

Burlington Planning Commission

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www.burlingtonvt.gov/pz

Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission

Tuesday, April 27, 2021, 6:30 P.M.

Remote Meeting via Zoom

To Join the Meeting on a Computer

Link: <https://us02web.zoom.us/j/84364677580?pwd=VVkrWEtaMmVldWx4UFI3TGpvZjFkZz09>

To Join the Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 843 6467 7580

AGENDA

I. Agenda

II. Chair's Report

III. Director's Report

IV. Public Forum

Public forum for items not on the agenda. See the Agenda Packet for details on how to participate in the public forum for this meeting.

V. Proposed CDO Amendment: Height Measurement, Dormers & Eaves

The Planning Commission will discuss a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding building height, roof dormers and eaves. Information related to this item is included in the agenda packet on pages 4-8.

Staff Recommendation: Approve the Municipal Bylaw Amendment Report and warn for public hearing.

VI. Proposed CDO Amendment: Act 179 Changes

The Planning Commission will discuss a proposed amendment to the Burlington *Comprehensive Development Ordinance* regarding changes based on the Vermont Legislature's 2020 Act 179. Information related to this item is included in the agenda packet on pages 9-13.

Staff Recommendation: Approve the Municipal Bylaw Amendment Report and warn for public hearing.

VII. Proposed CDO Amendment: Article 14 Updates

Staff will present a series of proposed amendments to Article 14 of the Burlington *Comprehensive Development Ordinance* which have been collected since the form code was first adopted in 2017. Information related to this item is included in the agenda packet on pages 14-33.

Staff Recommendation: Ask questions and provide feedback to staff on the proposed amendments for further discussion at a future meeting.

VIII. Commissioner Items

- a. **Upcoming Meetings:** May 11 and 25, 2021 at 6:30pm (anticipated on Zoom)
- b. **Reminder:** Deadline for Commissioner applications is May 14 at 4:30pm. Visit:

<https://www.burlingtonvt.gov/CityCouncil/Public-Boards/Vacancies>

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov

Tuesday, April 27, 2020

IX. Minutes & Communications

- a. The minutes of the April 11, 2021 meeting are enclosed in the agenda packet on p. 34.
- b. Communications are enclosed in the agenda packet beginning on p. 37, with additional communications posted online at <https://www.burlingtonvt.gov/CityPlan/PC/Agendas>

X. Adjourn

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Guidance for Participating in a Virtual Planning Commission Meeting

As social distancing measures to preserve public health and safety continue to be required to prevent the spread of COVID-19, or are recommended as a standard practice, the Office of City Planning will be supporting the Planning Commission to conduct their meetings online via Zoom. Here is information about how to join a virtual meeting, and what to expect while participating.

General Guidance for Public Participation

Please remember that in this digital meeting environment, meetings are open to the public and anyone may be watching or listening even if you cannot see them. Meetings will be recorded, and both the recording and chat content of the meeting will be maintained as a public record.

Please ensure your display photo and screen name are professional, such as using your first and last name. Please test your audio and video prior to the start of a meeting, and familiarize yourself with how to join a meeting by your chosen method. And finally, please be patient with us. Technology doesn't always work as planned, and we are all learning how to hold a successful virtual meeting!

How to Join a Virtual Meeting

Zoom allows participation via either computer or telephone. Each agenda for a meeting that will be conducted virtually will include details about how to join via either of these options, including a web address, phone number, Meeting ID, and password.

If you participate via computer, you have the option of seeing Commissioner videos and any presentation materials that may be shared. If you use either a standard phone or cell phone to call in, you will only hear the audio portion of the meeting. If you join via a smartphone, you may have the option to download the Zoom app, which will enable you to see and hear the meeting.

How to Participate in a Virtual Meeting

During meetings, only Planning Commission members and limited staff members will be viewed on video. Members of the public attending a meeting will be muted, except when invited to speak during public forum or a public hearing. Whether members of the public can speak at other times during the meeting is the discretion of the Chair.

If you want to speak during public forum, please take the following steps to assist us in making this process run as smoothly as possible:

- Email staff at mtuttle@burlingtonvt.gov by 5pm on the day before a meeting to indicate your interest in speaking. You do not need to provide your comments. Staff will enable your microphone as your name is called from a list of interested speakers.
- During a meeting, you can use the "Raise Hand" feature, or indicate in a chat message that you wish to speak during public forum. Staff will enable your microphone as your name is called.
- If you are interested in submitting your comments in writing instead of speaking during the meeting, you may do so by 5pm the day before a meeting, they will be forwarded to the Commissioners ahead of the meeting.

TO: Planning Commission

FROM: David E White, FAICP, Dir. of Planning
Scott Gustin, AICP, DPI Principal Planner & Zoning Division Manager
Mary O'Neil, AICP, DPI Principal Planner

DATE: April 21, 2021

RE: Proposed CDO Amendment: Height Measurement, Dormers & Eaves (will be ZA-21-07)

Overview & Background

This amendment addresses two areas within the Comprehensive Development Ordinance that relate to how a building's height is measured as follows:

Height Measurement:

This amendment seeks to improve the connection between existing sections of the Comprehensive Development Ordinance pertaining to how building height is measured:

- Sec. 5.2.6 (a) 1 A & B note two starting points for measuring a building's height – from the sidewalk or from the average finished grade around the entire building, depending on the distance from the sidewalk.
- Sec. 5.2.6 (a) 3 specifies increments for building height measurement along the street façade.

The relationship between Sec. 5.2.6 (a) 1 A and 3 is clear. A building's height measured from the public sidewalk is done in increments to account for changes in grade along the street façade. The relationship between Sec. 5.2.6 (a) 1 B and 3 however is not clear. How does the requirement for height measurement intervals along the street façade(s) relate to the average finished grade around the entire building? This amendment seeks to clarify this relationship. The end result clarifies that measurement of building height is done in increments along the street façade(s) in any case.

The Committee met and discussed this issue on 2/4 and 3/4, and unanimously recommended forwarding the staff recommendation to the full Planning Commission.

Dormers & Eaves:

The Comprehensive Development Ordinance offers no guidance on how the measurement of a building's height may be impacted when dormers are proposed. Dormers are a common building element that enable greater useable living space in an attic, and at times, can stretch or exceed height limits. This amendment seeks to articulate under what circumstances roof dormers actually affect building height and how. It also introduces a basic design standard and new definition of the term.

A related matter as to roof form is the term "eave" which lacks definition in the CDO. Eaves are allowed to project into setbacks. Lacking definition of the term, there have been proposals to stretch the concept of what an eave is in order to take advantage of the allowable setback encroachment. This amendment seeks to define the term "eave."

The Planning Commission Ordinance Committee discussed changes to address dormers and eaves separately, but the matters have been combined into one amendment given that they are both related to roof forms. The Committee addressed dormers January 7 and February 4, 2021 and

recommended forwarding the amendment to the full Planning Commission for consideration. The Committee discussed the eave matter at their March 7 and April 4, 2019 meetings and recommended forwarding the amendment to the full Planning Commission for consideration.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The purpose of this amendment is to clarify that building height is measured in increments along the street façade, regardless of whether the building height is measured just from the public sidewalk or from the average finished grade around the entire building. Further, the proposed amendment identifies when and how roof dormers affect building height measurement, provides a design standard for dormers, and defines the terms "dormer" and "eave."

Proposed Amendments

Deleted language is ~~crossed out~~ and new language is underlined in red.

[Begin text amendment]

Article 5: Citywide General Regulations

Sec. 5.2.6 Building Height Limits

No structure shall exceed thirty-five (35) feet in height unless otherwise authorized under the district-specific provisions of Article 4:

(a) Height Measurement:

The maximum height of any building shall be measured as follows:

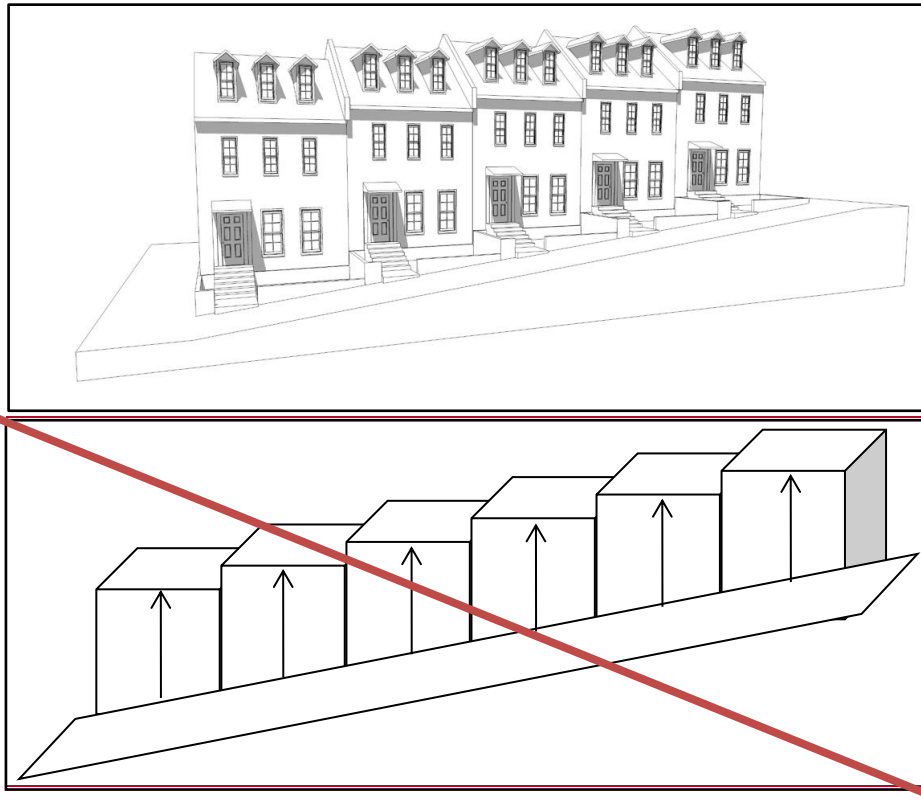
1. Starting Point: Building height shall be measured from:
 - A. a public sidewalk, alley, or other public way or space where the proposed building's street-facing façade is within a 1050-foot horizontal distance of the lot's street frontage of an exterior wall on the front of the building; or,
 - B. the average finished grade within a 10-foot horizontal distance of the building's street-facing façade where the proposed building is more than a 50-foot horizontal distance from the lot's street frontage, all exterior walls of the building. In cases where a property line is within a 10-foot horizontal distance of an exterior wall, the average grade shall be measured between the property line(s).
 - B.C. For buildings on sloped sites, see additional measurement standards in (b) below.
- 1-2. Ending Point: Building height shall be measured to:
 - A. Flat Roof: *As written.*
 - B. Pitched Roof: *As written.*
 - C. Curved Roof: *As written.*
 - D. Roofs with Dormers: Building height will be calculated to the midpoint of the rise of any dormer that exceeds 50% of the width of

the horizontal eave length of the roof. Dormers less than this width do not affect height calculation noted in A – C and E of this subsection.

