

## State of Vermont

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# LAND USE PERMIT AMENDMENT

**CASE NO: 4C0822-5**

Shelburne Green, LLC  
c/o J. Graham Goldsmith Architects  
7 Kilburn Street  
Burlington, VT 05401

**LAWS/REGULATIONS INVOLVED**

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #4 hereby issues Land Use Permit Amendment #4C0822-5, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 385, Pages 36-39, of the land records of Shelburne, Vermont, as the subject of a deed to Shelburne Green, LLC.

This permit specifically authorizes the construction of 12 buildings totalling 70,550 gsf with a combination of uses including general office, cafe, warehousing, food-processing, light manufacturing and accessory retail with supporting parking, stormwater management and utility infrastructure.

The project is located at 6221 Route 7 in Shelburne, Vermont.

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, is 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 4C0822-5, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

Sheet L1 - "Site Improvement & Landscaping Plan, Shelburne Green South" dated 11.21.13, last revision 4.28.14 (Exhibit #33);

Sheet C1.0 - "Overall Site Plan, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #34);

Sheet C2.0 - "Site Plan, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #35);

Sheet C2.1 - "Site Drainage Plan, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #36);

Sheet C2.2 - "Site Utility Plan, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #37);

Sheet C2.3 - "Site Lighting Plan, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #38);

Sheet C3.0 - "Road and Utility Profile, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #39);

Sheet C4.0 - "Site and Drainage Details, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #40);

Sheet C4.1 - "Sewer Details, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #41);

Sheet C4.2 - "Pump Station Plan and Section, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #42);

Sheet C4.4 - "Miscellaneous Details, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #44);

Sheet C5.0 - "EPSC Plan, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #45);

Sheet C5.1 - "Erosion Control Details and Specifications, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #46);

Sheet C6.0 - "Specifications, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #47);

Sheet C6.1 - "Specifications, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #48);

Sheet C6.2 - "Specifications, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #49);

Sheet C6.3 - "Specifications, Shelburne Green, LLC" dated Dec., 2013, last revision 4.28.14 (Exhibit #50);

Sheet A1.0 - "Proposed Elevations, Lot 1 Shelburne Green South" dated 09.16.13, last revision 10.11.13 (Exhibit #51); and

Sheet A2.0 - "Proposed Elevations, Lot 1 Shelburne Green South" dated 09.16.13, last revision 10.11.13 (Exhibit #51).

3. All conditions of Land Use Permit #4C0822 and amendments are in full force and effect except as further amended herein.
4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
  - a. Potable Water Supply and Wastewater System Permit #WW-4-0181-3 issued on 10/23/14 by the ANR Wastewater Management Division;
  - b. Authorization under Construction General Permit #6534-9020.1 issued on 5/2/14 by the ANR Watershed Management Division;

- c. Authorization General Permit #6534-INDS.A (Stormwater Discharge Permit), issued on 10/30/14 by the ANR Watershed Management Division.
  - d. Individual Wetland Permit #2014-124 issued on 11/5/14 by the ANR Watershed Management Division.
5. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
8. 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.
9. No further subdivision, alteration, and/or development on the tract/tracts 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.
10. 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.
11. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
12. The project is approved for the following maximum impacts:
  - 117 vehicle parking spaces;
  - 1647 gallons per day of water;
  - 149 AM peak hour vehicle trips; and
  - 101 PM peak hour vehicle trips.
13. No later than 10 days prior to commencement of building demolition/construction, the Permittee shall submit a Construction Waste Reduction Plan, to <http://www.anr.state.vt.us/wastediv/recycling/pubs/ACT250template.doc> to be approved by the Agency of Natural Resources Solid Waste Management Program. The contractor shall be obligated to implement the Plan.
14. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Sediment Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
15. Immediately upon initial roadway clearing, a stabilized construction entrance must be installed and maintained as shown on Sheet C5.0 (Exhibit #45). At a minimum, this

entrance must be constructed and maintained in accordance with the specifications as described in the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006). No further clearing or construction beyond the stabilized construction entrance may occur until the stabilized construction entrance is complete.

16. The Permittee shall comply with Exhibits #45 and #46 (Sheets C5.0 and C5.1) for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
17. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
18. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).
19. All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 1. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
20. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snowfencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
21. 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.
22. The Permittee shall apply for and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.

23. There shall be no floor drains installed at the Project without first acquiring the required Underground Injection Control Permit from the ANR Wastewater Management Division.
24. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
25. Pursuant to the Commission's findings of fact and conclusions of law under Criterion 9(B), the Permittee shall protect 3.24 acres of primary agricultural soils through on-site mitigation, as depicted on Exhibit #26 (Sheet PA-1), in order to compensate for the acreage of primary agricultural soils whose agricultural potential has been reduced or eliminated as a result of the project.
26. The protected primary agricultural soils shall be maintained in a manner that will ensure they will be available for economic or commercial agriculture, in perpetuity. Activities, structures, or other non-agricultural improvements that might in any way prevent or reduce the use of the protected soils for economic or commercial agriculture shall be prohibited. If, at any time, open protected soils are not used for an economic or commercial agricultural purpose, the Permittee shall ensure that the soils remain open and unobstructed through accepted practices such as haying or brush hogging a minimum of once every two years.
27. Pursuant to 10 V.S.A. § 6081(s), no permit amendment is required for farming that will occur on primary agricultural soils preserved in accordance with 10 V.S.A. § 6093 or will not conflict with any condition in this permit.
28. Farming is permitted on lands exempt from amendment jurisdiction pursuant to 10 V.S.A. § 6081(s).
29. The following "right to farm" covenant shall be included in any declaration of covenants for the project and in any lease or deed conveying any portion of the project tract:

Notice is given of the existence of preserved agricultural lands located in the vicinity of the lands conveyed herein. Current or future agricultural operations on these lands may include, without limitation: plowing; planting; fertilizing; spraying; the use of agricultural chemicals, pesticides and herbicides in the course of cultivating, harvesting, storing and transporting agricultural products; and the raising, feeding and management of livestock. Consistent with this notice, the lands are conveyed subject to a perpetual easement for any noise, odors, dust, and/or byproducts and impacts that may occur in the course of conducting accepted agricultural and best-management practices on these nearby agricultural lands. Grantees, by the acceptance of this deed, waive any objection to impacts arising from accepted agricultural and best-management practices, and are further notified that existing agricultural activities which are consistent with accepted agricultural and best-management practices do not constitute a nuisance or a trespass.
30. The Permittee shall comply with the terms and conditions of Exhibit #93, the Primary Agricultural Soils Off-Site Mitigation Agreement, and dated November 20, 2014. The

Permittee shall pay the \$18,771.75 mitigation fee specified in that Agreement prior to commencement of construction.

31. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit #33 (Sheet L1) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
32. The installation of exterior light fixtures is limited to those approved in Exhibit #38 (Sheet C2.3), and shall be mounted no higher than 14 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
33. 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.
34. The Permittee shall install conduit infrastructure for future vehicle charging stations within the outside parking lots.
35. Pursuant to 21 V.S.A. § 268, energy design and construction shall, at a minimum, comply with *the Vermont Commercial Building Energy Standards* in effect at the time of construction.
36. The installation and/or use of electric resistance space heat are specifically prohibited without prior written approval from the District Environmental Commission.
37. 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).
38. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2017**, 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.
39. 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, National Life Records Center Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.

40. Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Essex Junction, Vermont, this 24<sup>th</sup> day of November, 2014.

By: /s/Krista Reinhart, Acting Chair  
District #4 Environmental Commission

Commissioners participating in this decision  
Parker Riehle  
Tom Getz, Jr.

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 (VRECP). The appellant must file with the Notice of Appeal the \$265 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, Dewey Building, National Life Drive, 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 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: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

State of Vermont  
NATURAL RESOURCES BOARD  
DISTRICT #4 ENVIRONMENTAL COMMISSION

RE: Shelburne Green, LLC	Application #4C0822-5
c/o J. Graham Goldsmith Architects	Findings of Fact
7 Kilburn Street	Conclusions of Law, and Order
Burlington, VT 05401	10 V.S.A. §§ 6001-6093 (Act 250)

**I. INTRODUCTION**

On June 12, 2014, Shelburne Green, LLC and filed an application for an Act 250 permit for a project generally described as construction of 12 new buildings totalling 70,550 gsf with a combination of uses including general office, cafe, warehousing, food-processing, light manufacturing and accessory retail with supporting parking, stormwater management and utility infrastructure. The tract of land consists of 20.7 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on April 28, 2011 in the land records of Shelburne, Vermont.

The application was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated May 5, 2014. The application was deemed complete on June 12, 2014 upon receipt of the required supplemental information.

The Commission held a hearing on this application on July 29, 2014. The Commission also conducted a site visit that day and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on November 12, 2014 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 constitutes a material change to a permitted development, 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). A calculation error was made in the Dash 4 permit regarding the amount of on-site agricultural soils to be preserved. This error has now been accounted for in the current calculations for on-site/off-site preservation of soils.

