



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Land Use Review Board
District 3 Environmental Commission
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Woodstock Resort Corp.
9 Cross Street
Woodstock, VT 05091

CASE NUMBER:
3W0568-4

LAW/REGULATIONS INVOLVED:
10 V.S.A. §§ 6000 – 6111 (Act 250)

I. INTRODUCTION

Application 3W0568-4 from Woodstock Resort Corporation was received on August 28, 2025. The project is generally described as the demolition of a single family home at 14 South Street (the Beach House) and demolition of a duplex home with an attached garage at 16 South Street. (Hereinafter the Buildings.) The continual general upkeep of the Buildings has been tied to mitigation of a previous Act 250 permit (3W0568-3) to construct a spa, relocate and rehabilitate a barn (the Paul Barn), and demolish a house (the Paul House). This project proposes to remove the structures and foundations, interior sidewalks, asphalt top of driveway, fill in the site with soil, reseed lawn and landscape with screening trees and shrubs. (Hereinafter the "Project"). The Applicant's legal interest is ownership in fee simple described in a deed recorded on July 15, 1999, in Book 59, Pages 448-449, in the land records of Woodstock, Vermont.

The application was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated September 5, 2025. The application was resubmitted with the required supplemental information on September 25, 2025 and deemed complete on November 7, 2025.

The Commission held a hearing on this application on December 16, 2025. The Commission also conducted a site visit on December 16, 2025. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on March 21, 2026 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 this application is barred by Act 250 Rule 34(E) and does not comply with 10 V.S.A § 6086(a) (Act 250 criteria).

II. JURISDICTION

Jurisdiction attaches because the Project the Project is a material change to a permitted development 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).

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). Accordingly, official notice is hereby taken of the following documents, subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6:

1. 3W0568 permit series

IV. AMENDMENT APPLICATION – RULE 34(E)

The threshold question on an amendment application is “whether the Applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1).

The Applicant seeks to amend the following permit condition:

19. The permittee shall maintain for future use the buildings at 16 South Street and the Beach House. In addition to current maintenance work, the permittee shall: a. inspect, at least annually, the interior, including attics and basements, and exterior of the buildings, to identify any deterioration or damage to the structures; b. address and repair in a routinely timely and appropriate manner, any deterioration or damage identified during the routine inspections; c. submit future plans for demolition, relocation, or rehabilitation of either building to the Division and the Commission for review, comment, and approval; and d. submit a copy of the routine inspection report to the Division and the Commission by May 1st of each year, starting in 2010.

We deem this condition to be critical to the issuance 3W0569-3 in 2009, therefore, we must conduct the Rule 34(E) analysis, as set forth below.

Rule 34(E) requires the Commission to balance the need for flexibility against the need for finality, considering at least the following factors:

- a) Whether there have been changes in facts, law, or regulation beyond the permittee’s control.
- b) Whether there have been changes in technology, construction, or operations which necessitate the amendment.
- c) Other factors, including innovative or alternative design which provide a more efficient or effective means to mitigate the impact addressed by the permit condition.
- d) Other important policy considerations, including the proposed amendment’s furtherance of the goals and objectives of duly adopted municipal plans.

- e) Whether there was manifest error on the part of the District Commission, the Board, or the Superior Court, Environmental Division in issuance of the permit condition.
- f) The degree of reliance on prior permit conditions or material representations of the Applicant in prior proceeding(s) by any party, the District Commission, the Board, the Superior Court, Environmental Division; or any other person who has a particularized interest protected by 10 V.S.A. Ch. 151 that may be affected by the proposed amendment.
- g) Whether the Applicant is merely seeking to relitigate the permit condition or to undermine its purpose and intent.

As a preliminary matter, the Applicant argues that it is not seeking to amend this condition, as much as it is seeking to follow the condition's dictates. The Applicant argues: "In the 2009 Permit, the Commission made a deliberate choice to require ongoing maintenance and repair of the Buildings pending a later, substantive decision among three options: *demolition*, relocation, or rehabilitation. . . . Applicant cannot be said to be 'amending' this condition where it merely is seeking to implement one of its terms." (Emphasis added.)