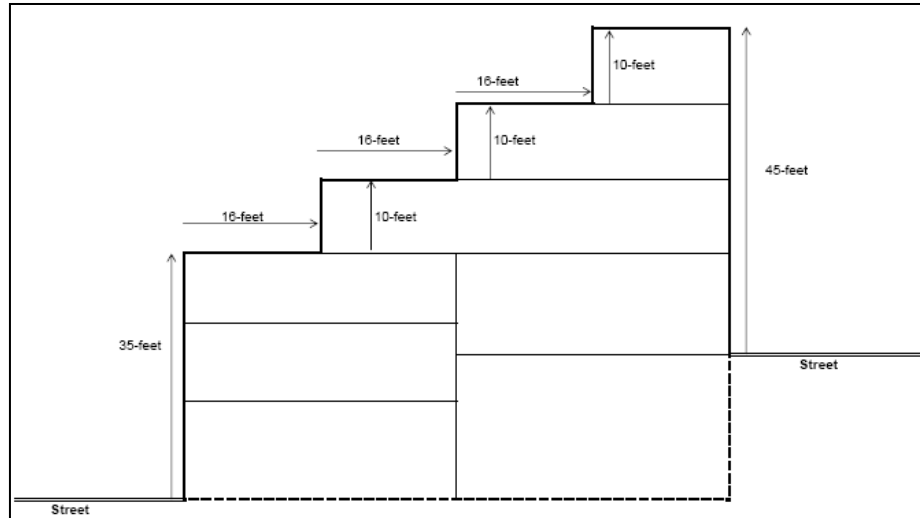
E. Other Roof Forms: As written.

(b) Buildings on Sloped Sites: Buildings on slopes shall reflect the pre-construction topography of the site by making use of opportunities to vary the building's height and roof forms relative to terrain changes as follows:

1. Measurement Interval: ~~To encourage a variation in building heights relative to terrain changes and encourage a variation in roof form, Building height shall be measured along the street-facing façade beginning no less than 16-feet or more than 32-feet from lowest corner, or where two streets intersect if a corner lot, and at an intervals of no less than 32-feet or more than 65-feet for along the entire length of the street-facing façade(s).~~



2. Lots Fronting on Two or More Streets: Where a lot, other than a corner lot, fronts on two or more streets, the building height shall be measured along each street-facing façade. Where the streets are at differing elevations, the building height may gradually increase above the maximum height allowed on the lowest street provided that any such additional height along the lowest street shall be set-back a minimum of 16-feet from the average plane of the building's street-facing façade below for every 10-feet of additional building height up to the maximum height allowed on the highest street.



3. Illustration: To ~~illustrate~~ evaluate the height and bulk of ~~the a proposed building structure in context with its surroundings,~~ the ~~DRB applicant~~ may be required the developer to prepare a scale model, computer visualization, illustrations, or other renderings ~~of the proposed building in context with its surroundings.~~

(cb) Exceptions to Height Limits

(Unchanged)

Article 6: Development Review Standards

Sec. 6.3.2 (a) 2, Roofs and Rooflines

New buildings should incorporate predominant roof forms and pitches within the existing neighborhood and appropriate to the context. Large expanses of undifferentiated roof forms shall be avoided. This can be achieved by incorporating dormers or some variation in the roof form to lessen the impact of the massing against the sky. While flat roofs can be a reasonable architectural solution, pitched roof forms and architectural elements that enhance the city's skyline are strongly encouraged. Roof eaves, parapets, and cornices should be articulated as an architectural detail. Roof-top mechanicals shall be screened from view from the public street, and should be incorporated into and hidden within the roof structure whenever possible.

Dormers shall not exceed the height of the ridgeline of the roof to which they are attached, and are limited in total to 33% of the horizontal eave length of the principal roofline.

Solar panels, light colored ballast or roof membranes, split roof clerestories, planted or "green" roof technologies (with a clearly articulated maintenance plan) and "gray water" collection are encouraged. Active rooftop uses are also encouraged to add to the visual complexity and activity of the city's skyline, and afford public access to otherwise unseen views of the city and surrounding landscape.

Article 13: Definitions

Eave: The edge of the roof which overhangs the face of an exterior building wall and, normally, projects beyond the side of a building; performing the primary function of the roof in throwing water clear of the exterior building walls.

Dormer: A roofed structure, often containing a window that projects vertically beyond the plane of a pitched roof. Dormers are commonly used to increase the usable space in a half story and to create window openings in a roof plane.

Shed dormers have a single, inclined roof.



Dog house dormers are gable roofed, typically with a single window.



All other definitions, as written.

[End text amendment]

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

Theme	Dynamic	Distinctive	Inclusive	Connected
Land Use	Conserve	Sustain		Grow

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety and affordability.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

Planning Commission Process				
Draft Amendment prepared by: Staff, PC OC review 2/4 & 3/4/21	Presentation to & discussion by Commission 4/27/21	Approve for Public Hearing	Public Hearing	Approved & forwarded to Council
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommend as modified	Second Read & Public Hearing	CCOC Recommends Approval & Adoption
				Rejected



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TO: Planning Commission
FROM: David E White, FAICP, Dir. of Planning
Scott Gustin, AICP, DPI Principal Planner & Zoning Division Manager
DATE: April 21, 2021
RE: Proposed CDO Amendment: Act 179 Changes to Ch. 117 (will be ZA-21-08)

Overview & Background

The Vermont legislature passed Act 179 (S.237) in September 2020, and the bill was signed into law on October 12, 2020. Among other things, this act included multiple changes to state enabling law (24 VSA Ch 117) intended to promote greater access to affordable housing. Specifically relevant to Burlington are 3 changes that require amendment to the *Comprehensive Development Ordinance (CDO)* in order to conform with these changes in state statute. These are:

- amending the definition and some requirements for accessory dwelling units
- requiring that certain "small lots" must be unable to connect to municipal water and sewer in order for a municipality to prohibit development on it
- prohibiting a municipality from denying dwellings of four or fewer units in districts that allow multi-unit dwellings based solely on the character of the area when conducting a conditional use review

The Planning Commission discussed each of these issues on Feb 23, 2021, and supported recommended staff changes applicable to sections of the *CDO* relative to Accessory Dwelling Units and Existing Small Lots. The Commission referred the issue of conditional use review for small multi-unit buildings to its Ordinance Committee for additional discussion.

The Commission's Ordinance Committee discussed the provisions related to conditional use review of multi-unit buildings between two and four units on March 4, 2021. Staff presented 4 possible approaches, with an overall recommendation which centered on removing conditional use review for all residential uses across the city. The staff recommendation that conditional use is not appropriate for residential uses located within a residential district is based on a number of factors, including:

- residential uses permitted or prohibited within each district should be more consistent with the purpose statement of the zoning districts involved (i.e. allowing duplexes as a permitted use in RL)
- there is regulatory redundancy between Conditional Use Review and Major Impact Review for multi-unit housing; ultimately Major Impact Review is more appropriate for considering changes in residential intensity
- Appendix A currently creates confusion between regulating use vs. regulating building type (ie. "Attached Dwelling(s) – Mixed-Use" is a building type, not a use).

The Ordinance Committee unanimously recommended forwarding the staff recommendation to the full Planning Commission for consideration.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The proposed amendment addresses recent changes to the state enabling statute, ensuring that the CDO complies with new standards for ADUs, existing small lots, and small multi-unit dwellings.

Proposed Amendments

The following amendments to the Burlington CDO are included in this proposal:

1. Amend Sec. 5.2.1 Existing Small Lots

This affords additional provisions for the development of existing Small Lots, when those lots can connect to municipal water and sewer infrastructure.

2. Amend Sec. 5.4.5 Accessory Dwelling Units and Sec. 13.1.2 Definitions

This removes bedroom and occupant limits from ADU standards and definitions, and increases the alternative maximum size for ADUs to 900 sq.ft.

3. Amend Appendix A- Use Table

Changes duplex from a Conditional to Permitted use within the RL and RL-W districts; deletes "Attached Dwellings-Mixed Use" and distinguishes between multi-family dwellings of 3-4 units and those with 5 or more units; and changes multi-family dwellings of 3-4 units from a Conditional to a Permitted use in the Institutional district.

[Begin text amendments]

Note: Deleted language is ~~crossed out~~ and new language is underlined in red.

Sec. 5.2.1 Existing Small Lots

Any small lot of record existing as of April 26, 1973 may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements if the lot:

- can be served by municipal water and sewer service; and;
- such the lot is not less than at least four thousand (4,000) square feet in area; with or and,
- the lot has a minimum width and depth dimension of forty (40) feet or more, and
- the lot can connect to municipal water and sewer infrastructure.

A permit for Any such development shall require a permit certificate of appropriateness pursuant to the standards of Article 4 and, where design review is applicable, design review provisions of Article 3 and the development standards of Article 6.

Sec. 5.4.5 Accessory Dwelling Units

(a) Accessory Units, General Standards/Permitted Uses:

Where there is a principal structure on a lot which exists as an owner-occupied single family residence, one accessory dwelling unit, that is located within or appurtenant to

such single family dwelling, shall be allowed as a permitted use if the provisions of this subsection are met. An accessory dwelling unit means ~~a an efficiency or one bedroom apartment~~ dwelling unit that is clearly subordinate to the principal dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. ~~No accessory unit shall be inhabited by more than 2 adult occupants.~~ An accessory unit shall not be counted as a dwelling unit for the purposes of density calculation. Additionally, there must be compliance with all the following:

1. The property has sufficient wastewater capacity as certified by the Department of Public Works; and,
2. The unit does not consist of more than ~~800~~ 900 sq.ft., or 30 percent (30%) of the Gross Floor Area of the principal home, whichever is greater; and,
3. Applicable setback and coverage requirements are met, except as provided for in Sec. 5.2.3 (b) 10; and,
4. A deed or instrument for the property shall be entered into the land records by the owner containing a reference to the permit granting the accessory unit prior to the issuance of the certificate of occupancy for the unit. Such reference shall identify the permit number and note that the property is subject to the permit and its terms and conditions including owner occupancy. No certificate of occupancy shall be issued for the unit unless the owner has recorded such a notice.

Sec. 13.1.2 Definitions.

Accessory Dwelling Unit or Apartment: ~~An efficiency or one bedroom apartment~~ A dwelling unit that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

Appendix A – Use Table

See attached.

End text amendments

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Theme	Dynamic	Distinctive	Inclusive	Connected
Land Use	Conserve	Sustain		Grow

Compatibility with Proposed Future Land Use & Density

The proposed amendments, while necessary to maintain compliance with state enabling statutes, are consistent with the land uses and densities proposed in *planBTV*. These changes do not significantly change the overall land uses and densities permitted in residential areas of the city, but is in line with the plan's future land use vision, which anticipates small and incremental changes to residential areas within the context of existing development patterns.

Impact on Safe & Affordable Housing

The proposed amendments have no impact on housing safety, and may serve to improve affordability by reducing the time, cost, and complexity for small multi-family residential development.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

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Appendix A-Use Table – All Zoning Districts – PCOC Draft 03/04/2021

	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use ⁱ	Neighborhood Mixed Use				Enterprise	
USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
RESIDENTIAL USES	UR	RCO - A ¹	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Single Detached Dwelling	N	N ¹	N	N	Y	Y	Y	N ³⁰	N	N ³⁰	N ³⁰	N ³⁰	N	N	N
Attached Dwellings - Duplex	N	N ¹	N	N	Y	YCU ²	Y	Y	N	Y ³	N	Y	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N ¹	N	N	CUY	N	Y	Y	N	Y	Y	Y	Y	N	N
Attached Dwelling(s) – Mixed Use ²⁶	N	N ¹	N	N	CU	CU	CU	CU	N	Y	Y	Y	Y	N	N

1. Residential uses are not permitted except only as an accessory use to an agricultural use.

2. Duplexes may be constructed on lots which meet the minimum lot size specified in Table 4.4.5-1.

3. Duplexes shall only be allowed as a result of a conversion of an existing single family home. New duplexes are prohibited.

4. No more than 5 rooms permitted to be let in any district where bed and breakfast is a conditional use. No more than 3 rooms permitted to be let in the RL district.

