

VERMONT SUPERIOR COURT  
Environmental Division  
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Docket No. 22-ENV-00039

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Frost Final Plat Approval

**Decision on the Merits**

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Robert and Anne Frost (Applicants) seek final plat approval of a 4-lot subdivision to create two new lots in Hinesburg. The 4-lot subdivision would result from two properties in the Agricultural Zoning District owned by the Applicants—a 27.39-acre lot Applicants purchased from the O’Neil subdivision and the 89.6-acre property where Applicants reside.

The Town of Hinesburg Developmental Review Board (DRB) issued its Findings of Fact, Conclusions of Law and Order and Applicants’ final plat approval on April 4, 2022. The approval was subject to conditions based on issues raised by neighbors during the public hearing. One of those neighbors, Mr. Robert D. Hedden (Appellant), appealed the final plat approval on April 11, 2022. Mr. Hedden’s appeal is now before the Court.

Mr. Hedden is self-represented in this appeal. Applicants are represented by Liam L. Murphy. Kendall M. Frost and Brendan Keenan entered an appearance as interested parties and are self-represented.

The Court conducted a one-day remote trial on November 16, 2022, using the WebEx platform.

### **Statement of Questions**

As the Appellant, Mr. Hedden sets the parameters for the legal issues we must address in this appeal. V.R.E.C.P. 5(f) (requiring that only legal questions presented by an appellant in a statement of questions may be raised in an appeal). Mr. Hedden filed his original Statement of Questions on April 21, 2022, an Amended Statement of Questions on April 25, 2022, and then a final Amended Statement of Questions on November 10, 2022. The Court addressed the

amendments and adopted the final questions on the record during the Pretrial Conference on October 31, 2022 and during the Merit’s Hearing on November 16, 2022. Three Questions remain for trial:

2. Whether the Proposed Lots intrude [on] the designated Core and Block Wildlife Habitat designated by Hinesburg Town Map 14 “Wildlife Habitat Town of Hinesburg,” Wetlands or Wildlife Corridor as defined in [the Hinesburg Subdivision Regulations (HSR), (effective July 12, 2018)] Article 9.

3. Whether the Proposed Lots meet the standards, based on goals and objectives identified in the Hinesburg Town Plan 2021<sup>1</sup> (HTP), of the Planning Standards for Suitability for Development and Natural Features Protection per HSR 5.1.1 and 5.1.2.

4. Whether the Proposed Lots are consistent with the HTP “Top Priority Actions”: “Direct development to minimize impacts on natural systems in Chapter 5, with emphasis on wildlife habitat and connectivity,” HTP Action 3.4.5, 3.4.6, 5.11.3, 5.11.4.<sup>2</sup>

See Statement of Questions (filed Apr. 21, 2022); see Statement of Questions – Amendment (filed Apr. 25, 2022); see Statement of Questions – Amendment (filed Nov. 10, 2022); see Pre-Trial Hr’g at 3:00 (Oct. 31, 2022); see Merit’s Hr’g at 1:03–19 (Nov. 16, 2022).

#### **Findings of Fact**

1. Robert and Anne Frost (Applicants) own and reside at 236 Boutin Road, an 89.6-acre lot.
2. In 2018, Applicants purchased 588 O’Neil Road. This property is at 236 Boutin Road and is 27.39 acres.
3. Both 236 Boutin Road and 588 O’Neil Road are in the Agricultural Zoning District.

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<sup>1</sup> Appellant filed an amendment to Question 3, changing the cited Town Plan from the 2017 Hinesburg Town Plan to the 2021 Hinesburg Town Plan. The parties stipulated to the use of the 2021 Town Plan during the Merits hearing.

<sup>2</sup> After the parties agreed to use the 2021 Town Plan, the Court discussed the necessary changes to the Question 4 so that the Question reflected the new identified priorities and language in the 2021 Town Plan. The Court adopted those changes on the record.

