



LAND USE PERMIT

State of Vermont
Natural Resources Board
Districts 1 and 8 Environmental Commissions
440 Asa Bloomer State Office Building
88 Merchants Row, 4th Floor
Rutland, VT 05701-5903 <https://nrb.vermont.gov/>

CASE NO: 8B0634

Northeastern Baptist College, Inc.
104 Kocher Drive
Bennington, VT 05201

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 8 Environmental Commission hereby issues Land Use Permit 8B0634, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit applies to the lands identified in Book 538, Pages 48, of the land records of the Town of Bennington, Vermont, as the subject of a deed to Northeastern Baptist College, Inc., the Permittee.

This permit specifically authorizes the construction of a Planned Residential Development (“PRD”) to be occupied by participants in programs managed by the College, consisting of nine duplex dwellings (total of 18 single-family, two-bedroom residential units), on an unimproved +/-7.30-acre parcel.

The project is located 0.25-miles north of the intersection of Convent Avenue and Main Street in Bennington, Vermont.

As determined in a jurisdictional opinion issued on July 16, 2020, jurisdiction attaches because the Project constitutes a ‘development’ pursuant to 10 V.S.A. §6001.

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 8 Environmental Commission (“Commission”) in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with the conditions of this permit, Findings of Fact and Conclusions of Law 8B0634, the permit application, plans, and exhibits on file with the Commission, and other material representations. In the event of any conflict, the terms and conditions of this permit and the conclusions in the findings shall supersede the approved plans and exhibits.

The approved plans are:

Sheet C101 – “Site Development Plan”, dated 6/19/2020, last revision 6/22/2020 (Exhibit #006);

Sheet C102 - "Proposed Conditions Plan", dated 6/19/2020, last revision 6/22/2020 (Exhibit #047);

Sheets C103, C103.a - "Utility Plan" and "Utility Profile", dated 6/19/2020, last revision 6/22/2020 (Exhibit #008);

Sheets C104, C104.1, C104.2 - "Grading Plan" and "Grading Details", dated 6/19/2020, last revision 6/22/2020 (Exhibit #010, 011, 012);

Sheets C501, C502, C503 - "Construction Details", dated 6/19/2020, last revision 6/22/2020 (Exhibits #013, 014, 015);

Sheets A210, A20, A230, A240, A250, A260, A270, A280, A290 - "Building Elevations", (Exhibits 022, 023, 024, 025, 026, 027, 028, 029, 030);

Sheet ESL1 - "Electrical Site Lighting", dated 3/13/2020;

"Construction and Demolition Waste Management Plan" (Exhibit #016); and

"Wetland Buffer Planting Plan", dated 3/20/2020 (Exhibit 048).

2. 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.
3. A copy of this permit and plans shall be on the site at all times throughout the construction process.
4. 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.
5. 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 Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
6. 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.
7. 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.
8. The Permittee shall comply with all conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit #WW-8-2003 issued on July 7, 2020, by the ANR Drinking Water and Groundwater Protection Division (Exhibit 018);
 - b. Authorization to Discharge Permit #8989-9020 under Construction General Permit 3-9020 issued on August 10, 2020, by the ANR Watershed Management Division (Exhibit 056c);
 - c. Individual Wetland Permit #2020-042 issued on September 2, 2020, by the ANR Watershed Management Division (Exhibit 038); and

- d. Public Water System Construction Permit #C-3833-20.0 issued on June 30, 2020, by the ANR Drinking Water and Groundwater Protection Division (Exhibit 020).
9. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
10. Construction hours shall be limited to Monday through Friday from 7:00AM to 6:00PM, and Saturdays from 9:00AM to 1:00PM. There shall be no construction activity on Sundays or Federal holidays.
11. The Permittee and its contractors shall be obligated to implement the Construction Site Waste Reduction Plan included as Exhibit 016.
12. A Project Coordinator/construction manager shall provide orientation to the volunteer construction teams and will manage and monitor construction activities weekly for the duration of the construction process.
13. The Permittee shall contract with a waste hauler with recycling capabilities. The dumpster container(s) shall remain covered and secured and shall be adequate in size to allow all refuse and recycling to be contained within containers, fitted with covers, and able to close.
14. The Permittee shall install a paved sidewalk along Convent Avenue, as represented in Exhibits 001 and 047.
15. There shall be no college resident or visitor parking along Convent Avenue. The Permittee shall endeavor to establish the Convent Ave PRD location as a stop on the Green Mountain Express bus route.
16. The Permittee shall install the EV charging station as depicted on Exhibit 047 and shall run conduit during construction to allow for additional chargers.
17. The Permittee shall install bicycle rack(s) for at least six (6) bikes. Exhibit 056.
18. Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree lines to be retained along the northern and southern boundaries, as represented in Exhibits 001 and 047.
19. Any extracted stumps shall be disposed of at a state-certified stump and inert waste disposal facility, and not in any wetland or water body, or so as to prevent groundwater pollution.
20. The Permittee shall permanently demarcate the limits of development with birdhouses and posts (or alternative, with prior ANR Wetland Program approval) installed at regular intervals of no more than 25 feet, as depicted in Exhibit 048. The markers shall be installed prior to onsite earth disturbance and shall be maintained while dwellings are in existence.
21. The Permittee and all assigns and successors in interest shall implement the Wetland Buffer Planting Plan approved by the ANR and shall comply with the restoration planting and monitoring provisions therein. The Permittee shall monitor the success of the plantings for three years; all unhealthy plantings shall be replaced in-kind or an alternative with prior ANR Wetland Program approval. Replacement plantings shall likewise be monitored for health and replaced as needed for three years. The Permittee shall electronically submit an

