

**STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT ENVIRONMENTAL COMMISSION #2**

RE: Zaremba Program Development, LLC
f/k/a Zaremba Group, LLC
14600 Detroit Avenue, #1500
Lakewood, Ohio 44107
and
Theodore Zachary
25 Mountain Brook Drive
Cheshire, CT 06410

Application #2S0699-3
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER**
10 V.S.A., §§ 6001 - 6093

I. INTRODUCTION

On September 21, 2012, Zaremba Program Development, LLC, and Theodore Zachary filed an application for an Act 250 permit for a project generally described as **creating a two-lot subdivision consisting of: Lot 1 with 8.72 +/- acres and the existing, permitted 3,000-square foot restaurant and parking; and Lot 2 with 1.37 +/- acres and the proposed construction and operation of a 9,100 square foot retail store. The project is located at 319 South Main Street (Route 103) in Chester, Vermont.** The tract of land consists of 10.08+/- acres. The Applicants' legal interest is ownership in fee simple described in a deed to Zachary's Pizza, recorded on March 18, 1996, in the land records of the Town of Chester, Vermont and a contract to purchase with Zaremba Program Development, LLC.

Under Act 250, projects are reviewed based on the 10 criteria of 10 V.S.A. § 6086(a) (1)-(10). Before granting a permit, the District Environmental Commission (Commission) must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file identified as Exhibits 1 through 110, and the evidence received at hearings held on October 17, 2012; November 9, 2012; and January 17, 2013. At the end of the final hearing, the Commission recessed the proceeding pending submission of additional information. The Applicants and other parties submitted proposed findings on December 21, 2012. The Commission adjourned the last hearing on February 26, 2013, upon receipt of the additional information and completion of Commission deliberations.

II. JURISDICTION

A Project Review Sheet dated November 30, 2011, established jurisdiction over this project because the project is a material change to an existing permit. Act 250 Rule 2(C)(6).

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 Land Use Permit #2S0699 issued on December 22, 1986, and revised on March 16, 1990 (permit #2S0699-1) and May 25, 2007 (permit #2S0699-2).

Also, official notice is hereby taken of the Chester Town Plan and the Southern Windsor County Regional Plan (Volumes 1 and 2) 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. PARTY STATUS

A. Preliminary Party Status Determinations

Parties to this application are:

1. The Applicants, by David Cooper, Esq., and Matthew Casey, who attended the hearings.
2. The Vermont Agency of Agriculture, Food & Markets, by Diane Zamos, Esq. and Kyle Davis, through an Entry of Appearance dated September 28, 2012, and they attended a hearing.
3. The Southern Windsor County Regional Planning Commission (SWCRPC), by Jason Rasmussen and Tom Kennedy. The SWCRPC announced it's intention to address Criteria 1(D) Floodways, 5 Traffic, 9(B) Primary Agricultural Soils, and 10 Town Plan. The Applicants objected except as these criteria are addressed under the Town Plan. SWCRPC is a statutory party under all ten criteria.

4. The Vermont Agency of Natural Resources, through an Entry of Appearance by Elizabeth Lord, ANR Land Use Attorney, dated October 16, 2012, and represented by Donald Einhorn, Rebecca Pfeiffer, and Sacha Pealer at the November hearing.

The following persons presented written Petitions for Requesting Party Status:

Leonard Lisai and Virginia Lisai submitted a Petition for Party Status at the pre hearing.

Through a submission by James A. Dumont, Esq., the Commission received a Petition for Party Status by Michele Bargfrede, Diane Holme, John Holme and Claudio Veliz, dated October 13, 2012.

At a prehearing conference, the Commission received another Petition for Party Status, through a submission by Mr. Dumont, Esq. for Shawn Cunningham, Dan Cote, Penny Cote, Bill Reed, Bret Rugg, Sharon Baker, Stephanie Whitney Payne, Donald Payne, Lew Watters, Nora Watters, Tom Housten, Janice Housten, Robert Gibbons, Gail Gibbons, Carrie King, Kathy Schoendorf, Richard Farnsworth, Cynthia Farnsworth, Kathy Pellet, Mark Martins, Scott Morgan, and Georgette Thomas.

The Commission granted preliminary party status under the criteria indicated to the following individuals:

5. Leonard Lisai and Virginia Lisai, reside at 121 School Street, Westminster, Vermont and own and operate a grocery store at 526 Depot Street in Chester. They requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 8 and 10 (Town Plan). The Applicants objected.
6. Michele Bargfrede resides at 3009 Weston-Andover Road in Andover and she owns and operates a business, Sage Jewelry, located at 295A Main Street in Chester, which is at the end of the Green. She requested party status under Criteria 5 Traffic, 8 Aesthetics, and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 5, 8 and 10 (Town Plan). The Applicants objected.
7. Diane and John Holme reside at 244 Putnam Hill Road in Chester. The project is in their line of sight from their residence, approximately a quarter mile from the project site. They requested party status under Criteria 5 Traffic, 8 Aesthetics, and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 5, 8 and 10 (Town Plan). The Applicants objected.