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

1. The **Applicant** was represented at the hearing by Adam Davis of J. Graham Goldsmith Architects, PC and David Marshall, P.E. of Civil Engineering Associates, Inc.
2. The **Vermont Agency of Natural Resources** ("ANR") was represented through technical reviews of the required state issued permits.
3. The **Vermont Division of Historical Preservation** ("DHP") was represented at the hearing by Scott Dillon, Survey Archaeologist and Yvonne Benney Basque.
4. The **Vermont Agency of Agriculture, Food and Markets** ("AAFM") was represented through a submitted review letter by Beth Fenstermacher.
5. The **Vermont Agency of Transportation** ("VTTrans") was represented through an Entry of Appearance submitted by Rajnish Gupta, P.E., PTOE.
6. The **Chittenden County Regional Planning Commission** ("CCRPC") was represented through an Entry of Appearance submitted by Charlie Baker, Executive Director.

At the hearing the Chair preliminarily granted party status to the following parties under the listed criteria

7. The **Gables Homeowners' Association** was represented at the hearing by Anne G. Powell, Bernard Gevry and Peter Regan; The Commission granted preliminary party status under Criteria 1 (air) which requires that the proposed project will not result in undue air pollution; 1(B) (wastewater) which requires that the proposed project, in addition to all applicable criteria will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes; 4 (erosion control) which requires that the proposed project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; and 8 (aesthetics) which requires that the proposed project will not have an undue adverse effect on the scenic or natural beauty of the area.

#### 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.

#### V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact are based on the application, Exhibits #1 - #93, 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. 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.

**Criterion 1 - Air Pollution:**

Findings of Fact

1. The proposed uses within these buildings are generally associated with general office, small café, light manufacturing, food processing and accessory retail uses. The project does not propose any heavy manufacturing processes.
2. There will be no air pollutant emissions, noxious odors or noise pollution from operation of the Project.
3. Applicant has agreed with Gables Association, to the east, not to locate any café/restaurant in either building 7, 8, or 12.
4. During construction the applicant will control dust through the use of stabilized construction entrances and through the use of water and/or calcium chloride.
5. All buildings constructed as part of the Project will have high efficiency gas furnaces.
6. Construction hours will be limited to between 7:00 AM and 7:00 PM Monday through Friday and from 7:00 AM to 5:00 PM on Saturdays and 8:00 AM to 3:00 PM on Sundays. All blasting activities will be governed by the Blasting Protocol for the project which identifies the necessity for pre-blast surveys, notifications, and blast monitoring.

Conclusions of Law

The Commission concludes that this Project will not result in undue air pollution. The Commission concludes that this Project complies with Criterion 1(air).

**Criterion 1(A) - Headwaters:**

Findings of Fact

7. The Project is not located in, and has no potential to impact, a headwaters area.

Conclusions of Law

The Commission concludes that this Project is not located in a headwaters area as defined by this section because it is not situated in a drainage area of 20 square miles or less, is not above the elevation of 1,500 feet, is not in the watershed of a public water supply, and is not in an aquifer recharge area.

The Project complies with Criterion 1(A).

**Criterion 1(B) - Waste Disposal:**

Findings of Fact

8. Waste generated by the Project will include sewage, solid waste, and stormwater runoff.
9. The estimated 1,999 gallons per day of wastewater from the Project will be disposed of through connection to the municipal wastewater treatment system.
10. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit WW-4-0181-3 on 10/23/14.
11. The Project does not have any floor drains.

12. The applicant will use erosion prevention and sediment control measures contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control that conforms to the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2006, Amended 2008) to control stormwater runoff during construction.
13. The ANR Water Quality Division has issued Construction General Permit 3634-9020.1 on May 2, 2014, and Stormwater Discharge Permit #6534-INDS.A on 10/30/14 for the Project.
14. The ANR Department of Environmental Conservation has issued coverage under General Permit #6534-9015 (Stormwater Discharge General Permit) dated 10/30/14 for the operational phase of the project.
15. The total impervious area included in the Operational Stormwater Authorization application is 3.6 acres for the entire project. The proposed approach to stormwater treatment and drainage includes an effort to promote overland flow across vegetated areas and in grass channels to the greatest extent possible.
16. Heavy soils at the site preclude significant infiltrative practices, so the design promotes overland flow prior to routing to the two detention ponds.
17. The proposed system consists of a new wet detention pond to treat runoff from the driveway, parking lot, and commercial building rooftops. Grass channels provide water quality treatment.
18. Runoff from the north side of the rooftops along the north side of the project will be collected and sent to the existing stormwater facility which has excess capacity to treat this impervious surface.
19. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.
20. A Solid Waste Reduction Plan has been prepared for the management of site demolition and construction debris.

#### Conclusions of Law

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

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

The Project complies with Criteria 1(water) and 1(B).

#### **Criterion 1(C) - Water Conservation:**

##### Findings of Fact

21. The Project will use low flow plumbing fixtures throughout all buildings.
22. The applicant has considered water conservation in the design of the Project.

23. Multiple use or recycling of water is not technically and economically practical given the scope of the Project.

Conclusions of Law

The Project design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, uses the best available technology for water conservation, and provides for continued efficient operation of these systems.

The Project complies with Criterion 1(C).

**Criterion 1(D) - Floodways:**

Findings of Fact

24. The project is not located within a flood hazard area nor is it located within 100 feet of a perennial stream or river.
25. The Project is not located in a floodway.
26. The Project is not in the floodway fringe.

Conclusions of Law

The Commission concludes that the Project will not involve the development of lands within any floodway or floodway fringe. The Project complies with Criterion 1(D).

**Criterion 1(E) - Streams:**

Findings of Fact

27. There are no streams on the tract.

Conclusions of Law

The Commission concludes that the Project is not on or adjacent to a stream. The Project complies with Criterion 1(E).

**Criterion 1(F) - Shorelines:**

Findings of Fact

28. The Project is not located on a shoreline.

Conclusions of Law

The Commission concludes that this Project will not be located on any shoreline. The Project complies with Criterion 1(F).

**Criterion 1(G) - Wetlands:**

Findings of Fact

29. The property includes a Class II wetland. A small portion of the project will impact the uphill side of the wetland.
30. The Project or its construction or both constitutes an activity in a significant wetland or buffer zone of a significant wetland protected under the Vermont Wetland Rules.

31. On November 5, 2014 the ANR Department of Environmental Conservation issued Wetland Permit #2014-124, dated 11/5/14, authorizing fill in the buffer and wetland.

Conclusions of Law

An Individual Wetland Permit, issued by ANR, creates a presumption pursuant to Act 250 Rule 19 that the Project will not violate the rules of the Water Resources Panel relating to significant wetlands. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR. The Project complies with Criterion 1(G).

**Criteria 2 and 3 – Water Availability and Impact on Existing Water Supply:**

Findings of Fact

32. This Project will use 1,647 gallons per day of Town water.
33. There is sufficient water available for the Project.
34. The ANR Department of Environmental Conservation issued Potable Water Supply and Wastewater System Permit # WW-4-0181-3 on 10/23/14.

Conclusions of Law

The ANR Wastewater Management Division issued Permit creates a presumption pursuant to Act 250 Rule 19 that the Project has sufficient water available for its reasonably foreseeable needs and complies with Criterion 2. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that there is sufficient water available to meet the reasonably foreseeable needs of this Project. The Project complies with Criterion 2.

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

**Criterion 4 - Soil Erosion:**

Findings of Fact

35. The project site is gently sloping from east to west toward Shelburne Road (US Rte. 7). The soils are generally comprised of Stockbridge soils in the eastern half and Belgrade soils in the western half. Most of the proposed soil disturbance will occur in soils with K Factors of less than 0.36. The site is generally open meadow except for a grouping of trees located in the eastern mid-portion of the site and in the far southwestern corner of the parcel.
36. The applicant will use erosion prevention and sediment control measures contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control that conforms to the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2006, Amended 2008) to control stormwater runoff.
37. The project will include the placement of construction entrance, drain inlet protection, silt fence along the down gradient portions of the disturbed areas, use of erosion control matting on slopes in excess of 3:1, use of the detention basins as temporary sediment basins, and timely stabilization of the disturbed soils.

38. The stormwater management system has been design so that the proposed discharge points mimic the existing conditions. The project site currently discharges at two separate locations, one on the north side of the main entrance drive and one on the south side.
39. The north discharge point is preceded by an existing stormwater detention facility which provides both treatment and peak flow management. The post- development peak flow volumes been designed so as to provide a pre and post- development peak flow match for the 10-year design storm and to fully contain stormwater runoff during the 25-year Storm event.
40. The south discharge point will benefit from a series of on-site stormwater management facilities including the use of grass lined wales to slow the movement of water to the proposed stormwater management facility. This system has been designed to accommodate the 50-year design storm.
41. The ANR Water Quality Division has issued Construction General Permit 3634-9020.1 on May 2, 2014 for the Project.

