copy of the foregoing document re Act 250 Findings of Fact and Conclusions of Law and Order and Land Use Permit Amendment #7C0600-9-3 for Hanus Realty LLC, Lyndon by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 10th day of January, 2020.

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify the District office of any e-mail address changes.

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State of Vermont
NATURAL RESOURCES BOARD
DISTRICT «District» ENVIRONMENTAL COMMISSION
[District Office Address]

RE: Hanus Realty, LLC	Application #7C0600-9-3
P.O. Box 72	Findings of Fact
East Burke, VT	Conclusions of Law, and Order
05832	10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On April 19, 2019, Hanus Realty, LLC filed an Act 250 permit application for a project generally described as a parking lot for 34 vehicles, to support outdoor recreation, and operation of a seasonal food truck, to support café operations. The project includes portable toilets, exterior signage, and landscaping, and is located at the Stepping Stone Spa, 1563 Darling Hill Road, in Lyndon, VT. The tract of land consists of 10.2 acres. The application was revised on August 29, 2019 to encompass (3) seasonal campsites and a seasonal outdoor beverage area, and to expand the scope of parking, for new total 56 spaces (34 seasonal, and 22 year-round, of which 9 spaces were previously permitted). The Applicant's legal interest is ownership in fee simple described in a deed recorded in the land records of Lyndon, Vermont.

The Commission held a hearing on this application on June 18, 2019. The Commission also conducted a site visit on June 18, 2019. After the application was expanded on August 29, 2019, it was re-noticed on August 30, 2019. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on December 17, 2019 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. 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 applicant does 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.

IV. 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) who attended the hearing are:

- The Applicant, by Susan Hanus
- The Northeastern Vermont Development Association, via written comments received after the hearing (letter from Douglas Morton dated June 28, 2019).

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:

- Barb and John Irwin, granted party status under criteria 5(A), 8, and 10 (town plan);
- Zoe Gascon, granted party status under criteria 5(A), 8 (aesthetics), and 10 (town plan);
- Bill and Joan Fallon, granted party status under criteria 5(A) and 10 (town plan); denied party status under criterion 8 for failure to demonstrate a sufficiently particularized interest (represented at the hearing, by Catherine Dwyer);
- Kathleen Walsh and James Hathaway, granted party status under criteria 5(A) and 10 (town plan); denied party status under criterion 8 for failure to demonstrate a sufficiently particularized interest.
- Mary Jane Miller, granted party status under criteria 5(A) and 10 (town plan); denied party status under criterion 8 for failure to demonstrate a sufficiently particularized interest.
- Catherine Dwyer, granted party status under criteria 5(A) and 10 (town plan); denied party status under criterion 8 for failure to demonstrate a sufficiently particularized interest.
- Amy L. Joyal and Sharon Dolloff, denied party status (did not attend the hearing).

ii. Final Party Status Determinations

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 found no reason to change its preliminary determinations.

C. Friends of the Commission

The District Commission allowed the following nonparties to participate as Friends of the Commission pursuant to 10 V.S.A § 6085(c)(5), under Criterion 8 (aesthetics). Unless otherwise noted below, each was granted the rights of full participation allowed under 10 V.S.A § 6085(c)(5):

Bill and Joan Fallon;
Kathleen Walsh and James Hathaway;
Mary Jane Miller;
Catherine Dwyer.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The District Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on May 3, 2019. The Commission distributed a notice and proposed permit establishing a deadline of May 23, 2019 by which parties, or the Commission on its own motion, could request a hearing on this matter. The Commission received timely requests for a public hearing from several persons and determined that sufficiently substantive issues were raised. On June 4, 2019 the Commission issued a Notice of Hearing indicating that a public hearing would be held on Criterion 5(A), 8 (aesthetics) and 10, because substantive issues had been raised.

After the application was expanded on August 29, 2019, the Commission again distributed a Notice of the revised application, establishing a deadline of September 16, 2019, by which parties could request a hearing. No requests to reconvene the hearing were received, however the Commission did receive additional comments from the parties, and replies from the Applicant. The Commission did not receive any additional requests for party status, in response to its notice of the expanded application.

Pursuant to Act 250 Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or sub-criteria at issue during the hearing. Therefore, the following Findings of Fact are limited to Criteria 5, 8, and 10.

The findings of fact are based on the application, Exhibits 001 – 051a, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

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 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. The subject #7C0600-9-3 Project is located at the existing permitted “Stepping Stone Wellness Center” a bed & breakfast specializing in herbal healing, with 12-seat dining café serving maximum 2 meals per day (the existing Inn-Café-Spa), for which Act 250 permits #7C0600-9 and #7C0600-9-A have been previously issued. The Commission

understands that the Inn offers Spa and wellness services, some to day guests, within the existing permitted building, and that this is a permitted use within the meaning of the “bed & breakfast specializing in herbal healing” identified in permit #7C0600-9-A. The existing previously permitted multi-purpose business will henceforward be referred to as the “Inn-Café-Spa”. The existing Inn-Café-Spa occupies a renovated farmhouse and is accessed via two existing driveways from Darling Hill Road. The previously issued permits authorize 9 on-site parking spaces which are located generally between the “Inn-Café-Spa” and Darling Hill Road, and these 9 parking spaces have been constructed (or otherwise established and designated).

