



LAND USE PERMIT AMENDMENT

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

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

[phone] 802-879-5614

CASE NO: 4C0936-7

Richard Bove and Maria Barria

218 Overlake Drive

Colchester, VT 05446

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment 4C0936-7, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 440, Page 512, of the land records of the Town of Colchester, Vermont, as the subject of a deed to Richard Bove and Maria Barria.

This permit specifically authorizes the construction of an addition to an existing single-family home and boundary line adjustments to combine Lots 10 & 11 of the Hidden Lake subdivision. The Project includes demolition of an existing pool, spa, and terrace. The Project is located at 218 Overlake Drive in Colchester, Vermont.

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

1. The Permittees, and their assigns and successors in interest, are obligated by this permit to complete, operate, and maintain the project as approved by the District 4 Environmental Commission (the "Commission") in accordance with the following conditions.
2. The Project shall be completed, operated, and maintained in accordance with the conditions of this permit and the permit application, plans, and exhibits on file with the Commission and other material representations.

The approved plans are:

Sheet P1 - "Boundary Line Adjustment Plat," dated 7/17/20 (Exhibit 007);



Sheet C1.0 - "Existing Conditions Plan," dated 12/16/16 (Exhibit 008);
Sheet C1.1 - "Site Plan," dated 7/17/20, revised 3/1/21 (Exhibit 009e);
Sheet C1.2 - "Civil Details," dated 7/17/20 (Exhibit 010);
Sheet C1.3 - "Civil Details," dated 7/17/20, revised 3/1/21 (Exhibit 011a);
Sheet A1.0 - "Basement Plan," dated 4/21/20 (Exhibit 013);
Sheet A1.1 - "Overall Plan - First and Second Floors," dated 06/12/20 (Exhibit 014);
Sheet A2.1 - "Exterior Elevations," dated 4/21/20 (Exhibit 015);
Sheet A2.2 - "Exterior Elevations," dated 4/21/20 (Exhibit 016);
Sheet A3.1 - "Building Sections," dated 4/27/20 (Exhibit 017);
Sheet C1.4 - "Riparian Buffer & Archaeological Plan," dated 09/24/20, revised 3/1/21 (Exhibit 024b);
Sheet L2.1 - "Hardscape Plan," dated 09/3/20, revised 3/2/21 (Exhibit 027b);
Sheet L4.1 - "Plant Concept Plan," dated 09/3/20, revised 3/2/21 (Exhibit 028b); and
Sheet L4.2 - "Planting Plan," dated 09/3/20, revised 3/3/21 (Exhibit 029b).

3. All conditions of Land Use Permit 4C0936 and amendments are in full force and effect except as further amended herein.
4. The Permittees shall comply with all of the conditions of the following Agency of Natural Resources Permit:
 - a. Wastewater System and Potable Water Supply Permit (WW-C-0782) issued on October 14, 2020 by the Onsite Wastewater Official, Town of Colchester
5. Any nonmaterial changes to the permit listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
6. 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 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 of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
10. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
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 Permittees and their successors and assigns.
12. Construction hours shall be limited to Monday through Friday from 7:00 AM to 6:00 PM, with no construction on weekends or federal holidays.
13. The Permittees shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and 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.
14. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
15. At a minimum, the Permittees shall comply with the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
16. The Permittees shall comply with Exhibits 001, 009e, 010, and 011a for erosion prevention and sediment control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
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 workday. 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 15. 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 Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
20. In addition to conformance with all erosion prevention and sediment control conditions, the Permittees shall not cause, permit, or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
21. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
22. Prior to any site work, the Permittees shall install and maintain temporary fencing along the tree line and around trees to be retained as depicted on Exhibit 029b.
23. The installation of exterior light fixtures is limited to those typically proposed with residential construction. Any 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.
24. Pursuant to 30 V.S.A. Section 51(e), the Permittees and/or subsequent lot owner, at a minimum, shall construct the residential addition in accordance with Vermont's Residential Building Energy Standards (RBES-Stretch Code) effective at the time of construction.
25. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
26. The Permittees, upon completion of the construction of the residential addition and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 51(f).
27. The archaeological buffer zone for Site VT-CH-729, the Archaeological Restricted Area, shall be marked on all relevant site plans. All contractors shall be notified of the buffer zone restrictions and a silt fence or other exclusionary barrier shall be placed on the buffer zone limits prior to the start of any construction activity.

28. Topsoil removal, grading, scraping, cutting, filling, stockpiling, planting, or any other type of ground disturbance is prohibited within the Archaeological Restricted Area without the approval of the District 4 Environmental Commission and the Vermont Division for Historic Preservation.
29. Placement of the storm water drainage pipe through the Archaeological Restricted Area as shown on Exhibit 009e is permitted, provided the installation is done using horizontal directional drilling techniques, such that the pipe is placed a minimum of 3 feet below the existing ground surface.
30. Construction of a 6-inch soil berm in the Archaeological Restricted Area along the hedge row on the east edge of the lot is also permitted, provided construction utilizes hand tools and soil brought in from an outside source. Fill shall be placed on the existing ground surface with no grubbing or sod removal. Any mechanized equipment used to transport soil shall be limited to standard lawn maintenance machinery.
31. Permittees will contract with a qualified consulting archaeologist to monitor the removal of the existing stone path in the Archaeological Restricted Area, and the placement of fill in the former path footprint once the stone pavers are removed. Path removal and fill placement shall proceed utilizing non-motorized hand tools and soil brought in from an outside source. Any mechanized equipment used to transport materials shall be limited to standard lawn maintenance machinery.
32. The Permittees' qualified archaeological consultant shall also conduct data recovery excavation in the footprint of the new stone path alignment prior to construction to mitigate impacts to VT-CH-729. The archaeological investigation must follow the VDHP's Guidelines for Conducting Archaeological Studies in Vermont (2017). The Permittees' archaeological consultant shall submit a scope of work to the VDHP for review and approval prior to implementation.
33. The Permittees shall provide a minimum of 5 days' notice to the VDHP prior to the start of any construction, removal, or archaeological mitigation activity in the Archaeological Restricted Area to allow the opportunity for on-site monitoring at VDHP's discretion.
34. The archaeological studies implemented as part of this project will result in one or more interim or final reports, as appropriate, that meet the VDHP's Guidelines for Conducting Archeological Studies in Vermont (2017). A digital copy of any report will be submitted to the VDHP. Archaeological reports submitted to the District 4 Environmental Commission to be available to the public on the Act 250 Database shall have specific archaeological site locational information redacted in accordance with 22 V.S.A. § 761(b) and 1 V.S.A. § 317(c) (20).
35. The exterior of the addition shall match the existing home's green stucco. The Permittees shall obtain written approval from the District 4 Commission prior to any future changes to the home's exterior color.