5. An existing fraternity, sorority, or other institutional use may be converted to dormitory use subject to conditional use approval by the DRB.

6. Must be owner-occupied.

7. Must be located on a major street.

8. Daycare centers and preschools in the RCO zones shall only be allowed when a small museum is the principal use.

9. Automobile sales not permitted other than as a separate principal use subject to obtaining a separate zoning permit.

10. Exterior storage and display not permitted.

11. All repairs must be contained within an enclosed structure.

12. No fuel pumps shall be allowed other than as a separate principal use subject to obtaining a separate zoning permit.

13. Permitted hours of operation 5:30 a.m. to 11:00 p.m.

14. Such uses not to exceed ten thousand (10,000) square feet per establishment.

15. Excludes storage of uncured hides, explosives, and oil and gas products.

16. See Sec.4.4.1(d) 2 for more explicit language regarding permitted and conditional uses in the Downtown Waterfront – Public Trust District.

17. Allowed only as an accessory use.

18. A permitted use in the Shelburne Rd Plaza and Ethan Allen Shopping Center.

19. [Reserved].

20. Accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 VSA §1021(f) and 1259(f) and 6 VSA §4810 are exempt from regulation under local zoning.

21. See Sec. 4.4.7 (c) for specific allowances and restrictions regarding uses in the Urban Reserve District.

22. See Sec. 4.4.5 (d) 6 for specific allowances and restrictions regarding Neighborhood Commercial Uses in Residential districts.

23. Allowed only on properties with frontage on Pine Street.

24. Such uses shall not exceed 4,000 square feet in size.

25. Dormitories are only allowed on properties contiguous to a school existing as of January 1, 2010.

26. The mixed uses shall be limited to those that are either permitted, conditional, or pre-existing nonconforming in the zoning district.

27. This use is permitted or conditionally permitted on lots south of Home Avenue only when one or more Industrial or Art Production use(s) exists on the lot, and when the combined gross floor area of all uses with this footnote does not exceed 49% of the Gross floor Area on the lot.

28. Grocery Stores up to but not to exceed 35,000 square feet may be permitted subject to conditional use approval by the DRB in that portion of the Enterprise-Light Manufacturing District between Flynn and Home Avenue.

29. Must be fully enclosed within a building.

30. New single detached dwellings are not permitted. However, a pre-existing single detached dwelling may be reverted to a single family use regardless of its present use if the building was originally designed and constructed for that purpose.

31. See special use standards of Sec. 5.4.13, Emergency Shelters.

32. Performing Arts Centers in the ELM zone shall be limited to properties with frontage on Pine Street up to 5,000 square feet in size, and to properties with frontage on Industrial Parkway up to 15,000 square feet in size. Performing Arts Centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment.
- Legend:

Y	Permitted Use in this district
CU	Conditional Use in this district
N	Use not permitted in this district
Abbreviation	Zoning District
RCO – A	RCO - Agriculture
RCO – RG	RCO – Recreation/Greenspace
RCO – C	RCO - Conservation
I	Institutional
RL/W	Residential Low Density, Waterfront Residential Low Density
RM/W	Residential Medium Density, Waterfront Residential Medium Density
RH	Residential High Density
DW-PT	Downtown Waterfront-Public Trust
NMU	Neighborhood Mixed Use
NAC	Neighborhood Activity Center
NAC-RC	NAC – Riverside Corridor
NAC-CR	NAC – Cambrian Rise
E-AE	Enterprise – Agricultural Processing and Energy
E-LM	Enterprise – Light Manufacturing

ⁱ For permitted and conditional uses within the Downtown and Waterfront Form Districts, refer to Article 14.



City of Burlington, VT
149 Church Street, 3rd Floor
Burlington, VT 05401

www.burlingtonvt.gov/plan

TO: Planning Commission
FROM: David E White, FAICP, Dir. of Planning
DATE: April 21, 2021
RE: Proposed CDO Amendment: Updates and Corrections to Article 14 (will be ZA-21-09)

Overview & Background

This amendment makes a collection of corrections and revisions to Article 14 of the *Burlington Comprehensive Development Ordinance* (BCDO) – the planBTV: Form Based Code - based on the past 36+ months of real-world application to improve its consistent use and effective applicability. This has been a collective effort of the Permitting and Inspections team and some applicants working with Planning to collect problems, questions, and challenges confronted in its application to real-world projects since adoption in the fall of 2017.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The purpose of this amendment is to revise Article 14 of the *Burlington Comprehensive Development Ordinance* (BCDO) based on the past 36+ months of real-world application to include a number of corrections and updates to improve its consistent use and effective applicability including:

- Consistent use of terms and concepts regarding things like allowed encroachments into setbacks, location of parking, glazing, and voids.
- Makes clear the the exemption for work being proposed for a public right-of-way or thoroughfare, and instead directs compliance with *Great Streets BTV: Downtown Street Standards*, and approval by the Dept. of Public Works.
- Adds new definitions including those for Awnings, Balconies, Canopies, Decks
- Revises rear yard setback in FD5 to be consistent with previous Downtown-Transtion District requirement
- Adds a new Civic Space Type for "Water-Dependent" sites to better incorporate current and potential use of Perkins Pier
- Revise Map 3 – Shopfronts Required to include the new segments of Pine and St. Paul streets
- Revises Urban Design Standards regarding Primary Materials, Balconies and Decks, and Awnings and Canopies to improve their practical application

- Consolidates standards regarding Fences into a single location for ease of use, and adds maximum height and expands material standards
- Clarifies how the requirements and standards apply to existing and non-conforming structures.
- Expands authority for Administrative Relief for minor variations from numerical standards.
- Removes references to "Planning and Zoning" department and "Director." and replaces them with "Permitting and Inspections" dept and "Administrative Officer" as appropriate

Proposed Amendments

Deleted language is ~~crossed out~~ and new language is underlined in red.

[Begin text amendment]

See attached

[End text amendment]

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

Theme:	Dynamic	Distinctive	Inclusive	Connected
Land Use:	Conserve	Sustain		Grow

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety and affordability.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

Planning Commission Process				
Draft Amendment prepared by: Staff 4/7/21	Presentation to & discussion by Commission 4/27/21	Approve for Public Hearing	Public Hearing	Approved & forwarded to Council
				Continue discussion
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommendation	Second Read & Public Hearing	Approval & Adoption
				Rejected

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-21-XX – planBTV Downtown Code Update

As prepared by the City Planning Office – April 21, 2021.

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: This amendment is to revise Article 14 of the BCDO to include a number of corrections and updates to improve its use and applicability.

Sec. 14.1.1-14.1.2 – unchanged

Sec. 14.1.3 -Applicability

This planBTV Downtown Code shall be applicable to all lands outside of the public rights-of-way or a Thoroughfare within the Downtown and Waterfront District as mapped or described on the Burlington Regulating Plan (Section 14.2), as such may be changed from time to time, pursuant to Section 14.2 - Regulating Plan. Any and all subdivision of land, development, and construction or modification of all Improvements, land, Buildings, and Structures in the Downtown and Waterfront District shall occur only in accordance with this Article 14 planBTV Downtown Code as in effect on the date of acceptance of the completed application for approval of the applicable Project Plan submitted pursuant to Section 14.7 Administration and Procedures.

Improvement, development, construction or modification within an existing or proposed public right-of-way or a Thoroughfare shall be made in accordance with Great Streets BTV: Downtown Street Standards, and require approval by the Dept. of Public Works.

To the extent applicable, and not otherwise in conflict with this Article 14-planBTV Downtown Code, the following sections of the Burlington Comprehensive Development Ordinance (CDO) shall also continue to apply:

- a) Article 1 - General Provisions
- b) Article 2 - Administrative Mechanisms;
- c) Article 3 - Applications, Permits and Project Reviews, Parts, 1, 2, 3, 5 and 6;
- d) Article 4 - Zoning Maps and Districts, Parts 1, 2, 3, and Part 5 Sec. 4.5.4;

- e) Article 5 - Citywide General Regulations, Parts 1 ~~and~~, 2, Part 3, Secs 5.3.1-5.3.4 and Secs 5.3.1-5.3.8, Part 4, Sec. 5.4.7 and, Sec. 5.4.8, and, Part 5;
- f) Article 7 - Signs
- g) Article 8 - Parking
- ~~g)~~h) Article 9 - Inclusionary and Replacement Housing;
- ~~h)~~i) Article 10 - Subdivision Review;
- ~~i)~~j) Article 12 - Variances and Appeals; and,
- ~~j)~~k) Article 13 - Definitions.

In each case, the standards and requirements applicable to the Downtown and Waterfront District Regulating Plan and this Article 14 shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the Burlington Comprehensive Development Ordinance (BCDO).

If there is any conflict between the provisions of this Article 14 and any provisions of any other existing City codes, ordinances, regulations or standards (the "Existing Local Codes"), the provisions of this Article 14 shall take precedence over such conflicting provisions except for City and state Building, Fire, Health and Safety Codes.

The graphics, illustrations, photographs, tables, and metrics are an integral part of the planBTV Downtown Code; however:

- a) Photographs are provided only as general illustrative examples and are not binding;
- b) The illustrations of Table 14.3-A Burlington Form Districts Summary Table, Table 14.3.6-A Civic Space Types Summary Table, Table 14.4-A Building Types Summary Table, and Table 14.5-A Frontage Types Summary Table are provided only as general illustrative descriptions and are not binding;
- c) The diagrams, photographs, and illustrations contained in Sections 14.3.4 through 14.3.6 (Specific to Form Districts), Sections 14.4.4 through 14.4.13 (Specific to Building Types), and Sections 14.5.4 through 14.5.17 (Specific to Frontage Types) are provided only to indicate the general character of the various Form Districts and elements. References to metrics shown thereon however shall have regulatory effect.
- d) The graphics, illustrations, and photographs in Section 14.8 Glossary are provided for illustrative purposes only and are not binding;
- e) ~~h)~~ The graphical depictions of the Form Districts on the various Tables are provided for ease of reference only and are not binding. The Form District designations and standards applicable to each Form District are binding.

Where in conflict, metrics represented in text and/or tables shall take precedence over metrics represented graphically, and a more specific standard shall take precedence over a more general standard.

Sec 14.2.6 - Special Requirements

Map 3 - Shopfronts Required

Sec. 14.3.4 FD6 Downtown Core

14.3.4-C- Lot Occupation & Building Placement

Frontage Buildout & Building Setback

Rear Setback:

- Principal Buildings 0-ft min. or 15-ft from a rear public Alley centerline
- Outbuildings 0-ft min. or 15-ft from a rear public Alley centerline

Table 14.3.4-E- Parking, Loading & Service

On-Site Parking

On-site parking shall be provided per the requirements of Sec. 14.6.7.

Location on the Lot

All parking provided within a Principal Building Type (other than a Perimeter Building) shall be located Underground, above the second Story, and/or at-grade within the first Story where located in the Third Lot layer and separated from the street by an Active Street-level Use.

~~Parking Lots are not permitted, and Parking Areas shall be located in the Third Lot Layer.~~

~~Unless located within a Principal Building below the finished grade or above the second Story,~~

~~a~~ All Parking Structures, and Garages, and Parking Areas shall be located in the Third Lot Layer behind a Principal Building Type Perimeter Building (see Sec. 14.4.11 and Sec. 14.6.3).

Parking Lots are not permitted

Miscellaneous

See also Sec. 14.6.7 for additional requirements pertaining to parking and site design.