- annual report to the ANR Wetlands Program and District Commission documenting the status of the restoration area during the years that plantings are being monitored.
22. The Permittee shall comply with the Construction General Permit 8989-9020, the Vermont Department of Environmental Conservation's [Low Risk Site Handbook for Erosion Prevention and Sediment Control \(February 2020\)](#), and Exhibits 001 (at page 12), 038 at J-K, and 046 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.
 23. A copy of the approved erosion prevention and sediment control plans shall be on the site at all times during construction.
 24. 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 or wetlands. 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.
 25. The Permittee and all assigns and successors in interest shall install and continually maintain the landscaping features, dumpster enclosure, and propane tank screening as represented and approved in Exhibits 001 and 047. Any dead or diseased plantings shall be replaced within the season or as soon as possible after the ground thaws, whichever is sooner.
 26. The Permittee shall install and continually maintain stockade fencing along the northern boundary of the parcel, as depicted in Exhibit 047. New posts shall be installed for this section of the fence, will be installed below the permeable frost line, and the A-side of the fence shall face the adjoining property along Anthony Drive.
 27. The installation of exterior light fixtures is limited to those approved as represented in Exhibits 001 and 031. 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. The exterior lights shall be on a timer/sensor and programmed to dim beginning no later than 10:00PM and shall return to full brightness for a period of no more than 10 minutes upon being activated by motion sensors.
 28. The exterior project sign marking the entrance to the parking lot shall be installed as represented in Exhibits 001 and 006. Any illumination of the sign shall be from above and not below, and the fixture shall be downcast and fully shielded to conceal the light source and prevent light glare and trespass from beyond the perimeter of the sign. Excepting traffic or parking signage as represented in the approved site plans, no other exterior signage shall be erected without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules.
 29. The Permittee shall, prior to commencement of construction, submit the calculated off-site mitigation fee payment of **\$2,682.02** to the Vermont Housing and Conservation Board (VHCB, General Counsel, 58 East State Street, Montpelier, VT 05602). The off-site mitigation fee is calculated as follows: **1.46 acres (number of acres of Primary Agricultural Soils to be**

- impacted) × 1 (multiplier, 1:1 mitigation ratio) × \$1,837.00 (cost to acquire conservation easements for primary agricultural soils in the same geographic region) = \$2,682.02.** If the mitigation fee is not paid within one year from the date that a Land Use Permit is issued, the amount of the fee will be subject to a simple interest annual inflation factor increase of 2.8% and the fee will increase each year on the anniversary of the Land Use Permit to an amount equal to 102.8% of the previous year's amount, rounded to the nearest dollar.
30. The maximum total occupancy of the nine (9) buildings/18 units in the PRD shall not exceed 72 without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 31. Pursuant to 30 V.S.A. §§ 51(e) and 53, the energy design and construction shall comply with Vermont's Residential Building Energy Standards (RBES) Stretch Code and/or Commercial Building Energy Standards (CBES) (whichever is applicable) in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this subject can be found at http://publicservice.vermont.gov/energy_efficiency/cbes and https://nrb.vermont.gov/documents/9f-procedure_2020-09-01.)
 32. The Permittee, upon completion of the construction of each building 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) or 53(d) (whichever is applicable).
 33. 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.
 34. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
 35. Should the Town at any time agree to accept any private utilities being then operated by the Permittee and/or its assigns and successors in interest, the Permittee and/or its assigns and successors in interest shall be responsible to improve the same to Town specifications and shall deed all lands involved with said improvements to the Town. Such improvements may require a land use permit amendment.
 36. The remainder of the parcel beyond the limits of development authorized herein shall remain open and undeveloped.
 37. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit and the Findings of Fact before entering into any written contract of sale.
 38. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 8B0634 in all deeds of conveyance and leases.
 39. Pursuant to 10 V.S.A. § 6090(b)(1), this permit 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).

40. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2024**, 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.
41. **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. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201 Attention: Certification.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated in Rutland, Vermont this 13th day of May 2021.

By /s/Richard Kobik
Richard Kobik, Acting Chair
District 8 Commission

Members participating in this decision: Don Miller and Leslie Keefe

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.

E-Notification CERTIFICATE OF SERVICE #8B0634

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit and Findings of Fact on May 13, 2021, by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Rutland@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB 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 the District Office of any email address changes.**

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont

Natural Resources Board

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CASE NO: 8B0634

Northeastern Baptist College, Inc.
104 Kocher Drive
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LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On July 30, 2020, Northeastern Baptist College Inc., 104 Kocher Drive, Bennington, VT 05201 filed a complete Act 250 application seeking authorization for the construction of a Planned Residential Development (“PRD”) to be occupied by participants in programs managed by the College, consisting of nine duplex dwellings (total of 18 single-family, two-bedroom residential units), on an unimproved +/-7.30-acre parcel. The Applicant's legal interest is ownership in fee simple described in a deed recorded on September 23, 2019, in the land records of the Town of Bennington, Vermont.

The District Environmental Commission (“Commission”) held a prehearing conference (“PHC”) on this application on October 8, 2020; a site visit was conducted on November 4, 2020, and the Commission held a public hearing on December 10, 2020. The hearings were conducted remotely via Microsoft Teams videoconferencing software due to Executive Order 01-20 and associated Addenda and Directives issued by Governor Scott based upon the coronavirus (“COVID-19”) emergency. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on May 13, 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

As determined in a jurisdictional opinion issued on July 16, 2020, jurisdiction attaches because the Project constitutes a ‘development’ pursuant to 10 V.S.A. §6001.