2. The subject #7C0600-9-3 proposed Project consists of (a) a parking expansion; (b) three seasonal campsites; and (c) a seasonal outdoor food and beverage area. The Project also includes portable toilets, updated exterior signage, and landscaping.
3. The proposed parking expansion will create new total 56 parking spaces at the property (34 for seasonal use only, on grass, plus 22 gravel (or paved) parking spaces for “year-round” use, of which 9 spaces were previously permitted, such that the additional parking spaces created by the Project is 47, or 56 minus 9). The proposed expanded “year-round” parking is depicted on Exhibit 37, and it is noted that some of the currently proposed “year-round” parking spaces, for which a permit is now sought, depicted in pink, have already been constructed (or otherwise established). The proposed seasonal parking on grass (34 spaces) is comprised of 8 spaces located along the shared access drive south of the Inn-Café-Spa, and 26 spaces located in the open field north of the Inn-Café-Spa, as depicted on Exhibit 34.
4. The seasonal outdoor beverage area includes a food truck on wheels. The food truck will not be operated when the existing indoor café kitchen is operated (the food truck will function as an outdoor café kitchen, only when the existing indoor café kitchen is not operated – they will not operate simultaneously, pursuant to the Town of Lyndon DRB decision, Exhibit 21). The outdoor food and beverage area will feature seating in the format of two (2) picnic tables with maximum 16 outdoor seasonal seats (8 seats per picnic table). The narrative provided in Exhibit 41 identifies that 21 parking spaces are allocated for the outdoor food and beverage area. If visitors arrive by vehicle, with 2 people per vehicle, then total 42 persons could occupy the outdoor food and beverage area, at peak parking capacity, of which most persons (i.e. 26, or 42 minus 16) would be standing and would not have a seat. The Commission will restrict occupancy of the outdoor food and beverage area to 42 persons, in consideration of the proposed planned parking capacity for this use.
5. The three (3) seasonal campsites will be located at specific designated locations on the property, where identified on Exhibit 38. The campsites may be occupied with tents and/or with vehicle(s), such as a car, truck, or small wheeled camper (e.g. ADA sprinter, pop-up camper, camping van, or small recreational vehicle). The campsites and parking areas may not be occupied by any vehicles in excess of 22 feet in length. The only exception to this would be to accommodate a handicapped (i.e. special needs) person, for whom a special accommodation could occur. In addition to these parameters, the Commission will include the following condition in its permit, to further clearly define campsite use and campsites parking requirements:

*Each campsite shall not be occupied by more than total eight (8) persons.
Each campsite shall not be occupied by more than two (2) vehicles (i.e. cars,
trucks, vans, small campers etc.). All vehicles shall not exceed 22 feet in length.*

Vehicle(s) in excess of two per campsite, if any, must park in one of the designated 56 parking spaces. Campers shall park such excess vehicle(s) in the designated 56 space parking areas, but may not occupy these parking spaces for any camping activities; overnight camping (occupancy, by people) in any of the 56 space parking areas is strictly prohibited.

6. The seasonal campsites and seasonal outdoor food and beverage area will operate, at most, during the months of May to October, inclusive. These seasonal operations will not occur from November to April inclusive. The food truck will not be parked on the tract, nor present on the tract, from November to April inclusive.
7. The seasonal campsites will not be occupied in excess of 60 days per calendar year (i.e. not in excess of 60 days occurring from May to October inclusive), nor in excess of 3 consecutive weeks (May to October), also the outdoor food and beverage area seating will not exceed two picnic tables (8 seats each, total 16 seats). Sanitary (toilet) needs will be met via portable toilets to be placed where identified on Exhibit 3, and to be regularly serviced by a licensed contractor.
8. The proposed Project will be accessed via one of two existing access drives from Darling Hill Road. The southerly existing driveway is shared, and controlled by right of way. Some exhibits, received from the Applicant, depict an extension of the interior roadway as a "proposed drive" that would provide access to the rear of the subject property (i.e. beyond the location of the proposed food truck), for example as shown on Exhibits 34 and 37; this extension of the northerly access drive is also depicted, with a 50-foot right of way, on Exhibits 3, 7, and 38. The noted extension of the northerly drive, beyond the location of the proposed food truck, is not part of the subject #7C0600-9-3 Project, and was not reviewed (nor approved) by the Commission as a component of this application. Similarly, Exhibit 38 depicts a 4-lot subdivision with new house sites on 3 of the lots; the 4-lot subdivision, with new house sites, is not part of the subject #7C0600-9-3 Project, and was not reviewed (nor approved) by the Commission as a component of this application. Also, Exhibit 16 (a site plan) depicts parking conditions (and what appears to be a new small building?) that differ from the Applicant's subject #7C0600-9-3 Project proposal; Exhibit 16 was not considered for approval, by the Commission, as a component of its review of the subject Project application. The aforementioned following items were not considered for approval by the Commission, and may not be constructed, developed, or otherwise used or implemented without additional future Commission review and approval of these potential (not currently proposed) land uses:
 - 4-lot subdivision (with additional housing thereon)
 - conditions depicted on Exhibit 16 (to the extent varying from Applicant's proposed Project);
 - extension of the northerly access drive (where beyond the location of the proposed food truck).