8. Claudio Veliz lives at 183 VT Route 103 South (Main Street) in Chester and owns and operates an architecture firm at 116 Main Street in Chester. Mr. Veliz experienced damage by the Williams River during the August 2011 Tropical Storm Irene. He requested party status under Criteria 1(D) Floodways, 5 Traffic, 8 Aesthetics, and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 1(D), 5, 8 and 10 (Town Plan). The Applicants objected.
9. Shawn Cunningham owns and resides at 3008 Popple Dungeon Road, Chester. He and his wife operate a business promoting 100 small businesses and attractions of Chester. He requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 8 and 10 (Town Plan).
10. Dan and Penny Cote reside at 321 Main Street, Chester, where they also operate a bed and breakfast, the Inn Victoria. They requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. The Commission granted preliminary party status under Criteria 8 and 10 (Town Plan).
11. Bill Reed and his wife own and operate Misty Valley Books, an independent bookstore at 54 The Common in Chester. They also reside in the building. He has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
12. Brett Rugg and his wife own and operate the Fullerton Inn, a 20-room inn at 40 The Common, on the Green in Chester. Mr. Rugg requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
13. Sharon Baker has a residence and business, Country on the Common, at 80 The Common in Chester. She requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
14. Stephanie Whitney Payne and Donald Payne have owned residences in Chester for over 50 years and have resided at 397 River Street in Chester for more than 15 years. They operate two businesses from their home. One is an interior design firm and the other is for conducting employee surveys. They have requested party status under Criteria 5 Traffic, 8 Aesthetics, and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 5, 8 and 10.

15. Lew Watters and Nora Watters own and have lived at 250 North Street in Chester for 38 years. This is one of the stone buildings in the Stone Village. Ms. Watters runs a doll making business and Mr. Watters is an instructor in computing and digital photography. They requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
16. Tom Houston and Janice Houston are retired and own and reside at 810 Quarry Road in Chester. They requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
17. Carrie King resides at 408 Depot Street in Chester and has owned this home since 2004. She requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
18. Kathy Schoendorf and her family own and live at 9 Dale Road in Stony Brook, NY and have a second home at 2609 Lovers Lane in Chester. They have owned their Chester home for 8.5 years and plan to retire here. She requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
19. Richard Farnsworth and Cynthia Farnsworth own and live at 256 Depot Street in Chester. They also own property at 193 Talc Mill Road that abuts the project site's property. They have lived at Depot Street for 23 years and Mr. Farnsworth's mother resides at the Talc Mill Road property. The Farnsworths have constructed a barn on the Talc Mill Road property for the use of his business, Custom Colors Painting. The Talc Mill Road property overlooks the rear of the project site. They requested party status under Criteria 8 Aesthetics including Noise, 8(A) Wildlife Habitat, and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 (including Noise), 8(A) and 10.
20. Robert Gibbons and Gail Gibbons have owned at 2475 Popple Dungeon Road for more than 16 years and retired to the property within the past few years. They requested party status under Criterion 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criterion 10.
21. Kathy Pellet and her husband have lived at 835 Quarry Road in Chester for 14 years with the intention of retiring here. They requested party status under Criterion 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criterion 10.

22. Mark Martins lives at 397 Peck Road in Chester. He is a principal in The Williams River House at Fox Chair Mountain Farm, a bed and breakfast, and a location for "destination weddings and other events." He requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
23. Scott Morgan lives at 244 Main Street in Chester. He is a professional artist and operates the WaterMusicArt Gallery. Mr. Morgan is also a landscape architect. He requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.
24. Georgette Thomas lives on Route 103 North between downtown Chester and Gassetts. She has owned and operated the Hugging Bear Inn and toy store since January 1983. She requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission granted preliminary party status under Criteria 8 and 10.

B. Final Party Status Determinations

Pursuant to 10 V.S.A. § 6085(c)(2) and Act 250 Rule 14(E), the Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. Prior to the completion of deliberations, the Commission re-examined the preliminary party status determinations and found that the parties continue to qualify under the relevant criteria as stated above:

V. FINDINGS OF FACT

Prior to taking evidence with regard to the ten Criteria of 10 V.S.A. § 6086(a), the Commission and all parties agreed that the Applicants, through submission of the application material, have met the burden of proof with respect to the following criteria:

- | | |
|---------------------------------------|---------------------------------------|
| 1 - Air Pollution | 7 - Municipal Services |
| 1(A) - Headwaters | 9(A) - Impact of Growth |
| 1(B) - Waste Disposal | 9(C) - Forest and Secondary Ag. Soils |
| 1(C) - Water Conservation | 9(D) - Earth Resources |
| 1(E) - Streams | 9(E) - Extraction of Earth Resources |
| 1(F) - Shorelines | 9(F) - Energy Conservation |
| 1(G) - Wetlands | 9(G) - Private Utilities |
| 2 - Water Supply | 9(H) - Costs of Scattered Development |
| 3 - Impact on Existing Water Supplies | 9(J) - Public Utilities |
| 4 - Erosion | 9(K) - Public Investments |
| 6 - Educational Services | 9(L) - Rural Growth Areas |

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

The following written Findings of Fact pertain to Criteria 1(D) Floodways; 5 Traffic Safety and Congestion; 8 Aesthetics; 8(A) Wildlife; 9(B) Agricultural Soils; 10 Conformance with Local and Regional Plans.

To the extent that the Commission has agreed with proposed findings of fact and conclusions of law submitted by the Applicants and other parties, those findings and conclusions have been incorporated herein. Otherwise, said requests to find are denied. In making the following findings, the Commission has summarized the statutory language of the 10 criteria of 10 V.S.A. § 6086(a):

GENERAL FINDINGS

1. The Applicants propose to subdivide an approximately 10.08-acre lot located at 319 Main Street (Route 103) in Chester, Vermont (the "Property"), into two lots - Lot 1 (approximately 8.72 acres, also referred to herein as the "Zachary Lot") and Lot 2 (approximately 1.37 acres, also referred to herein as the "Zaremba Lot") - and to construct and operate a 9,100-square foot retail store with associated infrastructure on Lot 2 (the "Project").