#### Conclusions of Law

The ANR stormwater permits – individual construction discharge permit or approval under construction general permit – create a presumption under Rule 19(E)(6) that stormwater runoff during construction authorized by the permit will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. In addition, technical determinations entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that the construction of the Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. The Project complies with Criterion 4.

#### **Criterion 5 - Traffic:**

##### Findings of Fact

42. The property currently has two points of access. One is from Cynosure which intersects with US Route 7 (Shelburne Road). The second is a driveway south of Cynosure Drive which handles northbound traffic into the site and north and south bound egress from the site.
43. The proposed entrance into Shelburne Green South will be from the direct Route 7 (south) driveway. Approximately 200 feet from the Route 7 intersection, the new Shelburne Green South driveway will begin and extend southeasterly.
44. Based on a review of the most recent (2006-2010) high crash location summaries published by VTrans, there are no high crash segments or intersections located on Route 7 in the vicinity of the project.
45. The estimated traffic from the Project is 101 PM and 149 AM peak hour trips. This includes 106 employees.
46. Sight distance exceeds 600 feet in both directions (500' required for 45 posted mph).
47. Route 7 has the capacity to accommodate this additional traffic.

48. The 117 parking spaces are adequate for the demands of the Project. The project will provide an 11-bike wave rack and electric car charging station infrastructure.
49. VTrans requested a speed limit reduction on Route 7 in the area of the Shelburne Green development. The speed reduction would be an extension of the existing 35 mph zone just north of the project area, extending southward through the project area. VTrans also requested the applicant provide public transit stops on each side of Route 7; a crosswalk with a rectangular rapid flashing beacon (RRFB) that connects the public transit stops; and reserve and dedicate an easement to the town adjacent to Route 7 for future sidewalk development.
50. The applicant agrees with assisting the proposed reduction in the posted speed limit.
51. The applicant strongly objects to being burdened with the responsibility and associated costs for the requested rectangular rapid flashing beacon (RRFB) that connects the public transit stops. The existing pedestrian crossing demand in this section of Route 7 is associated with two land uses (Koerner: Folino's Pizza and Fiddlehead Brewery; and the Shelburne Vineyard) which were previously issued access permits by the Agency of Transportation.
52. The applicant spent \$275,000 widening Route 7 to improve the turning movement safety in this section of Route 7 which in turn has resulted in direct benefits for improved accessibility to both the Koerner and Shelburne Vineyard properties.
53. CCTA, the local bus system, does not wish to enter the site for a new stop until such time as patron volume warrants it. The system already stops every thirty minutes from 6:30AM to 7:30PM, Monday-Friday, nearby at Marsett Road/Rt. 7.
54. The Town has secured a public easement to use the internal sidewalks from the project north to Marsett Road, thru the Champlain Housing project sidewalk. Walking distance is about ¼ mile from the project to this existing bus stop.
55. With regard to the requested dedication of a sidewalk easement to the Town for future sidewalk construction, Applicant feels this is onerous for the following reasons.
56. The existing sidewalk system developed and maintained by the Town of Shelburne along Route 7 is located within the existing 6-rod (99 foot) wide rights-of-way and supplemental easements have not been required.
57. Along the northern third of the property (portion fronting Route 7 from the aforementioned Koerner property to Cynosure Drive), there is 35' of width from the edge of pavement to the rights-of-way limit which is much more than is necessary to accommodate a sidewalk and drainage ditch. Immediately outside of the Route 7 ROW, where the sidewalk easement would typically be placed, this section is already encumbered with easements to the Town of Shelburne Water Department for its water system booster station.
58. A sidewalk paralleling Route 7 would significantly disrupt the circulation and parking layout of the Koerner property.
59. Just south of the Koerner property, a proposed sidewalk would impact the proposed stormwater detention facility (which had to be oversized beyond the State Stormwater Rules to accommodate VTrans requirements for a 50-year design storm match of pre and post-development peak flow runoff conditions).

60. A new stop right on Rt. 7 would not be safe due to the 45 mph speed limit.
61. The applicant has offered a new off-Rt. 7 stop within the site which would then be available to Champlain Housing residents, and Phase 1 & 2 workers.
62. CCTA will utilize the current Marsett stop until such time as significant ridership warrants deviating into the project site.
63. The Project incorporates transportation demand management strategies by providing a future CCTA bus stop, providing the 11-bike wave rack, and by working to connect the new parking areas by pathway to existing sidewalks in Phase 1 which in turn can connect to the public sidewalk to Marsett Road/Rt. 7 where the bus systems stops every half hour of the working day. These measures are appropriate in light of the type, scale, and transportation impacts of the proposed Project.

#### 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.* Allocations for parking and employee numbers within the business park will be made a permit condition in order to track tenants in the twelve buildings as they build out.

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.*

With respect to the requests from VTrans, we believe that Project patron ridership conditions do not warrant another bus stop along busy Rt. 7, nor should this applicant be burdened with the costs of the crosswalk and rapid flashing beacon for pedestrians who may now be crossing here between Folino's Pizza, Fiddlehead Brewery, and the Shelburne Vineyard. This applicant has already spent \$275,000 widening Route 7 to improve the turning movement safety in this section of Route 7 which in turn has resulted in direct benefits for improved accessibility to both the Koerner and Shelburne Vineyard properties. An option exists already at Marsett Road for catching the bus system. The walking distance is not unreasonable, and a public sidewalk already exists. In the future, if ridership warrants it, the CCTA can deviate from the current routing to pick up within the project rather than along busy Rt. 7.

For all the reasons noted above in the Applicant's objections, an easement along Rt. 7 for a sidewalk does not make sense.

The Project complies with Criterion 5(A).

The Project incorporates transportation demand management strategies by providing a future CCTA bus stop, providing the 11-bike wave rack, and by working to connect the new parking areas by pathway to existing sidewalks in Phase 1 which in turn can connect to the public sidewalk to Marsett Road/Rt. 7 where the bus systems stops every half hour of the working day.



These measures are appropriate in light of the type, scale, and transportation impacts of the proposed Project.

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

**Criteria 6 and 7 - Educational and Municipal Services:**

Findings of Fact

64. The applicant estimates that no school-age children will be added to the local school system as a result of this Project. As school enrollment is decreasing in Shelburne, the schools have the capacity to accept additional students.
65. The Project will utilize municipal police, fire, and rescue services.
66. The Town Fire Department and Police Department can provide services to the Project.
67. The Town Rescue Service can provide rescue services to the Project.
68. The Applicant will construct the public roads and all utilities to town specifications.

Conclusions of Law

Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criteria 6 and 7. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate the burdens created. *Id.*

As long as per-pupil spending does not change, a change in the Grand List will not change school tax bills after the first year, because under Vermont's school financing system (Act 60), the cost of additional students is financed entirely by the state education fund and by funds which the town has elected to spend above and beyond the state's block grant. Therefore, the inquiry under Criterion 6 is whether the Project will necessitate any physical improvement to local schools that would cause new capital costs to be incurred. If so, the question is whether such a burden is reasonable.

The Commission concludes that the additional students will not impose an unreasonable burden on the municipality's ability to provide educational services. The Project complies with Criterion 6.

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

The burden of proof is on the opponents under Criteria 6 and 7, but the burden of production is on the Applicants. No evidence was presented to contend that the proposed Project will cause an unreasonable burden on the municipality.

Therefore, the Commission concludes that this Project will not place an unreasonable burden on the ability of the municipality to provide educational, municipal or governmental services. The Project complies with Criteria 6 and 7.