Criterion 5 - Transportation:

Findings of Fact

9. The Project is not in a Transportation Improvement District (TID).

10. Concerning the Project's estimated traffic, and its impact, the Applicant states as follows: *"The proposed project creates a safer environment for existing pedestrian and bicycles by keeping them off the busier part of Darling Hill road. The parking at the Spa is only 1/4 mile from the paved portion of Darling Hill Road. The design takes bicycles off the road and through a backyard to the trailheads. Access will use the already existing driveway at the spa, and because the parking is closer to Lyndon and near three trail heads for outdoor recreational use, it is anticipated that traffic will be reduced on Darling Hill Road. Last season the Wildflower's parking facilities overflowed onto the street creating a problem for the municipality. It is anticipated that parking at the Spa will help alleviate the overflow"*. The Commission is not persuaded that the Project will decrease traffic at the Project site. The subject Project creates planned visitors and parking demand, and will increase traffic. In addition the Commission notes that the subject Project is not proposed as a recreation trail parking trailhead.
11. Pursuant to the Town DRB decision on the parking expansion and outdoor food and beverage service area (Exhibit 21), *"several Darling Hill residents provided testimony during the public hearing expressing concerns that the proposed parking and food truck would contribute to an unacceptable increase in vehicular traffic on Darling Hill Road; the addition of the proposed outdoor recreation use and the associated parking has the potential to create some new vehicle trip ends to the site, however combined with the impacts of other use(s) in the area this will not significantly increase vehicular traffic on Darling Hill Road [...]"*. So finds the Commission, noting however that the project reviewed by the DRB (Exhibit 21) does not encompass three (3) campsites. Additionally, the Commission finds that the three (3) campsites, given their seasonality, and relatively small scope (only 3 campsites, with 8-person occupancy restriction) will have a modest traffic impact, and encourages the use of advanced reservations, as this will discourage additional unnecessary traffic in the form of persons traveling to the Project in search of a campsite, when none are available. The Commission emphasizes the importance of strictly adhering to the identified on-site available parking capacity, and planning and marketing for usage of the Project, accordingly.
12. The Town DRB considered an application for a new seasonal 67-space parking lot on the subject tract, and the Town DRB denied this application (Exhibit 23), on June 21, 2018; in the DRB denial, reference was made to use of the formerly proposed 67-space parking lot as a Kingdom Trails lot, for use by those accessing these recreation trails. The Town DRB later considered an application to add 34 seasonal parking spaces, and found, in relevant part (Exhibit 21) that *"according to the Applicant the subject property, including lots #1,2,3, and #4 will be made available to walkers, hikers, and bikers for the purposes of on-premise outdoor recreation as well as access to outdoor recreation opportunities on neighboring trail networks and scenic Darling Hill Road. The Applicant is proposing to provide new parking and restroom facilities specifically for the outdoor recreation use"*. The only recreation use included in the subject proposed #7C0600-9-3 Project is the (3) campsites.
13. The parking component of the subject Project is planned to support the various proposed on-site business activities, specifically, the Inn-Café-Spa, campsites, and outdoor food & beverage area, as further outlined in Exhibit 41, and summarized below:

<u>Year Round Parking:</u>	Inn Café Guests:	11
	Spa Guests:	5
	Inn Café Spa Staff:	5
	Handicapped Space	1

	TOTAL	22
<u>Seasonal Parking:</u>	Inn Café Guests:	10
	Spa Guests:	7
	Campsite Guests:	6
	Outdoor Food & Beverage Guests:	21
	Outdoor Food & Beverage Staff:	4
	Staff (Inn Café Spa Campground):	7
	Handicapped Space	1
	TOTAL	56

The parking component of the subject Project is not a Kingdom Trails (recreation trails) trailhead parking lot, however the Commission understands that some Project clientele may arrive via these nearby recreation trails. Also the Commission understands that some Project clientele will likely park on the tract to access a service offered on the tract AND such clientele may also, on the same day, access the nearby recreation trails as a component of clientele's visit and parking usage (example: camper who accesses the recreation trails during their stay; outdoor food and beverage area guest who also accesses the recreation trails during their visit); Project clientele may use the parking area in this manner, if elected by Permittee, and this will prolong the duration of parking usage resulting from a multi-purpose clientele visit, however the Commission does not anticipate such usage will render the proposed parking inadequate to meet the expected and planned parking needs of the Project. Notwithstanding, the new total 56 parking spaces must not be used or marketed as a Kingdom Trails (recreation trails) parking lot nor Kingdom Trails (recreation trails) trailhead; the reasons for this include the following: (1) if unplanned Kingdom Trail users occupy the subject Project parking spaces, solely for recreation trail access, there will not be sufficient remaining parking to meet the planned and expected Project parking demands identified in Exhibit 41, and this could result in unplanned problematic, unsightly, and/or unsafe off-site parking, for example along Darling Hill Road; and (2) if the Project parking is advertised as a Kingdom Trails parking lot or Kingdom Trails trailhead, this may result in considerable additional traffic to the Project site, and these unplanned traffic impacts have not been identified nor evaluated by the Commission as a component of its review of this #7C0600-9-3 application.