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

2. A stream (Lovers Lane Brook) is located along the entire length of the back (northeast) of the 10-acre parcel. The mapped inundation flood hazard area was exceeded during Tropical Storm Irene (August 2011). Most of the site is located within the 500-year floodplain. Exhibits 51, 63, 70 and Testimony.
3. The Project contains Special Flood Hazard Areas as designated on the most current National Flood Insurance Program (NFIP) maps. The Applicants have modified the original plan such that a floodplain terrace will be constructed at a slightly lower elevation behind the existing restaurant to provide additional flood water storage and conveyance. Exhibits 51, 63, 69, 70 and Testimony.
4. The Mitigation Cut Area is designed to serve as additional flood water storage. The Project, as redesigned and reflected on Exhibit 70, involves a net gain of 1,239 cubic yards of flood water storage on the property. This translates to a storage capacity of 250,228 additional gallons of water than currently exists on the property. Exhibit 70 and Testimony.
5. On August 23, 2012, the Stormwater Management Program, Department of Environmental Conservation, Agency of Natural Resources, issued Permit number 3280-9015.A, an amended authorization to discharge under General Permit 3-9015. This permit authorizes the discharge of stormwater from paved roads, paved parking lots, rooftop and non-rooftop impervious

disconnection, and natural terrain via overland flow across vegetated terrain to grass channels and rip-rap lined channels to collect, treat, infiltrate and convey the stormwater to a pocket pond to again treat and infiltrate the stormwater prior to discharge to Lovers Lane Brook. Exhibit 6.

6. The Applicants will grant reciprocal, non-exclusive easements authorizing the site work and stormwater flowage rights necessary to construct and implement the terracing and stormwater infrastructure described at the hearing and shown on the site plans. Exhibits 96, 97, 98 and Testimony.

Conclusion:

The Commission concludes that this Project will be located in a floodway. The Commission will include a condition incorporating the ANR's discharge permit into the Act 250 permit. With this condition, the Commission concludes that the Project will not restrict or divert the flow of flood waters nor significantly increase the peak discharge of a river or stream.

SECTION 6086 (a)(5) TRAFFIC SAFETY and CONGESTION:

7. The existing access off VT Route 103 (South Main Street) into the existing restaurant will be moved approximately 100 feet to the south and will serve as a shared access for both the existing restaurant and the proposed retail store. Exhibits D, 2A, 2E, 5 and 14.
8. The proposed, shared access will have improved sight distance to the north, and no reduction in the sight distance to the south. Sight distances will exceed the minimum stopping and intersection sight distance standards. Exhibits 2A, 2E, 5 and Testimony.
9. Route 103 is a State highway that provides a major connection between I-91 and points west including Okemo Mountain Resort. VTrans classifies this road as a rural principle arterial highway. Exhibit 5.
10. The section of Route 103 adjacent to the property is controlled by the Town of Chester and is designated a Class 1 Town Highway. State control of the roadway begins approximately 50 feet south of the property line, or 140 feet south of the proposed entrance drive. Exhibits 1, 5 and Testimony.
11. The speed limit is 25 mph at the Project site and increases to 30 mph where State control begins to the south. Exhibit 5 and Testimony.

12. Based on traffic counts conducted at existing Dollar General stores in Springfield and Colchester, Vermont, the estimated total traffic for the Chester Dollar General Store, including primary and passby trips is approximately 71 (36 enter, 34 exit) for Weekday PM Peak Hour and approximately 92 total trips (46 enter, 45 exit) for Saturday Peak Hour. These actual counts are approximately double the trip generation rates presented in the Institute of Transportation Engineer's *Trip Generation*. Exhibit 5 and Testimony.
13. Due to increased winter traffic levels associated with local ski resort activity, the design hour volume (DHV) increases by 40% to 59% depending on the intersection and analysis time period. Exhibit 5 and Testimony.
14. During the peak ski season, the Maple Street intersection is controlled by a traffic officer during peak time periods. Okemo is obligated to provide a traffic officer pursuant to Land Use Permit #2S0351-(Jackson Gore, Phase 2). Exhibit 5, Testimony and Official Notice.
15. During the peak ski season, the addition of project-generated traffic is projected to increase delays at the three most affected intersections by four seconds or less during both the weekday PM and Saturday peak hours. Exhibits 5, 71, and Testimony.
16. All the traffic study area approaches are expected to operate at level of service (LOS) C or better during the weekday PM hour, with or without the addition of project-generated traffic. During the Saturday peak hour, longer delays are projected for southbound traffic at the Pleasant Street intersection with or without project-generated traffic, but approach LOS D in all scenarios. All other intersection approaches in the study area are projected to operate at LOS C or better during the Saturday peak hour during the peak ski season. These are acceptable levels of service under the VTrans Level of Service policy. During the peak ski season, police officer traffic control at the Maple Street intersection is projected to remain effective during both the weekday PM peak hour and Saturday peak hour with the addition of the project-related traffic. Exhibits 5, 71 and Testimony.
17. There is a High Crash Location (HCL) along Route 103 passing through the Maple Street intersection and the Pleasant Street intersection. A "stop ahead" warning sign will be added in advance of the Maple Street intersection, and striping the words "STOP AHEAD" will be placed on the southbound Route 103 approach to Maple Street. The narrow bridge on Route 103 immediately east of the intersection with Pleasant Street was replaced by VTrans in 2011 and should improve both intersection sight distances and overall safety. Exhibits 5, 71 and Testimony.