36. The Permittees shall plant four new red maple trees to partially screen the structure and to naturalize the appearance of the shoreline as viewed from Lake Champlain. These trees and the “existing ash” depicted on Exhibit 029b shall be allowed to grow to maturity, and the Permittees shall maintain trees capable of providing comparable visual screening and related aesthetic and ecological benefits in these locations in perpetuity.
37. The Permittees shall maintain natural vegetation within Zones F and H2 of the Lake Champlain riparian zone represented on Exhibit 029b. The Permittees shall install the plantings depicted on Exhibit 029b by the end of the next growing season following the commencement of construction. During each growing season for three years after planting, the Permittees shall monitor for and replace any failed Zones F and H2 plantings with the appropriate species listed for Zones F and H2 in Exhibit 29b. Within Zones F and H2, vegetation management shall maintain naturally growing New England native or Vermont naturalized plant species; involve only non-motorized hand tools to trim and prune plants (no power tools shall be used); and remove non-native invasive plants only if given prior written approval by the Agency of Natural Resources. Otherwise, Zones F and H2 shall remain undisturbed, meaning that no activities shall occur that may cause or contribute to ground disturbance or soil compaction, including, but not limited to, construction, earthmoving activities, storage of materials, tree, shrub, or groundcover removal; plowing or disposal of snow, grazing, and mowing.
38. The Permittees and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits 028b and 029b by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
39. The Permittees shall provide each prospective purchaser of any interest in this Project a copy of the approved site plan, Potable Water Supply and Wastewater System Permit, and the Land Use Permit Amendment before any written contract of sale is entered into.
40. The Permittees shall reference the requirements and conditions imposed by Land Use Permit 4C0936-7 in all deeds of conveyance and leases.
41. 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 Permittees have not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
42. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2023**, unless an extension of this date is approved in writing by the

Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.

43. The Permittees shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittees shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
44. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Essex Junction, Vermont, this 16th day of March 2021.

By /s/Thomas A. Little, Chair
Thomas A. Little, Chair
District 4 Commission

Members participating in this decision:

Parker Riehle

Kate Purcell

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

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

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

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

For additional information on filing appeals, see the Court's website at:

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



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Natural Resources Board
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
<https://nrb.vermont.gov/>

[phone] 802-879-5614

CASE NO: 4C0936-7

Richard Bove and Maria Barria
218 Overlake Drive
Colchester, VT 05446

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On July 30, 2020, Richard Bove and Maria Barria (the “Applicants”), 218 Overlake Drive, Colchester, VT 05446 filed application number 4C0936-7 for a project generally described as the construction of an addition to an existing single-family home and boundary line adjustments to combine Lots 10 & 11 of the Hidden Lake subdivision. The Project includes demolition of an existing pool, spa, and terrace. The Project is located at 218 Overlake Drive in Colchester, Vermont (the “Project”). The tract of land consists of 1.47 acres. The Applicants’ legal interest is ownership in fee simple described in a deed recorded in Book 440, Page 512 of the land records of Colchester, Vermont.

The Commission convened a prehearing conference for application 4C0936-7 on November 6, 2020, for the purpose of identifying contested facts and legal issues, discussing party status, and determining a hearing schedule. Pursuant to Executive Order 01-20 and associated Addenda and Directives issued by Governor Scott based upon the coronavirus (COVID-19) emergency, and as authorized under Act 92 (2020), this prehearing conference was conducted remotely via Microsoft Teams video conferencing software. The prehearing conference was conducted pursuant to Act 250 Rule 16, with Chair Thomas A. Little presiding. Prior to the prehearing conference, a site visit was held at the project site.

The Commission held a hearing on this application on December 11, 2020. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on March 16, 2021, after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

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

II. JURISDICTION

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

III. OFFICIAL NOTICE

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

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). The Commission takes official notice of the Colchester, Vermont 2019 Town Plan and Land Use Permit Amendment 4C0936-2.

Accordingly, official notice is hereby taken of the Colchester, Vermont 2019 Town Plan and Land Use Permit Amendment 4C0936-2, subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

IV. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

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

The **Applicants**, by Rick Bove, licensed civil engineer Seth Goddard of Krebs & Lansing; Brad Rabinowitz, Architect; and attorney Robert H. Rushford of Gravel & Shea P.C.

The **Vermont Division for Historic Preservation**, by Scott Dillon.

The **Vermont Agency of Natural Resources** by Karin McNeill, Regulatory Policy Analyst; Bernie Pientka, Fisheries Biologist; and Maureen Lynch, Fisheries Program Director.

B. Interested Parties

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

i. Preliminary Party Status Determinations

At the August 14, 2020 Prehearing Conference, the Chair preliminarily granted or denied party status to the following Parties under the listed criteria:

Christopher J. Cain and Judy E. Cain (217 Overlake Drive): Preliminarily granted party status under Criteria 8 (Aesthetics and Natural Beauty) and 10 (Local & Regional Plans).