14. Traffic on Darling Hill Road has increased significantly in recent years, as identified by neighbor opponents in Exhibits 11, 12, 27, 28, 43, 45, 48, 49, and 50. The police chief, in 2016, identified that "*that area carries a great number of people on foot, on bike and on ski. The area is already heavily traveled by motor vehicle...[...]*" (Exhibit 14).
15. In consideration of the proposed specific use of the on-site parking areas (i.e. planned to support the subject Project), the concerns raised about traffic on Darling Hill Road, and the information outlined in Findings 12 to 14, the Commission will include the following condition in its permit for the Project:

Permittee's on-site parking areas shall serve the needs of the Project only, and shall not be operated, used, or marketed as a recreation trail (e.g. Kingdom Trails) parking lot or trailhead. Permittee shall take all reasonable necessary measures to prevent such unauthorized use. Notwithstanding this restriction, if so elected by Permittee, Project clientele (guests) visiting the Project tract to access permitted services (i.e. Inn-Café-Spa, campsites, outdoor food and

beverage area) may also access the recreation trails (e.g. Kingdom Trails) as a component of their visit to the tract for such permitted Project service(s), on a given day. If Project services are discontinued or terminated, in whole or in part, temporarily or permanently, the parking spaces allocated to such discontinued or terminated use(s) shall also be discontinued (abandoned), i.e. usage of the number of parking spaces allocated to guests and staff, as identified in Finding 13, for the discontinued use, shall cease, and Permittee shall take all reasonable necessary measures to prevent unauthorized use of the discontinued parking spaces; for example: if, and at any time, the outdoor food and beverage area ceases operation or is otherwise not in operation, 25 of the seasonal parking spaces shall be closed and abandoned.

16. The Town DRB included the following condition in its approval (Exhibit 21): “No more than four (4) events that utilize unapproved parking areas may be held on the premises per year.” The District Commission did not receive information concerning events. The District Commission is not approving any events, parking activities, or parking areas beyond those identified in the subject #7C0600-9-3 Project application.
17. The new total 56 parking spaces (i.e. 34 for seasonal use only, on grass, plus 22 gravel (or paved) parking spaces for “year-round” use) are adequate for the parking demands of the Project.
18. The Project includes occupancy restrictions (16 outdoor seats, and 3 campsites for maximum 8 people per site), and Project usage and parking demand will be managed so that parking occurs only in the designated permitted areas, by authorized users, and so that off-site parking does not occur.
19. The Project will utilize existing driveways which features adequate sight distances, as observed by the Commission during its site visit. Emergency vehicle access is provided.
20. The Project does not incorporate specific planned or required transportation demand management strategies. A shuttle bus (or van) stop is located adjacent to the tract, in proximity of the northern entrance drive, and the Project design does not interfere with operation of this shuttle stop.
21. The Project as proposed does not interfere with any existing or planned pedestrian, bicycle, or transit networks and services. As identified in Finding 15, Project clientele may access recreation trails as a component of their visit to the tract for Project services on a given day (if elected by the Applicant), however the Project is not a trailhead parking area and will not be used, operated or marketed as such, without Commission review and approval.

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. *Id.*

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 measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

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.

The Project complies with Criterion 5(A).

The Project incorporates all appropriate transportation measures and complies with Criterion 5(B).

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

FINDINGS OF FACT: Aesthetics, Scenic or Natural Beauty

22. Findings of Fact 1 to 9 are incorporated herein.
23. As observed by the Commission during its site visit, and as illustrated in Exhibits 24 and 25 (area photos), the proposed Project site is located in a very scenic area characterized by very low density development, historic buildings, rolling farmland, open spaces, forested areas, private homes, and extensive long distance valley views, extending westerly including Lake Willoughby gap.
24. As observed by the Commission during its site visit, the Project site is not situated at the very height of land; a height of land is located on the opposite side of Darling Hill Road.
25. As observed by the Commission during its site visit, and as illustrated in the photos presented as Exhibits 18 and 19, the Project site is highly visible from the adjacent public road (Darling Hill Road). The proposed 26 space seasonal parking area, located in an open meadow area, will have significant visibility because of its proximity to Darling Hill Road, and the open conditions. The seasonal campsites and seasonal outdoor food and beverage area will have less overall visibility as viewed from Darling Hill Road, because they are to be located generally behind the existing Inn / Café building and/or further away from Darling Hill Road. The proposed 8 spaces of seasonal parking, to the south of the Inn-Café-Spa, and the proposed additional “year-round” parking spaces, are positioned generally around the Inn-Café-Spa and its existing driveway and parking areas, at various dispersed locations on the periphery of the existing improvements, and have (or will have) comparatively more modest aesthetic impact due to the location and overall scope.
26. As observed by the Commission during its site visit, and as identified by the Applicant (Exhibit 25), from the 26-space seasonal parking area (the component of the Project with greatest expected visibility) one can see the Irwin’s adjacent home to the north, through a “gap” or “opening” in the existing mature hedge located along the shared property line; one cannot see the homes of other neighbors and landowners who participated as Parties or Friends of the Commission under Criterion 8, therefore the Commission anticipates that the 26-space parking area will not be visible or highly visible from these other homes (other than aforementioned Irwin’s to the north). The portion of the Gascon property located opposite the Project, on the opposing side of Darling Hill Road, is

undeveloped; the Applicant claims this is a wetland area and thus cannot be developed, however this information was not verified as a component of application review by the Commission, and is not seen as significantly material to the Commission's evaluation of impact, which focuses mainly on views from public corridors such as Darling Hill Road.

27. A nearby residence, owned by Gascon, features solar panels mounted in an open area adjacent to the residence; these solar panels are easily visible from the adjacent public road (Darling Hill Road), are not illuminated nor located at the height of land, as observed by the Commission during its site visit.
28. Scenic historic properties are located to the north of the Project tract, at different locations along Darling Hill Road, as observed by the Commission during its site visit.
29. The seasonal outdoor food and beverage area occupies an area directly behind the Inn-Café-Spa, and includes an area featuring an existing landscaped garden. The seasonal outdoor food and beverage area is identified as the "Alcohol Zone" on Exhibit 34, and may be fenced with seasonal or permanent fencing, where depicted on Exhibit 34. Any such fencing will be aesthetically compatible with the highly scenic rural landscape, will not feature bright colors or advertising, and will be a low earth tone fence.
30. The Project does not include any new exterior lighting, other than that to be operated seasonally and intermittently by campers at campsites, such as hand-flashlights and portable lanterns, which will have a modest visual impact. Condition 14 of permit #7C0600-9 provides as follows (and will remain in effect):

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.