18. A turn lane warrant analysis was conducted for the Route 103/Site Access intersection. Using Kikuchi and Chakroborty's warrant methodology, a left-turn lane at this location is not warranted in any scenario. Using a different warrant methodology, the Harmelink methodology, a left-turn lane is not warranted during the weekday PM peak hour but is warranted during the Saturday peak hour during peak ski season. Given the village setting, slow speed limit, and adequate sight distances, the traffic expert advised that the Kikuchi and Chakroborty's methodology is more applicable to this Project than the Harmelink method, which is designed for roads with speed greater than 40 mph. The peak hour of traffic at the retail store may not coincide with the ski-related Saturday peak hour traffic. The traffic expert recommended that no dedicated turn lane be constructed at this time, but that traffic volumes and queuing be monitored post-construction, during ski season Saturday peak hour to confirm that adequate traffic operation exists at the site driveway. Exhibits 5, 71 and Testimony.
19. There are 72 existing parking spaces serving the existing restaurant. Project parking spaces to serve the restaurant will be reduced to 48 and there will be 31 parking spaces serving the retail store. A grassy island between the two parking lots will be created to allow continued use as a farmers market sales area. Exhibits 1, 3, 65 and Testimony.
20. A landscaped island separating the restaurant from the retail store will allow traffic circulation between and around the restaurant property. Exhibit 68 and Testimony.
21. There will be one lane for the driveway entering the Project site and two lanes for the driveway exiting the site. Exhibit 68.
22. Internal stop signs will control traffic circulation. Exhibit 68.
23. A pedestrian crosswalk will be painted/striped at the entrance/exit to the Project site, connecting to a sidewalk. A concrete sidewalk will be constructed to provide access to pedestrians from a sidewalk along Route 103 to the retail store. Exhibit 68.

Conclusion:

The Commission finds that the traffic generated from the proposed Project will not exacerbate an existing traffic safety situation. Moving the entrance/exit will improve sight distances. The Commission will include permit conditions to: require a "stop ahead" warning sign along southbound Route 103 in advance of the Maple Street intersection; and to stripe the caution "STOP AHEAD" on the southbound Route 103 approach to the Maple Street intersection. The Commission will also require monitoring of traffic volumes and queuing following build-out of the retail store and

during a ski-season Saturday peak hour at one and five years post construction. The Commission will retain jurisdiction with respect to Criterion 5 and impose additional conditions including the installation of a turn lane if warranted. The Commission will also require that provision be made for bicycle parking to encourage alternative means of transportation. With these conditions, the Commission concludes that this Project will not cause unreasonable congestion or unsafe conditions with respect to transportation.

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

24. Previous relevant findings are incorporated herein.
25. There are no historic sites or rare and irreplaceable natural areas which will be affected by this Project. Exhibit D.
26. The approximate 10-acre Project site is partially developed with an existing permitted restaurant, parking and associated infrastructure. The proposed Project will be located at 319 South Main Street (Route 103). The parcel will be subdivided into two lots consisting of Lot 1 with the existing development on 8.72+/- acres (Zachary's lot) and Lot 2 with the construction and operation of the proposed 9,100 square foot Dollar General retail store on 1.37+/- acres (Zaremba lot). Exhibits 14 and 63.
27. The proposed single-story, 70-foot by 130-foot (9,100 SF) retail building will be situated on the lot such that the 70-foot, gabled side will face South Main Street (Route 103). Exhibits 14 and 68.
28. A stormwater detention basin with a berm, along with grass-lined swales, will be constructed along the eastern side of the Project site and will extend onto the adjacent Lot 1 (Zachary's lot). Exhibits D, 65 and 67.
29. *A Reciprocal Easement Agreement with Covenants and Restrictions* will be made between Theodore Zachary and Zaremba Program Development, LLC authorizing the site work and stormwater flowage rights necessary to construct, implement and maintain the proposed terracing and stormwater infrastructure. Exhibits 96, 97 and 98
30. The area behind the existing restaurant will be cut and graded in order to provide 1,239 cubic yards (250,228 gallons) of additional flood storage if needed. A 50-foot naturally vegetated buffer will be maintained between the top of the bank of Lovers Lane Brook and any disturbance on either the Zaremba lot or the Zachary's lot. Exhibits D, 70 and Testimony.

31. Parking areas will be provided along the front of the building, between the building and Route 103 and along the west side of the building, adjacent to the existing development. Traffic will be able to move between the two parking lots (Zachary and Zaremba lots) at the back of the landscaped island that will separate the two lots. Exhibits D, 14, 65 and Testimony.
32. Parking along the front of the retail building will be separated from a sidewalk along Route 103 by a landscaped, green space that is approximately 55 feet wide at the north end of the parking area and narrows to approximately 45 feet at the south end. Plantings in the green space will include seven 3-inch caliper deciduous trees and shrubs and seven rhododendrons. A walkway through the green space will connect the sidewalk along Route 103 to the parking area in front of the building where pedestrians will access the building via a cross walk. Exhibits D, 14 and 65.
33. The exterior materials for the proposed building will include horizontal wooden clapboards, cornice boards and rake boards. The main entrance will be centered on the front facade of the building and will have large, tinted faux windows to either side of the entry. A faux hayloft style door will be placed above the main entry. Wooden materials on the exterior facade will be either painted or stained in neutral earth tones. There will be a natural brick knee wall along the front facade. The roof of the building will have a 5/12 pitch and will be metal standing seam with a dark painted factory finish. A cupola will be placed on the roof's ridgeline towards the front of the building. Exhibits D, 12, 14 and Testimony.
34. A downlit, 16-inches high by 16-feet, 7-inches long wall sign depicting "DOLLAR GENERAL," in black letters, will be pin-mounted to the front of the building above the main entrance. A downlit, 15-foot high by approximately six foot wide, free-standing sign, will be constructed on the south side of the entrance drive. The "DOLLAR GENERAL" sign will have black letters painted on a special, yellow shape on a gray background. The signs will not be internally illuminated. Neither sign will exceed 24 square feet in size. Exhibits D, 11 and 65.
35. The general building form has been utilized for several other commercial structures in the Village of Chester, such as the Chester Hardware store, St. Joseph's Church, post office, TD Bank, Peoples National Bank and also the American Legion building and the Stone House Antiques building in the commercial district at the south end of the village. Exhibit 14 and Testimony.
36. The Project will be landscaped as outlined on Exhibit 65. The Applicants will continually maintain the landscaping as approved. Exhibit 3.