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

Findings of Fact

Aesthetics, Scenic or Natural Beauty

69. The project site is gently sloping from east to west toward Shelburne Road (US Route 7). The site is generally open meadow except for a grouping of trees located in the eastern mid-portion of the site and in the far southwestern corner of the parcel.
70. The project is located within the Commerce & Industry - South zoning district which provides for office as a permitted use and light industry as a conditional use.
71. During the construction phase, there will be some noise levels inconsistent with the existing residential use. To help mitigate this, construction hours will be limited to between 7:00 AM and 7:00 PM Monday through Friday and from 7:00 AM to 5:00 PM on Saturdays and 8:00 AM to 3:00 PM on Sundays. Noise is regulated through the Performance standards outlined in the Town's Zoning Bylaw.
72. TOWN OF SHELBURNE ZONING BYLAW 1950 PERFORMANCE STANDARDS.1950.2 All new development and all existing land uses, whether permitted by these regulations or otherwise, including non-conforming uses and uses approved by the Development Review Board as conditional uses, must at all times comply with the standards and requirements set forth below: C. Noise. The sustained (for a period of one hour) sound pressure level shall not exceed the 70 dbA decibel level at the property line between the hours of 7:00 a.m. and 7:00 p.m., and shall not exceed the 60 dbA decibel level at the property line between the hours of 7:00 p.m. and 7:00 a.m. If the noise is impulsive (i.e., hammering), intermittent (i.e., music or machine sounds) or periodic (i.e., hums or screeches), the maximum sound pressure levels described above shall be reduced by five (5) dbA.
73. The project may require blasting of bedrock to assist in placement of underground utilities. The management of the rates of particle acceleration and noise from any required blasting are outlined in the Blasting Protocol for the project. These will be reviewed with the Town Manager prior to initiation for conformance with the intent of Zoning Bylaw Performance Standards.
74. The proposed twelve buildings comprise a mix of three different size commercial buildings. The surrounding area is comprised of large commercial buildings at the Teddy Bear Factory facility, large light manufacturing facility building on the property to the north, moderate size commercial buildings to the west and residential condominiums set off a significant distance to the east.
75. Shelburne Green south has been designed to resemble the characteristics of an old New England Settlement: a scattering of small to medium sized commercial buildings using economical building materials and sparse landscaping. The concept is to give the area some relief from the large buildings in the Commerce & Industry South zoning district along Route 7 (notably the Teddy Bear Factory and the recently rehabilitated Snelling Business Park Building, now the Shelburne Green Business Park Building).
76. Walls and roofs are proposed to be made of factory metal panels in various arrangements (horizontal, vertical and sloped) with colors consistent enough to create a coherent Village appearance yet varied enough to give interest to the project. Colors for

the metal siding proposed are White, Barn Red and Forest Green. Roofing is proposed to be natural galvanized which will complement the natural anodized aluminum storefronts, entries and garage doors and forest green to complement the Shelburne Green Building next door. Windows and trim are proposed to be white vinyl with double glazed Low E glass (white being a typical New England color). Serviceman doors are proposed to be faux brown fir wood.

77. Driveways, parking and walks are proposed to be rustic white gravel (Shelburne Limestone) as extracted from a nearby quarry. Parking is designed to be nestled in between the buildings to minimize visual impacts from Route 7. Immediately surrounding the buildings will be lawns with some plantings of edible fruit trees and bushes. The remaining fields will be hayed yearly if not planted to community gardens.
78. There are no proposed freestanding signs other than a small 3 SF directory sign that will be placed at the new driveway intersection with the existing driveway.
79. The exterior lighting will be provided from building mounted lights using LED downcast fixtures.
80. The applicant agreed to continually maintain the landscaping as approved.
81. Shelburne Green (SG) entered into an agreement with adjoining The Gables Association (TGA) with respect to landscaping. SG shall replace any white pines that have died since being planted in 2011.
82. Shelburne Green (SG) will add approximately 180 native cedar shrubs to create a natural buffer along the southern end of the westerly property line between TGA and SG. The cedar shrubs are to be planted in two rows in a staggered pattern, 2 feet apart. The cedar shrubs shall be approximately 5 to 6 feet in height at the time of planting.
83. SG agrees to plant the native cedar shrubs comprising the hedge prior to commencing construction of the buildings.
84. SG will be responsible for the maintenance and trimming of the buffer hedge described above. In order to maintain an appropriate height, TGA may request that Shelburne Green trim the hedge; with a limit of 2 requests per calendar year. A 6 foot minimum hedge height shall be maintained.
85. SG has extended the 5 foot high wire fence to the southern end of the east/west property line between SG and TGA. Furthermore, the wire fence has been extended from the southern end of the east/west property line between SG and TGA to the west a distance of 15 feet. This was done at TGAs request.
86. SG shall be responsible for the maintenance of the wire fence described above.
87. SG agrees to not construct any parking areas, recessed loading docks, or driveways within the 150 foot setback between SG and TGA, or on the east side of any structure to be built in the area currently occupied by buildings 7 and 8, unless the plans are significantly altered. Should the plans be significantly altered, SG shall be required to go back to the Town of Shelburne for approval.
88. SG shall not lease space to a cafe/deli operator in the southeast corner of the project. This area is currently occupied by proposed buildings 7, 8, and 12.

Historic Sites

- 89. There are no historic sites which will be affected by this Project.
- 90. The Division conducted two site visits to the project in July and identified portions of the project area as archaeologically sensitive. On August 6-7, 2014, the University of Vermont Consulting Archaeology Program (UVM CAP) completed a Phase I site identification survey of the sensitive areas. The Division received a copy of the UVM CAP end-of-field letter report dated August 2014. No evidence of cultural activity was identified and the UVM CAP concluded that no additional archaeological investigation was warranted. The Division concurs with this determination and concludes that the Shelburne Green South Development will have No Effect on any historic sites that are listed on or eligible for inclusion in the State Register of Historic Places.

Rare and Irreplaceable Natural Areas

- 91. There are no rare and irreplaceable natural areas 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).

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

Findings of Fact

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

Conclusions of Law

The Project does not impact any necessary wildlife habitat or endangered species. Therefore, the Project complies with Criterion 8A.

**Criterion 9(A) - Impact of Growth:**

Findings of Fact

- 93. The Town has a duly adopted capital improvement plan.
- 94. It is estimated that the proposed 70,000 GSF of proposed commercial usage associated with the project will increase the area employment by 160 jobs, with some jobs relocated from other portions of the Greater Burlington area.
- 95. The estimated increase in the Grand List is conservatively set as \$2,500,000. Based on a \$0.32/\$100 Town rate, the Town will receive additional revenue in the amount of \$8,000 per year not including water and sewer usage fees. Based on a \$1.60/\$100 school rate, the State School tax additional revenue will be \$40,000 per year.

96. Based on the consolidated nature of the project and response that the services can be readily provided by the Town and that there is capacity in the schools, these revenues will likely match or exceed the increase in annual operating costs caused by the project.

#### Conclusions of Law

To make an affirmative finding under Criterion 9(A), the Commission must determine that the proposed development will not significantly affect the municipality's and the region's ability "to accommodate two separate items: (i) growth that will occur generally, regardless of the proposed project and (ii) growth that will occur specifically because of the Project. *Re: Town of Stowe, #100035-9-EB, Findings of Fact, Conclusions of Law, and Order at 52 (Vt. Envtl. Bd. May 22, 1998); Re: St. Albans Group and Wal\*Mart Store, Inc., #6F0471-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 29 (Vt. Envtl. Bd. June 27, 1995), affd, In re Wal\*Mart Stores, Inc., No. 95-398 (Vt. Sup. Ct. Aug. 29, 1997).* The analysis under this criterion differs from that under Criterion 7 in that here we consider the experienced growth, expected growth and projected growth of the municipality. *see Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet, #1R0048-12-EB Findings of Fact, Conclusions of Law, and Order at 49 (Vt. Envtl. Bd. August 20, 2001).*

The municipality has a duly adopted capital improvement plan, therefore the Applicant bears the burden of proving that the proposed Project will not significantly affect the existing or potential financial capacity of the town and region to accommodate such growth. *see Home Depot USA, Inc., Ann Juster, Homer and Ruth Sweet #1R0048-12-EB Findings of Fact, Conclusions of Law, and Order at 47 (Vt. Envtl. Bd. August 20, 2001).*

In the present case, town services are already being served nearby so the Project will not cause an undue burden on the existing and potential financial capability of the municipality and the region to accommodate growth caused by the Project.

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

#### **Criterion 9(B) - Primary Agricultural Soils**

##### Findings of Fact

97. A mapping error occurred in the application materials submitted for Dash 4 Shelburne Green Development in 2011. Due to this error, the Applicant was required to mitigate for impacts to soils that were not mapped as primary agricultural soils. The Dash 4 LUP required that 1.65 acres of soils be preserved for on-site mitigation for the impact of 0.55 acres. Only 0.31 acres of soils were impacted; therefore, the area of on-site mitigation for the impacts under LUP #4C0882-4 should be reduced to 0.93 acres (as shown in Site Plan PA-1 (Exhibit #24), revision date 6/5/14).
98. The project site (20.7 acres) contains 9.16 acres of primary agricultural soils as defined by 10 V.S.A. § 6001(15). The 9.16 acres are mapped as: BIB – Belgrade and Eldridge Soils, 3 to 8 percent slopes, agricultural value 2; Cv – Covington Silty Clay, agricultural value 6d; EwA – Enosburg and Whately soils, 0 to 3 percent slopes, agricultural value 4d; HnA – Hinesburg fine sandy loam soils, 0 to 3 percent slopes, agricultural value 3; and SuB – Stockbridge and Nellis Stony loams, 3 to 8 percent slopes, agricultural value 1.