31. The planned new exterior Project signage, including the "Open" flag, (Exhibits 33 to 36) will be compatible with the existing signage and scenic setting. The Commission will replace condition 15 of permit #7C0600-9 with the following updated standard condition:

The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.

32. The updated exterior signage at the Project, including updates of the previously permitted signage, will be located where depicted on Exhibit 41, and will consist of, at most, the following:

- The existing painted (burgundy, gold, black, white) multi-purpose wooden free-standing sign (identified as "Existing" on Exhibit 41), as depicted in Exhibit 33. This multi-purpose sign may be expanded seasonally, to include an additional earth-tone painted wooden sign board to hang directly below the black & white sign board thereon, and to have dimensions matching the black & white sign board, for example as needed to advertise the camping and/or outdoor food & beverage.

- The small seasonal painted earth-tone wooden free-standing signs (identified as “Spa”, “Parking”, “Food”, “Arrow”, on Exhibit 41), as depicted on Exhibit 35. These small seasonal painted wooden signs do not feature illumination and shall not be higher than 4 feet. One of these seasonal small non-illuminated painted wooden signs may be installed at each campsite to identify campsite location.
- The flag to be placed on the front porch when the business is open (Exhibit 36), which does not feature illumination.

All exterior signage on the tract shall be limited to that identified above. Any other signage, banners, flags, other advertising displays, vendor advertising on canopies or tents, “sandwich-board” style “temporary” signage, etc., on the tract is prohibited, excepting temporary real estate marketing signs and temporary (single occurrence) “Grand Opening” signs. It is noted that the “Shuttle” sign, depicted on Exhibit 34, is understood to be located in the road right of way (i.e. not located on Applicant’s property), and its design was not reviewed as part of the subject Project application; the Commission further notes its understanding that a shuttle bus or shuttle van may stop at the Project, along the public road, in proximity of this sign, and this apparent shuttle stop location appears to be a suitable place, in proximity of the existing northern drive entrance, for a shuttle bus or shuttle van to stop, for collection and/or discharge of passengers accessing this transportation.

33. The Project does not encompass any new utilities, and the existing power and communication lines will remain unchanged.
34. There are no rare and irreplaceable natural areas which will be affected by the Project.
35. Wetlands have been delineated on the Project tract, and the Project does not include any improvements or activities in the wetlands or 50-foot wetland buffer areas.
36. Trash and recycling containers will be located to the rear of the existing Inn-Café-Spa building and will not be highly visible from Darling Hill Road.
37. The Project does not violate any clear written community standard.
38. The Project will create new sources of seasonal noise, from the outdoor food and beverage area, the 3 campsites, and the parking expansion. Since the Project does not encompass any substantive construction activities (other than installation of minor exterior signage modifications, landscaping, and potential fencing) construction noise will be very limited. Neighbors have expressed concern about noise impacts from the Project; examples of such unwanted noise could be that attributable to slamming car doors at the seasonal parking area, music at the outdoor food and beverage area, barking dogs, or recreational visitors making noise such as loud talking or music from portable radios.
39. As proposed by the Applicant, the Project will comply with, at least, all of the following measures, and these measures will mitigate noise impacts that may otherwise occur from the new seasonal business activities:
 - (a) quiet hours at the campground will be maintained from 10 PM to 7 AM;

(b) any music at the outdoor food & beverage area will be “in general mellow” (hence is understood by the Commission will not be loud, and will not create off-site nuisance noise impacts);

(c) the outdoor food and beverage area will typically close by sunset (per the expected market), and will be strictly closed by 10 PM;

(d) no alcohol consumption in the parking lot (alcohol to be consumed only in the designated area);

and (e) management by an on-site attendant who will ensure compliance with all of these measures.

In addition, the Commission will, by permit condition:

(f) restrict occupancy of each campsite to not more than 8 persons, to further limit noise that might otherwise result from usage by larger numbers of people or groups;

(g) prohibit the use of generators, loud music, and loud fireworks, at the Project.

40. The Project does not include removal of any existing vegetation or landscaping. The 26-space seasonal parking area located north of the Inn-Café-Spa will be accessed via an existing “meadow lane” framed by existing landscaping to be retained.
41. The Project includes suitable new landscaping in the form of \pm 10 lilac plantings to occupy a 100 foot section of frontage along Darling Hill Road, extending beyond existing mature trees, as identified on Exhibit 34. These lilac plantings are between Darling Hill Road and the 26-space seasonal parking area on grass, and will soften the visual impact of this new seasonal parking area. An additional single lilac planting will be placed where identified on Exhibit 34, at the location of an existing “gap” or “hole” in the existing mature lilac hedge generally along the shared northern property line, to improve the visual buffer along the northern property line. The new lilac plantings will feature a variety of colors within common lilac species, will be planted about 10 feet apart (depending on size at the time of delivery), and will be kept (trimmed) 5 feet high, so that they do not grow very tall to form a prominent vertical visual obstruction.
42. The Project does not include construction of any new buildings or structures, nor construction of any new gravel or paved areas. The only “permanent” improvements will consist of additional or modified exterior signage, fencing, and designated locations for the seasonal portable toilets and seasonal food truck. A portion of the new exterior signage will be seasonal.
43. The parking and camping activities are to be located on existing open meadow (grass) areas, and both include use of vehicles. Vehicle travel on vegetation has potential to impair the ground surface and vegetation, with soil rutting, for example if the area is over-used and/or conditions are too wet. Project operation shall ensure that the areas used for seasonal parking and camping remain sufficiently vegetated and are not compromised with excessive soil rutting or damage.
44. Neighbors who own and occupy a home on Darling Hill Road, though not adjacent to the Project site, Bill and Joan Fallon, state concerns, including:

- *“The landscape, agricultural setting, views and pastoral appeal give this area a very special quality. The precedent of food trucks, tents & campsites, outdoor Bars and Beer Gardens, and excessive signage create a ‘carnival’ type atmosphere which diminishes this treasured landscape”*
- *“As we have stated at previous Lyndonville DRB hearings, we are concerned about the impact these changes will have on traffic and the rural character of the area. As noted by Police Chief Harris in a letter sent to the Lyndonville Zoning Board on Jan 19, 2016 ‘...the negative impact of traffic is very real. Should the town need to take action and pave and widen the road, it would mean the loss of all the bordering maples that we all love.’*

45. The Lyndon Town Plan adopted January 1, 2008 (last revised February 9, 2015), the Town Plan) applies to the application review of the Project. Portions of the Town Plan were evaluated for relevancy to the Project. The subject parcel is located in the Rural Residential Zoning District. The Future Land Use section of the Lyndon Town Plan adopted January 1, 2008 (last revised February 9, 2015, Exhibit 40), states that:

The Rural Residential District contains land that has and should retain a low density of use, and which should be primarily restricted to agricultural, forestry, outdoor recreational and residential use. The Rural Residential District is characterized by the lack of a network of improved roads, municipal services such as water supply and sewage treatment and disposal, and the remoteness of the district from commercial centers. This district encompasses all outlying areas of Town.

RECOMMENDATIONS:

- *More precisely define the vague “other uses” designation so as to more specifically describe permitted and conditional uses.*
- *Utilize an Overlay model to assist in preserving the district’s rural character;*

In the section of the Town Plan which addresses community character, the following was identified, under GOALS AND STRATEGIES:

9. *Research the need to create an overlay district to preserve historic neighborhoods, scenic views and vistas in Town.*
10. *Identify specific views and scenic vistas that the Town should preserve.*

46. Neighbor Barb Irwin, who owns and occupies a home immediately north of the Project tract, has identified various language within the Town Plan, including the following:

- *There is a strongly held sentiment that Lyndon’s natural beauty should be preserved*
- *We should strive to preserve the Town’s beautiful views and scenic vistas*

- *The Darling Hill area also has a number of potentially historic farms and estates that are important to the Town's past. These historic areas should be maintained to preserve the historic image of the Town and Village.*
47. Neighbors Barb and John Irwin, and James Hathaway and Kathleen Walsh have identified that the Lyndon Planning Commission has a new town plan draft that specifically includes Darling Hill Historic District. The Town Plan which applies to the subject application review is that which was in effect at the time the complete application was received, and the planning commission's draft does not apply.
 48. There are no clear community standards relevant to the proposed Project's impacts on aesthetics, nor did the Commission identify any Town Plan language which is a clear community standard which conflicts with the Project.
 49. The Town of Lyndon Development Review Board (DRB) has reviewed and approved the parking expansion and the outdoor food and beverage components of the Project (Exhibit 21). The Commission did not receive a copy of any Town DRB approval for the (3) campsites, however campsites are a recreational use of the type recognized in the Town Plan for the Rural Residential Zoning District, and the Commission did not receive any information identifying that the proposed small campground consisting of three (3) campsites may violate a clear community standard.
 50. Project opponents identify that the parking component of the Project is unnecessary because *"the Lyndon town is planning to address additional parking by working to convert the Old Town Garage at the foot of Darling Hill Road into a free parking site. This parking is on Route 114 which does not add additional car traffic to Darling Hill Road.* (Exhibit 9). The Project parking is for the on-site Project needs (Inn Café (with spa / wellness center), outdoor food and beverage area, campsites, employees, etc.) as identified in Exhibit 41. The parking component of the Project is not planned nor proposed to support uses other than those to occur on the Project tract. The "alternate" planned parking facility, suggested by neighbors, and reportedly pursued by the Town of Lyndon, as a public facility to meet other growing public or recreational parking needs, would not replace the private commercial parking needs of the subject Project, which must be provided as a component of the Project, sufficient to accommodate the needs of the Project.

FINDINGS OF FACT: Historic Sites

51. The Vermont Division for Historic Preservation (VDHP) was notified of the application and did not file any comments raising concerns about potential for impact on a historic site, as would ordinarily occur if VDHP had any such concerns or questions.
52. Neighbors Barb and John Irwin, and James Hathaway and Kathleen Walsh submitted an Inventory of the Darling Estate Historic District which extends from south of the applicant's business/residence all the way up Darling Hill Road to beyond the Burke line, and state that *"the Inventory is quite thorough and lengthy. It emphasizes the importance of preserving the "vernacular landscape evolved from two-centuries old agricultural tradition; the writers were particularly impressed with how much is still preserved of its sweeping views, well-planned landscapes, historic buildings, agricultural endeavors so that it still offers visitors a "journey through the past."* It appears that the Project site may be within or immediately adjacent to an area inventoried and nominated for

inclusion in the National Register, yet other historic site mapping (Exhibit 51, 51a) does not encompass the Project site, and the VDHP did not indicate that the Project may impact a historic site, nor raise concerns.