The key question in Rule 34(E) is whether a condition was imposed in a previous permit to resolve an issue critical to the issuance of that permit. *Re: Stowe Club Highlands, #5L0822-12-EB*, Findings of Fact, Conclusions of Law and Order (June 20, 1995), *aff'd, In re Stowe Club Highlands*, 166 Vt. 33 (1996); see also, Act 250 Rule 34(E). In 3W0568-3, the issue was whether to issue a permit for the construction of a new spa building, among other things. At that time, the Vermont Division for Historic Preservation argued that the Buildings were not "unsound for active use, and [that] future rehabilitation costs are dependent on the proposed future use of the buildings." Exhibit 25a. The Commission decided the Buildings needed to be preserved and added this condition to protect them from neglect or demolition. Thus, preservation of the Buildings was critical to the issuance of 3W0569-3. Put another way, but for the preservation of the Buildings, 3W0568-3 would not have issued. The language requiring the Applicant to: "submit future plans for *demolition*, relocation, or rehabilitation" was meant to preserve a future Commission's right to review any such changes. That the Commission envisioned that demolition of the Buildings might be proposed as part of a later proposal does not change the critical nature of this condition when it came to issuing 3W0569-3.

The Commission will now address each factor in turn.

- a. Whether there have been changes in facts, law, or regulation beyond the permittee's control.

The Applicant makes three arguments relating to this factor. First the Applicant argues that current market forces constitute a change in facts that support flexibility in this case. We do not agree that a change in market forces is a change of facts that support flexibility. Market forces had little bearing on the 3W0568-3 Commission's decision. Market forces fluctuate, and if mere unforeseeable market factors were enough to outweigh the finality of permit conditions, then no critical permit condition would be safe.

Second, the Applicant argues that the Woodstock Zoning Regulations require that hotel/inn rooms be "accessible from a central point within the building." We note several flaws with this argument. First, it is not established that the Regulations changed since the 2009 permit issued. Second, it is not clear to us that this requirement forbids individual buildings from being a "hotel/inn," rather it seems to us that this provision is intended to distinguish these types of transient accommodations from motels, where each room is accessed from a separate outside entrance. We are unaware that the regulations changed, and, even if so, we do not think the

change means the houses must be removed to allow them to be used for additional rooms or some other useful function.

Third, the Applicant argues that it has conducted more extensive evaluations as to the cost of maintaining and improving the Buildings since 2009, and that those costs are now substantially higher than they were thought to be at that time. This argument is similar to the argument about market forces. It was foreseeable that the cost of maintaining and restoring these Buildings would increase over time. If this were the standard, then no critical permit condition would be safe. Moreover, as further described below, we find the Applicant's cost estimates to be extremely high. We acknowledge that the Inn maintains a high standard of quality in its buildings and grounds, but we conclude that more affordable options likely exist to make beneficial use of the Buildings. We also note that although we agree that the Applicant made the minimum repairs to the Buildings since 2009, there was nothing stopping the Applicant from making other repairs that would have paid off with savings now had it simply elected to do so. Again, this is not intended to be a criticism. It is rather an acknowledgement that the Applicant's own decisions since 2009 contributed to the increase in costs it may incur to rehabilitate the Buildings now.

Thus, we conclude that this factor weighs in favor of finality.

b. Whether there have been changes in technology, construction, or operations which necessitate the amendment.

As above, the Applicant argues that it was arguably not foreseeable that the Buildings would be so expensive to maintain and reuse given that they were unaware how extensive the damage was and that the costs to make repairs would have increased over time, and we do not agree. The Applicant makes an additional argument that because the Buildings are in a high-risk flood zone the necessary repairs will be more stringent, and thus more expensive. We do not see how this constitutes a change warranting flexibility where the extent of the need was knowable at the time and where it was foreseeable that costs and regulatory burdens would increase in a flood prone area.

Thus, we conclude that this factor weighs in favor of finality.

c. Other factors, including innovative or alternative design, which provide a more efficient or effective means to mitigate the impact addressed by the permit condition.

The Applicant argues that it worked with its consultant to evaluate "four alternatives for the Buildings, including continued mothballing, relocation, rehabilitation/adaptive reuse, and demolition with mitigation." The Applicant asserts that mothballing for 20 years failed because no viable use was found in that time and that relocation is not feasible. Thus, the Applicant's proposed solution is as follows: mitigate the loss of the Buildings by: documenting them with "Historic Resource Documentation Packages" to preserve a permanent archival record; conduct a survey of National Register eligibility documentation for approximately a dozen other Applicant-owned historic buildings over 50 years old outside the Village Historic District; conduct a formal update to the Woodstock Village National Register listing; and install an interpretive historic-marker text near the Inn to maintain public understanding of the Inn's historic context.