4. Robert Hedden (Appellant) lives at 526 O'Neil Road. Appellant accesses his property using Boutin Road South.
5. The subdivision application before the Court is a four-lot subdivision of 588 O'Neil Road (Project).
6. Proposed Lot #1 is 1.13 acres and includes an existing residence.
7. Proposed Lot #6 is 4.94 acres, is currently undeveloped, and would be utilized for a new residence.<sup>3</sup>
8. Proposed Lot #7 is 2.32 acres, is currently undeveloped, and would be utilized for a new residence.
9. Both Lots #6 and #7 contain areas of steep slope (25% grade or steeper). These steep slopes are situated in the southern area of the lot # 7, and across the center of lot # 6. Compare Applicant Ex. 5 with Applicant Ex. 7.
10. The remainder of the Project, approximately 19.01 acres, would be added to the Applicant's property at 236 Boutin Road.
11. Lots #6 and #7 will be accessed by a shared right-of-way across Lot #7 to the class four section of Boutin Road (Boutin Road South).
12. Access to Lots #6 and #7 from O'Neil Road was considered. Applicants and/or their design team determined that the steep slopes existing on each lot could not be avoided, and therefore, access from Boutin Road South was more appropriate.
13. Lots #6 and #7 contain some steep slopes within them. The building envelopes for Lots #6 and 7 are located toward the northern side of each lot, just upslope from the steep pitches of each lot.
14. Boutin Road South will be improved as follows:
  - a. Widened to 18 feet to allow two-way traffic.
  - b. In areas where the slope of the road is steep, and at times greater than 20% slope, the road will be regraded to a maximum slope of 15%.
  - c. Additional base material will be added to the road.
  - d. Stormwater improvements to the road will include capturing water, slowing release of water, and decreasing wash outs.
  - e. A turn-around radius will be added just north of the Hedden driveway to allow vehicles to turn around.

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<sup>3</sup> The reference to Lots # 6 and 7 are used to avoid confusion with pre-existing lot numbering of adjoining lands.

15. The Project will not result in any increase or change in use of the northern portion of Boutin Road.
16. The Project is located north of O'Neil Road. The Project contains part of a 40-acre Habitat Block.
17. The Habitat Block has been assigned a value of 1, so it is of relatively low value. This block is relatively isolated and surrounded by roads, houses, and open farmland. It is likely home to or visited by wildlife such as groundhogs, cottontail rabbits, white-tailed deer, red fox, weasels, a variety of squirrels and chipmunks, moles, voles, mice, and birds. Amphibians may be present along the wetter northern border of the forest and adjacent wet areas. It is unlikely to be utilized by predators such as bobcat or fisher on any more than an occasional basis (there is no evidence of their use of this block), and if used, only briefly.
18. There is a 2.5-acre area of core wildlife habitat in this Habitat Block. Similarly, the core wildlife habitat is characterized as a low priority. This core wildlife habitat is located within the 19.01 acres that will be merged into Applicants' residential property. The ANR Atlas lists the percentage of the HB as consisting of 0% core. The core habitat in this HB is so small wildlife species that require or thrive in core wildlife habitat receive no to little benefit from its presence.
19. Lots #6 and #7 will not intrude into this core wildlife habitat. The building envelopes for the house sites are located between the core wildlife habitat and the steep slopes (>25% grade) of each lot.
20. Wastewater systems for Lots #1, #6 and #7 are designed to be installed in the southern section of Lot #6 just south of the steep slope area.
21. A small wetland is located along the northeastern forest edge and wetland habitat exists in the field immediately north of the woodlot. Applicants' Ex. 9, at 1. A very small Class III wetland is located in the space between O'Neil Road and the property boundary and extends into the Property less than 25-feet. The Project and its access road avoids these areas, though the leach field comes within 25–50 feet of the small wetland on the southern border.
22. Primary Resources on Project lands include steep slopes (>25%) and the small wetland described in ¶ 21.
23. Secondary Resources include slopes that have a steepness of 15 to 25% and core wildlife habitat.
24. The rest of the wildlife habitat block in the Project area is not classified as either a Primary or a Secondary resource.