III. 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 Mark Ballard and David King (NEBC), Jason Dolmetsch and Abby Chaloux (MSK Engineering and Design), Jeffrey Goldstone (Goldstone Architecture), and David Grayck, Esquire.

The Agency of Natural Resources (“ANR”), by Jennifer Mojo, Regulatory Policy Analyst, Office of Planning & Policy, in attendance at the PHC and through an Entry of Appearance dated November 30, 2020.

The Vermont Division of Historic Preservation (“VDHP”) by Yvonne Basque, in attendance at the PHC and through Entries of Appearance dated October 5, 2020 and January 19, 2021.

The Agency of Agriculture, Food, and Markets (“AAF”) by Ari Rockland-Miller, through an Entry of Appearance dated January 11, 2021.

The Town of Bennington, not represented.

Bennington County Regional Commission, not represented.

B. Interested Parties

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

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

Mary C. McGuinness (140 Convent Ave, Bennington), granted preliminary party status under criteria 5 (Traffic & Safety), 8 (Aesthetics) and 10 (Local and Regional Plans). Denied party status under criteria 4 and 9 (under relevant criteria 9K and 9L).

Heather Raab (129 Convent Ave, Bennington), granted preliminary party status under criteria 5 (Traffic & Safety), 8 (Aesthetics) and 10 (Local and Regional Plans). Denied party status under criteria 1G, 4, and 9L.

There were no other requests for party status.

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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application:

1 - Air Pollution

- 1 - Water Pollution
 - 1(A) - Headwaters
 - 1(C) - Water Conservation
 - 1(D) - Floodways
 - 1(E) - Streams
 - 1(F) - Shorelines
- 2 - Water Supply
- 3 - Impact on Existing Water Supplies
- 6 - Educational Services
- 7 - Municipal Services
- 8(A) - Wildlife Habitat & Endangered Species
- 9(A) - Impact of Growth
- 9(C) - Productive Forest Soils
- 9(D) - Earth Resources
- 9(E) - Extraction of Earth Resources
- 9(F) - Energy Conservation
- 9(G) - Private Utility Services
- 9(H) - Costs of Scattered Development
- 9(J) - Public Utility Services
- 9(K) - Effects on Public Investments

Therefore, the application shall serve as the Findings of Fact on these criteria. The findings of fact below are based on the criteria implicated in this case: 1(B) – Waste Disposal, 4 – Erosion, 5 – Traffic and Parking, 8 – Aesthetics, 9(B) – Prime Agricultural Soils, 9(L) – Settlement Patterns, and 10 – Local and Regional Plans, and are based on the application, Exhibits 001 – 056c, 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 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 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.

General Findings:

1. The Project is a 9-building, 18-unit Planned Residential Development to be occupied by participants in programs managed by the Applicant, including both single and married students, staff in transition, guest speakers, and faculty (and families). Exhibit 046 and Testimony.
2. The residences will be occupied at some capacity year-round. Exhibit 046.
3. The Project Tract is a vacant lot in a state designated growth center pursuant to 24 V.S.A. Chapter 76A. Exhibit 001.

Criterion 1(B) - Waste Disposal and Criterion 4 - Soil Erosion:

Findings of Fact

4. Waste generated by the Project will include sewage, residential solid waste, stormwater runoff, and stumps generated by site clearing. Exhibit 001.
5. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit #WW-8-2003 issued on July 7, 2020. Exhibit 018.
6. There will be up to four (4) students living in a unit and a total maximum occupancy in the PRD of 72 based on 'habitable space' defined as the total number of bedrooms, and 2 persons per bedroom. The Applicant agreed to a condition establishing maximum total occupancy. Exhibit 018 and Testimony.
7. The ANR Department of Environmental Conservation issued an Authorization to Discharge Permit #8989-9020 under Construction General Permit 3-9020 on August 10, 2020, for the construction phase of the Project. Exhibit 056c.
8. The Project contains less than one acre of impervious development and therefore is not required to provide a stormwater conveyance and treatment system. Exhibit 001.
9. The Project has been designed to continue to divert stormwater as sheet flow across the site to the east and southeast towards the Walloomsac River, as prior to development. A one- to two-foot-deep grassed swale runs along the length of the parking lot to divert stormwater and runoff from the parking lot to sheet flow following the natural contours of the parcel toward the river. Exhibits 001, 046, and Testimony.
10. Construction will begin with installation of construction entrances and perimeter silt fence along the wetland buffer areas, and additional internal erosion deemed necessary. Exhibit 001.
11. The erosion control measures will comply with the *Low-Risk Site Handbook for Erosion Prevention and Sediment Control*, Vermont ANR, February 2020, to control stormwater runoff during construction. Construction will begin with installation of stone construction entrances and perimeter silt fence along the wetland buffer areas and at the downgradient project limits. Erosion control measures will also include inlet protection, temporary and final stabilization of disturbed areas, and additional internal measures deemed necessary. Exhibits 001 and 056c.
12. All swales and slopes of 3H:1V or steeper will receive rolled erosion control fabric with 24-month minimum service life. Exhibit 001.
13. Inspections of the site and stormwater treatment systems will occur annually and following heavy rains. Exhibit 001. During construction, erosion controls will be inspected at least every seven (7) calendar days and within twenty-four (24) hours after a storm event resulting in discharge of stormwater from the construction site. Exhibit 001.

14. The applicant submitted a construction site waste reduction plan to direct as little waste as possible to the landfill. Stumps will be disposed of off-site in a State-approved location. Construction debris will be recycled by a waste hauler who will supply separate dumpsters for cardboard and clean wood. Exhibits 001 and 016.

Conclusions of Law

The ANR wastewater and stormwater 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 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.

No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Project will meet all applicable Department of Environmental Conservation (“DEC”) regulations on waste disposal and erosion.