These proposals may be more efficient, but that is only because they would constitute the absolute minimum that would be required to preserve some memory of the historic nature of the Buildings. We do not agree that the minimum is a basis for doing the opposite of what the Commission ordered in 2009. We do not think that that Commission would have accepted mere documentation in return for the permit to construct the spa. Further, we do not accept the

Applicant's self-fulfilling prophecy regarding the 20 years of disuse. The mere passage of time is not a consideration in the Stowe Club analysis.

Thus, we conclude that this factor weighs in favor of finality.

d. Other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans.

The Applicant argues the Woodstock Town Plan supports demolition of the Buildings. The Town Plan includes support for its historic buildings while acknowledging that it cannot remain frozen in time. It is difficult to determine what to make of this in the context of this case. In the context of criteria 8 and 10, we look for sufficiently specific language in town plans, and when that is not present, we look to zoning bylaws. See, *Re: The Mirkwood Group #1R0780-EB*, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Env'tl. Bd. August 19, 1996) and *In re Frank A. Molgano Jr.* 163 Vt. 25 (1994). We think the same standard should apply here in the 34(E) analysis. The Town Plan and the Woodstock Zoning Regulations provide little guidance as to how we should settle the conflicting desires to preserve historic character while at the same time allowing growth.

Thus, we conclude that this factor weighs in favor of finality.

e. Whether there was manifest error on the part of the District Commission, the Board, or the Superior Court, Environmental Division in issuance of the permit condition.

There is no claim of manifest error. Rather, the Applicant argues that the Commission's determination that "routine maintenance," (namely: "exterior painting and washing, lawn mowing and landscaping, maintaining window shades, and exterior siding replacements") have proven misplaced simply because no use has been established since and because the condition of the Buildings is more dire than initially contemplated. As we explained above, we do not accept the Applicant's self-fulfilling prophecy argument because we do not think the mere passage of time is a factor in this analysis. We appreciate that the Applicant has fulfilled the minimum requirements of the 2009 permit, and we commend it for coming forward now. But we do not agree that the Commission envisioned that mere mothballing of the Buildings for demolition later was sufficient.

Thus, we conclude that this factor weighs in favor of finality.

f. The degree of reliance on prior permit conditions or material representations of the Applicant in prior proceeding(s) by any party, the District Commission, the Board, the Superior Court, Environmental Division; or any other person who has a particularized interest protected by 10 V.S.A. Ch. 151 that may be affected by the proposed amendment.

The Applicant argues that there has been only general reliance on the preservation of the Buildings as part of the historic district, but the evidence adduced at the hearing demonstrated otherwise. As discussed below, several neighbors requested and were granted party status primarily due to this reliance and their concerns that the removal of these buildings will further erode the basis for the historic district's existence. Also, at least one neighbor with party status, Robert Pear, testified about his concern that removing the building will exasperate noise impacts of weddings and events at the Inn because the Buildings serve as a noise barrier.

Thus, we conclude that this factor weighs in favor of finality.

g. Whether the Applicant is merely seeking to relitigate the permit condition or to undermine its purpose and intent.

As we said above, we appreciate that the Applicant has fulfilled the minimum requirements of the 2009 permit, and we commend it for coming forward now. Thus, we do not consider this application to be a bad faith attempt to undermine the purpose or intent of the condition. We view it as an attempt to test our continued commitment to the preservation of these buildings. We are not persuaded that the changes and arguments the Applicant raises are sufficient to outweigh the fundamental terms of the deal the Commission struck in 2009, which was to allow for the construction of the spa building with the promise to maintain the Buildings. We will not undo that deal at this time.

Before turning away from the Applicant's 34(E) arguments, we note that the Division of Historic Preservation filed its comments on December 16, 2025, the day of the hearing and after the Applicant filed its legal memorandum regarding Rule 34(E), thus, the Applicant did not argue (though perhaps it could have done so either at the hearing or in the recess period) that the Division's change of mind since 2009 constitutes a change of fact.¹ We give deference to the Division's determinations as to whether a site is historic, but not to legal determinations about the applicability of District Commission decisions.

Thus, we conclude that this factor weighs in favor of finality.

Considering all the factors, the Commission finds that finality outweighs flexibility, and this amendment application is barred by Rule 34(E).