14.3.4-F- Encroachments –into

Required Setbacks

Encroachment Type	Front	Rear
Frontage Type Elements ¹	Permitted	Permitted
Awnings and Canopies ²	Permitted	Not permitted
Signs ³	Permitted	Not permitted
<u>Balcony and Decks</u>		<u>4-ft max.</u> <u>encroachment</u>
Other Architectural Features ⁴	<u>4-ft max.</u>	4-ft max. <u>encroachment</u>
Landscaping	Permitted	Permitted
Fences or freestanding walls	Not permitted	6-ft max. height
Driveways, Walkways	Permitted	Permitted
Utility Structures	Not permitted	Permitted

14.3.4-G- Encroachments - Public right-of-way

³ Building eaves, roof overhangs, solar shades, and light shelves; bay windows, oriels, and vestibules that are less than ten feet wide; and, cornices, belt courses, window sills, buttresses, or other similar architectural features may encroach into the ROW provided they are a minimum of 10-ft above the Sidewalk.

Sec. 14.3.5 FD5 Downtown Center

14.3.5-C- Lot Occupation & Building Placement

Frontage Buildout & Building Setback

Rear Setback:

- | | |
|---------------------|---|
| Principal Buildings | - <u>03</u> -ft min. or 15-ft from rear <u>public</u> Alley centerline
- 10-ft min. along a Form District boundary shared with a residential district. |
| Outbuildings | - <u>03</u> -ft min. or 15-ft from rear <u>public</u> Alley centerline |

Table 14.3.5-E- Parking, Loading & Service

On-Site Parking

On-site parking shall be provided per the requirements of [Sec. 14.6.7](#).

Location on the Lot

All parking provided within a Principal Building (other than a Perimeter Building Type) shall be located: Underground, above the second Story, and/or at-grade within the first Story where located in the Third Lot layer and separated from the street by an Active Street-level Use.

~~Parking Lots are not permitted, and Parking Areas shall be located in the Third Lot Layer.~~

~~Unless located within a Principal Building below the finished grade or above the second Story, All~~ Parking Structures, [Garages](#) and ~~Garages~~ [Parking Areas](#) shall be located in the Third Lot Layer behind a [Principal](#) ~~Perimeter~~ Building (see [Sec. 14.6.3](#) and [Sec. 14.4.11](#)) ~~Type~~.

Parking Lots are not permitted

Miscellaneous

See also [Sec. 14.6.7](#) for additional requirements pertaining to parking and site design.

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14.3.5-F- Encroachments ~~into~~ Required Setbacks

Encroachment Type	Front	Rear
Frontage Type Elements ¹	Permitted	Permitted
Awnings and Canopies ²	Permitted	Not permitted
Signs ³	Permitted	Not permitted
Balcony and Decks		4-ft max. encroachment
Other Architectural Features ⁴	4-ft max.	4-ft max. encroachment
Landscaping	Permitted	Permitted
Fences or freestanding walls	Not permitted	6-ft max. height
Driveways, Walkways	Permitted	Permitted
Utility Structures	Not permitted	Permitted

89

14.3.5-G- Encroachments - Public right-of-way

³ Building eaves, roof overhangs, solar shades, and light shelves; bay windows, oriels, and vestibules that are less than ten feet wide; and, cornices, belt courses, window sills, buttresses, or other similar architectural features may encroach into the ROW provided they are a minimum of 10-ft above the Sidewalk.

Sec. 14.3.6-I Water-Dependent

Intent

An Open Space associated with water-dependent recreation and related facilities.

Specifications

Form District

FD5

Size

No size limits

Frontage

Independent

Character

Informal

Coverage¹

80% max.

Buildings and Structures¹

1,500 sqft max in aggregate

Setback for Buildings and Structures

50-feet from the mean high water mark of Lake Champlain (100-feet above mean sea level) unless encroachment is required for the operation of a water-dependent use or facility.

Features such as walkways, planters, benches, fountains, public art, sitting walls and other improvements to enhance the pedestrian environment and enjoyment of the waterfront may encroach into this required setback provided public access to the water's edge and pedestrian circulation is not unreasonably impaired.

¹ Not inclusive of any associated Civic Buildings.

Typical Facilities

- Water-oriented facilities and services such as docks, marinas, boat ramps and lifts, boat fueling and pump-out, restrooms, marina office and chandlery, and facilities for commercial vessels.
- Civic, recreational, and community facilities
- Playgrounds and play Structures
- Passive recreation, paths, and trails
- Buildings and Structures necessary to support water-oriented facilities and services
- Commercial concessions

Parking

On-site parking is not required, and may not occupy more than 60% of the gross site area.

Sec. 14.4.13 - Urban Design Standards

a) - *unchanged*

b) **Windows & Doors:**

iii. Principal Entrances shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, canopies, awnings, transoms, sidelights, or other design elements appropriate to the architectural style and details of the Building as a whole. Bays including a Principal Entrance should be expressed vertically, and may continue onto the upper stories. Such bays are not required to include additional horizontal expression or upper story step-backs as required in c) below.

iv. Where provided:

A-D - unchanged

~~E. Shading devices designed and intended to control light entering the Building may project no more than 5 feet from the Facade, shall be consistent in materials, color, and design across the same Facade, and shall be placed, sized, shaped, and proportioned to match the associated openings.~~

c) **Façade Articulation and Upperstory Stepbacks:**

iii. Building Facades shall be horizontally articulated as follows:

C. The top story (other than a penthouse setback at least 10-feet from the primary plane of the Façade below) must have a cornice, parapet, pitched or shaped roof form and/or other equivalent architectural feature involving a projection from the average plane of the Façade of the story below by at least 12-inches to serve as an expression of the Buildings top.

iv. The upper stories of any Building exceeding 6 stories in height shall step-back as follows:

A. An upper story step-back of at least 10-feet from the primary plane of the Façade below shall occur above either the 2nd 3rd, 4th, or 5th story, with the resulting Building base ~~seeking to maintain~~ing a consistent height of at least 50-feet along Main and Battery streets, and at least 33-feet on all other downtown streets, in order to frame and define the public realm.

d) **Building Materials:**

i. Primary Materials: Not less than 80 percent of each street-facing Façade (not inclusive of voids) shall be constructed of one or more primary materials comprised of tested and proven, high quality, durable, and natural products. For Facades over 100 square feet, more than one Primary Material shall be used. Changes between Primary Materials must occur only at inside corners. The following are considered acceptable Primary Materials:

A. Brick and tile masonry;

B. Native or sintered stone;

C- E - *unchanged*

ii-iii - *unchanged*

~~iv. Fences: Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line, however, woven cable fencing is permitted.~~

iv. Roof Materials (not applicable to flat roofs). Acceptable roof materials include 300 pound or better, dimensional asphalt composite shingles, wood shingles and shakes, metal tiles or standing seam, slate, and ceramic tile. To the extent possible, all roof materials and colors should be selected to minimize solar reflectance.

vi. Alternate Materials: Alternate materials, including high quality synthetic materials, may be approved by the ~~Planning Director~~Administrative Officer after seeking input from the Design Advisory Board. New materials must be considered equivalent or better than the materials listed above and must demonstrate successful, high quality local installations. Regionally-available materials are preferred.

vii. Other: - *unchanged*

e). Walls:

- i. Unfinished (ie. not clad or constructed in a Primary or Secondary Material per d) above)
foundation walls on a Principal Building shall be exposed no more than 48-inches above the
finished grade. Surface-applied waterproofing on any foundation wall shall not be visible.

ii-vi – unchanged

f). Roofs: – *unchanged*g) Balconies and Decks: Where provided, all Balconies and Decks shall meet the following specifications:

- i. Balconies must be at least 4-feet deep (A) and 5-feet wide, and shall not project more than 8-feet from the plane of the Façade or Elevation to which it is attached.
- ii. Balconies shall be cantilevered or visibly supported by brackets or beams sized, shaped and proportioned to match the associated ~~b~~Balcony. Columns or posts extending to the ground within the public right-of-way are prohibited ~~on a Façade, except in the case of a Gallery Frontage Type.~~
- iii. Balconies shall provide 8-feet minimum clear height above the finished grade, or 13-feet 6-inches minimum clear height above the finished grade above any area used for vehicular parking or circulation, or emergency vehicle access.
- ~~iv.~~ The ~~b~~Balcony platform shall be at least 3-inches thick, and where the underside of a balcony is visible from a public way it shall be finished. Balconies may ~~or may not~~ incorporate a ~~roof~~, Canopy or Awning, but shall not be enclosed.
- v. Decks shall be permitted only in the Third Lot Layer or on rooftops.
- vi. Decks may include a Canopy, Awning or free-standing pergola, but shall not be enclosed.

h) **Awning and Canopies:** Awnings ~~s~~ and ~~e~~Canopies are encouraged as a traditional street-level store-front fitting to accent and provide shade and/or shelter over a primary entrance, display windows, or outdoor seating. Awnings and Canopies may also be found above upper story windows and Balconies, and over secondary entrances. Where provided, ~~such all~~ Awnings and Canopies ~~placed on a Façade~~ shall meet the following specifications:

- i. Awnings and ~~e~~Canopies shall provide 8-feet minimum clear height above the finished grade ~~(A)~~, and ~~shall project a minimum of 6 feet from the Façade (B) to a maximum of 2 feet from the curb (C)~~. 13-feet 6-inches minimum clear height above the finished grade shall be provided above any area used for vehicular parking or circulation, or emergency vehicle access (A).

- 185 ii. First floor Awnings and Canopies shall project a minimum of 3-feet from the Façade (B)
186 or Elevation to which it is attached to a maximum of 2-feet from the curb (C). Awnings
187 and Canopies on upper story windows may project no more than 5-feet from the Facade.
188 Awnings that cannot project a minimum of 3-feet due to the small size of the opening,
189 shall project a minimum of 50% of the height of the opening (e.g. a window that is 4-ft tall
190 shall project at least 2-ft).
- 191 ~~ii.~~iii. Awnings and Canopies shall be placed, sized, shaped, and proportioned to match the
192 associated openings or width of the associated Frontage, and shall be consistent in
193 materials, color, and design across the same Façade, Frontage Type, or architectural
194 bay.
- 195 ~~iii.~~iv. Awnings and Canopies that span across an entire Façade-Frontage shall be fixed no
196 higher than the top of the first story.
- 197 ~~iv. All awnings and canopies used within an individual Frontage Type shall be consistent in~~
198 ~~materials, color, and design.~~
- 199 v. Awnings and Canopies shall not be internally illuminated or backlit, however they may
200 contain lighting fixtures intended to illuminate the ground beneath when covering a
201 Building entrance.
- 202 ~~v.~~vi. Awnings and Canopies may incorporate signage pursuant to the requirements of Article
203 7.
- 204 ~~vi.~~vii. Awnings shall have an internal or external structural framework of steel/aluminum or
205 other appropriate, durable structural material supporting a thin, non-translucent covering
206 material with a matte finish such as painted metal, acrylic, canvas, or synthetic fabric.
207 The Awnings design shall not include a soffit, and c or side panels. Retractable
208 awnings are encouraged. Columns or posts extending to the ground are prohibited within
209 the public right-of-way. Retractable Awnings are encouraged.
- 210 ~~vii.~~viii. Awnings shall be are typically rectangular in elevation and triangular in cross-section, with
211 shall have straight edges with no arcs or curves, and may be pitched to shed water off to
212 the side when placed over a Building entrance. The valance of the an Aawning shall be
213 no more than 12-inches in height (D).
- 214 ix. Canopies are typically rectangular in both elevation and in cross-section, shall have
215 straight edges with no arcs or curves, and may be pitched enough to shed water off to
216 the side when placed over a Building entrance. The faces of the Canopy shall be no more
217 than 24-in in height (D).
- 218 x. Canopies shall be constructed of steel/aluminum or other appropriate, durable structural
219 material, and The canopy may be clad in metal panel, wood, or other durable finished
220 material.

viii.xi. The eCanopy design shall may include a flat roof be or be left open to from above without a roof using louvers or slats instead to provide shade, and the exterior faces of the canopy should be no more than 24-in in height (D).

ix.xii. Canopies projecting into the public right-of-way shall be cantilevered or supported from above, and C columns or posts extending to the ground are prohibited. Canopies placed outside of the public right-of-way may be partially or fully free-standing.

i). **Other:**

- i. Upper-story open exterior fire stairs shall be located in the Third Lot Layer. They may be located in the Second Lot Layer provided they are enclosed and incorporated and designed in a manner consistent with the overall architectural design of the Building.
- ii. Permanent vertical access features (stairs, ramps, etc.) ~~handicapped access ramps~~ located in the First Lot Layer must be integrated into the design of the chosen Frontage Type. Otherwise they must be located in the Second or Third Lot Layer.
- iii. All utility service connections shall be underground for new construction.
- iv. The footprint area of an Outbuilding may not exceed the footprint area of the Principal Building.

