

From: [Kinnick, Christopher](#)
To: [Cotter, Madeline](#); [Pastor, Alexandra](#)
Cc: [Lomonaco, Rachele](#)
Subject: FW: Courtesy copy of PROPOSED civil citation related to Act 250 Permit #9A0378
Date: Thursday, May 4, 2023 3:38:14 PM
Attachments: [image002.png](#)
[2023-04-03 PROPOSED Citation letter 2022 91 Airbridge.pdf](#)

Hi All –

The comments (below) were received in response to the attached proposed citation. Could these please be uploaded to the public comments page? Thanks!



Christopher Kinnick

Compliance & Enforcement Officer

(802) 461-6707 | christopher.kinnick@vermont.gov

Natural Resources Board

10 Baldwin Street

Montpelier, VT 05633-3201

<https://nrb.vermont.gov/>

From: David Shlansky <djs@burchfieldcompany.com>
Sent: Wednesday, May 3, 2023 9:21 PM
To: Kinnick, Christopher <Christopher.Kinnick@vermont.gov>; Stone, Alison <Alison.Stone@vermont.gov>; Donabedian, Joshua <Joshua.Donabedian@vermont.gov>
Cc: Katherine Varnum <kav@burchfieldcompany.com>
Subject: RE: Courtesy copy of PROPOSED civil citation related to Act 250 Permit #9A0378

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Mr. Kinnick and Colleagues,

On April 3, 2023, you sent me the first attachment, a proposed Citation. That letter suggests that there has been a violation of Land Use Permit No. 9A 0378. It states “Removal of the air bridge without first obtaining the required LUP amendment is a violation of LUP #9A0378, Condition 14.”

This letter is directed to you, and the Natural Resources Board, via the copied individuals, and clarifies how the property owner, Shenandoah, LLC, submits written comments suggesting that the Citation is incorrect, and should be withdrawn promptly.

As we have repeatedly in writing suggested to the Natural Resources Board, there has been a number of allegations of “knowing and willful violation” of the Permit, and Shenandoah has repeatedly sought to obtain the information that was only sent a month ago. It has also sought to confer about how there has not been a violation, much less anything knowing or willful. That repeated, written series of requests was not responded to by the Natural Resources Board.

Shenandoah renews its willingness to engage in a meaningful manner with this state agency, and reserves all of its rights.

There has been extensive consultation and discussion with the State Historic Preservation Office, which resulted in an actual agreement as to what would be needed to mitigate the removal of the airbridge, in an amended permit. That permit amendment by necessity could not be applied for and obtained in the time that the airbridge was actively collapsing. That removal was necessitated by an emergent safety situation that arose with regard to the airbridge, presenting an imminent public health hazard. That public health hazard was discussed at length with the Vermont Department of Public Safety, the City of Vergennes Health Officer and Zoning Administrator, and resulted in an indication by a licensed structural engineer that the airbridge was an urgent hazard to safety.

Despite that emerging hazard, Shenandoah engaged in extensive delay on taking action, discussing the matter with the State Historic Preservation Office, and actually receiving that agency's agreement that mitigating steps would be acceptable to it. At no time did anybody contend that the airbridge was not a very real safety hazard. Nothing in any of the Natural Resources Board's jurisdiction confers on it the authority to require a safety hazard and health hazard to remain in effect.

Nor does the Permit require that such hazards cannot be addressed. In this case, an airbridge that there had been extensive efforts to figure out how to preserve started sagging and presenting signs of collapse. Considering that there are pedestrians and cars below it at many times during the day, this was immediately addressed with a structural engineer. There is an extensive record of seeking to satisfy the State Historic Preservation Office, despite the emergence of this situation. When it finally became clear that there was no mitigation that would address the safety issue, and a licensed structural engineer indicated that it must come down, Shenandoah took it down.

The Permit is an authorization to "complete, operate, and maintain" a project. It governs how the project, *when it is being undertaken*, must be conducted. The project was not in construction, and there was no activity going on, at the time that the airbridge began to collapse. In fact, the actual collapse of the airbridge was surprising, which is indicated by the fact that there was extensive discussion of how to save the airbridge as part of the Permit, -- which presupposes that the air bridge could have been saved, that it was not an imminent hazard, and that people were not wasting their time if it were intended to bring it down.