53. The Project is not a historic site and will not have an undue adverse impact on a historic site. There are no historic sites which will be affected by this Project.

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, noise, odors, historic sites, rare and irreplaceable natural areas].

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. Envtl. 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 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 Project is in a very scenic mostly open rural mixed use landscape which features residential homes, farming, a chapel with pavilion, and the existing Inn Café at the Project site. Long views extend westerly across the site, and across the mostly open landscape, from the adjacent Darling Hill Road, where travelers can experience scenic views in all directions. The aesthetic

value of the project area exceeds a typical Vermont scenic landscape, however the Project is not located at the height of land within the overall scenic setting, an important consideration.

Most of the Project elements are seasonal in nature, don't involve permanent physical improvements, and will be located around the periphery of the existing permitted Inn Café. The Project, as planned, represents a modest to significant expansion of business activities and aesthetic impacts at the site. Of the elements of the Project, the 26-space seasonal parking area is expected to have the most significant visual impact on the scenic views from Darling Hill Road. The small number of planned campsites (3) with campsite occupancy restrictions detailed above, and the very limited planned seating at the outdoor food and beverage area (maximum 16 seats) will substantially reduce impacts that could otherwise occur if these facilities had increased capacity.

It will be important for the operator to strictly manage the Project so that parking demand does not exceed that available and permitted, and so that actual parking does not exceed that planned and reviewed as a component of this Project. For example, the operator must not host music events or other group events such as weddings, at the outdoor food & beverage area, that would result in vehicle parking demand in excess of that included in the Project and reviewed. The operator must also take all necessary measures to ensure that guests visiting the Project are not parking off-site, for example along Darling Hill Road, nor parking anywhere beyond the new total 56 parking spaces reviewed (plus campsite parking as defined above), notwithstanding that the Commission understands that some guests may travel to and from the Project via a shuttle bus or shuttle van.

The Commission notes its understanding that some visitors may travel to the site via existing recreation trails, and this may increase the number of people present at the outdoor food & beverage area, however this will not result in additional vehicle traffic or parking demand. It is further understood that the outdoor food and beverage area occupancy may exceed the planned 16 seats, as some guests may occupy the space standing; regardless, seating will not exceed the planned 16 seats, and this will reduce overall usage that might otherwise occur if a greater number of seats was planned.

Due to the highly scenic setting, we conclude that the Project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. In re Rinkers, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing In re: Times & Seasons, LLC, 2008 VT 7, ¶ 8; In re McShinsky, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a

project. Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. 4/9/02). A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. 12/21/00).

A plan which states "consideration should be made . . ." is not a clear, written community standard. Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Env'tl. Bd. Dec. 8, 2000).

The Commission has reviewed relevant portions of the municipal plan which applies to the application review of the Project (i.e. the Lyndon Town Plan adopted January 1, 2008 (last revised February 9, 2015), the Town Plan). Portions of the Town Plan were evaluated for relevancy to the Project. The subject parcel is located in the Rural Residential Zoning District. The Future Land Use section of the Lyndon Town Plan adopted January 1, 2008 (last revised February 9, 2015, Exhibit 40), states that:

The Rural Residential District contains land that has and should retain a low density of use, and which should be primarily restricted to agricultural, forestry, outdoor recreational and residential use. The Rural Residential District is characterized by the lack of a network of improved roads, municipal services such as water supply and sewage treatment and disposal, and the remoteness of the district from commercial centers. This district encompasses all outlying areas of Town.

RECOMMENDATIONS:

- *More precisely define the vague "other uses" designation so as to more specifically describe permitted and conditional uses.*
- *Utilize an Overlay model to assist in preserving the district's rural character;*

In the section of the Town Plan which addresses community character, the following was identified, under GOALS AND STRATEGIES:

9. *Research the need to create an overlay district to preserve historic neighborhoods, scenic views and vistas in Town.*
10. *Identify specific views and scenic vistas that the Town should preserve.*

The Commission did not identify any Town Plan language which is a clear written community standard and which conflicts with the Project. Specific views and scenic vistas have not yet been identified in the Town Plan, with respect to the subject Project area. There are no clear community standards relevant to the proposed Project's impacts on aesthetics.

The Town of Lyndon Development Review Board has reviewed and approved the parking expansion and the outdoor food and beverage components of the Project (Exhibit 21). The Commission did not receive a copy of any Town approval for the campsites, however the Commission understands that campsites are a recreational use of the type recognized in the Town Plan for the Rural Residential Zoning District, and did not receive any information identifying that the proposed small campground consisting of three (3) campsites will violate a clear community standard.

Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." Re: Okemo Mountain, Inc. #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. Rinkers, No. 302-12-08 Vtec, Decision and Order at 11-12; Horizon Development Corp., #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992).

In consideration of the scenic setting, and with the inclusion of considerable planning, detail, and requirements governing site occupancy, parking control, noise, and aesthetics including landscaping, as outlined above, we find that the aesthetic impact of the Project does not rise to the level of "offensive or shocking". Some people, including some neighbors, may find the aesthetic impact of some or all elements of the Project offensive or shocking, however the Commission finds that the Project will not offend the sensibilities of the average person. The Project will diminish the scenic quality of the area, however it is not out of character with its surroundings, with the inclusion of important Project detail as noted above. The Project is not offensive or shocking and does not significantly diminish the scenic qualities of the area.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicant has "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." In re Times & Seasons, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." In re Stokes Communications Corp., 164 Vt. 30, 39 (1995)(quoted in In re Rinkers, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010). A generally available mitigating step "is one that is reasonably feasible and does not frustrate either the project's purpose or Act 250's goals."