37. Exterior lighting will consist of two single pole mounted, full cutoff lights. One will be installed near the cross walk to the front door on the edge of the front parking area; and another installed on the landscaped island separating the Project's parking area from the restaurant parking area. The light poles will not be higher than 16 feet off the ground. Full cutoff wall pack lights will be installed along the front of the building and on the long western wall adjacent to the side parking area. There will be downward facing lights located in the parking lot, for walkway and rear service areas of the proposed building. Exhibits D, 15, 35, 36 and 65.
38. All proposed exterior lighting, including signage, will come on no sooner than one-half hour before opening and will be turned off no later than one-half hour after closing. The store will be open every day from 8:00 a.m. to 9:00 p.m. Exhibits 3 and 35.
39. The dumpster pad and mechanical pad located at the back of the Project site, will be screened by fencing and arborvitae shrubs (minimum 8-foot height). Exhibit 65.
40. The Chester Town Plan was adopted on July 21, 2010. The Town Plan's Future Land Use Map designates the Project site as being in the Village/Mixed Use Area. Exhibits D, 20 and 23.
41. The zoning map further designates the Project site as being located within the Residential Commercial (RC) District. The RC District borders the Aquifer Protection District 1 (the APD2 District), which begins at the intersection of Depot Street and South Main Street. The Village Green is situated within the APD2 Zoning District to the northwest of the Project. Exhibits 14, 76 and Testimony.
42. The RC District continues southeast along South Main Street for approximately one half mile, and then turns to the northeast and continues along Pleasant Street (VT Route 11) for another one-third mile. The remainder of the RC District is mostly surrounded by the Residential 20 District. Exhibits 14, 76 and Testimony.
43. There is a distinct change in the development pattern beginning at the northwestern end of the RC District and continuing to the intersection with Pleasant Street. Exhibit 14 and Testimony.
44. On April 16, 2012, the Chester Development Review Board issued a conditional use permit for the proposed Project. A retail store is an allowed use in the RC District with a Conditional Use Permit from the DRB. Exhibits 3, 76 and 77.

45. The northernmost 500 feet of the RC district between Depot Street and Maple Street exhibit characteristics that resemble the development pattern of buildings within the Village Green area. Buildings are closely sited to one another, are close to the street, and include a mix of historic and newer buildings. There are sidewalks along both sides of the street. Exhibits 14, 76 and Testimony.
46. Beginning where South Main Street intersects with Maple Street and continuing southeast, building setbacks vary; and several buildings are set back further from the road. The space between buildings also increases. Several properties have large parking areas and the curb and sidewalk at St. Joseph's Church end along the west side of the road. There is a higher percentage of buildings from the mid-twentieth century in this area. Exhibit 14 and Testimony.
47. Continuing southeast along South Main Street from Depot Street, the development pattern becomes less dense. The area around the Project is visually separated to the northwest by the presence of mature vegetation. Exhibit 14 and Testimony.
48. The buildings within the immediate surroundings include: (1) the Pizza House restaurant; (2) a small residence with front lawn is immediately opposite the restaurant; (3) the Country Girl Diner with a stainless steel exterior and a paved parking area out front is across Route 103; and (4) a Sunoco Gas Station with a combination of brick, vertical wood siding, storefront windows, overhead doors, and a flat roof with gas pumps, convenience store and a Vermont Liquor Outlet is east of the Diner. Exhibit 14 and Testimony.
49. There is a high level of architectural variation within the area immediately surrounding the site. The Pizza House restaurant has a contemporary appearance, including a hipped roof and large picture windows along the entire wall facing South Main Street. The building is set back over 200 feet from the edge of the road right-of-way, and has a large, landscaped parking lot in the front yard. Exhibit 14 and Testimony.
50. The area northwest of the Project includes several architectural styles, including a few mid - to late twentieth century residential structures, and several structures from the later nineteenth and early twentieth centuries that appear originally to have been residential. Many of these buildings currently have commercial uses. They are mostly two-story structures with horizontal clapboard siding and backyard barns or other outbuildings that extend away from the road. Within this same area is a mix of contemporary, single-story

commercial buildings, including the post office, St. Joseph's Church, and the People's United Bank. These structures have gable ends with pitched roofs and a combination of stone, brick and clapboard siding. Other commercial buildings within the APD2 District include the Chester Hardware Store (which has a similar form and size to the proposed retail building, although the ridgeline is parallel to the street) and the TD Bank building, another gable-ended structure. Exhibit 14 and Testimony.