John P. Mitiguy, Robert M. Mitiguy, Patricia A. Houston, and Anne L. Cross, who together as tenants in common own property immediately adjacent to the project site at 184 Overlake Drive, represented at the prehearing conference by their attorney Peter Raymond and co-counsel Diane McCarthy of Sheehey Furlong & Behm P.C.: Preliminarily granted party status under Criteria 1(B) (Waste Disposal), 4 (Erosion), and 8 (Aesthetics and Natural Beauty); denied party status under Criterion 1(D) (Floodways).

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 revised the status of the following parties:

Christopher J. Cain and Judy E. Cain (217 Overlake Drive): Granted party status under Criterion 8 (Aesthetics and Natural Beauty); denied party status under Criterion 10 (Local & Regional Plans) for failure to document any lack of compliance with local or regional plans. Mr. Cain was given the opportunity to present testimony on Criterion 10 during the hearing, but provided additional testimony only on Criterion 8 (Aesthetics) instead.

John P. Mitiguy, Robert M. Mitiguy, Patricia A. Houston, and Anne L. Cross, who together as tenants in common own property immediately adjacent to the Project Tract at 184 Overlake Drive, represented at the prehearing conference by their attorney Peter Raymond and co-counsel Diane McCarthy of Sheehey Furlong & Behm P.C.: Granted party status under Criteria 1(B) (Waste Disposal), 4 (Erosion), and 8 (Aesthetics and Natural Beauty).

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The District Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on July 31, 2020. The Commission distributed a notice and proposed permit establishing a deadline of August 25, 2020, by which parties, or the Commission on its

own motion, could request a hearing on this matter. The Commission received timely requests for a public hearing from John P. Mitiguy, Robert M. Mitiguy, Patricia A. Houston, and Anne L. Cross under Criteria 1(B) (Waste Disposal), 4 (Erosion), 8 (Aesthetics and Natural Beauty) and 1(D) (Floodways) and from Christopher J. Cain and Judy E. Cain under Criteria 8 (Aesthetics and Natural Beauty) and 10 (Local & Regional Plans). On October 9, 2020, the Commission issued a Notice of Prehearing Conference indicating that a prehearing conference would be held to identify the parties and the issues. On November 19, 2020, the Commission issued a Prehearing Conference Report and Order indicating that a public hearing would be held because substantive issues were raised under Criteria 1(B) (Waste Disposal), 1(F) Shorelines, 4 (Erosion), 8 (Aesthetics and Natural Beauty), and 10 (Local & Regional Plans). Pursuant to Act 250 Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or sub-criteria at issue during the hearing. Therefore, the following Findings of Fact are limited to Criteria 1(B) (Waste Disposal), 1(F) (Shorelines), 4 (Erosion), 8 (Aesthetics and Natural Beauty), and 8 (Historic Sites).

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

- | | |
|-------------------------------------------|----------------------------------------------|
| 1 - Air Pollution | 8(A) - Wildlife Habitat & Endangered Species |
| 1 - Water Pollution | 9(A) - Impact of Growth |
| 1(A) - Headwaters | 9(B) - Primary Agricultural Soils |
| 1(C) - Water Conservation | 9(C) - Productive Forest Soils |
| 1(D) - Floodways | 9(D) - Earth Resources |
| 1(E) - Streams | 9(E) - Extraction of Earth Resources |
| 1(G) - Wetlands | 9(F) - Energy Conservation |
| 2 - Water Supply | 9(G) - Private Utility Services |
| 3 - Impact on Existing Water Supplies | 9(H) - Costs of Scattered Development |
| 5(A) - Transportation Congestion & Safety | 9(J) - Public Utility Services |
| 5(B) - Transportation Demand Management | 9(K) - Effects on Public Investments |
| 6 - Educational Services | 9(L) - Settlement Patterns |
| 7 - Municipal Services | 10 - Local & Regional Plans |
| 8 - Rare & Irreplaceable Natural Areas | |

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

The findings of fact are based on the application, Exhibits 001 – 045, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

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

Criterion 1(B) - Waste Disposal:

Findings of Fact

1. Waste generated by the Project will include sewage and stormwater runoff. Exhibit 001.
2. The site is mostly flat and is composed of sandy soil over 10 feet deep. Exhibit 001 and Applicants' Testimony.
3. The estimated 490 gallons per day of wastewater from the Project will be disposed of through on-site disposal using a conventional subsurface wastewater disposal system. Exhibit 031.
4. The existing house on Lot 10 is connected to the wastewater system on that Lot. This system will be abandoned, and they will build and connect to the permitted wastewater system on Lot 11. Exhibit 001.
5. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit WW-C-0782 on October 14, 2020. Exhibit 031.
6. The Project does not have any floor drains. Exhibit 001.
7. The Town of Colchester holds an existing 15-foot-wide easement across the Project tract for the purpose of maintaining an overflow pipe and/or swale that extends northward from the existing stormwater catchment basin at the end of Overlake Drive. The Applicants will relocate the existing Town easement to allow stormwater overflows from the street and its associated infiltration system to outlet closer to the lake. This relocation should help to reduce stormwater flows from the overflow system reaching adjoining party Mitiguy's property. Exhibit 008 and Applicants' Testimony.
8. Most stormwater runoff from the completed Project will infiltrate directly into the Project tract's deep sandy soils. Rooftop stormwater runoff will be collected at downspout locations and piped to two 600-gallon drywells where stormwater will infiltrate into the existing sandy soils. Exhibit 001.

