

having more heavy trucks pass through the Route 100B and Moretown Mountain Road intersection or the Pony Farm Road intersection. Nor did he assess the impact of quarry trucks on school bus routes, traffic generated by the Moretown Elementary School, Town facilities, recreational facilities, Town crosswalks, or existing Village traffic and Village uses such as access to the Mad River. *Dickinson Transcript* at 29-35. Indeed, it appears that the Applicant's traffic expert purposefully failed to look at areas of obvious concern in order to avoid any negative conclusions.

91. The Applicant's traffic expert is not aware of the Moretown Elementary School and Harwood Union Middle and High School bus schedules. The Applicant has not proposed any mitigation on the record in regard to bus schedules. *Dickinson Transcript* at 27-30.
92. The Applicant's traffic expert provided no analysis of sight distance for the Moretown Mountain Road, yet acknowledged that at least some trucks may come from or turn onto the Moretown Mountain Road.
93. The Applicant's traffic expert provided no analysis for the number of quarry trucks that would turn onto or from Moretown Mountain Road.
94. The Applicant's traffic expert acknowledged on p. 8 of his report that 4 out of 6 (66%) of all accidents in this area occur at the intersection of Moretown Mountain Road and Route 100B. *Traffic Impact Assessment* (Exh. T-5 at 8).
95. The Applicant did not provide any assessment of the number of Project-generated trucks that would or would not use any Town roads.

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*McLean Enterprises Corporation*, Application #2S1147-1 (Reconsideration) (March, 2006)

(Denying application, *inter alia*, under criteria 5 and 9(K)).

Rivers not only wholly fails to assess these impacts, but also has not offered mitigation on the record to address them. It cannot dispute them as it has not assessed them.

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Indeed, Rivers' own traffic expert concedes that the Project will increase overall truck traffic by at least 21% and more than double the heavy truck traffic going through Moretown Village. All of the Project's traffic will be heavy dump trucks and Mr. Dickinson has admitted that the quarry traffic will be concentrated in times during the day when the School will be in operation, tour groups will be cycling along Route 100B, and pedestrians will be out in Moretown Village.

This project must be denied under Criteria 5, 6, 7 and 9(K). While opponents bear the burden of proof under Criteria 5, 6 and 7, the Applicant bears the initial burden of production. *In re: St. Albans WalMart*, 167 Vt. 75, 82 (1997). Here, the Applicant's complete failure to assess known traffic impacts on the village, the resulting unsafe traffic conditions, and burdens on Moretown's ability to provide municipal and educational services preclude any determination that the Applicant's initial burden has been met.

It is worth again emphasizing the extraordinarily limited scope of the Applicant's assessment of the Project's burden on Moretown's ability to provide municipal and educational services. Moretown does not dispute the fact that the School could absorb a few more students. However, Moretown carefully detailed other impacts that would create unreasonable burdens. While conceding that such impacts could cause burdens, the Applicant wholly ignored them, did not assess whether the burdens would be unreasonable, and

affirmatively ~~has not proposed~~ any mitigation. *See WalMart*, 167 Vt. at 83. Such failure, ~~compels denial for failure to meet the initial burden of production.~~

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Further, the evidence compels outright denial under Criterion 9(K). This project would unreasonably endanger Moretown's Elementary School and other public investments in the Village. The impact to the School cannot be understated. Its two largest classrooms – the two classrooms in the historic portion of the School building would be rendered useless. The Applicant offered no testimony or evidence to dispute the testimony of the School's principal on this point. There is no room in the school to relocate the classrooms. And as explained in the above proposed findings, the children themselves would be endangered while walking or taking the bus to school. Likewise, persons using, and the actual the public investment in, sidewalks, roads, recreational facilities, and trails and accesses to the Mad River would be endangered.

In *In re: Berlin Associates*, this Commission denied a permit for a gravel pit under Criterion 9(K) after having concluded that the Moretown Mountain Road and Rte 100B intersection was dangerous and finding that the applicant failed to develop a plan for the intersection. *In re Maloney and Powers* 5W1430 (2004) at 4.

Finally the Commission concluded that the intersection of Cox Brook Road [Moretown Mountain Road] and Vermont Route 100B was a hazardous intersection. The Commission warned that had a permit been issued it would have required that the applicant have a properly qualified traffic consultant devise proposed mitigation measures for District Commission review and approval prior to the gravel pit's operation. The Commission's conclusions stated" 'Perhaps the only viable permit condition would have prohibited the operation of the pit until the intersection was somehow rebuilt.' Findings of Fact 5W1280 at page 12."