99. 6.72 acres do not meet the definition of primary agricultural soils due to previous impacts (4.86+0.31 acres) and Class 2 wetlands (1.56 acres). As previously noted, 0.93 acres of the primary agricultural soils are preserved for on-site mitigation under LUP #4C0882-4.
100. Based on the 4.68 acres of impact for Shelburne Green South, the total amount of mitigation required pursuant to 10 V.S.A. § 6093(a) is 12.51 acres. [2.39 acres (impact to soils in value group 1) x 3 (Stipulated multiplier)] + [0.42 acres (impact to soils in value group 2) x 2.75 (Stipulated multiplier)] + [1.76 acres (impact to soils in value group 4) x 2.25 (Stipulated multiplier)] + [0.11 acres (impact to soils in value group 6) x 2 (Stipulated multiplier)] = 12.51 acres
101. If a project site contains "primary agricultural soils" and the proposed project involves earth disturbance, compliance with Criterion 9(B)'s four sub-criteria is required. Sub-criterion (iv) mandates that "suitable mitigation" be provided for "any reduction in the agricultural potential of primary agricultural soils." 10 V.S.A. § 6086(a)(9)(B)(iv). What constitutes suitable mitigation depends on the project's location. Project parcels located outside of "designated growth centers" must provide mitigation for impacts on site. Id., § 6093(a)(2).
102. As designed, the project potentially leaves 3.24 acres of primary agricultural soils available on-site for present and future agricultural use and on-site protection of these soils:
103.  $9.16$  (total number of acres of PAS)  $- 0.31$ ,  $- 0.93$  (acres of PAS preserved for mitigation of previous impacts)  $- 4.68$  (acres of PAS to be impacted by development) = 3.24 acres (PAS available for on-site mitigation)
104. The Agency requests these 3.24 acres be protected, at a minimum, through a permit condition issued by the District Commission. Usually, the Agency requires that tracts of land for on-site mitigation have a 100' minimum width. However, smaller tracts of land have been designated for use as Community Gardens, as shown in Site Plan PA-1, revision date 6/5/14.
105. The Agency requests that a Right to Farm condition be included in the Land Use Permit and any land use leases.
106. The Project is not located in a designated growth center.
107. There is no agriculture or forestry activity on lands adjoining the Project tract.
108. The Applicant does not own or control any lands other than primary agricultural soils which are reasonably suited to the purpose of the project.
109. 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 so that the remaining primary agricultural soils on the Project tract are capable of supporting or contributing to an economic or commercial agricultural operation.
110. 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 and its location in relationship to other agricultural and nonagricultural uses.

111. The project tract is 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 Shelburne.
112. The area contains a mixture of uses, including commercial and manufacturing uses and a significant residential component adjacent and nearby, supported by municipal infrastructure.
113. A combination of on-site preservation for community gardens to complement the food product industry proposed as tenants, and off-site mitigation, will best further the goal of preserving Primary Agricultural soils for present and future agricultural use thus serving to strengthen the long-term economic viability of Vermont's agricultural resources.
114. 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.
115. The Secretary of Agriculture, Food, and Markets (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 \$2,025.00.
116. The applicant and AAFM have entered into a Primary Agricultural Soils Mitigation Agreement that will provide for the protection of 9.27 acres soils offsite through the payment of an off-site mitigation fee of \$18,771.75 to the Vermont Housing and Conservation Trust Fund. Exhibit #93.
117. The fee was calculated as follows: [2.39 acres (impact to soils in value group 1) x 3 (Stipulated multiplier)] + [0.42 acres (impact to soils in value group 2) x 2.75 (Stipulated multiplier)] + [1.76 acres (impact to soils in value group 4) x 2.25 (Stipulated multiplier)] + [0.11 acres (impact to soils in value group 6) x 2 (Stipulated multiplier)] – 3.24 acres (on-site mitigation)} x \$2025 (cost per acre) = \$18,771.75.

#### Conclusions of Law

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 or 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 (N.R.C.S.) of the United States Department of Agriculture (U.S.D.A.).

10 V.S.A. § 6001(15).

In summary, the Commission concludes that 9.16 acres of soils on the project tract meet the Act 250 definition of primary agricultural soils at 10 V.S.A. § 6001(15). The Commission further concludes that the project will result in the loss of 4.68 acres of primary agricultural soils, through direct impacts to the soils. Because there will be a reduction in the agricultural potential

of 4.68 acres of primary agricultural soils, the District Commission must conduct a review under the subcriteria of Criterion 9(B).

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

Since the Commission has concluded that the agricultural potential of 4.68 acres of primary agricultural soils on the 20.7 acre parcel will be reduced by the proposed Project, the Applicants must address the four subcriteria under Criterion 9(B).

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. Therefore, the Commission concludes that the applicant has met subcriterion (i).

Subcriterion (ii) is met if the Applicants do not own or control any non-agricultural soils which are reasonably suited for this Project. The applicant does not own or control lands other than primary agricultural soils which are reasonably suited to the purpose of the development. Therefore, the Commission concludes that the applicant has 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 project is located outside a designated growth center. The project will result in the reduction of the agricultural potential of 4.68 acres of soils while 3.24 acres of primary agricultural soils will be permanently preserved onsite through permit condition in a configuration that will enable their continued use for agriculture, especially community gardens. This preservation complies with the applicable ratios enumerated in 10 V.S.A. § 6093 as determined by the Secretary of Agriculture, Food, and Markets. Thus the district commission finds 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, so that the remaining primary agricultural soils on the project tract are 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(2) and 10 V.S.A. 6086(a)(9)(B)(iii), 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 applicant 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. We find that the applicant qualifies 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 are based on a finding of the following:



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 and its location in relationship to other agricultural and nonagricultural uses; moreover, the project tract is 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; and the area contains a mixture of uses, including commercial and industrial uses and a significant residential component, supported by municipal infrastructure, and

The District Commission determines that a 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 also determines 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.

Subcriterion (iv) is met through a representation that 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 10 V.S.A. § 6093.

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, 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.

#### Summary

The District Commission concludes that the project will result in a reduction in the agricultural potential of primary agricultural soils on the project site, however, the applicant has satisfied the applicable provisions of subcriteria (i) – (iv).

The Commission concludes that with payment of an off-site agriculture mitigation fee, the Project complies with Criterion 9(B).

#### **Criterion 9(C) - Productive Forest Soils:**

##### Findings of Fact

118. No productive forest soils are located on the Project tract.

##### Conclusions of Law

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

#### **Criterion 9(D) - Earth Resources:**

##### Findings of Fact

119. No mineral or earth resources exist on the Project tract.

##### Conclusions of Law

The Project complies with Criterion 9(D).

**Criterion 9(E) – Extraction of Earth Resources**

Findings of Fact

120. The Project does not involve the extraction or processing of mineral or earth resources.

Conclusions of Law

The Commission concludes that this Project complies with Criterion 9(E).

**Criterion 9(F) - Energy Conservation:**

Findings of Fact

- 121. The applicant will construct and operate the commercial buildings in the Project in accordance with the Commercial Building Energy Standards issued by the Vermont Department of Public Service pursuant to 21 V.S.A. § 268 (CBES), which is evidenced by the COMCheck Certification submitted.
- 122. The COMCheck Certification, demonstrates that the project will exceed Vermont Commercial Building Energy Standards by 22 percent for indoor lighting, 85 percent for exterior lighting, and 2 percent for the building's envelope.
- 123. The Project's mechanical equipment meets energy star standards or exceeds code minimum requirements. The project's mechanical equipment efficiency ratings exceed code: 15 seer vs 11 seer required on air, while the gas furnace is 83% efficient vs. 80% required.
- 124. The project's planning and design incorporates the following energy conservation measures, which will reduce the project's greenhouse gas emissions from the use of energy: site orientation maximizes use of active and passive solar, LED lighting, connections to walking paths, and electric charging parking spaces.
- 125. The Project will not involve the installation and/or use of electric resistance space heating.
- 126. Interior Lighting will be efficient T8, T5, and T5 HO. Exterior will be Metal Halide or LED. Several prospective tenants have expressed interest in installing Solar Hot Water and Solar Photovoltaic systems for their spaces on the roofs which face south.

Conclusions of Law

Criterion 9(F) requires the Applicant to show that the planning and design of the Project "reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy." 10 V.S.A. § 6086(a) (9) (F).

Criterion 9(F) requires the Applicant "provide evidence that the subdivision or development complies with the applicable building energy standards under 21 V.S.A. §266 or 268."

The Project complies with Criterion 9(F).

**Criterion 9(H) - Costs of Scattered Development**

Findings of Fact

127. The project is located immediately contiguous to an existing settlement.

128. The Project will generate tax revenue and other public benefits, such as increased employment opportunities.

Conclusions of Law

Criterion 9(H) applies only to projects that are not located within or immediately contiguous to an existing settlement. The proposed Project is physically contiguous to an existing settlement. The Project complies with Criterion 9(H).

**Criterion 9(J) - Public Utility Services:**

Findings of Fact

129. The supportive governmental and public utility facilities and services to be used by the project include water, sewer, and roads.
130. There is a duly adopted capital improvement program or plan.
131. Necessary supportive governmental and public utility facilities and services are available.
132. The Project will not place an excessive or uneconomic demand on these services and facilities.