The Wastewater System and Potable Water Supply Permit #WW-8-2003 and Authorization to Discharge Permit #8989-9020 will be incorporated into the Act 250 permit.

The Project complies with Criterion 1(B) (Waste Disposal) and Criterion 4 -- Erosion.

Criterion 1(G) - Wetlands:

Findings of Fact

15. The eastern side of the Project Tract includes a palustrine wetland on the Vermont Significant Wetlands Inventory maps and is therefore designated as a Class II wetland. Exhibits 038 and 049.
16. The Project will impact a total of 900 square feet of wetland and 6,650 square feet of wetland buffer zone. Exhibit 038.
17. The Project and its construction constitute an activity in a significant wetland or buffer zone of a significant wetland protected under the Vermont Wetland Rules.
18. Individual Wetland Permit #2020-042 was issued on September 2, 2020, by the ANR Watershed Management Division. Exhibit 038.
19. The applicant has proposed a total of 9,600 square feet of wetland and buffer zone improvements to offset the permitted impacts. Exhibits 001 and 048.

Conclusions of Law

Individual Wetland Permit 2020-042, issued by ANR, creates a presumption pursuant to Act 250 Rule 19 that the Project will not violate the Vermont Wetland Rules relating to significant wetlands. Technical determinations made by ANR in issuing the permits are entitled to substantial deference. 10 V.S.A § 6086(d).

No evidence was presented to rebut the presumption or challenge the technical determination made by ANR.

To ensure compliance with the Vermont Wetland Rules and Criterion 1G, conditions will be included requiring that the Permittee comply with Vermont Wetland Permit #2020-042 and the planting, monitoring, and reporting provisions identified in Exhibit #48 – Wetland and Buffer Planting Plan. Exhibits 017, 038, 048, and 049.

The Project complies with Criterion 1(G).

Criterion 5 - Transportation:

Findings of Fact

20. The Project will be accessed by Convent Avenue, a paved, town-maintained road. Exhibit 001.
21. The Project includes a 5-foot-wide concrete sidewalk proposed to run along the western property line adjacent to Convent Avenue. Exhibits 001, and 006.
22. The Project will be accessed by a 24-foot-wide paved driveway. There will be a stop sign installed at the egress of the paved driveway. Exhibits 001 and 006.
23. The posted speed limit is 30 mph. There is a clear line of sight from where the proposed driveway enters Convent Avenue. Exhibit 001.
24. The driveway and parking lot provide sufficient access to the site for emergency vehicles. Exhibit 001.
25. The Project is estimated to generate 27 total one-way trips, 16 AM peak hour trips and 11 PM peak hour trips. Exhibit 001.
26. Not all students are expected to have the same schedule, which will cut down on peak travel times. Exhibit 001.
27. The town requires 1.5 parking spaces for every unit; therefore, 27 spaces are required. The 28 parking spaces, including 2 ADA spaces, are adequate for the demands of the Project. Exhibits 001, 006, and Testimony.
28. There are no parking spaces at the Project Tract allocated for visitor parking. Testimony.

29. The number of parking spaces is restrictive for any future uses, there is no more buildable land. Testimony.
30. Convent Avenue does not have a width that allows for on-street parking, and it is not being contemplated for use by the Project. Testimony.
31. Parking spaces will be assigned and numbered; they are allotted by lottery on a first come, first served basis. Allotment of spaces is based on evaluating criteria such as seniority. A resident may only park in the space they were assigned. The College advises students about driving safety during student orientation, and students must adhere to an extensive code of conduct, including no use of alcohol. If a student is determined to be an irresponsible driver, they may lose their privilege to have a vehicle on any campus location. Testimony.
32. Not all residents will own or have access to personal vehicles. The Project is within walking distance of municipal parking in downtown Bennington and other nearby facilities associated with the Northeast Baptist College, such as the Paradise and Ramada properties. Residents who own a vehicle but who are not assigned an onsite parking space may park in any lawful space downtown. Exhibit 046 and Testimony.
33. The town has no concerns regarding additional traffic and has available parking spaces for overflow. Testimony.
34. Students use bikes a lot and some will make the one-mile bike ride to the Main Campus building. Students will also carpool to the Main Campus or downtown locations; the students have an extensive plan for carpooling. The Green Mountain Express community bus has routes serving the downtown and Main Campus. Pedestrian access is also available via the Hunt Street Bridge and Northside Drive to Kocher Drive pedestrian walkway. Exhibits 001, 046 and Testimony.
35. The applicant agrees to install a bike rack, and Green Mountain Express will walk the applicant through the process of establishing the Project site as a stop on their free bus route, to eliminate unreasonable congestion and provide safe access and connections to adjacent lands and facilities. Exhibit 056.
36. The applicant will install a single EV charging station but can easily install additional chargers if demand increases. This currently meets energy code. The applicant agreed to run conduit during construction to allow for future charging stations. Exhibit 006 and Testimony.

Conclusions of Law

Criterion 5(A) requires that the Project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways.” See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

Criterion 5(B) requires that a project, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and

to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether the measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The Commission will include a condition in the Act 250 permit regarding overflow parking along Convent Avenue to ensure safety and prevent congestion. With the variable scheduling, number of vehicles limited by parking spaces, available municipal parking, and public transportation, carpooling, and pedestrian options, the Commission concludes that the addition of residential units will not cause unreasonable delays or unsafe conditions with respect to the existing and proposed users of Convent Avenue.

The Project complies with Criterion 5(A).