51. Visibility of the Project site will be limited to a stretch along South Main Street that begins slightly before and after the area where the road abuts the property. Existing vegetation and existing buildings that surround the site screen views from other locations further away. For southbound vehicles, the site will remain visible for approximately 500 feet, although existing trees with the parking lot of the restaurant and proposed landscaping will partially screen and soften views. Traveling north on South Main Street, views are restricted by a hedgerow of mature vegetation approximately 25 feet deep running along the shared diagonal property line. Visibility of the Project when vegetation is defoliated will increase, but views will be partially screened and softened by existing and proposed landscaping. Exhibit 14 and Testimony.
52. The Town Plan includes the following policies in its Land Use Chapter:
 1. Revitalization of village commercial, residential and mixed-use areas, including the appropriate use, maintenance and reuse of existing historic structures and other existing buildings whenever possible, should be encouraged.
 2. Excessive commercial development along VT Routes 10, 11 and 103 (i.e., strip development) is discouraged. Access management and innovative commercial development that maintain the characteristics of the existing village areas and greens, is encouraged.
 4. In order to maintain the existing settlement patterns, higher density residential, commercial, and industrial development should be located in the village areas of the Town, and within walking distance of most of the residents of the village.
 6. The Town should make efforts to attract and locate viable and appropriate businesses in areas targeted by the town for economic development.
 14. Preserve the historical development pattern of mixed-use village areas surrounded by open land, agriculture, mining, forest, and low-density residential use.

Exhibit 20 (Town Plan, pages 12-13).

53. A sign indicating the entrance into Chester is located just east of the Project site. Exhibits 72, 73 and 74.
54. The retail store will be open every day, 8:00 a.m. to 9:00 p.m. Testimony.

Conclusion:

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 Environmental Court May 17, 2010); see also, *Re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (VT Environmental Board, 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, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (VT Environmental Court May 17, 2010)(citing *Re: Susan Dollenmaier*, #3W0125-5-EB, Findings of Fact, Conclusions of Law, and Order at 8 (VT Environmental Board, Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, slip op. at 5 (VT Environmental Court, Feb. 15, 2008), affirmed 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 Environmental Board, Nov. 4, 1985)(cited in *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).

The Project is in an area of mixed use and diverse architectural design. The building will "fit" in the context of the Village/Mixed Use and Residential-Commercial district. The site will be landscaped, including revising Zachary's existing parking lot such that there is additional green space added for continued use as a farmer's market sale area. The scale is consistent with other similar use buildings, including the hardware store and St. Joseph's Church within the RC District. The form of the building, with the front gabled end, is common throughout the town. The use of natural earth tones, wooden horizontal clapboard siding and trim boards and brick knee wall are in keeping with the character of the area.

The Commission concludes that the Project is compatible with its surroundings and will not have an adverse aesthetic impact. Accordingly, the Project complies with Criterion 8.

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

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

Conclusion:

The Commission concludes that the Project will not destroy or significantly imperil necessary wildlife or endangered species habitat.

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

56. The application for the original Land Use Permit #2S0699, issued in 1986, for the subject Property included a document titled "Primary and Secondary Agricultural Soil Information." That exhibit noted that the site contains certain primary agricultural soils. The exhibit also stated that:

[t]he total project will cover 1.26 acres (buildings & paving). The remaining 8.77 acres will remain in natural state. Development will be clustered towards VT. HW's 103 & 11.

Exhibit 34, Official Notice LUP #2S0669 and Testimony.

57. The original permit protected the remaining 8 +/- acres of primary agricultural soils on the site. Official Notice, Findings of Fact and Conclusions of Law #2S0699 (at 9B&C) and Exhibit 34.
58. The Project tract contains 4.73+/- acres of mapped NRCS Prime soils (Podunk) and 2.7+/- acres of mapped Statewide soils (Croghan-Sheepscot), for a total of 7.43 acres of mapped primary agricultural soils. Exhibits 33 and 67.

59. An additional 2.66 acres of soils on the site are not mapped as primary agricultural soils. Exhibit 33.
60. The Project will result in a reduction in the agricultural potential of the primary agricultural soils. Exhibits D, 32, 33 and 34.
61. Condition 12 of Land Use Permit #2S0699 requires that a 50-foot undisturbed vegetated buffer strip be maintained on both sides of the brook. This renders a significant portion of the primary agricultural soils present at the site unsuitable for on-site mitigation. The entire area north of the brook is either subject to the 50-foot buffer or is too narrow and inaccessible for agricultural activities. The small area of land to the east of the proposed Project site is likewise impacted by the required 50-foot buffer and renders the sliver of available primary agricultural soils to less than 200 feet wide. Exhibit 34.
62. The Project is not located in a designated growth center. The site is located in an area that is designated Village/Mixed Use and further zoned Residential Commercial. Exhibits D, 23 and 76.
63. The Applicants do not own or control any land other than primary agricultural soils which are reasonably suited to the purpose of the Project.
64. The area is devoid of adjacent agricultural operations. The proposed Project site is equipped with town water and sewer and there are adjacent residences as well as commercial and industrial structures in the area. Exhibit 34.
65. The proposed Project is clustered towards the road and adjacent to a pre-existing structure and infrastructure. Exhibits 34, 64 and 69.
66. Off-site mitigation for all impacts, past and present, including indirect impact, advances the statutory purpose of protecting agricultural soils for present and future agricultural use. Exhibit 34.
67. The Applicants and the Agency of Agriculture, Food and Markets (AAFM) have reached an agreement to mitigate all impacts to primary agricultural soils as set forth in the Mitigation Agreement and Stipulation. Exhibits 32 and 34.
68. The Project will directly or indirectly impact 1.23 acres of primary agricultural soils with agricultural value of 3 and 2.46 acres of primary agricultural soils with agricultural value of 6 as determined by the USDA NRCS. The statutory multipliers are 2.5 and 2 respectively. The total mitigation required for this site is 7.995 acres (rounded to 8 acres). Exhibits 32, 33, 34 and 67.