Conclusions of Law

To comply with Criterion 9(J), the Applicant must demonstrate each of the following that: (a) necessary supportive governmental and public utility facilities and services are available or will be available under a duly adopted capital program or plan; (b) the Project will not place an excessive or uneconomic demand on such facilities and services; and (c) the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

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

**Criterion 9(K) – Development Affecting Public Investments:**

Findings of Fact

133. The project is not adjacent to governmental and public utility facilities, services, and lands other than Route 7.
134. Phase one of Shelburne Green spent \$275,000 to add a turning lane on Rt. 7.
135. The Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the facility, service or lands.
136. The Project will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands because.

Conclusions of Law

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the applicant bears the burden of proving that the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function,

efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands.. 10 V.S.A. § 6086(a) (9)(K). The Commission concludes that the Project complies with Criterion 9(K).

**Criterion 9(L) – Settlement Patterns:**

Findings of Fact

Existing Settlement

137. The Project tract is not in a village center, downtown development district, growth center, new town center, Vermont neighborhood or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.
138. The area surrounding the Project tract is not a compact, walkable, community center with a mix of uses and substantial residential component that has significantly higher densities than outside that center. The Project is adjacent to but not surrounded by such an existing settlement. Nevertheless, the Project is served by the following municipal infrastructure: water, wastewater, sidewalks, and transit.

Efficient Use

139. The Project makes efficient use of land, energy, roads, utilities, and other supporting infrastructure as follows:
140. The project utilizes an existing curb cut off Rt. 7, and has natural gas, sewer and water infrastructure located on the property. The project has been consolidated in a manner that provides over 270' feet of separation from the nearest building to Route 7. This minimizes impact on the land. Most of the proposed buildings have been configured so as to allow for the long edge of the roof line to face southerly in support of the use of solar panels.
141. The project has been designed to isolate the proposed commercial buildings and parking areas away from Route 7 in a manner much different than the existing nearby commercial uses where the buildings and parking are focused on the highway. This project utilizes existing shared access and provides shared employee outdoor meeting/lunching venue. Pedestrian access to the bus loop serving the Shelburne Village has been coordinated with CCTA.
142. The proposed project site is located between both the former Snelling light manufacturing buildings (now redeveloped as a combination of office and light manufacturing [4C0822]) and the Koerner property, and both the Clark Farm commercial subdivision (4C0837) which now houses the Vermont Teddy Bear Company and the Countryside Motel. It is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title. The project has been designed to isolate the proposed commercial buildings and parking area away from Route 7 in a manner much different than the nearby commercial uses where the buildings and parking are focused on the highway. Here, infrastructure such as parking areas, loading docks, dumpsters, are shielded from passing motorists by the structures.

Strip Development

143. The Project is confined to an area of linear commercial development along a public highway. The Teddy Bear facility abuts to the south as well as a motel. Shelburne Green phase one abuts to the north, while in front lies Folino's Pizza and Fiddlehead Brewery.
144. The project property has frontage on Route 7 but the proposed project buildings have been set back 270 or more feet from Route 7. Despite the long Route 7 frontage, only one narrow shared driveway is utilized.
145. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located. The property is currently bisected from the majority of the residential neighborhood to the north by a large wetland. Another wetland forms a triangle fronting Route 7 in the southwest corner. Off-site toward the Teddy Bear parcel, a large drainage gully fronts Route 7, consisting of the area between the adjoining motel and former day care center.
146. The applicant is mitigating the strip characteristic of single story flat roofed buildings by having sloped roofs with high pitches on all buildings as well as architectural features including dormer windows and cupolas. The single story and 1½ story structures with peaked roofs have been designed to enable ground floor incubator manufacturing space while also enabling high clear story inside to further facilitate future manufacturing requirements.
147. The project has full reliance upon an existing shared entrance with the original light manufacturing facility buildings on the property. Tenants in the Subject Property can access the property from two entrances along Cynosure Drive which provides a secondary access/egress point with Green Hills Drive. A previous primitive pathway between the property and The Gables Condominium neighborhood was discontinued at their request. The Teddy Bear employees can walk down the right of way to the water tower and then follow a path on this parcel that leads through the woods and property edge to the Teddy Bear factory.
148. The Property can be accessed via a pedestrian connection through the Lake Champlain Housing Trust residential pocket neighborhood (Ockert Lane) out to the Marsett Road sidewalk system. The Town of Shelburne has recently acquired an easement along this route to facilitate improved maintenance of this connector route.
149. The Town of Shelburne, through its Town Plan and its Zoning Bylaw, has created the Commercial South zoning district at the south end of the village area. The zoning bylaw provides for the planned implementation of commercial use adjacent to the existing residential uses. This project reflects those efforts to enable expansion of the light manufacturing uses within this portion of the Town while buffering the adjacent residential uses. The applicant is marketing the space towards Vermont Artisan Product Producers.
150. A combination of internal walkways and widened roadways to promote a shared access approach will enable pedestrians to move between all of the existing and proposed buildings on the property to access the future deli/café. Adjacent workers and customers would be welcome to use the facility. The existing building to the north supports pedestrian activity through a beautiful courtyard that has tables and chairs for people to

congregate outdoors. It includes flowers, ornamental trees, and a waterfall that cascades down a hill into the courtyard. Tenants from the entire site will utilize that space for meals and informal meetings.

151. But for the predominance of single story buildings, there is no evidence that the Project will establish or contribute to a pattern of strip development along Route 7.

#### Conclusions of Law

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

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

An existing center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens. 10 V.S.A. § 6001(16). Strip development outside a designated center is not an existing settlement. *Id.*

This project is not in an existing settlement or designated center as defined above.

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

Criterion 9(L) requires that projects:

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

The project layout makes efficient use of land by clustering the twelve buildings, leaving over 270 feet of frontage depth to Route 7. It utilizes efficient energy design in the buildings, shares a stormwater system with Phase 1, and shares a common employee outdoor area with Phase one for lunching/meeting.

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

1. Broad road frontage - Although the parcel has broad road frontage on Route 7, half of that space is wetland and the buildings are set back 270 or more feet from the highway. The layout is not linear, rather, it is clustered around the parking.
2. Predominance of single-story buildings - The project has a predominance of single-story buildings, albeit some have dormers and cupolas, and all have steep

roof pitches, rather than flat roof systems. These will lend themselves to light manufacturing uses. The gable end faces Route 7 for eight out of twelve of the buildings.

3. Limited reliance on shared highway access - The Phase two here is connected thru Phase one to Cynosure Drive which in turn connects with Route 7 and Green Hills Drive. The primary access will be the shared driveway off Route 7.
4. Lack of connection to any existing settlements except by highway - The aforementioned sidewalk system and pathways will allow pedestrian and bike access.
5. Lack of connection and coordination to surrounding land uses except by highway - Well-coordinated with surrounding land uses by providing access to an outdoor courtyard that has tables and chairs for people to congregate. It includes flowers, ornamental trees, and a waterfall that cascades down a hill into the courtyard. Tenants from the entire site will utilize that space for meals and informal meetings. Moreover, sought after tenants from the Vermont Artisan Product Producers will create synergy with existing tenants in Phase one.
6. Limited accessibility for pedestrians - Accessibility for pedestrians is already in place through a public sidewalk thru Champlain Housing to the Marsett Road / Rt. 7 sidewalk system.

It does not contribute to a pattern of strip development by not violating three or more of the factors cited above.

It lies between Teddy Bear facility to the south and Phase one Shelburne Green to the north, with a pizza/beer place in front, therefore, it is confined to existing strip development in a built-up area. As infill, it minimizes the characteristics of strip as outlined above. The lack of second stories is justified for light manufacturing uses.

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

#### **Criterion 10 – Town and Regional Plans:**

##### Findings of Fact

152. The project site is located within Growth Area 2 as depicted on Map 3 of Volume 1 of the Town Plan.
153. Growth Area 2: Beyond the Village: "...the Shelburne Growth Area includes Shelburne Village (Growth Area 1) and the area beyond the Village (Growth Area 2) that is currently designated to be served by the municipal sewer system under the Town's Sewer Service Allocation Ordinance. It is Growth Area 2 that is to contain the residential neighborhoods noted in the Vision statement, along with certain commercial and industrial activities that do not fit into the Village Center.
154. GOAL: TO CREATE AN AREA SURROUNDING THE VILLAGE THAT CONTAINS PLEASANT, MODEST DENSITY NEIGHBORHOODS, AND THAT WILL ACCOMMODATE LIMITED SUB-REGIONAL COMMERCIAL AND INDUSTRIAL ACTIVITIES. "Growth Area 2 is entirely served by the municipal sewer system and can accommodate densities that are higher than in the Rural Area but lower than in the Village Area. For the most part, Growth Area 2 will be residential, and will accommodate

much of the anticipated residential growth. In addition, this area will contain most of the Town's industrial establishments and some large, region-serving commercial establishments."