## Conclusions of Law

### I. Question 2: The Proposed Lots Avoid and Minimize Impacts on Defined Habitat:

The Court addresses whether the Proposed Lots intrude on the core wildlife habitat, wildlife habitat blocks, or wildlife corridors as designated by Hinesburg Town Map 14 “Wildlife Habitat Town of Hinesburg” and defined in the HSR Article 9, or on wetlands as defined in HSR Article 9.

Hinesburg Town Map 14 depicts Wildlife Habitat Blocks in Brown, Core Wildlife Habitat Blocks in Green, and Wildlife Corridor/Linkage habitat in purple. Surface water is depicted with blue, and different classifications of roadways are each assigned a color. Wetlands are not shown on Hinesburg Town Map 14. Parcel boundaries are delineated. The map notes in a disclaimer that:

The accuracy of information presented is determined by its sources. Errors and omissions may exist. Questions of on-the-ground location can be resolved by site inspections and/or surveys by a registered surveyor. This map is not sufficient for delineation of features on-the-ground. This map identifies the presence of features, and may indicate relationships between features, but is not a replacement for surveyed information or engineering studies.

Hinesburg Town Map 14 (Applicants’ Ex. 2). As such, the Map provides the town and its residents useful information, but that information can be overcome by facts on the ground with more site-specific surveys and engineering studies.

The import of the delineations established on Hinesburg Town Map 14 is provided by the HSR, which also defines core wildlife habitat, wetlands, and wildlife corridor and regulates activities in these areas. HSR Art. 9; HSR § 6.12. Article 9 of the HSR defines “Core Wildlife Habitat” as

Significant forest and wetland areas that are removed from roads, house sites, and other similarly developed areas as shown on map 14 of the Town Plan. Specifically, a subset of the overall habitat blocks delineated by the VT Fish and Wildlife Department in their 2011 “Habitat Block and Connectivity Analysis” dataset:

1. Habitat blocks of 700 acres or more – these blocks comprise the largest and most contiguous habitat areas.
2. Interior portions of smaller habitat blocks that are at least 100 meters from the edge of the habitat block (typically the edge of human disturbance).

Note – The extent of this core wildlife habitat shall be as described above and as conditions on the ground existed as of 9/9/2013 (date of Town Plan adoption with Map 14), such that incremental reductions in habitat blocks do not result in currently mapped habitat blocks losing the core designation - e.g., a large block becoming less than 700 acres, or the reduction interior area of a smaller block due to edge encroachment.

HSR, Art. 9 (“Core Wildlife Habitat”).

While the HSR does not define “wildlife habitat block,” the Court can discern how they are designated based on the definition of “core wildlife habitat.” Specifically, in the definition of “core wildlife habitat,” the HSR notes that Map 14 uses “overall habitat blocks delineated by the VT Fish and Wildlife Department,” and distinguishes the core wildlife habitat from those blocks as those blocks larger than 700-acres, or the “interior portions of smaller blocks that are at least 100 meters from the edge of the habitat block . . . .” HSR Art. 9. As such, the Court finds that “wildlife habitat blocks” are all these blocks, including the exterior on those blocks smaller than 700-acres. In other words, all “core wildlife habitat” are “wildlife habitat blocks,” but not all “wildlife habitat blocks” are “core wildlife habitat.”

Wildlife Corridors are defined in the HSR as

Stream/riparian, wetland, or forested areas that provide connections between patches of significant wildlife habitat types listed in sections 4.7 and 4.8 of the Town Plan – see map 14 from the Town Plan. Stream/riparian and wetland wildlife corridors are easily identified while upland forest corridors can range from highly constrained to more diffuse.

HSR, Art. 9 (“Wildlife Corridor”). The definition goes on to note that the effectiveness of each corridor varies depending on wildlife species and habitat type in question. Id.