69. The Secretary of the AAFM has determined that the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the geographic region of the Project is \$1,453.00. Exhibit 34.
70. The Applicants and AAFM have entered into a Primary Agricultural Soils Mitigation Agreement that will provide for the protection of soils off-site through the payment of an off-site mitigation fee of \$11,616.74 to the Vermont Housing and Conservation Trust Fund. Exhibit 32.
71. The Chester Town Plan does not include mandatory language with respect to "farmlands" or agricultural soils. Exhibits D, 20. Town Plan, page 10.
72. The Southern Windsor County Regional Plan (SWCRP), includes the following relevant *Agriculture & Forest Resource Policies*:
 1. Encourage measures that balance supporting land-based economies, protecting agricultural and large blocks of forested lands, with supporting development in or near town centers.
 6. Development within downtowns, villages and other locally designated growth areas should be allowed on areas of Primary and/or Secondary Agricultural Soils, if supported in the town plan, but shall use innovative site designs to minimize negative impacts and shall be required to maintain a small tract for future small-scale agricultural use or community garden.
 15. It is the policy of the RPC [Regional Planning Commission] to minimize or mitigate the loss of these resources to development. As an alternative to conventional methods, the RPC endorses use of off-site mitigation techniques to offset the loss of these resources. However, endorsement of off-site mitigation should be conditioned on finding that the project proposal is:
 - (a) Consistent with this Plan and the plans of affected municipalities; and
 - (b) Provides an equal or greater benefit than conservation of the development site itself.

SWCRP, pages 87-88.
73. The Regional Planning Commission is satisfied that the mitigation agreement submitted by the AAFM adequately addresses agricultural soil impacts. Exhibit 61.

Conclusion:

Act 250 defines primary agricultural soils as:

[S]oil map units with the best combination of physical and chemical characteristics that have a potential for growing food, feed, and forage crops, have sufficient moisture and drainage, plant nutrients or responsiveness to fertilizers, few limitations for cultivation of limitations which may be easily overcome and an average slope that does not exceed 15 percent. Present uses may be cropland, pasture, regenerating forests, forestland, or other agricultural or silvicultural uses. However, the soils must be of a size and location, relative to adjoining land uses, so that those soils will be capable, following removal of any identified limitations, of supporting or contributing to an economic or commercial agricultural operation. Unless contradicted by the qualifications stated in this subdivision, primary agricultural soils shall include important farmland soils map units with a rating of prime, statewide, or local importance as defined by the Natural Resources Conservation Service (NRCS) of the US Department of Agriculture. 10 V.S.A. § 6001(15).

A total of 7.43 acres is mapped as primary agricultural soils on the Project tract. The Commission concludes that the Project will result in the loss of 3.69 acres of primary agricultural soils, through direct impacts to the soils. Because there will be a reduction in the agricultural potential of 3.69 acres of primary agricultural soils, the Commission must conduct a review under the subcriteria of Criterion 9(B).

Subcriteria (i), (ii), (iii) and (iv)

Subcriterion (i):

Subcriterion (i) is met through a representation that the proposed Project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. There are no agricultural or forestry activities on adjoining lands. The Commission concludes that the Applicants have met subcriterion (i).

Subcriterion (ii):

If the project is not located in a designated growth center, Subcriterion (ii) is met if the Applicants do not own or control lands other than primary agricultural soils which are reasonably suited to the purpose of the development or subdivision. The Applicants do not own or control lands other than primary agricultural soils which are reasonable suited to the purpose of the development. The Commission concludes that the Applicants have met subcriterion (ii).

Subcriterion (iii):

For projects located outside designated growth centers Applicants, in most instances, are required to provide "on-site" mitigation through the use of "innovative land use design resulting in compact development patterns which will preserve primary

agricultural soils on the project tract for present and future agricultural use." The remaining soils must be capable of supporting or contributing to an economic or commercial agricultural operation.

The Commission has the flexibility to approve alternate mitigation proposals both inside and outside of designated growth centers in appropriate circumstances. In appropriate circumstances, the District Environmental Commission may, in lieu of the provisions of 10 V.S.A. § 6093(a)(2), require payment of an off-site mitigation fee; or, in the alternative, the Commission may require a combination of on-site or off-site mitigation. In all instances, however, the Applicants must demonstrate that the Project has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns. If the Commission concludes that the Applicants have used such innovative design, it must also find that the remaining primary agricultural soils on the Project tract are capable of supporting or contributing to an economic or commercial agricultural operation or that the Applicants qualify for mitigation flexibility based on appropriate circumstances.

In accordance with the Statement of Procedure on Protection of Primary Agricultural Soils adopted by the Land Use Panel of the Natural Resources Board on September 11, 2012, appropriate circumstances may be based on a finding of the following:

- a) the tract of land containing primary agricultural soils is of limited value in terms of contributing to an economic or commercial agricultural operation and devoting the land to agricultural uses is considered impracticable based on the size of the land or its location in relationship to other agricultural and nonagricultural uses; or
- b) the project tract is surrounded by or adjacent to other high density development with supporting infrastructure and, as a result of good land design, the project will contribute to the existing compact development patterns in the area; or
- c) the area contains a mixture of uses, including commercial and industrial uses and a significant residential component, supported by municipal infrastructure; and
- d) the District Commission determines that payment of an off-site mitigation fee, or some combination of on-site or off-site mitigation, will best further the goal of preserving Primary Agricultural Soils for present and future agricultural use with special emphasis on protecting Prime Agricultural soils thus serving to strengthen the long-term economic viability of Vermont's agricultural resources.

The Commission must also determine that such action is consistent with the agricultural elements of local and regional plans, as well as the pertaining goals of section 4302 of Title 24.

The Project is located outside a designated growth center. Previous permit conditions requiring a 50-foot buffer, the lack of existing nearby agricultural use, the size and landscape pattern of the soils and the town's designation of this area for development, supports consideration for off-site mitigation due to "appropriate circumstances."