Given the type, scale and transportation impacts of this Project, the following transportation measures are appropriate: installation of the sidewalk section, installation of a bike rack to encourage bike use to access the downtown, and exploration of establishing the Project site as a stop along the Green Mountain Express bus route. With these additional conditions, the Project complies with Criterion 5(B).

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

Findings of Fact: Aesthetics, Scenic or Natural Beauty

37. The present site is flat and grassy with some small scrub brush and tree cover. Approximately 1.3 acres of the Project Tract is Class II wetland and wetland buffer. The easternmost portion of the tract is within the river corridor of the Walloomsac River. This area will not be developed. Exhibit 001.
38. Trees will be planted along the boundary with Convent Avenue. The tree line between the Project Tract and adjacent properties to the north will be maintained, and existing wetland scrub brush and hardwood trees will be maintained to the south to minimize the visual impact of the Project. Exhibit 001.
39. Any tree not entirely within the Project Tract cannot be removed. Plantings will be on the Project side of the fence. A boundary survey was completed, and the Project will exist within the boundaries. Testimony.
40. The Project will be landscaped as outlined on Exhibits 001 and 047, and a restoration and planting plan will be implemented in areas disturbed within the wetland buffer during construction and not impacted by permanent construction. The applicant will monitor the restoration area and replace unhealthy plantings. Exhibit 048.
41. A section of stockade fence will be installed along Ms. Raabs’ parcel and will match the existing fencing along the northern border of the Project Tract. The A-side of the fence will face Ms. Raab’s property, and the B-side will be along the Project Tract. The fence and screening will be installed as part of the site work after the Project Tract is graded and the access drive installed, but prior to most of the construction. The fence will have new posts

and will not be hooked up to the neighbor's section and will be installed below the permeable frost line. Testimony.

42. The PRD is consistent with the existing residential land use in the area. The buildings will be a simple cottage/colonial style with trim style, gable roofs and colors to be compatible with existing dwellings. The surrounding neighborhood consists largely of multi-story, single-family dwellings. The PRD units are two-story, two-family dwellings, an allowed use in the Village Residential District. No building code differentiates between 1 ½ and 2 story. Exhibit 001 and Testimony.
43. The applicant had no objection to a condition establishing the remainder of the parcel be retained as open and unbuildable. Testimony.
44. A project sign will mark the entrance to the parking lot identifying it as "Northeastern Baptist College, Dr. Gray Allison Village." The freestanding sign dimensions and configuration are to be determined. Exhibits 001 and 006.
45. A trash dumpster enclosure will be located at the east end of the parking area and will be screened to avoid visual impacts. Two 1,000-gallon propane tanks will be located central to the building configuration and will be screened from view. Exhibits 001 and 047.
46. Exterior lighting will consist of three (3) pole-mounted lights in the parking area (14' mounting height on 12' poles with 2' concrete base), four (4) pole-mounted lights along the walkways (10' mounting height on 9.5' pole with 6" concrete base), and twenty (20) building-mounted porch lights (at 9'). They are 'night-sky', full cut-off and fully shielded, but light is reflected. Pole-mounted lights are intended to be on from dusk until dawn, dimming at a scheduled hour. Porch lights are intended to remain on all night. Both pole-mounted and porch lights will be controlled by a timer so that hours of illumination can be amended. The lights come on full brightness at a set time or by photocell and remain at full brightness for a set period. After the set period, the light output will decrease/dim by 50%, and will only return to full brightness when activated by detected motion. Exhibits 031, 056, and Testimony.
47. Any additional lighting adds to light pollution and limits aesthetics. Testimony.
48. Major construction noise will be generated by the use of heavy equipment and trucks entering and exiting the job site. Exhibit 001.
49. Adjoining landowner Heather Raab suffers from migraines. Testimony.
50. Construction hours were originally proposed to be Monday through Friday 7:00AM to 8:00PM and Saturdays from 9:00AM to 8:00PM. The Project proposes three years of construction for 13 hours per day, six days per week. Exhibit 001 and Testimony.
51. Construction activities that produce audible noise will be reduced to occur Monday through Friday 7:00AM to 6:00PM, and Saturdays from 9:00AM to 6:00PM. There will be no construction on Sundays. Exhibit 054 and Testimony.

52. The municipal ordinance states:

Article 24 (Noise Control), Article 24-2(E): Construction and Maintenance Sounds, prohibits "The Excavation, Erection, Demolition, Alteration, or repair of Any Buildings, Structure, Property or Street Between the Hours of 10:00PM and 6:00AM, Except for Necessary Emergency Construction or maintenance to Protect Property or Persons." Exhibits 046 and 054.

53. The construction activity will be sporadic, it will not be three solid years of construction. Construction will only be during construction seasons, primarily May through September. Testimony.
54. Several units will be constructed per year over each construction season. The construction is estimated to take approximately 12 months, over no more than three (3) construction seasons. Exhibits 001, 046, and Testimony.
55. Construction will be phased. All infrastructure and foundations will be constructed during Phase I of the Project. Slabs will be poured as each building is being constructed. Building 1 has to be built during Phase I as it contains all of the infrastructure that runs through the site. It is the closest house to Ms. Raab's property, at ~190 feet. With some degree of flexibility, that and the other building along Convent Avenue will be the first built. Exhibit 056 and Testimony.
56. The Project will use both paid local contractors and volunteer contractors as labor source. Testimony.
57. Most of the construction will be performed by volunteers from associated faith-based organizations. The volunteers consider this work an essential element of their faith and in fulfillment of religious purpose. The Religious Land Use and Institutionalized Persons Act ("RLUIPA") prohibits land use regulation that imposes a "Substantial burden" on religious exercise of a person or institution, unless the regulation is the least restrictive means of protecting a compelling governmental interest. Exhibit 054 and Testimony.
58. Volunteers come from various locations at their own time and expense, and if the scope of when they can work once they arrive gets narrowed too much, it becomes difficult for them. Testimony.
59. The applicant finds limiting the construction hours problematic because the work crews come during the summer and some aspects of construction are more difficult on a hot afternoon, so it helps to work a split shift and continue after dinner. The volunteers will want to work in the morning, take lunch from noon to 2:00 or 3:00PM, and work from 3:00 to 6:00PM or so. Testimony.
60. A Project Coordinator/construction manager will monitor work activities and provide orientation to the volunteer construction teams, and they will manage the process throughout the week. Testimony.