- 155. CONFORMANCE WITH SHELBURNE TOWN PLAN GROWTH AREA 2 OBJECTIVES:
- 156. ENCOURAGE NON-RESIDENTIAL DEVELOPMENT THAT IS NOT SUITABLE FOR THE VILLAGE AREA (GROWTH AREA 1) TO LOCATE IN APPROPRIATE SECTIONS OF GROWTH AREA 2. This is being achieved with this project.
- 157. IN THE COMMERCIAL/INDUSTRIAL AREA, ENSURE THAT COMMERCIAL AND INDUSTRIAL ESTABLISHMENTS ARE DESIGNED TO NOT APPEAR AS STRIP DEVELOPMENT (E.G. REQUIRE BROAD SET BACKS, PARKING SHIELDED FROM THE ROADS, VARIED ROOF PROFILES, SHARED DRIVEWAYS, ETC.). The project will introduce varied roof profiles into a flat or low pitched roof building, which is set back far from Route 7 and which proposes no new curb cuts.
- 158. CLEARLY DISTINGUISH THE POINTS AT WHICH THE VILLAGE AREA BEGINS. THESE VILLAGE ENTRIES ARE FOUND ON SHELBURNE ROAD NORTH OF THE LAPLATTE RIVER BRIDGE AND SOUTH OF BOSTWICK ROAD, ON HARBOR ROAD NEAR THE SHELBURNE COMMUNITY SCHOOL, AND ON IRISH HILL ROAD JUST EAST OF THE LAPLATTE RIVER BRIDGE. With its broad front yard setback, this project provides a proper transition from the open spaces to the south to the Village area north of Bostwick Road.
- 159. PROTECT STREAMS AND WATERWAYS WITH APPROPRIATE BUFFERS AND STORMWATER MANAGEMENT SYSTEMS. The project proposes to install a new stormwater management system which will provide treatment for all of the proposed parking lot while also providing improved peak flow mitigation for flows from the existing building.

CONFORMANCE WITH REGIONAL PLAN GOALS:

- 160. The project is located within the Enterprise Planning Area as defined in the Chittenden County Regional Plan, entitled the 2013 Chittenden County ECOS Plan.
- 161. The Enterprise Planning Area is identified in the Plan as an area planned for growth, and therefore this project helps implement Strategy #2 of the Plan which calls for 80% of new development in the areas planned for growth.
- 162. The project is proposed to be served by municipal water and sewer, and is located within the CCTA service area.
- 163. The density and uses are consistent with the local regulations.
- 164. The Town of Shelburne has a capital program. The project conforms with this program by not requiring any modifications to this program.

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 Town Plan is sufficiently specific. *Re: The Mirkwood Group #1R0780-EB*, Findings of Fact, Conclusions of



Law, and Order at 19 (Vt. Env'tl. Bd. August 19, 1996). Because the Town Plan is clear and unambiguous it is unnecessary to review the zoning bylaws. See *In re Frank A. Molgano Jr.* 163 Vt. 25 (1994). The Project complies with Criterion 10.

#### V. 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 in the findings and conclusions of this decision and the conditions of Land Use Permit #4C0822-5, will comply with the Act 250 criteria. 10 V.S.A. § 6086(a).

#### VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C0822-5 is hereby issued.

DATED at Essex Junction, Vermont, this 24<sup>th</sup> day of November, 2014.

By /s/Krista Reinhart, Acting Chair  
District #4 Environmental Commission

Commissioners participating in this decision:  
Parker Riehle  
Tom Getz, Jr.

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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 of this decision, 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 \$265.00 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, National Life Dewey Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B).

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: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

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<b>E</b>	<b>DATE</b>	<b>E</b>	<b>A = Applicant</b>
<b>X</b>	<b>R</b>	<b>N</b>	<b>T = Town</b>
<b>H</b>	<b>E</b>	<b>T</b>	<b>O = Opponent</b>
<b>I</b>	<b>C</b>	<b>E</b>	<b>RPC = Regional Planning Commission</b>
<b>B</b>	<b>E</b>	<b>R</b>	<b>ANR = Agency of Natural Resources</b>
<b>I</b>	<b>I</b>	<b>E</b>	<b>VTRANS = Vt. Agency of Transportation</b>
<b>T</b>	<b>V</b>	<b>D</b>	<b>DPS = Department of Public Services</b>
	<b>E</b>		<b>M = Municipality</b>
	<b>D</b>		<b>DHP = Division for Historic Preservation</b>
			<b>WMD = Wastewater Management Division</b>
<b>N</b>		<b>B</b>	<b>L = Landowner</b>
<b>O.</b>		<b>Y</b>	
			<b>Nature of Exhibit and Date Entered</b>
1	4/29/14	A	Letter by David Marshall, Civil Engineering Associates, Inc. (4/29/14)
2	"	"	Act 250 Land Use Permit Application Cover Sheets
3	"	"	Schedule A – Fee Information
4	"	"	Schedule E – Adjoiner Information
5	"	"	Schedule F – Certificate of Service
6	"	"	Schedule G
7	"	"	Schedule B – Act 250 Narrative
8	"	"	Blasting Protocol
9	"	"	Letter by D. Marshall to J. Colangelo, Shelburne Town Offices re Municipal Impact Questionnaire (4/3/14)
10	"	"	Letter by D. Marshall to W. Zabiloski, WWMD re Application (4/3/14)
11	"	"	Letter by P. Smiar, Civil Engineering to Helen Carr, DEC Water Quality Division re NOI and Application for Coverage Under GP 3-9015 (4/3/14)
12	"	"	Letter by D. Marshall to Ashley Carver, Stormwater Program re Low Risk NOI and Request for Coverage Under GP 3-9020 (4/3/14)
13	"	"	Construction Site Waste Reduction Plan
14	"	"	FEMA Flood Mapping (4/2/14)
15	"	"	Letter by Danielle Owczarski, Watershed Management Division Wetlands Program re Wetlands Permit (4/28/14)
16	"	"	Letter by Paul Bohne, Town of Shelburne re Ability to Serve – Water Supply (12/23/13)
17	4/29/14	A	Letter by D. Marshall to Greg Bostock, Drinking Water and Groundwater Protection Division re Request for Public Water Supply Permit to Construct (4/4/14)

18	4/29/14	A	Map Showing High Crash Locations
19	"	"	Vt. Agency of Transportation Permit Application
20	"	"	Comcheck Certificates
21	"	"	Lighting Cut Sheets
22	"	"	Map Showing Archeologically Sensitive Areas
23	"	"	Map – Rare, Threatened and Endangered Species (4/2/14)
24	"	"	Map – Prime Ag Soils Sht. PA-1 (11/20)
25	"	"	Map – Area Farm Map (4/4/14)
26	"	"	Letter by D. Marshall to Beth Fenstermacher, Vt. Agency of Agriculture re Consideration of Prime Ag Soils Supplementary Information (4/25/14)
27	"	"	Letter by D. Marshall to Mark Bergeron, Vt. Gas re Request for Ability to Serve Letter (4/3/14)
28	"	"	Letter by D. Marshall to Pam Allen, GMP re Request for Ability to Serve Letter (4/3/14)
29	"	"	Letter by D. Marshall to Karen Bratland, FairPoint re Request for Ability to Serve Letter (4/3/14)
30	"	"	Letter by D. Marshall to Jeremy Cota, ComCast re Request for Ability to Serve Letter (4/3/14)
31	"	"	Map Showing Zoning Districts of Shelburne – Effective June 1, 2011
32	"	"	Map 2 – Chittenden County Future Land Use
33	"	"	Plan: Site Improvement & Landscaping Plan Sht. L1 (Rev. 4/28/14)
34	"	"	Plan: Overall Site Plan Drw. C1.0 (Rev. 4/28/14)
35	"	"	Plan: Site Plan Drw. C2.0 (Rev. 4/28/14)
36	"	"	Plan: Site Drainage Plan Drw. C2.1 (Rev. 4/28/14)
37	"	"	Plan: Site Utility Plan Drw. C2.2 (Rev. 8/15/14)
38	"	"	Plan: Site Lighting Plan Drw. C2.3 (Rev. 4/28/14)
39	"	"	Plan: Road and Utility Profile Drw. C3.0 (Rev. 4/28/14)
40	"	"	Plan: Site and Drainage Details Drw. C4.0 (Rev. 4/28/14)
41	"	"	Plan: Sewer Details Drw. C4.1 (Rev. 4/28/14)
42	"	"	Plan: Pump Station Plan & Section Drw. C4.2 (Rev. 4/28/14)
43	"	"	Plan: Water Details Drw. C4.3 (Rev. 4/28/14)