(photo caption) - An example of a ~~handicapped~~ vertical access ramp integrated into a Building Frontage.

Sec 14.5.15- Courtyard Frontage Type

14.5.8-C - Standards

Courtyard - 12-ft min.

Width - lessor of 1/3 the total Building width or 35-ft max

Courtyard 12-ft min.- 35-ft max

Depth

Canopy/Awn 10-ft from Façade max

ing

Projection

Clear Path of Travel to a Principal Entrance

14.5.8-D - Miscellaneous

A maximum of one Courtyard is permitted per Principal Building.

A Courtyard shall remain open to the sky, and may not contain Driveways, parking, loading or service areas, or mechanical equipment or vents.

A Courtyard may include a free-standing Canopy, Awning, umbrellas or pergola, but they shall not be enclosed.

The Courtyard shall be activated as a space for gathering, circulation, outdoor shopping, and/or restaurant seating.

The proportions and orientation of ~~these spaces~~ a Courtyard should be carefully considered for solar orientation and user comfort.

A Courtyard is considered as part of the Building for the purpose of measuring the Frontage Buildout. All faces of the recessed Courtyard shall be considered to be part of the Façade.

Sec 14.5.15- Forecourt Frontage Type

14.5.15-D - Miscellaneous

A Forecourt occupies the First Lot Layer, and may extend the depth of a maximum required front yard setback to an amount equal to the maximum depth permitted in Sec. 14.5.15-C.

A Forecourt shall remain open to the sky, and may not contain Driveways, parking, loading or service areas, or mechanical equipment or vents.

A Forecourt may include a free-standing Canopy, Awning, umbrellas or pergola, but they shall not be enclosed.

Hardscape coverage requirement may be achieved through a combination of pervious and impervious surface materials.

Sec. 14.6.4- Building Height

a) thru c) - *unchanged*

d) Basements and Crawl Spaces

- i. Exposed basement walls visible along any Frontage shall not exceed ~~89~~ nine ~~nine~~ eight feet in height measured from the exterior finished grade to the finished floor of the Story above.
- ii. Unfinished crawl spaces taller than 3 (three) feet shall be screened from view from public Thoroughfares with landscaping.
- iii. Unfinished crawl spaces shall not exceed 5 (five) feet in height measured from the exterior finished grade to the finished floor of the Story above.

e) **Grading or Regrading of Sites.** Sites with uneven topography present unique issues in relation to Building height. Buildings on steep slopes shall reflect the pre-construction topography of the site. When a site's topography is modified, the site shall be graded in such a way to avoid the following features:

- i. Retaining walls or unfinished blank walls taller than 4 feet in height along required Principal or Secondary Frontage;
- ii. Retaining walls taller than 8 feet in height along the rear or side setbacks; and
- iii. The construction of Buildings that do not reflect the preconstruction topography of the site. Illustrations below show appropriate site grading methods.

f) - *unchanged*

Sec. 14.6.7- Parking and Circulation

a) thru d) – *unchanged*

e) **Parking Structures and Garages**

- i. With the exception of individual Garages serving a Rowhouse Building Type which shall be located in the Third Lot Layer, all Parking Structures and Garages shall be located:
 - within a Principal Building Type and located Underground, above the second Story, and/or in the ground floor when located in the Third Lot layer and separated from the street by an Active Street-level Use; or,
 - behind a Perimeter Building (See Section 14.4.11), or enclosed below the finished grade or above the second story within a Principal Building that provides active uses (such as, but not limited to, residential lobby, retail, office, recreational, or services) at the street level along the width of the Frontage a minimum of 20 feet deep.

ii-vi – *unchanged*

g) **Parking Spaces, Lot Design and Layout**

i - ii – *unchanged*

iii. Stacked and Tandem Parking. – *otherwise unchanged*

Sec. 14.6.8- Site and Landscape Standards

a) **Purpose and Applicability**- *unchanged*

b) **Site Standards:**

v. Fences and Free-standing Walls:

A. Fences and Free-standing Walls placed within the First Lot Layer shall not exceed 4-feet in height. Fences and Free-standing Walls placed within the Second or Third Lot Layer shall not exceed 8-feet in height unless a different height limit is specified under the applicable Form District or Frontage Type.

B. Materials used for Fences and Free-standing Walls shall be limited to Brick and tile masonry; Native or sintered stone; Wood – panels, clapboard or shingles; Cementitious siding, metal, and woven or braided cable wire. Chain-link and welded-wire fencing shall not be used along any Frontage Line with the exception of the temporary enclosure of a construction site, or where required by the Building Official to protect public safety. Barbed or razor wire shall not be used in any application. Alternate materials may be approved by the Administrative Officer after seeking input from the Design Advisory Board. Alternate materials must be considered equivalent or better than the materials listed above, and must demonstrate successful, high quality local installations. Regionally-available materials are preferred.

A-C. All fences and free-standing walls shall be installed so that the finished side faces outward towards the adjacent property or public way.

c) **Landscape Standards:** *otherwise unchanged*

d) **Solid Waste Storage Areas** - *unchanged*

Sec. 14.7 – Administration and Procedures

14.7.1 - Applying for a Zoning Permit: Submission Requirements and Review

a) – *unchanged*

b) Application Submission. Each application shall be submitted to the Department of Planning and Zoning Permitting and Inspections along in a form to be provided by the Department. Upon its determination that an application is complete, the Department shall process each application in accordance with this Section.

c) – *unchanged*

328 **d) Modification of Submission Requirements.** The Administrative Officer ~~Director~~ may allow
329 the modification of the application and submission requirements listed above, including reducing
330 and/or combining existing and proposed information on the same site plan, provided that any
331 modification enables adequate review of the application. The Administrative Officer ~~Director~~ may
332 also require the submission of additional information when deemed necessary to make a decision
333 on the request. Such additional information may include but is not limited to the following:
334 *(remaining unchanged)*

335
336 *e) - unchanged*
337

338 **f) Review and Approval of Civic Spaces and Civic Buildings.**

339 The creation of new Civic Spaces or Civic Buildings, or the Substantial Modification of an existing
340 Civic Space or Civic Building, shall follow the process as defined below. Any other proposed
341 alteration to an existing Civic Space or Civic Building shall be reviewed and approved by the
342 ~~Director~~ Administrative Officer who shall ensure ongoing compliance with the intent and
343 standards of this Chapter as applicable.
344

345 Because of their important civic nature and public use, the design and form of a new or
346 Substantial Modified Civic Space or Civic Building shall be determined after:

- 347 • pre-application review and consultation with the departments of City Planning and Zoning,
348 Permitting and Inspections, Community and Economic Development, and Parks, Recreation,
349 Waterfront;
- 350 • a pre-application Neighborhood Public Meeting pursuant to Sec. 3.2.1 (d) of the BCDO;
351 • review and recommendation of the Design Advisory Board; and,
352 • final review and approval by the Development Review Board.
353
354

355 *Remaining section is unchanged*
356
357

Sec. 14.7.2 - Non-Conformities

In addition to that as specified in Article 5, Part 3 Non-Conformities of the *Burlington Comprehensive Development Ordinance*, any Building, Structure, Frontage, Development, Site, Improvement, or other appurtenance thereto ~~non-conformity~~ which lawfully existed at the time of adoption of the applicable provisions of this ~~or any~~ Article or any amendment thereto may be continued subject to the following provisions:

a) Nothing in these regulations are intended to prevent normal repair and maintenance necessary to keep a Building, Structure, Site, Improvement or other appurtenance thereto in a safe and sound condition;

b) Any Building, Structure, Frontage, Development, Site, ~~sign~~, Improvement, or other appurtenance thereto which legally existed on the effective date of this Article that does not conform to the requirements of this Article may continue until a Substantial Modification is requested or Abandonment occurs;

c) Any nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part.

~~a)d)~~ At such time when a Substantial Modification is requested or Abandonment occurs, only the affected portion(s) of the Building, Structure, Frontage, Development, Site, ~~sign~~, Improvement, or other appurtenance thereto shall be required to comply with all applicable provisions of this Article, and to the greatest extent practicable in the determination of the Administrative Officer or unless relief is provided by the DRB pursuant to Sec. 14.7.3 below;

~~b)~~ Any modification other than a Substantial Modification an existing Building, Structure, Frontage, Development, Site, ~~sign~~, Improvement, or other appurtenance thereto shall be permitted By Right only if such changes result in greater conformance with the specifications of this Article;

e) Any change or modification shall not create any new nonconformity; and,

~~d)e)~~ Buildings listed or eligible for listing on the State or National Register of Historic Places shall not be required to make any modifications under ~~a) and b) above~~ this section that would threaten their historic integrity.

14.7.3 - Variation from the Form: Administrative Relief, DRB Alternative Compliance, and Variances

The planBTV Downtown Code is intended to result in By-Right approval where development occurs strictly in conformance with the requirements of the applicable Form District. In some instances, however, it may be necessary to vary the prescribed form in order to accommodate

unique site and/ or building circumstances in order to promote context-sensitive development. In such instances, an applicant may seek Administrative or Development Review Board approval for relief from the requirements as set forth below. Any and all relief from the prescribed standards shall run with the land and be binding on the Property Owner and its/their successor and assigns. Applications requesting relief shall be made in writing and in the form as determined by the Department.

a) **Administrative Relief.** The Administrative Officer shall have the authority to authorize modification of up to 10% from any numerical standard set forth in this Article inclusive of any specific relief set forth in Table 14.7.3-A Administrative Relief below ~~sets forth relief from the prescribed standards that may be granted by the Director.~~ No other relief from the prescribed standards shall be permitted except as approved by the Development Review Board in b) below.

i. Any request for Administrative Relief shall extend the requirements of 24 VSA 4448(d) regarding Administrative decisions for an additional 30 days in order to provide for opportunities for public notice and comment pursuant to Departmental procedures.

ii. Decisions by the Administrative Officer ~~Director~~ regarding any Relief granted shall be made in writing and upon affirmative findings that:

A. The relief granted is the minimum necessary to achieve the desired result;

B. Granting the relief will yield a result equal to or better than in strict compliance with the standard;

C. ~~The~~The property will otherwise be developed consistent the purpose of this ordinance, the intent of the Form District, the intent and purpose of the section that the relief is being sought, and all other applicable standards; and,

D. Any additional findings as may be required by Table 14.7.3-A Administrative Relief as follows:

Table 14.7.3-A - Administrative Relief

Type of Relief	Limits of Relief Granted	Required Findings	Standards Reference
<i>previous unchanged</i>			
Glazing Voids: A reduction in the amount of required minimum glazing voids on Primary and Secondary Facades	Maximum of 10% from the required <u>Glazing voids</u>	The relief is necessary to meet the requirements of a High Performance Building Energy Code or program.	Section 14.4: Specific to Building Types, Table 14.4.15- A Street Activation = <u>Primary and Secondary Façade</u> , and Section 14.5: Specific to Frontage Types
Glazing Voids:	Maximum of 10% of the required linear distance between windows <u>voids</u>	The relief is necessary for the creation of stronger distinctions between	Section 14.4: Specific to Building Types, Table 14.4.13-

A reduction in the maximum
linear distance between
window openings ~~voids~~

individual Frontage Types
and/or at Building corners.

remaining unchanged

b)-c) - unchanged

Sec. 14.8 - Glossary

Active Street-level Use: a use or activity within a space that is regularly frequented and actively utilized by workers, residents, guests, and/or patrons of the Principal Use; invites direct access from the public sidewalk or Civic space; and, provides visual interest and engagement to pedestrians on the adjacent sidewalk. Active street level uses generally include, but are not limited to retail, restaurants, bars, entertainment, hospitality, professional and personal services, libraries, institutional, educational and cultural facilities, office, residential, and entrance lobbies. Active Street-level Uses do not include those intended for parking, storage, mechanicals, utilities, and other substantially similar secondary or accessory uses and spaces.