Findings of Fact: Historic Sites

61. The environmental predictive model desk audit utilized for assessing Precontact archaeological sensitivity on the Project Tract scored well above the sensitivity threshold along the river. Exhibit 043 and Testimony.
62. The Project Tract was determined to be highly disturbed and unlikely to contain any important intact archaeological sites. There are no historic structures in the general area of the Project. Exhibit 056a.

Findings of Fact: Rare and Irreplaceable Natural Areas

63. There are no rare and irreplaceable natural or fragile areas on or near the Project Tract which will be affected by this Project. Exhibit 001.

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to aesthetics and noise.

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

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

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

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including the 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. Envtl. Bd., Nov. 4, 1985)* (cited in *Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13*).

The Project is in an existing residential area; the Project Tract is an undeveloped lot that has provided scenic and peaceful open space adjacent to the existing neighborhood. The Project will create loud construction noise for 11 hours per day Monday through Friday and nine hours per day on Saturdays over the course of three years, primarily during the warm-weather months when adjoining residents will have their windows open and also wish to relax and recreate outside. The proposed Project schedule offers little relief and quietude for the adjoining neighbors. The cumulative impact of the 14- and 10-foot pole mounted lights, and 20 porch lights, intended to be on all night, albeit dimmed for some portion, will contribute to light pollution, creating a localized skyglow, and will impact aesthetics. The lights are designed to be returned to full brightness upon detection of motion, so will repeatedly be triggered throughout the night to produce bright lights that will be visible over the stockade fence from the adjoining neighbor's properties.

This Project will have an adverse aesthetic impact, specifically with respect to noise and light. Accordingly, we must determine whether that impact is undue.

2. *Undue Adverse Effect*

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

(a) *Clear, Written Community Standard*

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. 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)*.

The Commission has reviewed relevant portions of the Bennington Town Plan and bylaws. The Project conforms to several goals or objectives relevant to this Project, see Finding of Fact #42. The town ordinance under Article 24 (Noise Control), Article 24-2(E): Construction and Maintenance Sounds, prohibits "The Excavation, Erection, Demolition, Alteration, or repair of Any Buildings, Structure, Property or Street Between the Hours of 10:00PM and 6:00AM, Except for Necessary Emergency Construction or maintenance to Protect Property or Persons." The proposed hours of construction conform to this standard.

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

(b) Offensive or Shocking Character

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

Under this second factor, the Commission must determine whether the Project offends the sensibilities of the average person. This includes whether the Project would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. *Re: Pike Industries, Inc, and William E. Dailey, Inc., #1R0807-EB, Findings of Fact, Conclusions of Law, and Order at 18-19 (Vt. Env'tl. Bd. June 25, 1998)*; *Re: Nile and Julie Duppstadt & John and Deborah Alden, #4C1013-EB, Findings of Fact, Conclusions of Law, and Order at 35 (Vt. Env'tl. Bd. April 30, 1999)*; and see, *Re: Robert B. & Deborah J. McShinsky, #3W0530-EB, Findings of Fact, Conclusions of Law, and Order at 9 (Vt. Env'tl. Bd. April 21, 1988)*; *aff'd, In re Robert and Deborah McShinsky, 153 Vt. 586 (1990)*.

The addition of major construction noise generated by the use of heavy equipment and trucks on the job site less than 200 feet from the adjoining neighbors' properties along Anthony Drive will significantly diminish the scenic and aesthetic qualities and peaceful enjoyment of the area. Given the duration of construction activity proposed to occur six days per week, extended over the course of three years, the ability of the neighbors to enjoy the outdoors will be limited, at best. The exterior lights, all of which are proposed to remain on from dusk until dawn, repeatedly activated to full brightness throughout the night, also rise to the level of aggravation and annoyance.

However, the Commission does not find that the Project is so out of character with its surroundings as to be offensive and shocking to the average person.

(c) Generally Available Mitigating Steps

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

To mitigate the aesthetic impacts of the Project, the Applicant proposes to dim the lights "at a scheduled hour". Both pole and porch lights will be controlled by a timer so that control can be amended to change the hours of illumination.

The Applicant has proposed to reduce the original construction hours by two hours per day, from 8:00PM Monday through Saturday to 6:00PM Monday through Saturday.

Given the aforementioned considerations, the Commission finds that the Applicants have not taken sufficient mitigating steps to minimize the adverse impacts of the proposed Project on the aesthetics of the area.

(d) Conclusion

Based on the above, the Commission concludes that the Project will have an undue adverse effect on the aesthetics of the area. The Commission has authority to impose conditions necessary to alleviate adverse impacts with respect to the ten Act 250 criteria. As long as a condition constitutes a proper exercise of the police power and alleviates adverse effects that would otherwise be caused by a project, the condition may be imposed. Any condition must be reasonable. *In re Denio*, 158 Vt. 230, 240 (1992).