Although our decision that the Applicant failed to overcome the Rule 34(E) test means the application must be denied, we will render a decision on the merits in the interest of economy of time and effort.

V. 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:

- A. The Applicant Woodstock Resort Corp, by Benjamin Pauly and its representatives David Cooper Esq.; Courtney Damato, Esq.; Scott Newman; John Higgins, PE, Steve Smith, AIA.
- B. The Agency of Natural Resources, through an Entry of Appearance dated December 15, 2026, by Kathleen Taft, Regulatory Policy Analyst.
- C. The Division for Historic Preservation, through an Entry of Appearance dated December 15, 2025, by Laura Trieschmann, State Historic Preservation Officer.

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

¹ We considered this possibility in part because we seek to acknowledge and give weight to the Division's comments. We conclude that the Division's comments are premised on accepting many of the arguments we rejected here.

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:

- A. Jeffrey Kahn (25 South St., Woodstock), requested and was preliminarily granted party status under criterion 8 relating to both aesthetics and historic sites.
- B. Robert Pear (23 High St., Woodstock), requested and was preliminarily granted party status under (all requested) 1 (noise) 5A, 5B, 8 relating to both aesthetics and historic sites.
- C. Wade Treadway (1773 Randall Rd., Woodstock), requested and was denied party status under criteria 8 and 9A.
- D. Phillip Neuberg (4 Church St., Woodstock), requested and was preliminarily granted party status under criterion 8 relating to historic sites
- E. Wendy Wright Marrinan (39 Mountain Ave., Woodstock), requested and was preliminarily granted party status under criterion 8 relating to both aesthetics and historic sites.
- F. Elisa Tarlow (3 Church St, Woodstock), requested and was preliminarily granted party status under criteria 1 (noise) and 8 relating to both aesthetics and historic sites
- G. Wendy Spector (16 The Green, Woodstock), requested and was preliminarily granted party status under criterion 8 relating to both aesthetics and historic sites.
- H. The Norman Williams Public Library (10 The Green, Woodstock) through its representative Michael Ricci, requested and was preliminarily granted party status under (all requested) 1 (noise) 5A, 5B, 8 relating to both aesthetics and historic sites.

ii. Final Party Status Determinations

Citing primarily *Founder's Hall Act 250 Appeal*, No 133-12-19 Vtec, Entry Regarding Motion (Vt. Super. Ct. Env'tl. Div., Feb 6, 202, *aff'd In re Founder's Hall Act 250 Sara Dillon*, No. 20-068, Opinion, 2000 Vt. Unpub. Lexis 107 (Oct. 9, 2020 (unpub. Mem.)), the Applicant argues that Robert Pear, Phillip Neuberg, Wendy Wright-Marrinan, Elisa Tarlow, and the Norman Williams Public Library should not be granted party status with respect to historic preservation and aesthetics because they do not live near enough to the project site to have a "particularized interest." In *Founder's Hall*, which was about changes to a building on the St. Michaels College campus, the appellant, Sara Dillon: "recognize[d] that she does not currently reside or work near St. Michael's College and alleges that her interest stems from her status as an alumni and familial connection to the College." Thus, in that case, there was no dispute that she lived far away. Her interest in the project was thus more akin to that of a member of the general public. We do not agree the same can be said for these parties. First, we note that we denied party status to Wade Treadway for this reason. Mr. Treadway did not renew his request, and we reaffirm that denial here. As to the others, they each live near or even adjacent to the Woodstock Inn tract. Direct, line-of-sight, view from one's own property is not the test. Each of these parties owns nearby properties in the core historic area surrounding the Woodstock Inn. They have an interest in maintaining the historic nature of the area, both as a matter of personal enjoyment but also because they have a pecuniary interest in maintaining it. At some point, the reduction to the number of historic buildings in this immediate area would have an adverse impact on their enjoyment and the value they derive from their land. This is an interest that is particular to each of them.