Awning: A fixed or retractable wall mounted frame covered with fabric or other pliable material that provides decoration and shade and weather protection over a patio, window, storefront, or Building entrance.

Balcony: A wall-mounted projecting platform with a railing accessible from an upper story doorway that provides outdoor amenity space above the first floor.

Canopy: A fixed wall mounted or stand-alone rigid structure that provides decoration and shade and weather protection over a patio, window, storefront, or building entrance.

Deck: A roofless, raised platform on the ground or on top of a roof that is accessible from a secondary entrance that provides outdoor amenity space.

Department: The Department of Permitting and Inspections.

Thoroughfare: a public or private way for use by public vehicular, pedestrian, and bicycle traffic that provides Access to Lots and Open Spaces, and incorporates vehicular lanes and Public Frontages.

Streetscreen: a freestanding hedge, fence or wall of between 3.5 and 8 feet in height built (a) along the Frontage Line or (b) on the same plane as the Façade of the Building to Screen a Parking Lot, Parking Area or Loading Area, provide privacy to a side yard or rear yard, and/ or strengthen the spatial definition of the public realm. A Streetscreens may have include an openings no larger than necessary 4-feet to allow automobile and enable pedestrian Access, and may be no longer than 20-ft or 20% of the Frontage whichever is less.

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
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(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission with City Council Ordinance Committee Tuesday, April 13, 2021, 6:30 P.M. Remote Meeting via Zoom Draft Minutes

Members Present	A Montroll, B Baker, Y Bradley, A Friend, E Lee, H Roen, J Wallace Brodeur, C Mason, J Hanson, Z Hightower
Staff Present:	D White, M Tuttle, S Gustin, K Sturtevant, P Wehman, B Ward
Attendance:	J Fish, R Camara, K Van Woert, A Magyar, M Barlow, J Hinsdale, F Lee, K Hackett, J Heller, E Redic, B Redic, L Kettler, L Jenson, M Orleans, K Gauthier, S carpenter, B Foust, D Lyons, J Marks, B Gonyaw, K Casella, K Cavoretto, R Danielson, S Bushor, one additional phone number unidentified

I. Agenda

Call to Order	Time: 6:38pm
Agenda	No Changes

II. Public Forum

Name	Comment
B Redic	City says it is interested in supporting homeownership for people of color, but disappointed about amount of work required to purchase a 3-unit home. Due to lack of paperwork in the City, required to make a significant investment to turn it into a duplex, and most recent concern is that it has been vacant for 60 days, losing the opportunity to maintain it for this purpose. Looking for support from the committee.

III. Proposed CDO Amendment: Short Term Rentals

Action: Amend proposed STR regulations to require owner-occupancy for all unit types.		
Motion: E Lee	Second: A Friend	Failed 2-5. Lee, Friend in favor; Baker, Bradley, Montroll, Roen, Wallace Brodeur oppose.
Action: Amend proposed STR regulations to allow STR in 1 and 2 unit buildings when host does not live on-site if owner has owned property for 3 years.		
Motion: B Baker	Second: H Roen	Passed 4-3. Baker, Bradley, Montroll, Roen in favor; Friend, Lee, Wallace Brodeur oppose.
Action: Approve the Municipal Bylaw Amendment Report and forward proposed CDO and Ch. 18 amendments to Council as amended, with recommendation.		
Motion: Y Bradley	Second: J Wallace Brodeur	Passed 6-1. Lee opposed.
Staff provided an overview of the current proposal for both CDO and Ch. 18 amendments, which are posted online at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas		
The Chair opened the Public Hearing at 6:51pm with the following comments received:		

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at 802-865-7144.

- E Redic- Disappointed in lack of concern about who is being impacted and harm to the community. Say want affordable housing and safe places to live, but the only way to do that is relieve some of the regulations in place. City is making it difficult to be a landlord, and putting own family and tenants at risk.
- K Casella- Proposed STR regulations are draconian and overreach. Did not do work to document how many STRs have replaced housing units, how owner-occupancy requirement is addressing a problem. 38% of VT STR hosts use STRs as primary income; personally use STR income to pay increasing taxes. Proposal could make homeownership impossible in Burlington, and harm homeowners' livelihood. Ask committee to withdraw the proposal, reconsider impacts, and implement a registration process.
- J Heller- Applaud adoption of clear and understandable regulations; do not think ability to STR should be based on neighbors' relationships.
- J Marks- Request withdraw of proposal until more data and evidence based recommendations to improve living conditions. Proposal is unlikely to improve housing, but will economically impact property owners. Lack of affordability is due to lack of growth, stagnant wages, and cumbersome zoning ordinance. ARPA will bring money for affordable housing in state and S.79 is likely to pass the legislature and have a positive impact on housing and reveal the true nature of STRs. Many whole unit STRs in Burlington were never long-term housing before.
- L Jenson- Withdraw the recommendations because committee is not willing to create a truly progressive policy. Impacts have not been meaningful debated, housing summit report has not been satisfied. Need to know who will benefit vs. be harmed; how the policy will make housing more affordable; and impact on tenants, tax income, and tourism economy. Need to determine the process and benchmarks for evaluating changes to the policy. Concerned about why housing inspections are not required in partial unit STRs renting just 1 or 2 bedrooms.
- A Magyar- How will the city replace the loss of rooms and meals tax, money from tourism economy if STRs are reduced? Pandemic has caused economic ruin but STRs have a role in the recovery. Burlington is a tourist city, and tourism will roar back after the pandemic. STR guests stay longer and spend more than typical visitors, distribute economic impacts outside of downtown, and money stays in local area. STRs are not new; homes and camps have been around, but sharing platforms ensure that taxes are paid. Is the Committee willing to risk not knowing how this will impact the city's economy?
- D Lyons- Eliminate requirement for primary residence for single unit and duplexes. Landlord should be able to permit a building whether they live on site or not. Committee should consider proposal from last month to allow owners of a building for 3+ years to host STR if they don't live on site. It is a balanced approach. Otherwise, should wait to see what S.79 does at the state level.
- Jacob Hinsdale- Concerned about false choice suggested between STR and long-term rentals. STRs require a lot more resources on a day-to-day basis compared to a LTR rental. Don't believe that large landlords will ever convert housing units en masse, partially because there is not enough labor to keep up with the work required. Don't think it will impact overall availability of housing in the city if people can STR another property that they own. Should be more data and reflection about relationship to state level policies.

The Chair closed the Public Hearing at 7:31pm, with Committee discussion to follow:

- At request of Committee members, A Montroll reintroduced proposal to allow people that have owned a property for 3+ years to STR even if they do not live at the property.
- Some Committee members supported this idea as a way to reach compromise, to avoid putting existing STR hosts out of business, but to stem property speculation and with little impact on existing rental housing stock. Generally, these members felt this provided flexibility for people to STR to afford to stay in their home or keep up their properties.

- Other Committee members were concerned this would create an incentive not to convert a housing unit back to long-term, resulting in a loss of workforce housing, and concerns that it was benefitting property owners who have already been able to invest in the market while excluding new property owners. Some committee members suggested a willingness to loosen the rules in other ways, but did not support this approach.
- Some committee members noted that waiting is not an option, both due to the post-pandemic potential to see an increase in STRs, as well as a concern that state-level policy may not address Burlington specific issues.
- A Committee member noted that it is disingenuous to say people are going to lose "their" home, because the proposal allows people to STR their own home. Having a second property is a significant investment. It was noted by several committee members that precluding STRs in some properties does not preclude the opportunity to make money from long-term renting.
- Some Commissioners noted that the committee has only heard from hosts, but not the people who are looking for housing in the city, including the 60% of households that are renter-occupied, and that the Committee has the responsibility to consider everyone.
- At the conclusion of the discussion, a motion to require owner-occupancy for all STR scenarios failed, and a motion to enable off-site hosting for 1 and 2 unit properties that have been owned for 3+ years passed. It was clarified that this is a recommendation to send to the City Council, but that the Council will ultimately have the authority to amend or adopt the proposed regulations.

IV. Reapprove Municipal Bylaw Amendment Report ZA-21-06

Action: Reapprove Municipal Bylaw Amendment Report and forward to Council for adoption.		
Motion: A Friend	Second: E Lee	Vote: Approved Unanimously
At the recommendation of staff, Council Ordinance Committee modified the proposed amendment to replace term "no-mow" with "low-mow". Commissioners supported the amendment as being accurate to the intent of the definition.		

V. Commissioner Items

Action: N/A		
Motion: NA	Second: NA	Vote: NA
• H Roen noted he will not be seeking reappointment at the end of the term in June, will focus on work with Renewable Energy Vermont. • B Baker noted continued concerns about how zoning presents a barrier to the next generation of homeownership in Burlington, including that duplexes aren't allowed in some of the existing zoning districts. • E Lee requested an update to the rental housing code to include on the permit checklist the requirement for recycling totters for all rental buildings, and the requirement to have a physical barrier that defines parking areas.		

VI. Minutes & Communications

Action: Approved the minutes and accepted the communications		
Motion by: A Friend	Second: J Wallace Brodeur	Vote: Approved Unanimously
• Minutes Approved: March 9, 2021 • Communications filed enclosed in agenda packet, and additional communications posted online at https://www.burlingtonvt.gov/CityPlan/PC/Agendas		

VII. Adjourn

Adjournment		Time: 8:49
Motion: H Roen	Second: J Wallace Brodeur	Vote: Approved Unanimously

April 21st, 2021

Burlington Planning Commission
c/o Department of Planning and Zoning
149 Church Street
Burlington, Vermont 05401

Re: Expanding the FD5 boundaries to include buildings along Pine Street north of King Street

Dear Members,

Please accept this letter as a formal request to amend the 2019 extension of the downtown FD5 District to include 3 buildings on the west side of Pine Street north of King Street. This request is put forth by the two owners of these buildings:

Offenhartz Inc., 157-159 Pine Street; Offenhartz Inc., 161-163 Pine Street; Amy Gonyaw, 76 King Street.

The red outlined areas in the map below are the 2019 expansions of FD5. The green outlined area encompasses the buildings we request added to FD5:



We are requesting this change so that we can have the flexibility to use our buildings for purposes which are allowed in FD5 and not allowed in residential high density, the current zoning designation for these buildings. We strongly believe it is appropriate that these buildings are zoned FD5 as it is in keeping with the FD5 zoning on either side of this block and with the plan for future growth of Burlington as it is described in Burlington's Comprehensive Plan.