Finally, while wetlands are not demarcated on the Hinesburg Town Map 14, they are defined in the HSR the same as the State of Vermont wetland rules and regulations. HSR, Art. 9 (“Wetland”); cf. 10 V.S.A. § 902(5).

A wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands are delineated pursuant to protocols established by the Federal and State government, which focus on soil type, hydrology, and vegetation.

HSR, Art. 9. The State of Vermont wetland rules distinguish Class I, Class II, and Class III wetlands, and regulate each classification differently. See 10 V.S.A. § 902(6)–(8); Vermont Wetland Rules § 2(26)–(28)

Intrusions into these habitat designations is not prohibited by the HSR. The HSR allows building sites and related development areas (e.g., roads, driveways, lawns, etc.), so long as they “avoid primary resources and minimize impact on secondary resources.” HSR § 6.12.1(2). The Town distinguishes primary and secondary resource areas as follows:

[1] Primary resource areas are extremely sensitive or generally unbuildable areas, including: *wetlands* and associated buffers pursuant to State of Vermont wetland rules/regulations (see wetland definition); flood hazard areas (FEMA special flood hazard area and fluvial erosion hazard area); steep slopes of 25% or greater; surface waters and setback area; rare, threatened & endangered species locations and significant natural communities identified by VT Department of Fish and Wildlife. [2] Secondary resource areas include: moderately steep slopes between 15-25%, prime and statewide agricultural soils (including conditional classes), *core wildlife habitat*, *wildlife corridors*, deer wintering areas, important cultural features (e.g., historic structures, stone walls).

HSR § 6.12.1(1) (emphasis added). As such, wetlands are protected as primary resource areas, and core wildlife habitat and wildlife corridors are protected as secondary resource areas. Id. Wildlife habitat blocks that are not consider “core habitat” are not protected primary or secondary resource areas. Id. Limited impacts to primary resource areas may be allowed for

access (e.g., road or driveway), “if there are no alternate development plans and no other means of access.” HSR § 6.12.1(2). “In such cases, the access shall be designed to impact as little of the primary resource area as possible.” Id.

Here, Appellant offers that Applicant failed to meet their burden of showing that the Project minimizes impacts to core wildlife habitat and wildlife habitat blocks. While it is undisputed that the proposed lots intrude on a Wildlife Habitat Block, there is nothing in the HSR that prohibits, or even limits, such an intrusion. See HSR § 6.12.1(1)–(2). Further, the Proposed Lots do not directly intrude upon the core wildlife habitat either. See Applicants’ Ex. 6 (overlying the subdivision and Hinesburg Town Map 14); Applicants’ Ex. 9 at 2. “While the proposed housing, driveway(s), and infrastructure are not located within the small core habitat area,” however, the proposed subdivision would be close enough to cause “edge effects” that would encroach on the small, 2.5-acre core habitat currently within the habitat block. Applicants’ Ex. 9 at 2.

The Court concludes the project gave due consideration to minimizing impacts to core wildlife habitat (i.e., secondary resource areas) while avoiding >25% grade slopes and wetlands (i.e., primary resource areas). See HSR § 6.12.1(1). This particular Wildlife Habitat Block is about 40-acres with a 2.5-acre core block just to the north of the Project. Applicants’ plan pushes the housing sites as far south as feasible without intruding upon the slopes greater than 25% grade to minimize these indirect impacts to the small core wildlife block while avoiding the steep slopes. Merit’s Hr’g at 11:00; see Applicants Ex. 6. The location of the driveway was chosen because using the area immediately to the south of the proposed houses was not feasible due to the steepness of those slopes. Compare Applicants’ Ex. 6 with Applicants’ Ex. 7. While these driveways do pass through some slopes with >25% grade, such limited impacts to primary resource areas are allowed for access. HSR § 6.12.1(2). Here, the only place where the access road will run through >25% grade is on Boutin Road—where the road will be widened to 18-feet, regraded to 15%, and improved with stormwater mitigation. This was determined to be superior to locating a long driveway through the habitat block from the north, as that new, longer driveway would have had a greater impact upon any wildlife that may use the habitat

block. Applicants' Ex. 9 at 2–3. The Court concludes this siting appropriately minimizes impacts to core wildlife habitat while avoiding impacts to >25% slopes.