The Applicant also objects to conferring final party status on Robert Pear for traffic under Criterion 5 and aesthetics under Criterion 8, again arguing that his house is too far away. The Applicant maintains that Mr. Pear's house is too far to feel the impacts of demolition traffic and potential noise. We disagree and conclude that Mr. Pear's house and property are certainly close enough to be impacted by the demolition traffic and noise. With respect to traffic, High Street, where Mr. Pear's house is located, is reached via the intersection of South Street and Cross Street from most points South, West, and, due to the traffic patterns around the green, north. He is close enough that he will hear the sound of the demolition, including the back-up alarms of machinery, even if it is for a brief time. His is also close enough that dust or debris may settle on his land.² As with the other parties who live nearby and were granted preliminary party status relating to aesthetics under Criterion 8 (namely Jeffrey Kuhn, Phillip Newburg, Wendy Wright Marrinan, Elisa Tarlow, Wendy Spector, and the Norman Williams Library), Mr. Pear demonstrated the removal of the Buildings would remove a visual and noise barrier for sound coming from events at the Inn that currently are screened by the presence of the Buildings.

Accordingly, we find no reason to change our preliminary determinations.

C. Friends of the Commission

The District Commission allowed the following nonparty to participate as a Friend of the Commission pursuant to 10 V.S.A § 6085(c)(5):

- A. Jenna Lepachinski of Preservation Trust of Vermont under criteria 8 relating to aesthetics and historic sites.

Preservation Trust of Vermont was offered an opportunity to attempt to convert its status to party status during the hearing recess period. It did not do so. The Applicant does not object to the Trust retaining Friend of the Commission status.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As stated above, although our decision that this application is barred by Rule 34(E) means the application must be denied, we will render a decision on the merits in the event that decision is reversed on appeal.

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

- | | |
|--|---------------------------------------|
| 1(A) - Headwaters | 9(A) - Impact of Growth |
| 1(C) - Water Conservation | 9(B) - Primary Agricultural Soils |
| 1(D) - Flood Hazard areas; River Corridors | 9(C) - Productive Forest Soils |
| 1(E) - Streams | 9(D) - Earth Resources |
| 1(F) - Shorelines | 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(B) - Transportation Demand Management | 9(J) - Public Utility Services |
| 6 - Educational Services | 9(K) - Effects on Public Investments |
| 7 - Municipal Services | 9(L) - Settlement Patterns |
| 8 - Natural Areas | 10 - Local and Regional Plans |
| 8(A) - Wildlife Habitat & Endangered Species | |

² Mr. Pear further testified that because storm drains near the site flow into the Kedron Brook just upstream from his house.

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

The findings of fact are based on the application, Exhibits 001 – 048, 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 criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety, or general welfare. The burden of proof under criteria 1 through 4 and 9 and 10 is on the applicant, and 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 building at 14 South Street is known as the Beach House. It is a single family residence. The building at 16 South Street is a duplex home with an attached garage. All three dwelling units are unoccupied. The garage at 16 South Street is used for cold storage. (Collectively “the Buildings.”) Exhibit 1.
2. Since 2009, the continual general upkeep of the homes has been tied to mitigation of a previous Act 250 permit to construct a spa, relocate and rehabilitate the Paul Barn, and demolish the Paul House. This project proposes to remove the Buildings and their foundations, interior sidewalks, asphalt top of driveway; fill in the site with soil; and reseed the lawn as well as to landscape with screening trees and shrubs. (the “Project”). Exhibit 1.

Criterion 1 - Air Pollution and Water Pollution:

Findings of Fact

3. Construction in this case will consist almost entirely of demolition and will take only a few days. Testimony.
4. Dust and debris could potentially enter the storm drains that flow into Kedron Brook. Testimony.
5. The Applicant proposes that there will be no noise generation before 9:00 a.m. and no work that will require public road usage during school pickup and drop off between 7:30 and 8am and 2:30 and 3pm. Exhibit 1.

Conclusions of Law

The Commission concludes that this Project will not result in undue air pollution. Some noise dust is to be expected, but we conclude that they would be short-lived and that the Applicant and its contractors would do a responsible job to limit both noise and airborne dust. If we were to issue a permit, we would limit the overall construction hours as proposed to 7:00 am to 5:00 pm Monday through Saturday with no noise generation before 9:00 a.m. and no work that will require public road usage during school pickup and drop off between 7:30 and 8am and 2:30 and 3pm.

It is possible that demolition dust and debris could enter the storm drains that flow into Kedron Brook. We think the amount of such dust and debris would be de minimis. The Commission concludes that the Project will not result in undue water pollution.