In 2019, the Commission voted to extend the FD5 boundaries in several locations on the edge of the FD5 District. One of additions to the FD5 District is a slice of the block which includes our buildings, the block between Main, King, South Champlain, and Pine Streets. You can see this in the image above. We question why the buildings facing Pine St. on this block were not added along with this strip. Burlington's Comprehensive Plan identifies Pine St as a major thoroughfare and area suitable to accommodate the city's future growth. The Plan goes on "we need to have places where we can accommodate and encourage future growth and development in order to maintain our vibrancy, tax base, and character." The parking requirements tied to building use were removed along Pine St recently in preparation for encouraging this intensity of use described in the Plan. It is only a matter of time before these buildings are designated FD5 as they are already part of downtown in character and it is the stated plan to encourage growth there.

To illustrate our position further, the following is the Purpose Statement from the 2019 FD5 zoning boundary amendment: "The purpose of this proposed amendment is to modify the boundaries of Form District 5 to include additional properties located along the boundary of the current district. Properties

considered for inclusion in the FD5 district were evaluated for their current use, future potential use, development intensity, and compatibility with adjacent properties. They have been recommended to be included in the FD5 in order to encourage the type and intensity of future infill or redevelopment consistent with adjacent properties, to enable greater flexibility for expansion or reuse of existing uses and structures, and/or reduce existing non-conformities.” We believe that not including these 3 buildings is directly at odds with this purpose statement.

Below are the buildings neighboring our 3 that are already designed FD5.

This is 168 Pine St. It is a 6 unit multifamily and is zoned FD5. It is directly across the street from our property.



This is 151-153 Pine St. It is a 5 unit multifamily. It is one building north of the 3 building we are requesting added to FD5. It was added to FD5 with the recent zoning changes.



It seems an oversight that these three buildings were not included in the 2019 expansion of FD5. We would like this corrected so that we can use our buildings in a way that is in keeping with their location in downtown Burlington as described in Burlington's Comprehensive Plan. Thank you for considering this amendment and for your dedication to ensuring Burlington grows in a thoughtful way.

Sincerely,

Steven Offenhartz, Bill and Amy Gonyaw

April 22, 2021

Rachel Lomonaco
District 4 Coordinator
Natural Resources Board
111 West Street
Essex Junction, Vermont 05452

Re: 410116-21H Burlington School District - Burlington

Dear Ms. Lomonaco:

VTrans has reviewed the proposed permit application as well as the VHB Traffic Impact Study (Exhibit 016, VHB-Burlington High School TIS, January 2021) and offers the comments below.

The proposed project consists of an after-the-fact change in use of former Filene's/Macy's store building into the host site for Burlington High School. According to the VHB traffic impact study, the proposed project is expected to generate 275 additional net trips per hour (vph) during the AM peak hour and a net *decrease* of 85 vehicles during the PM peak hour. These net trip calculations factor in the multimodal transportation of students and faculty (walking, buses, and bicycling) while also accounting for the AM and PM trips the previous land use (Macy's). In the case of the PM peak hour trips, the Macy's department store had created more trips than the school will create thus a net decrease of 85 vehicles was realized.

In reviewing the application and traffic impact study there are a few key points with the new high school location that should be noted:

- The school is not providing additional or new traffic to Burlington per se. It is shifting existing school traffic from its previous location approximately 1.5 miles away.
- The school traffic at the Macy's location will be for temporary use.
- As mentioned in the application description, this is an "after-the-fact" use. Students and faculty are currently using this building. This will form a good initial measure for monitoring traffic and multimodal behavior to see what is working or not working, respectively.
- The new school location is located in the downtown district with multiple town roads in a grid pattern to enhance traffic dispersion.

- The new downtown location of the school puts it within local street and sidewalk infrastructure for convenient bicycle and pedestrian access for students and faculty.
- The new downtown location of the school is in close proximity to the GMT downtown transit center for convenient transit access.

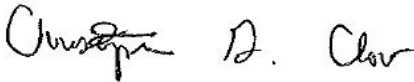
Based on these factors, VTrans concurs with net trip generation and traffic analysis from the VHB traffic impact study and has no concerns with this improvement relative to the impact of the project on traffic congestion, safety, or access for pedestrians, cyclists, and transit.

Act 145 Transportation Impact Fee

Based on our review of this permit application, VTrans does not recommend payment of a transportation impact fee pursuant to Act 145. A transportation impact fee is not required due to the fact that the school relocation is temporary, and the net PM trip generation will decrease relative to the traffic of the previous land use (Macy's). In the case where a project's net PM trip generation remains the same or decreases from that of the previous establishment, an Act 145 transportation impact fee is not warranted.

Please contact me with any questions or comments at 802-522-4901 or christopher.clow@vermont.gov

Sincerely,



Christopher G. Clow, PE
Transportation Engineer

Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE #4C0116-21H

I, Christopher Clow, of the Agency of Transportation hereby certify that on April 22, 2021, I sent a comment letter to the District #4 Environmental Commission concerning the applicant, Devonwood Cherry Street Associates, and the Burlington School District, 4C0116-21H by U.S. Mail, postage prepaid or by email to the following:

Burlington School District
150 Colchester Avenue
Burlington, VT 05401
mspauldi@bsdvt.org

Devonwood Cherry Street Associates, LLC
101 Cherry Street, Suite 440
Burlington, VT 05401
dave@btvspaces.com

David Farrington Jr.
4724 Spear Street
Burlington VT 05401
dave@btvspaces.com

Dave Marshall, PE
Civil Engineering Associates, Inc.
10 Mansfield View Lane
South Burlington, VT 05403
dmarshall@cea-vt.com

Amy Bovee, Assistant City Clerk
Chair, City Council/Chair, Planning Commission
City of Burlington
139 Church Street
Burlington, VT 05401
abovee@burlingtonvt.gov

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

Agency of Natural Resources
One National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
PSD.VTDPS@vermont.gov

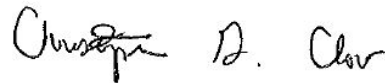
VTrans Policy, Planning, and Research Bureau
Barre City Place
219 N. Main St.
Barre, VT 05641
AOT.Act250@vermont.gov

Vt. Agency of Agriculture, Food, and Markets
16 State street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act20@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov
james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

Jennifer M.V. Fitch, PE, Commissioner
Judy Bruneau, Executive Assistant
Department of Buildings and General Services
2 Governor Aiken Avenue
Montpelier, VT 05633-5801
jennifer.fitch@vermont.gov
judy.bruneau@vermont.gov

Dated at Montpelier, Vermont this 22nd day of April 2021.



Christopher G. Clow, PE
Vermont Agency of Transportation



MEMORANDUM

TO: City of Burlington Planning Commission Chair
Town of Shelburne Planning Commission Chair
Town of Colchester Planning Commission Chair
Town of Williston Planning Commission Chair
City of Winooski Planning Commission Chair
Town of Essex Planning Commission Chair
Village of Essex Junction Planning Commission Chair
Chittenden County Regional Planning Commission
VT Department of Housing and Community Development

FROM: Paul Conner, Director of Planning & Zoning

SUBJECT: Proposed Land Development Regulation Amendments

DATE: April 13, 2021

Enclosed please find a series of proposed amendments to the City of South Burlington's Land Development Regulations, as well as a report from the Planning Commission, as required under Chapter 117. The Planning Commission will hold a public hearing on these amendments on Thursday May 20, 2021 at 7:00 pm via GoToMeeting. Participation options:

Interactive Online: <https://www.gotomeet.me/SouthBurlingtonVT/pc-2021-05-20>

Telephone (audio only): (571) 317-3112 **Access Code:** 886-368-509

A copy of the proposed amendments are enclosed, and available on the [City's website](#).

Feedback on the draft amendments is welcome, either at the hearing, or in writing in advance of the hearing date. Should you have any questions, feel free contact the Department of Planning & Zoning at planning@sburl.com.



PROPOSED AMENDMENTS to the SOUTH BURLINGTON LAND DEVELOPMENT REGULATIONS

Public Hearing Thursday, May 20, 2021 at 7:00 pm

PLEASE TAKE NOTICE that the Planning Commission will hold a public hearing on Thursday, May 20, 2021 at 7:00 PM to consider amendments to the Land Development Regulations. The amendments affect all parts of the City unless otherwise specified below. The hearing will be held via remotely via GoToMeeting. Participation options:

Interactive Online: <https://www.gotomeet.me/SouthBurlingtonVT/pc-2021-05-20>

Telephone (audio only): (571) 317-3112 **Access Code:** 886-368-509

The purpose of the hearing is to consider the following:

LDR-20-01: Modifications to Environmental Protection Standards, including existing 100-year floodplain, river corridor, stream buffer, wetland & wetland buffer, and stormwater management standards; establishment of standards regarding 500-year (0.2%) floodplain, habitat block, habitat connector, steep slope, and very steep slope standards; establishment of criteria to evaluate undue adverse effect; and related amendments referencing the above-listed resources.

Specific Articles / Sections to be Amended:

Section 2.02 Definitions

Section 2.03 Definitions for Flood Hazard and River Corridor Purposes

Section 3.01 Establishment of Districts and Description of Certain Districts

Section 3.02 Official Maps and Other Maps

Section 3.03 District Boundaries

Section 3.04 Applicability of Regulations

Section 9.06 Dimensional and Design Requirements Applicable to All [Southeast Quadrant] Sub-Districts

Section 9.12 SEQ-NRP; Supplemental Regulations

Section 10.01 Floodplain Overlay District (FP)

Section 10.07 River Corridor Overlay District (RCO)

Article 12 Environmental Protection Standards [Replaces Surface Water Protection Standards]

Section 15.02 [Subdivision and Planned Unit Development] Authority and Required Review

Section 15.18 Criteria for Review of PUDs, Subdivisions, Transect Zone Subdivisions, and Master Plans

Appendix E, Submission Requirements

Natural Resources Map [Replaces Wetlands Map]

Copies of the proposed amendments are available for inspection at the Department of Planning & Zoning, City Hall, 2nd Floor, 575 Dorset Street, and on the city website at www.sbvt.gov.

Jessica Louisos, Planning Commission Chair

April 13, 2021



**South Burlington Planning Commission
Proposed Land Development Regulations
Amendment & Adoption Report
Planning Commission Public Hearing Thursday, May 20, 2021**

In accordance with 24 V.S.A. §4441, the South Burlington Planning Commission has prepared the following report regarding the proposed amendments and adoption of the City's Land Development Regulations.

Outline of the Proposed Overall Amendments

The South Burlington Planning Commission will hold a public hearing on Thursday, May 20, 2021 at 7:00 pm, via GoToMeeting electronic platform, to consider the following amendments to the South Burlington Land Development Regulations:

LDR-20-01: Modifications to Environmental Protection Standards, including existing 100-year floodplain, river corridor, stream buffer, wetland & wetland buffer, and stormwater management standards; establishment of standards regarding 500-year (0.2%) floodplain, habitat block, habitat connector, steep slope, and very steep slope standards; establishment of criteria to evaluate undue adverse effect; and related amendments referencing the above-listed resources.