Regarding wetlands, the Court received no evidence or testimony from Appellant that the project intrudes into Wetlands. Rather, Appellant offers that Applicant failed to meet their burden of showing that the Project avoided Wetlands. The Court disagrees.

Applicant submitted a survey and site plans, each containing a legend that indicates that the survey/plans delineate wetland boundaries. See Applicants' Ex. 4; see also Applicants' Ex. 5; see also Applicants' Ex. 6. As shown on the survey and site plans, the only wetland in the Project is the small Class III wetland on the southern border, and while the septic system and leach field are to be installed near that area, they do not encroach on that demarcated boundary. Applicants' Ex. 4. Additionally, Arrowood Environmental identified a small wetland along the northeastern forest edge and wetland habitat in the field immediately north of the woodlot. The Project and its access avoids these areas. The Court concludes that the Project does not intrude on Wetlands.

Finally, Appellant offers that Applicant failed to meet their burden of showing that the Project minimized impact to wildlife corridors. As demarcated on Hinesburg Town Map 14/site plan overlay, the Plan shows that the Project does not intrude on any wildlife corridor. Applicants' Ex. 6. As noted above, however, the Map alone is not sufficient for the delineation of features on the ground. Applicants' expert provided on the ground testimony, however, that allowed the Court to conclude that wildlife do not use this block as a wildlife corridor. Merits Hr'g at 11:18.

The Court concludes that the Proposed Lots do not intrude on the core wildlife habitat, wetlands, or wildlife corridors as designated by Hinesburg Town Map and defined in the HSR Article 9, in a manner that violates the associated considerations in the HSR.

## II. Question 3: The Proposed Lots Meet Certain Town Planning Standards

Next, the Court address whether the Proposed Lots meet the Planning Standards for Suitability for Development and Natural Features Protection per HSR 5.1.1 and 5.1.2, as based on goals and objectives identified in the Hinesburg Town Plan 2021 (HTP).

The HSR requires subdivisions be evaluated in accordance with specific standards, as based on goals and objectives identified in the Town Plan. HSR § 5.1. Applicants may be required to provide additional information regarding how the project comports with these standards, and based on the findings, modification and/or phasing of the proposed subdivision or correction of any adverse impacts. *Id.* Applicant specifically asks the Court whether the proposed subdivision meets the suitability for development and the natural features standards.

*a. Suitability for Development Standards Pursuant HSR 5.1.1*

The Town requires that certain suitability for development standards be met. Those standards require the Town to evaluate:

Whether the land for the proposed subdivision is suitable for subdivision or development or demonstrates no significant impediments to development due to flooding, improper drainage, steep slopes, rock formations, or other adverse earth formations or topography, utility easements or other features which will be harmful to the safety, health, and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas.

HSR § 5.1.1; see HTP, Ch. 5.6, 5.9. (“Control impacts from storm water runoff” and “Floodplain and Flood Resiliency”).

As discussed above, the Project is designed to avoid the steep slopes. Housing envelopes are located above the steep slopes, where the grades are 5–15% grade. Compare Applicants’ Ex. 4 (showing slope gradients) with Applicants’ Ex. 5 (showing minimal to no regrading necessary in housing envelopes). The only area where the project needs to pass through a steep slope (>25%) is on Boutin Road. The Plan incorporates improvement to make that access road suitable for sharing and development. Specifically, the improvements to Boutin Road South contemplate adding stormwater improvements which will include capturing water, slowing release of water, and decreasing wash outs, and widening the road for its shared use. No other evidence of possible development or drainage issues was presented. As such, the Court concludes that the Project meets the planning standards for suitability for development.

b. *Natural Features Pursuant HSR 5.1.2*

The Town also requires that specific natural features protection standards be met.