Of the 7.43 acres of mapped primary agricultural soils, 3.69 acres will be impacted by the Project. Although the remaining 3.74 acres are mapped primary agricultural soils, the required 50-foot buffer on both sides of the stream and the sliver of land on the other side of the stream renders the soils as inaccessible and unusable. Therefore, the Commission concludes that the remaining soils are not capable of supporting or contributing to an economic or commercial agricultural operation, therefore do not meet the definition of primary agricultural soils and cannot be considered for on-site mitigation.

The area contains a mixture of uses with a significant residential component supported by municipal infrastructure. The Commission concludes that payment of an off-site mitigation fee will best further the goal of preserving primary agricultural soils for present and future agricultural use with special emphasis on protecting prime agricultural soils, thus, serving to strengthen the long-term economic viability of Vermont's agricultural resources. The Commission also concludes that such action is consistent with the agricultural elements of local and regional plans, as well as the goals of section 4302 of Title 24.

The Commission, therefore, has decided to exercise mitigation flexibility under 10 V.S.A. § 6093(a)(3) and will require the payment of a mitigation fee of \$11,616.74 to the Vermont Housing and Conservation Board, prior to commencement of construction.

Subcriterion (iv):

The project is located outside a designated growth center and suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with 10 V.S.A. § 6093 and the Act 250 Rules. The findings under subcriterion 9(B)(iii) above are hereby incorporated by reference.

Conclusion:

The Commission concludes that the Project will result in a reduction in the agricultural potential of primary agricultural soils on the Project site, however, the Applicants have satisfied the applicable provisions of subcriteria (i) - (iv). The Commission will include

a condition in the permit that will require the Applicants to execute and adhere to the terms of the Mitigation Agreement entered into with the Vermont Agency of Agriculture, Food and Markets. Pursuant to the Mitigation Agreement, the Applicants will pay an off-site mitigation payment to the Vermont Housing and Conservation Board in the sum of \$11,616.74 prior to the commencement of construction of the Project. With the addition of this permit condition, Criterion 9(B) is met.

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

74. The current Chester Town Plan (Town Plan) was adopted on July 21, 2010. Exhibit 20.

75. Previous relevant findings are incorporated herein.

76. Relevant policies under the Town Plan include:

Earth Resources Policies

2. Any development planned for agricultural or forested lands shall locate to the periphery of these resources in order to avoid fragmentation and encourage the natural productivity of these lands. Page 39.

7. Roads and driveways shall meet town standards and shall provide adequate, safe emergency vehicle access. Page 39, Chapter 4 - Natural and Cultural Resources.

Water Resources Policies

2. New development adjacent to streams or rivers must be designed to cause minimal damage to the stream environment. Any such development should be planned so that surface waters do not become silted, contaminated or otherwise degraded. Page 42, Chapter 4 - Natural and Cultural Resources.

77. The Project is located within the Mixed Use Village Area, and is within walking distance of a number of residences. Exhibits D, 23 and Testimony.

78. The Town of Chester can provide fire protection and rescue service. Exhibits D and 17.

79. The Town of Chester has issued an access permit for the Project. Exhibit 17.

80. The Southern Windsor County Regional Plan, Volumes one and two (including the 2009 Regional Transportation Plan), was adopted on June 16, 2009. Exhibit 22.

81. The Project is situated in an area designated by the Regional Plan as a "Town Center." Regional Plan at Map 3 of 10 (Future Land Use Map). Exhibit 22.
82. The *Alternative Modes of Transportation Policies* section of the Regional Transportation Plan includes a policy that states: "Through the development review process, ensure new development incorporates pedestrian and bicycle circulation in site plans." Exhibit 61, Regional Plan, Vol. 2, page 75 (policy 14).
83. There are no pedestrian connections to the restaurant. It is inconvenient and potentially unsafe to walk between the proposed retail building and the existing restaurant without connecting sidewalks. Exhibit 61 and Testimony.

The Commission concludes that the proposed Project, located within the Mixed Use Village area, and as discussed and mitigated under Criterion 9(B) Agricultural Soils, complies with the Town Plan. Also, the town has approved the access and the Commission concludes that the access meets the town standards and provides adequate, safe emergency vehicle access.

The 50-foot buffer along the brook, the stormwater management system, and the additional flood storage area created by terracing, conforms to the Town Plan.

The sidewalk along Route 103 that will connect to the entrance of the retail store via a walkway over the grassy, landscaped area and via a crosswalk over the front parking lot provides good access to pedestrians. The connection of the retail store's parking lot to the existing restaurant parking lot provides vehicular circulation. The Commission will include conditions in the permit to require that bicycle racks be provided at the retail store and that a sidewalk be provided between the retail store and the restaurant. With these conditions, the Commission concludes that the Project conforms to the Regional Plan.

The Commission concludes that, with conditions mentioned above, this Project conforms to the local and regional plans.

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, it is the conclusion of this District Environmental Commission that the Project described in the application referred to above, if completed and maintained in conformance with all of the terms and conditions of that application, and of Land Use Permit #2S0699-3, will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A. § 6086.

VII.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #2S0699-3 is hereby issued.

Dated at Springfield, Vermont, on February 27, 2013.



By: _____
Michael Bernhardt, Chair
District #2 Environmental Commission
Natural Resources Board

Commissioners participating in this decision: Stephan Morse
 Stanley Borofsky

Any party may file a **motion to alter** with the District Environmental 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 (VRECP). The appellant must file with the Notice of Appeal, the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, 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 environmental commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at:
<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call 802-828-1660.

The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.