9. Stormwater overflows from the Town's infiltration system will be directed into a 6-inch pipe prior to discharge into Lake Champlain. The 6-inch overflow storm pipe for the stormwater treatment system located at the end of Overlake Drive will be extended north along the property line with adjoiner Mitiguy. The pipe outlet will be downslope of the Mitiguys' house and wastewater system. Exhibits 001, 009e, 030, and Applicants' Testimony.
10. Any additional surface stormwater flows on the east side of the property will be directed into a grass-lined stormwater swale prior to discharge into Lake Champlain. This 2-foot wide by 6-inch-deep grass-lined swale is shown on the Site Plan extending along the eastern property line that abuts the Mitiguys' property. Once it reaches the Archaeological Restricted Area, the new stormwater swale will turn into a 6-inch berm along the property line. Exhibits 001, 009e, 030, and Applicants' Testimony.
11. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Exhibit 001.

Conclusions of Law

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

The Project will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal, and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. The Applicants' installation of drywells will allow rooftop stormwater to infiltrate into the soil. The majority of stormwater runoff from the project will infiltrate into the soils onsite. The Project will not cause undue water pollution.

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

Criterion 1(F) - Shorelines:

Findings of Fact

12. The Project's proposed landscaping, stone walkway, and stormwater outfall infrastructure are located adjacent to the shoreline of Lake Champlain. Exhibits 001, 009e, 024b, 025, 027b, 028b, 029b, 030, 037, 037a, and 042.
13. Land Use Permit Amendment 4C0936-2 allowed the construction of one single-family residence on Lot 11. Exhibit 038.

14. By incorporating the site plans submitted with the application, Land Use Permit Amendment 4C0936-2 allowed the construction of a seawall on the shoreline of the Project Tract, which destroyed the pre-existing natural vegetation on that part of the shoreline. Exhibit 038.
15. Land Use Permit 4C0936-2 did not require the replanting of trees following the construction of the seawall. Exhibit 038.
16. The Applicants have proposed a planting plan, designed in coordination with ANR, that incorporates species from ANR guidance documents. Exhibits 028b, 029b, 043 and 044.
17. The Agency of Natural Resources accepted the Applicants' planting plan on March 10, 2021. Exhibit 044.
18. Public access to Lake Champlain has not been previously provided through this residential property. Exhibit 001.
19. In response to the Commission's concerns about the lack of any screening of the project from the lake, the Applicants have agreed to plant four new red maple trees capable of growing higher than the existing house and proposed addition. These four new tree plantings shall be planted generally northerly of the existing house and proposed addition, and outside of the so-called "restricted area" depicted as a pink line extending from the southern building line of the Mitiguys' house on Exhibits 024b and 029b.
20. These four new red maple trees and the "existing ash" depicted on Exhibit 029b, when grown to maturity, are capable of providing some visual screening and softening of the Project's appearance as viewed from the lake. Exhibits 029b and 037a.
21. A 4'(l) x 4'(w) x 4"(h) below-grade geocell grid will be constructed on the lake bank at the end of the stormwater overflow outlet location. The geogrid will be filled with topsoil and allowed to revegetate. This vegetated geogrid will function to minimize erosion at the outlet during large storm events by providing a reinforced surface. Exhibits 009e and 030.
22. Shrubs and perennials along the shoreline in Zones H2 and F shall be self-sustaining and shall help to prevent erosion. Ground disturbance, including plant pulling, shall be prohibited within these zones, and vegetation shall consist of naturally growing New England native or Vermont naturalized plant species. Vegetation management shall involve only non-motorized hand tools to trim and prune the plants. No power tools shall be used. Exhibits 028b, 029b, 044, and Applicants' Testimony.

Conclusions of Law

The Commission concludes that the Project will, “insofar as possible and reasonable in light of its purpose,” maintain the shoreline and waters in a natural condition, maintain five trees that will soften and partially screen views of the Project from the waters, and provide self-sustaining shrubs and grasses that will stabilize the bank from erosion.

The Commission finds that Land Use Permit Amendment 4C0936-2 allowed the construction of a single-family residence on Lot 11. Furthermore, by incorporating the site plans submitted with that application, Land Use Permit Amendment 4C0936-2 allowed the construction of a seawall and the destruction of the natural shoreline of the Project Tract, without any replacement of the natural vegetation. The Commission concurs with the Applicants’ observation in Exhibit 038 that if not appealed, prior Act 250 findings, conclusions, and permits are final and are not subject to attack in a subsequent application proceeding, whether or not they were properly granted in the first instance. *In re Taft Corners Associates, Inc*, 160 Vt. 583, 632 A.2d 649 (1992).¹

The Project complies with Criterion 1(F).

Criterion 4 - Soil Erosion:

Findings of Fact

23. The terrain is relatively flat with slopes less than 5% and the soils are sands. Exhibit 001.
24. Most stormwater runoff from the completed Project will infiltrate directly into the Project tract’s deep sandy soils. Rooftop stormwater runoff will be collected at downspout locations and piped to two 600-gallon drywells where stormwater will infiltrate into those soils. Exhibits 001 and 030.
25. The Project will not affect the capacity of soil on the Project site to hold water. Exhibit 001.
26. Silt fencing will be installed downslope of all proposed earth disturbances. The contractor shall inspect erosion control measures daily during construction. Exhibit 001.

¹ The Commission is aware of the deed covenant concerning the erection of buildings and structures on the Applicant’s property that is recorded in Volume 2, Page 485 of the Colchester Land Records and which benefits the owners of the Mitiguy property. The Natural Resources Board is not a party to that covenant, and therefore, the covenant and the subsequent private litigation over its application did not play a role in the Commission’s decision-making.