Those standards require the Town to evaluate:

Whether the proposal gives due regard to the preservation and protection of existing natural features including: significant trees, hedgerows and productive forests; agricultural lands; streams, rivers, lakeshores and other surface waters; floodplains and wetlands; groundwater resources; rock outcroppings, steep slopes and ridge lines; earth resources; wildlife habitat; significant natural areas, and other natural resources.

HSR § 5.1.2. The Town Plan contemplates the goals for these resources in Chapter 5 (“Natural Resources and Ecological Systems”).

As discussed in more detail in Part I above, Applicants’ plan gives due consideration to protecting these natural resources. See *supra*, part I (Question 2). The final plan accomplished the development while minimizing the impacts to these natural resource areas. At only 40-acres, the habitat block is considered small, and the access road is designed to minimize effects to the wildlife block while minimally passing through steeper slopes. The Applicants’ expert surveyed and opined that the quality of the habitat that would be affected was low-rated habitat, thus resulting in minimal possible impacts to wildlife. The surveys and plans do not show any surface waters that may be affected by the subdivision. While the project site does contain one small, Class III wetland, the project’s construction does not encroach on any wetlands. The Court concludes that the proposed lots meet the Town’s planning standards for natural resource protection in a manner consistent with the goals discussed in the Town Plan.

III. Question 4: the Proposed Lots are Consistent with the HTP’s “Top Priority Actions”

Finally, Appellant asks this Court to address whether the Project is consistent with the Town Plan’s directive that development be directed in a manner to minimize impacts on the natural systems in Chapter 5. Appellant specifically identified the “Top Priority Actions” as being of concern in this development.

Generally, Chapter 5 of the HTP contemplates Hinesburg’s natural resources and ecological systems. See HTP at 46 (admitted as Applicants’ Ex. 1). Within this chapter, the Town has enumerated 12 natural systems: forest resources, agriculture, surface waters, water

quality and stormwater, groundwater, wetlands, floodplain and flood resiliency, wildlife habitat, ridgelines and scenic areas, greenspace planning, geological resources, and night sky.

Hinesburg developed its Town Plan “for the use of the Hinesburg Planning Commission, Selectboard, Development Review Board, Conservation Commission, other Town committees/boards, and regional and state agencies” to plan for the future and to serve as the basis for revising and adopting zoning and subdivision regulations. HTP at 9 (“Use of Plan”). “It is also meant as a guide to individuals and other organizations for decisions affecting the town.” *Id.* Zoning and subdivision regulations are enacted to implement a town plan. 24 V.S.A. § 4411(a) (“A municipality may regulate land development in conformance with its adopted municipal plan . . .”). “Although the plan may recommend many desirable approaches to municipal development, only those provisions incorporated in the bylaws are legally enforceable.” *In re Confluence Behav. Health, LLC*, 2017 VT 112, ¶¶ 19–20, 206 Vt. 302 (quoting *Kalakowski v. John A. Russell Corp.*, 137 Vt. 219, 225–26 (1979)). In the absence of pertinent zoning bylaws, however, the Court may not “give nonregulatory abstractions in the Town Plan the legal force of zoning laws.” *In re Molgano*, 163 Vt. 25, 31 (1994).

Appellants’ question places emphasis on the wildlife habitat and connectivity elements, and in particular the HTP actions identified as Top Priorities. These priorities are as follows.<sup>4</sup>

The first top priority action in the HTP guides the Town Officials, individuals, and other organizations to “[d]irect development to avoid primary resource areas including: wetlands; flood hazard areas; steep slopes of 25% or greater; surface waters and setback area; rare, threatened and endangered species locations and significant natural communities.” HTP § 3.4.5 (referencing “chapter 5 for discussion of these resources”). For the second top priority action, the Town Plan guides the Town Officials, individuals, and other organizations to “[d]irect development to minimize impacts on secondary resource areas including: moderately steep slopes between 15-25%; prime and statewide agricultural soils; core wildlife habitat and wildlife corridors; deer wintering areas; important cultural features (e.g., historic structures, stone