44	4/29/14	A	Plan: Misc. Details Drw. C4.4 (Rev. 4/28/14)
45	"	"	Plan: EPSC Plan Drw. C5.0 (Rev. 4/28/14)
46	"	"	Plan: Erosion Control Details & Specs Drw. C5.1 (Rev. 4/28/14)
47	"	"	Plan: Specifications Drw. C6. 0 (Rev. 4/28/14)
48	"	"	Plan: Specifications Drw. C6.1 (Rev. 4/28/14)
49	"	"	Plan: Specifications Drw. C6.2 (Rev. 4/28/14)
50	"	"	Plan: Specifications Drw. C6.3 (Rev. 4/28/14)
51	"	"	Plan: Proposed Elevations Drw. A1.0 (Rev. 10/11/13)
52	"	"	Plan: Proposed Elevations Drw. A2.0 (Rev. 9/16/13)
53	6/4/14	"	Letter by David Marshall, Civil Engineering re Additional Information (5/28/14)
54	"	"	Shelburne Green Rule 34 Information (5/29/14)
55	6/12/14	"	Letter by Agency of Agriculture, Food & Markets re Preliminary Consideration of Prime Ag Soils (6/12/14)
56	7/17/14	"	Letter by Charlie Baker, Exec. Dir. CCRPC re Comments on Project (7/17/14)
57	7/21/14	"	Letter by D. Marshall re Ability to Serve Responses (7/21/14)
58	"	"	Ability to Serve Letter by GMPC (4/14/14)
59	"	"	Ability to Serve Letter by FairPoint (4/25/14)
60	"	"	Ability to Serve Letter by Vt. Gas (4/22/14)
61	"	"	Letter by Rajnish Gupta, VTrans re Pedestrian Safety (7/23/14)
62	7/29/14	"	Memo by the Gables Association Requesting Party Status (7/25/14)
63	"	"	Division for Historic Preservation Entry of Appearance (7/29/14) w/Environmental Predictive Model for Locating Precontact Archaeological Sites (7/28/14)
64	"	"	Map of Shelburne Green Agricultural Use Area Plan Sht. 1.0 (12/29/10)
65	"	"	Map of Shelburne Green Revised Agricultural Use Area Plan Sht. 1.0 (12/29/10)
66	8/12/14	"	Memo by Alan Nevins, J. Graham Goldsmith Architects re Criterion 9(F) Energy Efficiency (8/12/14)
67	8/25/14	"	Letter by J. Graham Goldsmith to Department of Agriculture re Letter by Beth Fenstermacher Dated August 21 to D. Marshall (8/22/14)
68	"	"	Letter by D. Marshall re Supplemental Information (8/22/14)
69	"	"	Letter by Roger Dickinson, Lamoureux & Dickinson re Traffic (7/29/14)

70	8/25/14	A	Emails by R. Dickinson re Bus Stop (10/13)
71	"	"	Letter by D. Marshall re Criterion 5 (8/13/14)
72	"	"	Letter by J. Graham Goldsmith re CCRPC/VTrans Recommended Requirements (8/20/14)
73	"	"	Email by Meredith Birkett, CCTA re Bus Shelter (10/29/13)
74	"	"	Letter by Vt. Div. for Hist. Pres. re Criterion 8 (8/19/14)
75	"	"	End of Field Letter Report for Archaeological Phase I Site Identification Survey (8/14)
76	"	"	Findings of Fact and Notice of Decision by Town of Shelburne Development Review Board Dated May 2014
77	"	"	Letter by J. Graham Goldsmith to Ann Powell, Gables Association re Letter Indicating Support of Project (7/16/14)
78	"	"	Letter by Beth Fenstermacher, Dept. of Agriculture re Draft Mitigation Agreement and Correction to AAFM Review (8/21/14)
79	"	"	Draft Mitigation Agreement
80	"	"	Mapped Primary Agricultural Soils (4/10/14)
81	"	"	Information on Cost of Heating Unit
82	"	"	COMcheck Certificates (8/5/14)
83	"	"	Criterion 9L Settlement Patterns (Amended effective June 21, 2014)
84	10/29/14	"	Letter by Dave Marshall re Update to HRO Dated August 12, 2014
85	"	"	Wastewater System and Potable Water Supply Permit WW-4-0181-3 Issued October 23, 2014
86	"	"	NOI 6534-9020.1 Date of Authorization May 2, 2014
87	"	"	Letter by J. Graham Goldsmith re Opposition to Several Suggested Requirements by CCRPC (10/14/14)
88	11/6/14	"	Letter by CCRPC re Response to Applicant's Submittal on October 29, 2014 (11/6/14)
89	10/21/14	"	Letter by Shelburne Green re: Mass Transportation (10/14/14)
90	11/10/14	"	Individual Wetland Permit (11/05/14)
91	11/12/14	"	Cover Letter by DEC Watershed re Discharge Permit #634-INDS.A (10/30/14)
92	"	"	Draft Stormwater Discharge Permit #6534-INDS.A, Project ID #EJ10-0473 (10/30/14)
93	11/20/14	"	Mitigation Agreement Signed by Shelburne Green Dated November 13, 2014 and State of Vermont Agency of Agriculture, Food and Markets Dated November 19, 2014

## CERTIFICATE OF SERVICE

I hereby certify on this 24<sup>th</sup> day of November, 2014, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C0822-5, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

**Note:** any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to [nrb-act250essex@state.vt.us](mailto:nrb-act250essex@state.vt.us). You can now fill out and submit the Act 250 survey online at: <http://permits.vermont.gov/act250-survey>.

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### FOR YOUR INFORMATION

District #4 Environmental Commission  
Krista Reinhart, Acting Chair  
Parker Riehle/Tom Getz  
111 West Street  
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 24<sup>th</sup> day of  
November, 2014.

*Christine A. Commo*  
Natural Resources Board Technician  
879-5614  
[christine.commo@state.vt.us](mailto:christine.commo@state.vt.us)

W:\NRBIDIST4\PROJECTS\4C0751-4C1000\4C0822\4C0822-5\4C0822-5.COS..docx

**LEGEND**

- 336 --- EXISTING CONTOUR
- 338 --- PROPOSED CONTOUR
- --- APPROXIMATE PROPERTY LINE
- --- APPROXIMATE SETBACK LINE
- ● IRON ROD/PIPE FOUND/SET
- CONCRETE MONUMENT
- SS GRAVITY SEWER LINE
- FM FORCE MAIN
- W WATER LINE
- OE OVERHEAD ELECTRIC
- UE UNDERGROUND ELECTRIC
- FO FIBER OPTIC
- G GAS LINE
- ST STORM DRAINAGE LINE
- ⊙ SEWER MANHOLE
- ⊙ STORM MANHOLE
- ⊕ HYDRANT
- SHUT-OFF
- ⊕ POWER POLE
- ⊕ GUY WIRE
- ⊕ CATCH BASIN
- ⊕ LIGHT POLE
- ⊕ SIGN
- ⊕ DECIDUOUS TREE
- ⊕ CONIFEROUS TREE
- ~ EDGE OF BRUSH/WOODS
- ← DRAINAGE SWALE

NIF  
MEACH COVE REAL ESTATE  
109 COL FLETCHER

EXISTING WATER TO THE TOWN OF SHELBURNE EASEMENT AREA

SITE ENGINEER:



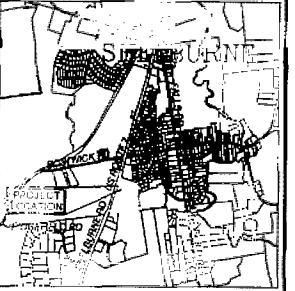
CIVIL ENGINEERING ASSOCIATES, INC.  
10 MANSFIELD VIEW LANE, SOUTH BURLINGTON, VT 05403  
802-864-2223 FAX: 802-854-2271 web: www.cae-vt.com

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DESIGN: SAL  
CHECKED: DSM  
APPROVED: DSM

OWNER:  
**SHELBURNE GREEN, LLC.**  
BURLINGTON, VERMONT

PROJECT:  
**SHELBURNE GREEN SOUTH**  
6221 SHELBURNE ROAD  
SHELBURNE, VERMONT



LOCATION MAP  
1" = 3000'

DATE	CHECKED	REVISION
04.15.14	DSM	FINAL PLAN SUBMITTAL
04.24.14	DSM	REVISED PER CLIENT
04.28.14	DSM	ACT 250 SUBMITTAL

**OVERALL SITE PLAN**

DATE: DEC., 2013  
SCALE: 1" = 60'  
PROJ. NO.: 13177

DRAWING NUMBER: **C1.0**

NIF  
SHELBURNE VINEYARD

**VISIONAL SUMMARY**

EQ'D.	EXISTING	PHASE II IMPROVEMENTS
0 AC.	20.7 AC.	20.7 AC.
150'	1098'	1098'
100'	230'	277'
50'	18'	100'
100'	22'	N/A
25%	7.2%	15.5%
50%	15.7%	33.0%
BLDG. TO CYNOSURE DR. R.O.W.		

NIF RECORD & APPLICANT:

SHELBURNE GREEN, LLC.  
SHELBURNE, VT

DISTRICT:

RESIDENTIAL & INDUSTRY SOUTH