27. The site will be permanently stabilized with topsoil, seed, and mulch or hydroseeded after construction. Exhibit 001.
28. The Project does not require coverage under a Construction General Permit. Exhibit 001.
29. The Applicants will use erosion prevention and sediment control measures contained in the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*, Vermont ANR, February 2020 (Exhibit 011a), and in accordance with the erosion prevention and sediment control plan described and depicted on Exhibit 009e.
30. Overland stormwater flow shall be directed through a series of grassed swales to infiltrate into the onsite soils (vegetated disconnection). A 2-foot wide by 6-inch-deep grassed swale along the property boundary to the east will prevent offsite erosion on the adjoining property. Exhibits 009e, 023, and 030 and Applicants' Testimony.
31. Overflows from the Town stormwater drywell system will daylight within the Riparian Zone on the slope above the lake onto a 4-foot by 4-foot by 4-inch deep geocell membrane which will be allowed to naturally revegetate. This membrane will help to minimize erosion at the outlets during large storm events by providing a reinforced surface. Exhibits 009e and 030 and Applicants' Testimony.

Conclusions of Law

The high permeability of the soils, the silt fence, dry wells, vegetated swales, berms, and geotechnical products that the Applicants propose to construct and install should ensure that stormwater runoff during and after construction will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water.

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 8 – Aesthetics and Historic Sites:

FINDINGS OF FACT

Findings of Fact: Aesthetics, Scenic or Natural Beauty

32. The present site is primarily lawn, surrounded on three sides by a tall hedge of northern white cedar (*Thuja occidentalis*). The site includes several medium- to large-sized shade trees that will be removed during construction. Exhibits 009e and 043.

33. The hedges around the Project tract are currently 18 feet tall. Testimony of Adjoining Party Cain.
34. The existing house and the new addition will not be visible from the street, due to the existing hedge. The primary location from which it could be viewed is from Lake Champlain. Exhibits 037, 037a, and Applicants' Testimony.
35. The Project will be landscaped as outlined on Exhibits 028b and 029b. The Applicants agree to continually maintain the landscaping as approved.
36. No exterior lighting is proposed. Exhibit 001.
37. The new construction will be wood frame with an exterior insulation finishing system (EIFS stucco) matching the existing green stucco structure. Exhibits 001, 015, 016 and 037a.
38. Colchester adopted an ordinance in the 1980s establishing a regulated Shoreland Overlay District, 250 feet back from the mean water mark of the lake (measured from elevation 95.5 feet) to ensure that development is sensitive to the natural shoreline and intrusions into views from the lake are kept minimized. The Shoreland Overlay District section of the Town's Development Regulations encourages preserving natural vegetation around the lake and limits disturbance within 100 feet of the mean water mark, which provides opportunities for preserving natural habitat, views, and filtering runoff. Colchester Town Plan, page 33.
39. The Applicants have proposed a planting plan, designed in coordination with ANR, that incorporates species from ANR guidance documents. Exhibits 028b, 029b, 043 and 044.
40. The Agency of Natural Resources accepted the Applicants' planting plan on March 10, 2021. Exhibit 044.
41. The Applicants have agreed to plant four red maple trees capable of growing higher than the existing house and proposed addition. These four new tree plantings shall be planted generally northerly of the existing house and proposed addition, and outside of the so-called "restricted area" depicted as a pink line extending from the southern building line of the Mitiguys' house on Exhibit 024b. Exhibits 028b, 029b, and 043.
42. Shrubs and grasses along the shoreline in Zones H2 and F shall be self-sustaining and shall help to prevent erosion. These zones shall remain undisturbed except for the installation of plantings listed on Exhibits 028b and 029b. Vegetation management shall maintain naturally growing New England native or Vermont naturalized plant species. Vegetation management shall involve only non-motorized hand tools to trim and prune

the plants. No power tools shall be used Exhibits 028b, 029b, and Applicants' Testimony.

Findings of Fact: Historic Sites

43. In 1996, a Phase I archaeological survey resulted in the identification of an extensive Native American archaeological site on the project tract, now designated as VT-CH-729 in the Vermont Archaeological Inventory. Subsequent Phase II site evaluation and partial Phase III data recovery mitigation in 1997 confirmed that VT-CH-729 was eligible for the State Register of Historic Places. Based on those results, the archaeological buffer zone was reduced to its current configuration in land use permit amendment 4C0936-2. Exhibit 040 and land use permit amendment 4C0936-2.
44. Four project components are proposed within the VT-CH-729 archaeological buffer zone, labeled as the Archaeological Restricted Area on Exhibits 009e and 024b. These four components are removal of the existing stone walkway, construction of a new stone walkway on a new alignment with partial overlap with the previous walkway footprint, placement of a 6-inch storm water drainage pipe, and construction of a 6-inch soil berm along the edge of the existing hedge on east side of the lot to prevent surface water runoff to the adjacent property. Exhibits 009e and 040.
45. VDHP has no concern with the placement of the stormwater pipe through the Archaeological Restricted Area, provided that the installation is accomplished using horizontal directional drilling techniques that place the pipe at a minimum of 3-feet below the existing ground surface as shown on the Site Plan. Exhibit 040.
46. VDHP has no concern with the construction of the 6-inch soil berm provided that berm construction is done using hand tools and fill added on top of the existing ground. Exhibit 040.
47. Given that any archaeological work within the VT-CH-729 cannot occur under winter conditions, the VDHP has no objection to construction work starting outside the Archaeological Restricted Area, provided that the limits of the archaeological buffer zone restricted areas are clearly marked during all episodes of construction. Exhibit 040.
48. VDHP recommends that the following conditions be included in Land Use Permit 4C0936-7. These conditions will ensure that this project will have No Adverse Effect on VT-CH-729 and any other historic site that is listed in or eligible for inclusion in the State Register of Historic Places. Exhibit 040.
 - a. The archaeological buffer zone for Site VT-CH-729, the Archaeological Restricted Area, shall be marked on all relevant site plans. All contractors shall be notified

of the buffer zone restrictions and a silt fence or other exclusionary barrier shall be placed on the buffer zone limits prior to the start of any construction activity.