Criterion 1(B) - Waste Disposal:

Findings of Fact

6. Waste generated by the Project will include the materials resulting from the demolition of the Buildings. Exhibit 1 and Testimony.
7. The Applicant and its contractors and consultants who testified at the hearing that they would contract with a demolition company that would be prepared to handle any and all demolition waste and truck it to an appropriate facility. Testimony.
8. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Exhibit 1.

Conclusions of Law

We would condition a permit to require the Applicant to use qualified demolition companies and waste haulers, including proper handling and disposal of lead and asbestos, as it promised to do.

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

Criterion 4 - Soil Erosion:

Findings of Fact

9. The Project will not affect the capacity of soil on the Project site to hold water. Exhibit 1.
10. The Project does not have coverage under the Construction General Permit. Exhibit 1.

Conclusions of Law

The Commission concludes that the construction of the Project would 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. If we were to issue a permit we would require the applicant to use erosion prevention and sediment control measures contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control, Vermont ANR, June 2025 to control stormwater runoff.

The Project complies with Criterion 4.

Criterion 5 - Transportation:

Findings of Fact

11. The Project is located across the street from the Woodstock Elementary School, and there was much testimony about the amount a traffic during the times of day when students are dropped-off and picked up. Testimony.

12. The Applicant proposes that there will be no work that will requires public road usage during school pickup and drop off between 7:30 and 8am and 2:30 and 3pm. The Applicant promised to limit demolition activities in such a way as to minimize impacts during these high traffic periods. Exhibit 1 and Testimony.

Conclusions of Law

If we were to grant a permit for this Project it would include a condition that prohibited public road usage during school pickup and drop off between 7:30 and 8am and 2:30 and 3pm as proposed by the Applicant.

The Project complies with Criterion 5.

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

Findings of Fact: Aesthetics, Scenic or Natural Beauty

13. The present site is a corner of the larger Woodstock Inn parcel along South Street and Cross Street that contains the Buildings, which appear as two houses near the sidewalk and located behind the inn. The site includes several mature trees that would be retained. Exhibit 17.
14. The Buildings provide visual screening as well as screening of noise from activities, such as weddings, that take place in an open space between them and other Inn buildings, such as the main hotel building and the spa. Testimony.
15. The Buildings are contributing structures to the Woodstock Village Historic District. Exhibit 12 and Testimony.
16. Robert Pear, Phillip Newburg, Wendy Wright Marrinan, Elisa Tarlow, and Michael Ricci all testified as to the importance of maintaining these Buildings specifically and the integrity of the Village Historic District in general. Testimony.

Findings of Fact: Historic Sites

17. The following is taken from Exhibit 12, which is a letter from the Applicant's Historic Preservation Consultant to the Division of Historic Preservation:

14. South Street, HD #348, Contributing

From the National Register: "The two-story, Queen Anne-style house constructed ca. 1905 has a slate-shingled, pyramidal roof with a molded cornice; clapboard walls with corner boards; and a brick foundation. The roof has a brick ridge chimney and two small gable dormers with diamond-paned glass on the west slope. A two-story bay window with a polygonal roof is centered on the north elevation. The entrance is in the north bay of the two-bay facade (west) elevation under a one-story veranda with a standing-seam metal hip roof that has a shallow gable pediment over the entrance; bracketed, chamfered posts; and a wood railing. The windows are one-over-one, vinyl replacement sash and large square picture windows with molded wood surrounds.

The house was built ca. 1905, possibly for Albert L. Powers, a pharmacist at the Woodstock Pharmacy. Powers and his wife Josephine resided at this address from at least 1913 to 1929. Nancy Renton, a high school teacher, rented the house in 1940 and lived there with her parents.”

16 South Street HD #351, Contributing

From the National Register “The one-and-one-half-story, Greek Revival-style house constructed ca. 1840 has a slate-shingled, front gable roof with a molded cornice and deep returns; clapboard walls with paneled corner pilasters; and a brick foundation. The roof has a central brick ridge chimney and an offset shed dormer on the north slope. The entrance is offset in the four-bay facade (west) elevation under a one-story, shed-roof veranda with bracketed, chamfered posts and a wood railing. The windows are six-over-six and two-over-two, double hung wood sash with molded wood surrounds. A two-story rear (east) wing has standing-seam metal on the roof’s south slope; a two-story, shed-roof veranda with turned and square wood posts across the south elevation; and a one-story, converted garage addition on the east elevation.