In any event, the Permit states the following:

- A. Paragraph 1: "This permit specifically authorizes rehabilitation and reuse of the Haviland Shade Roller Mill building to create a total of 19 new residential units. The project also includes redevelopment and expansion of an existing parking lot to accommodate 23 parking spots and will expand its footprint to encompass an adjacent lot owned by Treetop Homes, LLC upon which an additional 3-space parking lot will be constructed. The project is located at 2 Canal Street and 13 Cataract Place in Vergennes, Vermont.
- B. Condition 14: "Any future removal of the airbridge connector will have an adverse effect on

the historic site and will require an amendment to the Land Use Permit. Prior to submitting the amendment application, the Permittee shall consult with the Vermont Division for Historic Preservation to consider alternatives to avoid, minimize, and/or mitigate the adverse effects.”

The scope of the permit is the “rehabilitation and reuse” of the mill. The Conditions of the permit relate to that scope, what is “permitted” by the permit. There was never any discussion that merely owning or maintaining the building, before any actual work requiring the Permit started, is subject to permission by the Board. Gravity acts regardless of the Permit, and the Permit has not been used, even one day.

Proposed Civil Citation #2022_91 seems to contemplate that the mill buildings are now forever governed by an obligation to maintain it in accord with the Conditions of the Permit. But there is no activity to act on the Permit, nor will there be now that the project has changed. Building owners do not violate a permit simply by a building existing and having a maintenance issue, a fire, or a structural collapse. Permits regulate affirmative efforts.

There has been extensive effort absorbed in attempting to seek an amendment to the Permit. It appears that the Board appears to have said this amendment is not to its satisfaction, because it believes that a violation has occurred.

Shenandoah will do the following in the coming days:

1. Shenandoah will send to you several emails that give a small indication of the extensive effort undertaken to satisfy the State Historic Preservation Office in reaching the terms of what would be acceptable to it in an amendment to the Permit.
2. Shenandoah will send to you the communications and data showing that this collapse was a present health and safety hazard, not part of any planned construction or desired activity.
3. Shenandoah will file a permit application in the near future.

Shenandoah respectfully declines the offer to pay a fine for the effects of gravity on its structure. It will decline to do so if the Board takes the position that future structural issues resulting from the passage of time are a violation of the Board’s authority.

This project presents sufficiently difficulties to rehabilitate historic properties in a difficult regulatory and economic climate. Shenandoah hopes to engage in a cooperative effort to amend the Permit so that the project might be constructed at some future time.

Thank you.

David J. Shlansky, Vice President
Burchfield Management Company, LLC
186 Main Street Vergennes, VT 05491
Direct 802-870-0685



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From: Kinnick, Christopher <Christopher.Kinnick@vermont.gov>
Sent: Monday, April 3, 2023 1:38 PM
To: David Shlansky <djs@burchfieldcompany.com>
Cc: Stone, Alison <Alison.Stone@vermont.gov>; Donabedian, Joshua <Joshua.Donabedian@vermont.gov>
Subject: Courtesy copy of PROPOSED civil citation related to Act 250 Permit #9A0378
Importance: High

ATTN: David Shlansky – *Registered Agent, Shenandoah LLC*

Dear Mr. Shlansky:

I am providing this courtesy copy of a PROPOSED Civil Citation (attached) that the Natural Resources Board intends to send to Shenandoah LLC this week by First Class mail. The Civil Citation is a result of activities occurring at 2 Canal Street, Vergennes under Act 250 Permit #9A0378, in violation of Condition 14.

No action is required of you at this time, and there is information about the range of penalties depending on how Shenandoah LLC chooses to plead. A brief overview of the process is that the proposed citation will be posted on the public website for 30-days, then prepared as a final citation sent to you, at which point you would choose how to plead and return it to us. You are not required to notarize the citation form, rather the notarization is for me certifying that the proposed citation was posted for a 30-day public comment period and that you are not on active duty in the U.S. armed forces. The FINAL citation sent to you will already be notarized, at which point action will be required. Please contact me at the phone number / email, below if you have questions.

Please let me know if you are represented by counsel.

Sincerely,



Christopher Kinnick
Compliance & Enforcement Officer
(802) 461-6707 | christopher.kinnick@vermont.gov

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