- b. Topsoil removal, grading, scraping, cutting, filling, stockpiling, planting, or any other type of ground disturbance is prohibited within the Archaeological Restricted Area without the approval of the District 4 Environmental Commission and the Vermont Division for Historic Preservation.
- c. Placement of the storm water drainage pipe through the Archaeological Restricted Area as shown on the site plan is permitted, provided the installation is done using horizontal directional drilling techniques, such that the pipe is placed a minimum of 3 feet below the existing ground surface.
- d. Construction of a 6-inch soil berm in the Archaeological Restricted Area along the shrub row on the east edge of Lot 11 is also permitted, provided construction utilizes hand tools and soil brought in from an outside source. Fill shall be placed on the existing ground surface with no grubbing or sod removal. Any mechanized equipment used to transport soil shall be limited to standard lawn maintenance machinery.
- e. Applicants will contract with a qualified consulting archaeologist to monitor the removal of the existing stone path in the Archaeological Restricted Area, and the placement of fill in the former path footprint once the stone pavers are removed. Path removal and fill placement shall proceed utilizing non-motorized hand tools and soil brought in from an outside source. Any mechanized equipment used to transport materials shall be limited to standard lawn maintenance machinery.
- f. The Applicants' qualified archaeological consultant shall also conduct data recovery excavation in the footprint of the new stone path alignment prior to construction to mitigate impacts to VT-CH-729. The archaeological investigation must follow the VDHP's Guidelines for Conducting Archaeological Studies in Vermont (2017). The Applicants' archaeological consultant shall submit a scope of work to the VDHP for review and approval prior to implementation.
- g. The Applicants shall provide a minimum of 5-days' notice to the VDHP prior to the start of any construction, removal, or archaeological mitigation activity in the Archaeological Restricted Area to allow the opportunity for on-site monitoring at VDHP's discretion.
- h. The archaeological studies implemented as part of this project will result in one or more interim or final reports, as appropriate, that meet the VDHP's Guidelines

for Conducting Archeological Studies in Vermont (2017). A digital copy of any report will be submitted to the VDHP. Archaeological reports submitted to the District 4 Environmental Commission to be available to the public on the Act 250 Database shall have specific archaeological site locational information redacted in accordance with 22 V.S.A. § 761(b) and 1 V.S.A. § 317(c) (20).

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)* (citations omitted); see also, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985); In re Halnon, 174 Vt. 514 (mem.)* (applying Quechee test in Section 248 context).

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

1. Adverse Effect

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

The Project is located on the shoreline of Lake Champlain in an area where single-family housing developments are interspersed with rare sandplain forest habitat. The Project will construct a 4,400-square foot addition on an existing 3,552-square foot single family home. The project will be visible from an area of Lake Champlain that sees heavy visitor recreational use for swimming, fishing, paddling, sailing and motor boating. The popular Town-owned Rosetti Natural Area and Thayer Beach are located approximately ¼ mile to the east of the Project tract.

The Applicants maintain the shoreline on the Project tract primarily as lawn. The Applicants propose to construct the Project with minimal vegetation capable of screening the development from the waters of Lake Champlain.

Because this Project will replace open space with a 2-story residential structure that will be highly visible from a popular recreational area of Lake Champlain, it will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

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

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, *Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Envtl. Bd. 4/9/02)*. A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action*, #2WO694-I-EB, *Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Envtl. Bd. 12/21/00)*.

A plan which states "consideration should be made . . ." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott*, #7C1079(Revised)-EB, *Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Envtl. Bd. Dec. 8, 2000)*. Although the proposed Project does not meet the specific goals or objectives cited above, there are no clear community standards relevant to the proposed Project's impacts on aesthetics.

The Commission has reviewed relevant portions of the Colchester Town Plan. The Plan identified no specific standard relating to the aesthetics of the area in which the Project is located. However, several goals or objectives are relevant to this Project. See Finding of Fact 38.

Having weighed these factors carefully, the Commission concludes that the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

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

While adjoining party Christopher Cain provided testimony during the hearing that the cedar hedges on three sides of the existing development obscure his view of Lake Champlain, that argument is not germane to the present application, because the cedar hedges are a pre-existing condition that will not be altered by the current application. While the Commission understands that Mr. Cain's view of the lake will be modified by the construction of the two-story addition to the Applicants' property and the planting of additional trees, the Commission finds that this new development by itself—in light of the tall intervening hedges—will not have an unreasonable visual impact on the Cains or other nearby landowners. The proposed project is located in what is already a residential subdivision, on a lot that is dominated by turfgrass. Although the project will replace green space with a large structure at the project location, it will not do so to a degree that can be considered offensive or shocking.

Given all of these considerations, we find that the Project's aesthetic impact is not offensive or shocking.

(c) Generally Available Mitigating Steps

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

To mitigate the aesthetic impacts of the Project, the Applicants will match the existing home's green stucco. The Commission will place a condition in the land use permit amendment

requiring the Applicants to obtain Commission approval prior to any future changes to the home's exterior color.

To mitigate the aesthetic impact of the construction of such a large structure on the Lake Champlain shoreline, and the associated removal of several large shade trees from the property, the Applicants shall plant four red maple trees to partially screen the structure and naturalize the appearance of the shoreline as viewed from Lake Champlain. The "existing ash to remain" depicted on Exhibit 029b also helps to mitigate the visual impact of the project. The Commission will place a condition in the land use permit amendment requiring the perpetual maintenance of comparable trees in these locations.

To mitigate the aesthetic impact of the reconstructed and expanded terrace, pool, and spa areas, the Applicants shall plant native shrubs and perennials along the more steeply sloping portion of the shoreline. These native shrubs and perennials shall be self-sustaining and shall serve to naturalize the appearance of the shoreline as viewed from Lake Champlain. The Commission shall place a condition in the land use permit amendment requiring that these shrubs and perennials be replaced if shrub mortality occurs.