In order to maintain conformance with criterion 8, the Commission will include the following conditions in the Act 250 permit:

- A condition to limit the hours of full brightness illumination of the exterior lights so they will dim beginning no later than 10:00PM and will return to full brightness for a period of no more than 10 minutes upon being activated by motion sensors.
- Construction hours will also be limited to Monday through Friday 7:00AM to 6:00PM and Saturdays from 9:00AM to 1:00PM, with no construction activity on Sundays or Federal holidays

The Applicant requested that the Commission consider under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) the fact that most of the construction will be performed by volunteers from associated faith-based organizations, who consider this work an essential element of their faith and in fulfillment of religious purpose.

While the Commission is not insensitive to the fact that volunteers come from various locations at their own time and expense, and they are cognizant that *excessively* restricting the scope of work hours could potentially impose a “substantial burden” on the religious exercise of the volunteers, the Commission was not persuaded that a “substantial burden” would, in fact, be created by merely reducing the Saturday afternoon construction hours.

To state a claim under RLUIPA, one must show that the land use regulation—in this case a condition included in the Act 250 permit:

1. Imposes a substantial burden
2. On religious exercise
3. Of a person, institution, or assembly.

The Commission asserts that the Applicant failed to satisfy the thresholds identified above; primarily (though not exclusively), the Applicant failed to meet the burden of proving the minimally limited construction hours were a substantial burden on the religious exercise of the volunteers or the College. The hours proposed by the Applicant were neither proven to be the minimal needed, nor was it demonstrated how the normal hours of construction are impeding on the volunteers' religious purpose. In fact, the Applicant only offered (in testimony) that limited construction hours were problematic because the work crews come during the summer and some aspects of construction are more difficult on a hot afternoon, so it helps to work a split shift and continue after dinner. Construction hours that extended the full day every day, possibly until 8:00PM, was because volunteers will want to work in the morning, take lunch from noon to 2:00 or 3:00PM, and resume work after 3:00PM until 6:00PM or 8:00PM. It was not represented that this break was for pursuit of religious purposes. Were the volunteers to work through the midday hours, later than typical evening construction hours would not be necessary. The construction hours proposed have not been prohibited, they were minimally reduced to mitigate impacts in order to achieve compliance under criterion 8, consistent with prevailing practices established in the District and throughout the state, particularly for development in residential areas.

Conclusions of Law: Historic Sites

The Project Tract was determined to be highly disturbed and unlikely to contain any important intact archaeological sites. There are no historic structures in the general area of the Project. The Project complies with 8, Historic Sites.

Conclusions of Law: Rare and Irreplaceable Natural Areas

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

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

SUMMARY CONCLUSIONS OF LAW: Aesthetics, Historic Sites and Rare & Irreplaceable Natural Areas

With the inclusion of conditions in the Act 250 permit to limit impacts on aesthetics (noise and light), the Commission concludes that the Project will not have an undue adverse effect on the aesthetics, historic sites, or rare and irreplaceable natural areas.

Criterion 9(B) - Primary Agricultural Soils ("PAS") – Mitigation Flexibility:

Findings of Fact

64. The Project tract is mapped as Stockbridge loam and Georgia loam, ranked as "Prime" importance, Vermont Agricultural Value Groups 1 and 3, respectively, and Massena silt loam, ranked as "Prime if Drained" importance, Vermont Agricultural Value Group 3d. Exhibit 034.
65. The Agency of Agriculture, Food and Markets ("AAFMM") holds the opinion that "1.46 acres of the parcel's primary agricultural soils will be either directly or indirectly impacted by the

- proposed development and thus the potential of these acres will not be available to present and/or future agricultural operations". Exhibit 056b.
66. The Project will not interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands. Exhibit 001.
 67. The Project Tract is a vacant lot in a state designated growth center pursuant to 24 V.S.A. Chapter 76A. Exhibit 001.
 68. The Applicant proposes to mitigate impacts to the PAS with off-site mitigation if appropriate circumstances are found by the District Commission. Exhibit 001.
 69. The AAFM determined the appropriate mitigation ratio for the PAS affected by the Project is 1:1 for the 1.46 impacted PAS, requiring 1.46 acres of off-site mitigation. Exhibits 035 and 056b.
 70. The AAFM determined the recent, per-acre cost to acquire conservation easements for PAS in the geographic region of the Project is \$1,837.00. The off-site mitigation fee will total \$1,837.00 based on the statutory multipliers.

Conclusions of Law

Presence of Primary Agricultural Soils

Under criterion 9(B), a subdivision or development may not result in any reduction in the agricultural potential of the primary agricultural soils or significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. Act 250 defines primary agricultural soils as either (1) an important farmland soils map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture (NRCS) as prime, statewide, or local importance, or (2) "soils on the Project Tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities..." 10 V.S.A. § 6001(15).

The Commission finds that 1.46 acres of primary agricultural soils on the site have been identified by the NRCS to be of prime, statewide, or local importance.

Reduction in Agricultural Potential of Soils

The Commission finds that the Project will result in a reduction in the potential of 1.46 acres of primary agricultural soils through direct impacts to the soils. Because there will be a reduction in the agricultural potential of 1.46 acres of primary agricultural soils, the District Commission must conduct a review under the sub-criteria of Criterion 9(B).

Sub-criterion (i)

Sub-criterion (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. The 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 sub-criterion (i).

Sub-criterion (ii)

The Project is located in a designated growth center; therefore, sub-criterion (ii) is not applicable.

Sub-criterion (iii)

The Project is located within a designated growth center. Therefore, sub-criterion (iii) is not applicable.

Sub-criterion (iv)

Sub-criterion (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 within a designated growth center and the applicant has proposed to provide a suitable mitigation fee in accordance with the offsite mitigation requirements of 10 V.S.A § 6093. Exhibits 001 and 035. Therefore, the Commission concludes that the applicant has met sub-criterion (iv).