The former garage has a pressed metal roof and two sliding glass doors in the south elevation. The house appears to have been built ca. 1840 and appears on the 1855 Presdee & Edwards map. In 1869, the property belonged to a Mrs. Bishop. In 1916, Nathan Cushing, in the maple sugar business, resided at this address. By 1924, Cushing and his wife also rented rooms to Edward J. Paul, an employee at the Vermont Standard. Cushing’s widow Georgianna and Mr. Paul still lived at the house in 1929. In 1940, Armand Martin, a carpenter, and his wife Ada owned and lived at the house and rented part of it to Robert J. Leonard, a plumber, and his family.”

18. The Buildings are located in, and contribute to, the Woodstock Village Historic District. Exhibit 12 and Testimony.
19. The Buildings are located across South Street from Woodstock Elementary and, although they are much smaller and lower than the main inn building located directly to the north, they are prominent features in their neighborhood. Testimony.
20. The Applicant’s architect estimated the renovations costs for the two Buildings to be over \$6 million dollars. Exhibit 11 and Testimony,

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, noise, and historic sites.

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 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*, at 10-11 (citing *Re: Susan Dollenmaier*, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt. Env'tl. Bd. Feb. 7, 2005); see also *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 a 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* at 18 (cited in *Rinkers*, at 12-13).

The Project is in an area at the edge of the main block that contains the inn and near the elementary school and residences. The Buildings are a prominent part of the streetscape on the corner of South and Cross Streets. The Buildings also provide a measure of screening of events occurring elsewhere on the inn property.

This Project 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) 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*, at 15 (citing *In re: Times & Seasons*, at ¶ 8; *In re McShinsky*, 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. Env'tl. 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*, #2W0694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. 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. Env'tl. Bd. Dec. 8, 2000). The Commission has reviewed relevant portions of the Town Plan. No one identified a clear standard and, as noted in our discussion of Rule 34(E) above and Criterion 10 below, we did not identify one in our own review.

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*, at 11-12; *Horizon Development Corp., #4C0841-EB*, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992).

From a purely aesthetic standpoint, the removal of the Buildings and the visual and auditory screening they provide would not be offensive or shocking. The remaining trees and landscaping would provide a modicum of screening, and, if we were to grant a permit, we would require additional plantings to further mitigate the loss of the screening provided by the Buildings.

Given all of these considerations and conditions, we find that the Project is not offensive or shocking.

(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*, at ¶ 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*, at 19). 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 has maintained the large trees as screening. If we were to grant a permit, we would require additional plantings.

Given all of these considerations (and with the caveat that we would have conditioned a permit to require additional screening) we find that the Applicant has taken the 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 above, 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:

1. Whether the Project site is or contains a historic site;
2. Whether the proposed Project will have an adverse effect on the historic site; and
3. 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*, 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. Env'tl. 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. Env'tl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).*

There is no dispute that the Buildings are listed historic sites.

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 fit 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, #9A0177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env'tl. 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. Env'tl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).*

The Buildings would be demolished, and the Applicant proposes to mitigate the loss of the Buildings by taking the following steps: documenting the Buildings with “Historic Resource Documentation Packages” to preserve a permanent archival record; conducting a survey of National Register eligibility documentation for approximately a dozen other Applicant-owned historic buildings over 50 years old outside the Village Historic District; conducting a formal

update to the Woodstock Village National Register listing; and installing an interpretive historic-marker text near the inn to maintain public understanding of the inn's historic context. No one denies that this constitutes an adverse impact. Accordingly, we must determine if the adverse impact would be undue.

3. Whether the adverse effect will be undue.

An adverse effect is undue if any of the following factors exists:

- i) the applicant has failed to take generally available mitigating steps which a reasonable person would take to preserve the character of the historic site;
- ii) the proposed project will interfere with the ability of the public to interpret or appreciate the historic qualities of the site;
- iii) the cumulative effects on historic qualities of the site by the various components of a proposed project, when taken together, are so significant that they create an unacceptable impact;
- iv) the project violates a clear, written community standard which is intended to preserve the historic qualities of the site.

Middlebury College, at 10. We will analyze the factors in order:

- i) The applicant has failed to take generally available mitigating steps which a reasonable person would take to preserve the character of the historic site.