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

(d) Conclusion

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

Conclusions of Law: Historic Sites

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

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

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

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

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

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

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

Based on the results of the archaeological survey work conducted in 1996 and 1997, which identified an extensive Native American archaeological site on the Project tract, the Commission concurs with VDHP’s recommendation that VT-CH-729 is a historic site that is eligible for inclusion in the State Register of Historic Places.

2. *Whether the proposed Project will have an adverse effect on the historic site*

The next question is whether the Project will have an adverse effect on the historic site, or whether the Project is in harmony with or fits the historic context of the site.

Important guidelines in evaluating this question include the following: (1) whether there will be physical destruction, damage, or alteration of those qualities which make the site historic, such as an existing structure, landscape, or setting; and (2) whether the proposed Project will have other effects on the historic structure, landscape, or setting which are incongruous or incompatible with the site’s historic qualities, including, but not limited to, such effects as isolation of an historic structure from its historic setting, new property uses, or new visual, audible or atmospheric elements. *Re: Middlebury College, #9AO177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Envtl. Bd. Jan. 26, 1990); cited in Re: OMYA, Inc. and Foster*

Brothers Farm. Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Envtl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).

VDHP has requested that the conditions included in sections 48 a) through h) of these Findings be included in Land Use Permit 4C0936-7. The Commission agrees, and will include these conditions in the permit. These conditions will ensure that this Project will have no adverse effect on VT-CH-729.

For these reasons, the Commission concludes that the Project will not have an undue adverse effect on historic sites.

SUMMARY CONCLUSIONS OF LAW: Aesthetics and Historic Sites

The Commission concludes that the Project, as conditioned, will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, or historic sites. As conditioned, the Project complies with Criterion 8, Aesthetics and Historic Sites.

VII. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicants, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 4C0936-7, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 4C0936-7 is hereby issued.

DATED this 16th day of March 2021.

By /s/Thomas A. Little
Thomas A. Little Chair
District 4 Environmental Commission

Commissioners participating in this decision:

Parker Riehle

Kate Purcell

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

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

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

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

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

Exhibit List



Application #	4C0936-7 (3/12/21)
Applicant(s)	Richard Bove & Maria Barria
Landowner(s)	Richard Bove & Maria Barria
Project Town(s):	Colchester, VT

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	7/22/20	001 Act 250 Application; and cover letter	Applicant
001a	7/30/20	001a Revised Schedule B - 1D Work Hours; 4A Soil Erosion; and General Project Description (7/30/20)	Applicant
002	7/22/20	002 Schedule G	Applicant
003	7/22/20	003 WW Permit EC-4-1723-3	Applicant
004	7/22/20	004 EC-4-1723-3 Plan 1 Site Plan	Applicant
005	7/22/20	005 EC-4-1723-3 Plan 2 Soils and Sewage Disposal	Applicant
006	7/22/20	006 T-1 Drawing Index	Applicant
007	7/22/20	007 PL Boundary Line Adjustment Plat	Applicant
008	7/22/20	008 C1.0 Existing Conditions Plan	Applicant
009	7/22/20	009 C1.1 Site Plan	Applicant
009a	9/24/20	009a C1.1 Site Plan (Rev. 9/24/20)	Applicant
009b	11/24/20	009b C1.1 Site Plan (Rev. 11/16/20)	Applicant
009c	12/10/20	009c C1.1 Site Plan (Rev. 12/9/20)	Applicant
009d	1/20/21	009d C1.1 Site Plan (Rev. 1/18/21)	Applicant
009e	3/3/21	009e C1.1 Site Plan (Rev. 3/1/21)	Applicant
010	7/22/20	010 C1.2 Civil Details	Applicant
011	7/22/20	011 C1.3 Civil Details	Applicant
011a	3/3/21	011a C1.3 Civil Details (Rev. 3/1/21)	Applicant
012	7/22/20	012 L1.1 Landscape Plan	Applicant
013	7/22/20	013 A1.0 Basement Plan	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
014	7/22/20	014 A1.1 Overall Plan-First and Second	Applicant
015	7/22/20	015 A2.1 Exterior Elevations	Applicant
016	7/22/20	016 A2.2 Exterior Elevations	Applicant
017	7/22/20	017 A3.1 Building Sections	Applicant
018	8/24/20	018 Letter by Peter Raymond, Esq., Sheehey Furlong and Behm on Behalf of John Mitiguy, Robert Mitiguy, Patricia Houston and Anne Cross, Abutters re Enlargement of Time to Request Hearing (8/24/20)	Opponent
019	8/25/20	019 Christopher and Judy Cain Petition Request for Party Status (8/25/20)	Opponent
020	8/25/20	020 ANR Entry of Appearance re Extension Request of Comment Period until September 8, 2020	ANR
021	8/26/20	021 Email by District Coordinator Granting Extension Request of Public Comment Period to September 25, 2020	Act 250
022	9/24/20	022 Letter by Peter Raymond, Esq., Sheehey Furlong and Behm on Behalf of Abutters re Party Status and Hearing Request (9/24/20)	Opponent
023	9/24/20	023 Memo to Karin McNeill, ANR, Summarizing Revisions and Clarifications to Site Plan Dated September 24, 2020	Applicant
024	9/24/20	024 Riparian Buffer and Archeological Plan C1.4 (9/24/20)	Applicant
024a	1/20/21	024a Riparian Buffer and Archeological Plan C1.4 (Rev. 1/18/21)	Applicant
024b	3/3/21	024b Riparian Buffer and Archeological Plan C1.4 (Rev. 3/1/21)	Applicant
025	9/25/20	025 ANR Supplemental Comment (9/25/20)	ANR
026	9/25/20	026 Email Comments by Scott Dillon, VDHP (9/25/20)	DHP
027	9/25/20	027 L2.1 Hardscape Plan	ANR
027a	1/20/21	027a L2.1 Hardscape Plan (Rev. 1/18/21)	Applicant
027b	3/3/21	027b L2.1 Hardscape Plan (Rev. 3/2/21)	Applicant
028	9/25/20	028 L4.1 Plant Concept Plan	ANR
028a	1/20/21	028a L4.1 Plant Concept Plan (Rev. 1/18/21)	Applicant
028b	3/3/21	028b L4.1 Plant Concept Plan (Rev. 3/2/21)	Applicant
029	9/25/20	029 L4.2 Planting Plan	ANR
029a	1/20/21	029a L4.2 Planting Plan (Rev. 1/18/21)	Applicant
029b	3/3/21	029b L4.2 Planting Plan (Rev. 3/3/21)	Applicant
030	11/24/20	030 Memo by Seth Goddard re Summary of Plan Revisions & Approved WW Permit (11/19/20)	Applicant
031	11/24/20	031 Wastewater Permit #WW-C-0782 Issued 10/14/20	Applicant
032	11/24/20	032 Judgement Order Vol 694_Page 305 with Exhibit B	Applicant
033	11/24/20	033 Deed Pages Vol 2_Page 485	Applicant
034	1/6/21	034 Motion to Clarify Recess Order by Peter Raymond, Sheehey Furlong & Behm (1/5/21)	Opponent