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 sub-criteria (i) – (iv).

To ensure compliance with the Criterion 9(B), a permit condition will be included requiring the Permittee to submit a calculated off-site mitigation fee payment to the Vermont Housing and Conservation Board (“VHCB”) prior to commencement of construction.

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

Criterion 9(L) – Settlement Patterns:

Findings of Fact

Existing Settlement

71. The Project Tract is located in a growth center designated pursuant to 24 V.S.A. Chapter 76A. Exhibit 001.

Efficient Use

72. The Project Tract is located in a growth center designated pursuant to 24 V.S.A. Chapter 76A. Exhibit 001.

Strip Development

73. The Project is a 9-building, 18-unit Planned Residential Development to be occupied by participants in programs managed by the Applicant, including students, staff in transition, guest speakers, and faculty. Exhibit 046.
74. The Project Tract is a vacant lot in a state designated growth center. Exhibit 001.

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.*

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:

- broad road frontage
- predominance of single-story buildings
- limited reliance on shared highway access
- lack of connection to any existing settlement except by highway
- lack of connection to surrounding land uses except by highway
- lack of coordination with surrounding land uses
- limited accessibility for pedestrians.

10 V.S.A § 6001(36).

Because the Project is located in a state designated growth center, it is considered to be inside an existing settlement, and therefore makes efficient use of the land. The Project is a purely residential project, and its location serves as ‘infill’ utilizing an undeveloped lot in an existing residential neighborhood. There is no evidence that the Project will establish or contribute to a pattern of strip development.

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

Criterion 10 – Town and Regional Plans:

Findings of Fact

75. The municipal plan that applies to this application is the Bennington Town Plan, duly adopted on October 6, 2015. Exhibit 001.
76. The Project is located in the Village Residential land use district, within the Urban Growth Area. Exhibit 001.
77. The municipal plan states:
 - a. The purpose of the Village Residential District is "...to provide attractive neighborhoods of relatively concentrated residential development in one and two family dwellings.
 - b. Land use in the Village Residential District "shall provide for moderately high densities of residential development."
 - c. Section 3.3 (Land Use Policies and Recommendations of the Town Plan) states that the "overall land use policy...is to reinforce the existing pattern of compact development within the Urban Growth Area."
 - d. Section 5.1 (Housing) of the Plan reinforces that future residential growth should occur predominantly in the Urban Growth Area and that a variety of housing types be encouraged in and around the downtown.
 - e. Section 5.3 (Location and Design of Residential Development) encourages the development of vacant land within the Urban Growth Area for residential use and also outlines a vision for "Smart Growth" or "New Urbanism" that endorses "architecture that is compatible with the historic character of the town and surrounding neighborhoods, but provides some variety in design among and between structures."
 - f. Section 7.14 (Policies and Recommendations for Community Facilities and Services) identifies the colleges in the area as important educational resources and heeds the Town to "continue to cooperate with these institutions to address their plans and needs and to further integrate the colleges into the life of the community."

Exhibit 001.

78. The town plan from 2015 states "The purpose of this district is to provide attractive neighborhoods of relatively concentrated residential development, in one and two family dwellings—with high owner occupancy rates—supported by municipal water and sewer service. The emphasis in these areas is to maintain and enhance the appealing residential character of the neighborhood." and "Uses in the Village Residential Districts are restricted to single-family dwellings and uses accessory to them, including up to one accessory apartment per single-family dwelling.". Testimony.
79. The Project consists of a planned PRD with a grouping of two-family dwelling units. The landscaping, building dimensions and orientation, pedestrian facilities and vehicular access

- are consistent with the residential character of the neighborhood. The proposed building designs are traditional cottage/colonial style, which is in character with, and complements, the varying existing architectural styles on Convent Avenue and Anthony Drive. Exhibit 001.
80. The Project will have onsite parking and will be served by municipal water and sewer systems, a critical policy for the Village Residential District. Exhibit 001.
 81. The Project provides "housing in walkable and accessible areas that have connections to public space and all basic amenities" and will be energy efficient. Exhibit 001.
 82. The Project buildings and their use are consistent and compliant with the town plan and its implementation through the zoning bylaws and municipal codes. Testimony.
 83. The Regional Plan that applies to this application is the Bennington County Regional Plan, duly adopted on March 19, 2015. Exhibit 001.
 84. The Project is located in the Urban Center land use district as designated in the regional plan. Exhibit 001.
 85. The Regional Plan, much like the Town plan, reinforces the goal of encouraging "compact mixed use development" in urban centers to "ensure urban centers contain a variety of commercial, professional, residential, industrial, and public uses that contribute to a diverse and stable economic base for the towns and surrounding communities." The policies for development of this district also support compact development patterns that are compatible with the surrounding neighborhood. The Land Use Development Regulations for the Town of Bennington do not allow for most commercial or industrial uses in the Village Residential District but this project does conform to the goal of providing for a compact residential development in the Urban Center of Bennington. Exhibit 001.
 86. The Project complies with the regional plan.

Conclusions of Law

Before issuing a permit, the District Commission must find that the Project is in conformance with any duly adopted local or regional plan or capital program. 10 V.S.A § 6086(a)(10).

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

Based on the preceding Findings, the Project complies with the municipal plan and the regional plan which are in effect and apply to the application review.

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 the findings and conclusions of this decision and the conditions of Land Use Permit 8B0634, 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 8B0634 is hereby issued.

Dated in Rutland, Vermont this 13th day of May 2021.

By /s/Richard Kobik
Richard Kobik, Acting Chair
District 8 Commission

Members participating in this decision: Don Miller and Leslie Keefe

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.