Here, as we stated above in the 34(E) analysis above, we conclude that the Applicant met the minimum terms of the 3W0568-3 permit by maintaining the Buildings since 2009 in the current "mothball" state, but we note that by doing so the Applicant is partially responsible for the high costs it faces now to renovate the Buildings. Moreover, we conclude that the Applicant's cost estimates are extremely high, and that they do not reflect the array of possible options to find a productive use of the Buildings, even in today's inflated construction market. We do not agree that the current proposal to remove them and merely document them in some archives and place a historic marker is the only step that a reasonable person would take to preserve the character of the site. We acknowledge that the Division for Historic Preservation endorsed this proposal (exhibit 29), though not without noting that: "Rehabilitation would be the ideal outcome for both buildings." Of course, "ideal outcome" is not the standard for this analysis, but it bears mentioning because the generally available mitigating step to preserve the character falls somewhere between that ideal and erasure. We think these historic buildings can be incorporated into a useful plan.

- ii) The proposed project will interfere with the ability of the public to interpret or appreciate the historic qualities of the site.

The Project will undoubtedly interfere with the ability of the public to interpret or appreciate the historic qualities of the site. Even if a sign is installed, it would fall far short of the status quo.

- iii) The cumulative effects on historic qualities of the site by the various components of a proposed project, when taken together, are so significant that they create an unacceptable impact.

This application is intrinsically tied to 3W0568-3 in that that permit included a condition about the preservation of these buildings. That Commission, like us, was concerned about cumulative impacts. We conclude that the piecemeal dismantling of the historical structures on the Project

Tract creates an unacceptable impact on this historic site and the overall tract and historic area in general.

iv) The project violates a clear, written community standard which is intended to preserve the historic qualities of the site.

As stated above, we are not aware of a clear, written community standard.

Taken together, we conclude that the project would have an undue adverse impact with respect to these Buildings, the Inn tract, and the Woodstock Village Historic District.

The Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area and aesthetics, but that it would have an undue adverse impact on historic sites.

VII. SUMMARY CONCLUSION OF LAW

In addition to our decision that the project does not pass muster under Act 250 Rule 34(E), we also conclude that the Project does not comply with Criterion 8 with respect to historic sites. 10 V.S.A § 6086(a).

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 3W0568-4 is hereby denied.

Dated this March, 23, 2026.

By /s/ Cheryl Harvey
Cheryl Harvey, Chair
District 3 Commission

Commissioners participating in this decision:

Roderick Maclay
Suzanne Butterfield

Any party, or person denied party status, may file within 15 days from the date of a decision of the District Commission one and only one motion to alter with respect to the decision, pursuant to Act 250 Rule 31(A). Under Rule 31(A), no party, or person denied party status, may file a motion to alter a District Commission decision concerning or resulting from a motion to alter. Per Rule 31(A)(3), the running of the time for filing a notice of appeal is terminated as to all parties by a timely motion to alter.

Any person aggrieved by an act or decision of a District Commission or District Coordinator, or any party by right, may appeal to the Environmental Division of Vermont Superior Court within 30 days of the act or decision pursuant to 10 V.S.A. § 8504. Such appeals are governed by Rule 5 of the Vermont Rules for Environmental Court Proceedings. The appellant must file a notice of appeal with the clerk of the court and pay any fee required under 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Land Use Review Board and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. The Land Use Review Board's copy may be sent to act250.legal@vermont.gov and/or 10 Baldwin Street, Montpelier, VT 05633-3201.

Note, there are certain limitations on the right to appeal, including on interlocutory appeals. See, e.g., 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. There shall be no appeal from a District Commission decision when the Commission has issued a permit and no hearing was requested or held, or no motion to alter was filed following the issuance of an administrative amendment. 10 V.S.A. § 8504(k)(1). If a District Commission issues a partial decision under 10 V.S.A. § 6086(b), any appeal of that decision must be taken with 30 days of the date of that decision. 10 V.S.A. § 8504(k)(3). 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.

The foregoing statements regarding motions to alter and appeals are intended for informational purposes only. They neither supplant nor augment any rights or obligations provided for by law nor do they constitute a complete statement of the rights or obligations of any person or party.

CERTIFICATE OF SERVICE

I hereby certify that I, Gina St. Sauveur, Land Use Review Board Technician, District 3 Environmental Commission, sent a copy of the foregoing **Findings of Fact and Conclusions of Law and Order 3W0568-4** by U.S. Mail, postage prepaid, on this March 23, 2026 to the following individuals without email addresses and by electronic mail, to the following individuals with email addresses:

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.

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