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<sup>4</sup> Appellants’ original question identified 5.11.1 as a top priority. The 2021 HTP, however, no longer provides this action as a top priority. Action 5.11.1 directs the town to “[i]dentify and preserve connections that would enhance existing wildlife habitat.” HTP at 61, § 5.11.1. While the Court does not devote a subsection to that Action in this subsection, it notes that habitat connectivity is discussed in detail in Part I.

walls.)” HTP § 3.4.6 (referencing “chapter 5 for discussion of these resources”). The HSR reflects this priority in its distinction of primary and secondary resources. See HSR § 6.12.1(1).

The third priority action guides the Town to “[w]ork with VT Fish and Wildlife to establish recommended corridor widths for each key corridor shown on Map 14.” HTP § 5.11.3. This is reflected in the Hinesburg Town Map 14, which delineates such wildlife corridors. The fourth priority action provides that, “[w]hen reviewing new development,” the Town Officials, individuals, and other organizations are to “strongly discourage development in key corridor/linkage areas (see Map 14 and wildlife corridor definition), and encourage areas separate from housing sites to provide connectivity between core wildlife habitat, riparian corridors, and wetlands.” HTP § 5.11.4. This priority is reflected in the HSR’s design standards for rural areas. See HSR § 6.12.1.

The Court concludes that these priorities do not have regulatory force, but rather create priorities for the town officials to consider as guidance when planning “the future growth and development of the town;” revising “the zoning and subdivision regulations;” planning and adopting budgets; recommending studies or programs focusing on community issues; reviewing “local, regional, and state regulatory proceedings”; and for information about the town. Thus, the Project does not have to comply with these priorities, but rather, the regulations need to be guided by them. 24 V.S.A. § 4411(a); Confluence Behav. Health, LLC, 2017 VT 112, ¶¶ 19–20.

To aid in Appellant’s acceptance of the approval provided by this decision, if the Court determined that these priorities had regulatory force, we would conclude under the facts of this Project that it complies with each priority. As noted, each of these priorities is reflected in the applicable section of the HSR, which has been reviewed by this Court in detail in Part I of this decision. There, the Court found that the evidence shows the subdivision avoids wetlands, and slopes greater than 25%, and minimizes impacts to core wildlife habitat and wildlife corridors as based on the HSR requirements and Hinesburg Town Map 14, as well as demonstrated by on-the-ground surveys and assessments.

### **Conclusion and Order**

For the foregoing reasons, the Court approves the Frost Final Plat. The Court concludes that the Proposed Lots do not intrude on the designated Core Wildlife Habitat, Wetlands, or a

Wildlife Corridor in a manner inconsistent with the requirements contained in the HSR. The HSR contains no limitations on Block Wildlife Habitat that has not been designated “core habitat.” The Court agrees with the DRB’s positive findings and conclusions as they pertain to Question 2.

Next, the Court concludes that the Proposed Lots meet the Planning Standards for Suitability for Development and Natural Features Protection per HSR 5.1.1 and 5.1.2, as consistent with and based on the goals and objectives identified in the HTP. As such, the Court answers Appellant’s Question 3 in the affirmative and again agrees with the DRB’s findings and conclusions as they pertain to Question 3.

Finally, the Court concludes that the HTP has no regulatory force, and as such, the Project does not have to establish that it complies with these priority actions. Thus, the Court does not need to address this Question. See Baker v. Town of Goshen, 169 Vt. 145, 152 (1999). To the extent that many of these priority actions were already considered in other analyses, however, the Court notes that the evidence shows that the Proposed Lots are consistent with the HTP “Top Priority Actions” 3.4.5, 3.4.6, 5.11.3, 5.11.4.

The Court APPROVES the Frost Final Plat consistent with the Town of Hinesburg Developmental Review Board’s Findings of Fact, Conclusions of Law and Order dated April 4, 2022. This concludes this matter. A judgment order is issued concurrently with this decision.

Electronically signed December 16, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division