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
035	1/6/21	035 Email by A. Brondyke re Chair Tom Little Supplemented Hearing Recess Order on Behalf of District Commission to Grant	Opponent
036	1/20/21	036 Memo by Seth Goddard re Hearing Recess Order Supplemental Evidence (1/20/21)	Applicant
037	1/20/21	037 Project View from Lake With Existing and Proposed	Applicant
037a	3/3/21	037a Project View from Lake With Existing Pre and Proposed (12/11/20)	Applicant
038	1/20/21	038 Memorandum of Law Regarding 1942 Covenant	Applicant
039	1/20/21	039 Bove Lakefront Improvement Plan Lots 10-12 and Mitiguys	Applicant
040	1/27/21	040 VDHP Comment Letter re Criterion 8 (1/27/21)	DHP
041	2/2/21	041 Mitiguys Reply Memorandum in Support of Applicants' January 20, 2021 Memorandum of Law (2/2/21)	Opponent
042	2/3/21	042 ANR Supplemental Comment re Reply to Applicant's January 20, 2021 HRO Response (2/3/21)	ANR
043	3/3/21	043 2ND Hearing Recess Memo by Seth Goddard (3/2/21)	Applicant
044	3/10/21	044 ANR Supplemental Comment re Reply to Applicant's March 2, 2021 HRO 2 Response (3/10/21)	ANR
045	3/12/21	045 Mitiguys' Reply to Applicant's Supplemental Evidence in Response to Second Hearing Recess Order (3/11/21)	Opponent
046		046	
047		047	
048		048	
049		049	
050		050	
051		051	
052		052	
053		053	
054		054	
055		055	
056		056	
057		057	
058		058	
059		059	
060		060	
061		061	
062		062	
063		063	

CERTIFICATE OF SERVICE

I hereby certify on this 16th day of March 2021, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C0936-7, 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@vermont.gov

Richard Bove & Maria Barria
218 Overlake Drive
Colchester, VT 05446
rickbove@comcast.net; mbarria@aol.com

Brad Rabinowitz
47 Maple Street, Suite 332
Burlington, VT 05401
brad@bradrabinowitzarchitect.com

Seth Goddard
Krebs & Lansing
164 Main Street, Suite 201
Colchester, VT 05446
seth.goddard@krebssandlansing.com

Robert Rushford, Esq.
Gravel and Shea
76 St. Paul Street, 7th Floor, PO Box 369
Burlington, VT 05402-0369
rrushford@gravelandshea.com

John Mitiguy, Robert Mitiguy, Patricia Houston and Anne Cross
c/o Peter Raymond, Diane McCarthy & Matt Preedom
Sheehey Furlong & Behm PC
30 Main Street, 6th Floor
PO Box 66
Burlington, VT 05402-0066
praymond@sheeheyvt.com; dmccarthy@sheeheyvt.com;
mpreedom@sheeheyvt.com; emurphy@sheeheyvt.com

Chris Cain and Judy Cain
217 Overlake Dr.
Colchester, VT 05446
drcaino@gmail.com

Julie Graeter, Town Clerk
Chair, Selectboard/Chair, Planning Commission
Town of Colchester
781 Blakely Road
Colchester, VT 05446
jgraeter@colchestervt.gov

Chittenden County Regional Planning Commission
c/o Charlie Baker, Exec. Dir.
Regina Mahony, Planning Program Manager
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Elizabeth Lord, Land Use Attorney
Karin McNeill, Regulatory Policy Analyst
Bernie Pientka, Fisheries Biologist
Maureen Lynch, Fisheries Prog. Dir.
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
anr.act250@vermont.gov; Karin.mcneill@vermont.gov;
bernie.pientka@vermont.gov; maureen.lynch@vermont.gov

Barry Murphy/Vt. Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
psd.vtdps@vermont.gov

Craig Keller/Jeff Ramsey/Christopher Clow
VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
aot.act250@vermont.gov

Vt. Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
c/o Scott Dillon
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
accd.projectreview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
Thomas Little, Chair
Parker Riehle/Kate Purcell
111 West Street
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 16th day of March, 2021.

/s/Christine Commo
Christine Commo
Natural Resources Board Technician
802-879-5614
christine.commo@vermont.gov

Y:\NRB\Essex\DISTRICTS\DIST4\PROJECTS\4C0751-4C1000\4C0936\4C0936-7\Published Documents\District Commission Documents\4C0936-7 cos lupfoc.docx