To mitigate the aesthetic impacts of the Project, the Applicant has included reasonable elements in the Project design, including but not limited to noise control measures (e.g. operating hours and quiet hours), compatible exterior signage and fencing, camping sites and outdoor food and beverage areas located generally behind the existing Inn Café and away from Darling Hill Road, landscaping to soften the aesthetic impact of the more visible element (seasonal 26-space parking area), occupancy restrictions (16 outdoor seats, and 3 campsites for maximum 8 people per site), and will manage usage and parking demand so that parking occurs only in the permitted areas, and so that off-site parking does not occur.

Given all of these considerations, we find that the Applicant has taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

(d) Conclusion

Based on the above, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

CONCLUSIONS OF LAW: Historic Sites

The Commission uses a three-part test to determine whether the Project meets the portion of Criterion 8 relating to historic sites. The Commission determines:

- Whether the Project site is or contains a historic site;
- Whether the proposed Project will have an adverse effect on the historic site; and
- Whether the adverse effect will be undue.

Re: Steven L. Reynolds and Harold and Eleanor Cadreact, #4C1117-EB, Findings of Fact, Conclusions of Law, and Order at 5 (Vt. Env'tl. Bd. May 27, 2004); Re: Manchester Commons Associates, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. Sept. 29, 1995).

1. Whether the proposed project site is or contains a historic site.

"Historic site" is defined as "any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the state register of historic places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant." 10 V.S.A § 6001(9).

Listing on the national and state registers is a question of fact. Re: Manchester Commons, supra, at 19. If a structure is listed on the State register as an historic site, Act 250 has no discretion to declare such structure not to be historic. Re: Stonybrook Condominium Owners Association, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order at 9 (Vt. Env'tl. Bd. Sep. 18, 2001); Re: OMYA, Inc. and Foster Brothers Farm, Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Env'tl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).

Even if a site has not been listed on the national or state register, 10 V.S.A § 6001(9) allows the Commission to declare it to be an "historic site" if it is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant. Accordingly, the Commission must consider whether such testimony establishes a site, structure, district, or archeological landmark as historically significant. The Commission is not bound by the opinion provided by the Council, but rather, must weigh the testimony and make the determination. Re: Manchester Commons, supra, at 20.

The Project site is not a historic site, and the Project complies with Criterion 8 (historic sites).

CONCLUSIONS OF LAW: Rare and Irreplaceable Natural Areas

Under Criterion 8, before issuing a permit, the Commission must find the proposed project will not have an undue adverse effect on rare or irreplaceable natural areas.

The Commission uses a four-part test to determine whether a Project satisfies Criterion 8 (Rare and Irreplaceable Natural Areas):

- 1) whether the Project is located in a natural area;
- 2) whether the natural area is rare and irreplaceable;
- 3) whether the Project will have an adverse effect on the rare and irreplaceable natural area; and
- 4) whether the adverse effect, if any, is undue.

Is the Project located in a natural area? There are two guidelines for identifying natural areas as follows:

- a. an area which contains an identifiable type of ecological community; and
- b. an area in which natural conditions predominate over human influences.

There are officially designated "natural areas" in Vermont, but the Board has specifically ruled that a site does not have to be officially listed to be considered a natural area.

The Project is not located in a natural area and thus complies with Criterion 8, Rare & Irreplaceable Natural Areas.

As set forth above, the Project complies with Criterion 8 (Rare and Irreplaceable Natural Areas).

SUMMARY CONCLUSIONS OF LAW: Aesthetics, Historic Sites and Rare and 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.

Criterion 10 – Town and Regional Plans:

Findings of Fact

54. Findings 45 to 49 inclusive are incorporated by reference, concerning the Town Plan.
55. As identified by the regional planning commission, the Northeastern Vermont Development Association (NVDA), by senior transportation planner Douglas Morton the Project does not meet the threshold for Substantial Regional Impact as defined in NVDA's *Regional Plan for the Northeast Kingdom* (Exhibit 30), and NVDA did not identify any conflict with its regional plan (NEK Regional Plan, adopted 2015, last revised April 26, 2018).

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 Commission has reviewed the Town Plan and has determined that the provisions in question are not sufficiently specific. See, Re: The Mirkwood Group #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Env'tl. Bd. August 19, 1996). Therefore, it is necessary to review the zoning bylaws. See In re Frank A. Molgano Jr. 163 Vt. 25 (1994).

In Act 250 proceedings in which the provisions of a regional plan or a municipal plan are relevant to the determination of any issue:

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

(2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact. 24 V.S.A. § 4348(h). No such conflict was identified or found.

Maple Tree Place Associates, #4C0775-EB, Findings of Fact, Conclusions of Law, and Order at 53 (Vt. Env'tl. Bd. June 25, 1998).

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 Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit #7C0600-9-3, 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 #7C0600-9-3 is hereby issued.

DATED at St Johnsbury, Vermont, this 10th day of January, 2020.

By /s/ Eugene Reid
Eugene Reid, Chair
District # 7 Environmental Commission

Commissioners participating in this decision:

Keith Johnson
Nicole Davignon

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.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

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.