Brief Description of the Proposed Amendments

The proposed amendments include the following:

- Enhancement of standards and/or geographic area for protection of natural resources currently regulated by the City: notably 100-year floodplains, class I and II wetlands, streams, and river corridors
- Mapping and establishment of standards for newly-regulated natural resources: habitat blocks, habitat connectors, steep slopes, and 500-year floodplains
- Update of stormwater management and 100-year floodplain standards to current best practices and streamlining of review for public stormwater restoration projects
- Update of references to natural resources throughout the regulations to be directed to the Environmental Protection Standards of Articles 10 and 12
- Establishing thresholds and consistent standards of review applicable to limited allowances for impacts to regulated natural resources, including infrastructure
- Categorization of regulated natural resources into three tiers

Below is a table summarizing the proposed changes / additions to natural resource

Hazards	Section	Status	Summary of Proposed Changes	How boundary is established
100 year (1%) Floodplain	10.01	Existing	Updates for consistency with State guidelines, provision for historic structures	FEMA Flood Insurance Rate Maps
500-year (0.2%) Floodplain B2 Area	10.01	New	No new buildings in the 500-year floodplain; substantial renovations must meet floodproofing standards	State River Corridor Map or applicant measurement using LiDAR data
River Corridors and Surface Waters	10.07	Existing	Consolidates two overlapping sets of current standards: Stream Buffer and River Corridors. Geographic areas includes areas previously included under each, and uniform measurement from top of bank/slope for buffers. Allowable incursions into buffers are reduced.	State-mapped River Corridor Flood Insurance Rate Maps
Class I, II Wetlands, Buffers	12.03	Existing, Expanded	Buffer for Class II wetlands expanded from 50' to 100' in residential and conservation districts. Allowable incursions in areas outside City Center FBC limited to only certain infrastructure and exemptions. Updated standards within City Center FBC. <i>[Class I wetland buffers also expanded, none presently identified in South Burlington]</i>	On-site field delineation using City/State maps as indicator
Very Steep Slopes (25+%)	12.09	New	No new development except certain infrastructure and exemptions	Applicant measurement using LiDAR data
Level I Resources	Section	Status	Summary of Proposed Changes	
<i>Habitat Blocks</i>	12.05	New	No new development within City-mapped Habitat Blocks except certain allowances to exchange land certain infrastructure, parcels with >70% Hazards/Level 1, and exemptions	Boundary as shown on City Natural Resources Map
<i>Habitat Connectors</i>	12.06	New	Habitat connector function must be kept intact, mapped location may be modified with approval	Boundary as shown on City Natural Resources Map
Level II Resources	Section	Status	Summary of Proposed Changes	
500-year Floodplain B1 Zone	10.01	New	New development and substantial renovation must meet floodproofing standards	FEMA Flood Insurance Rate Maps where they exist or applicant measurement using LiDAR data
Class III Wetlands, Buffers	10.03	Existing	Wetlands under 300 s.f. are exempted. Updated standards for review of proposed impact	On-site field delineation
Steep Slopes (15 to 25%)	12.09	New	New development must demonstrate slope stabilization	Applicant measurement using LiDAR data
Intermittent Streams, Buffers	10.07, 12.08	Existing	Clearer definition. Specifically excludes human-created drainage systems. Updated standards for relocation	On-site field delineation

Categories of Natural Resources

Resources are grouped into three (3) categories: Hazards, Level I Resources, and Level II Resources.

- *Hazards* are resources for which impacts can have significant effects on safety of property or life. They are often regulated at the State or Federal level. They may be large or small in area. Very limited incursions into these resources, particularly for certain infrastructure, may be permitted following review.
- *Level I Resources* are locally-identified natural resources that are typically larger in area and cross multiple properties. The draft regulations allow for limited adjustment of boundaries in certain circumstances and limited incursions under specific circumstances. Credit may be provided for the conservation of these areas through density transfers in certain Planned Unit Development types.
- *Level II Resources* require specific review for any impact, but are not necessarily excluded from development parcels. They are typically smaller in area and/or can be mitigated through careful site design.

Background and Context of the Proposed Regulations

The proposed modifications to the Regulations draw on the research work of prior Planning Commission efforts, the 2016 Comprehensive Plan, and several studies undertaken by the community in recent years, including the 2015 Open Space Plan, the 2020 Habitat Block and Assessment and Ranking, and the 2020 Interim Zoning Open Space Committee Final Report, among others.

Standards and geographic boundaries established by these Regulations were developed based on mapping, research, and consultations with subject area experts. Habitat Blocks and Habitat Connectors included in the proposed Regulation used the 2020 Habitat Block Assessment and Ranking as their starting point. Geographic boundaries, thresholds, standards for allowed modifications or incursions were subsequently established.

These draft amendments are proposed to function as one of a collection of tools to support natural resource conservation and thoughtful development in the community in support of the Comprehensive Plan.

Findings Concerning the Proposed Amendments

The proposed amendments have been reviewed by the Planning Commission in the context of the text, goals, and objectives of the City of South Burlington's Comprehensive Plan, adopted February 1, 2016. The Commission has addressed the following as enumerated under 24 VSA 4441(c):

"...The report shall provide a brief explanation of the proposed bylaw, amendment, or repeal and shall include a statement of purpose as required for notice under section 4444 of this title, and shall include findings regarding how the proposal:

- (1) *Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing.*
- (2) *Is compatible with the proposed future land uses and densities of the municipal plan.*

The 2016 Comprehensive Plan establishes four (4) principal Goals for the City:

Vision & Goals. Here and into the Future, South Burlington is...

Affordable & Community Strong *Creating a robust sense of place and opportunity for our residents and visitors.*

- *Be affordable, with housing for people of all incomes, lifestyles, and stages of life;*
- *Keep unique features, and maintain or enhance the quality of life of existing neighborhoods;*
- *Be a recognized leader in public education offerings and outcomes;*
- *Provide quality public safety, infrastructure, health, wellness, and recreation services;*
- *Ensure transparent and accessible government.*

Walkable. *Bicycle and pedestrian friendly with safe transportation infrastructure.*

- *Develop a safe and efficient transportation system that supports pedestrian, bicycle, and transit options while accommodating the automobile;*
- *Establish a city center with pedestrian-oriented design, mixed uses, and public buildings and civic spaces that act as a focal point to the community.*

Green & Clean. *Emphasizing sustainability for long-term viability of a clean and green South Burlington.*

- *Promote conservation of identified important natural areas, open spaces, aquatic resources, air quality, arable land and other agricultural resources, historic sites and structures, and recreational assets;*
- *Reduce energy consumption city-wide and increase renewable energy production where appropriate.*

Opportunity Oriented. *Being a supportive and engaged member of the larger regional and statewide community.*

- *Prioritize development that occurs within the community into the higher intensity areas identified within this Plan;*
- *Support a diverse and vibrant economy built on quality jobs, employment centers and a supportive educational and research system; support markets for local agricultural and food products.*

The 2016 Comprehensive Plan also includes the following objectives and strategies specific to ecological resources in the community:

Ecological Objectives

Objective 30. Proactively plan for a network of interconnected and contiguous open spaces to conserve and accommodate ecological resources, active and passive recreation land, civic spaces, scenic views and vistas, forests and productive farmland and primary agricultural soils.

Objective 31. Conserve, restore and enhance biological diversity within the City, through careful site planning and development that is designed to avoid adverse impacts to critical wildlife resources, and that incorporates significant natural areas, communities and wildlife habitats as conserved open space.

Ecological Strategies

Strategy 67. Substantially restrict new subdivision and development from primary resource conservation areas to include hazardous and environmentally sensitive areas identified, mapped and regulated by the City. Minimize the adverse impacts of new subdivision and development, including resource fragmentation and encroachment, within secondary resource conservation areas, to include those resources of state or local significance as indicated on available resource maps, identified in available inventories and studies, and confirmed through site investigation.

Strategy 68. Redefine open space in new developments such that usable, quality open space shall be required. Qualifying open space should include civic spaces, recreation, wildlife habitat, and usable agricultural lands.

Strategy 69. Retain healthy and high-quality existing trees, vegetation, and publicly owned natural areas and woodlands. Develop long-range management plans for each area to foster their continued health and use.

Strategy 70. Encourage public education about tree functions and tree disease inspection in urban areas through cooperation with the UVM Horticultural Farm and Vermont Department of Forest Parks, and Recreation, Urban and Community Forestry Program.

Strategy 71. Maintain the City's wildlife diversity, including making use of available planning and legal tools such as buffers, transfers of development rights, overlay zoning districts, conservation easements and other tools as appropriate.

Strategy 72. Work with adjoining municipalities and regional entities to enact complementary land use policies where wildlife habitat areas cross City boundaries.

Strategy 73. Maintain existing overall tree canopy. Set targets to increase overall tree canopy, with a focus on increasing tree canopy in urban areas and residential property parcels as identified in the Report on Existing and Potential Tree Canopy in the City of South Burlington (2014).

Strategy 74. Foster passive recreational use of natural areas and identify areas that may be appropriate for an "off-limits" designation due to their fragile nature.

And finally, the Comprehensive Plan establishes a series of five categories of Future Land Use, as depicted on Map 11, along with the following statement: *"Together, these broad categories are intended to encompass key issues and areas addressed in this Comprehensive Plan and provide an overall framework for implementation of the plan."*

- *Very low intensity, principally open space.*
- *Lower intensity, principally residential*
- *Medium intensity, residential to mixed use*
- *Medium to higher intensity, principally non-residential*
- *Medium to higher intensity, mixed use*

The proposed Regulations substantively and substantially advance the ecological goals and strategies enumerated in the 2016 Comprehensive Plan, and do so in the context of the overall Vision and Goals for the City and the designations within the Future Land Use Map.

The proposed regulations have been prepared following detailed evaluation of each individual resource as well as their collective and coordinated roles in support of the objectives and strategies above.

The specific resources included within the draft Environmental Protection Standards are not intended to be a precise replication of the individual resources as described or mapped in the Comprehensive Plan; South Burlington-specific study and analysis of these resources, consideration of best practices in resource conservation, and consideration of the geographic context of natural resources across the City were important factors in developing regulatory tools to implement these objectives and strategies.

The amendments have been considered for their impacts on the availability of safe and affordable housing. Establishing restrictions on certain land as priority areas for conservation of natural resources can affect the total land area available for the construction of new housing. The existing and proposed regulations mitigate the effects of this conservation, through several means:

- Existing regulations allow for the re-allocation of allowable housing density within a property through the use of Planned Unit Developments.
- The draft Regulations accommodate circumstances where certain natural resources – notably Habitat Blocks and Habitat Connectors - are present across the substantial majority of the land.
- The draft regulations provide for reduced standards, exemptions, or allowable modifications within areas designated as Medium to Higher Intensity in the Future Land Use Map
- Recent prior amendments to the Land Development Regulations have increased building height allowances along principal transportation corridors, established inclusionary zoning requirements, and reduced or eliminated minimum parking standards
- The proposed regulations are intended to provide greater clarity and certainty for all parties involved in land development

(3) Carries out, as applicable, any specific proposals for any planned community facilities.

The proposed amendments do not directly affect planned community facilities. Planned Community facilities are specifically addressed through reference to the Official Map.

LDR-20-01: ENVIRONMENTAL PROTECTION STANDARDS & RELATED

KEY TO AMENDMENTS:

Text in underline are proposed additions or relocated text

Text in ~~striethrough~~ are proposed deletions or text that has been moved

Text in **yellow highlights** are notes to the draft

ARTICLE 2 DEFINITIONS

...

2.02 Specific Definitions

...

Building Envelope. A designated area or portion of a lot, delineated on a subdivision plat, within which all structures, parking and loading areas, and clearing of land must be located, with the exception of driveways and utility lines. A building envelope shall be defined by minimum setback and maximum height requirements unless otherwise specified in these Regulations.

Environmental Restoration Project: A project authorized under the MS4 General Permit, TS4 General Permit, or Municipal Roads General Permit (MRGP), that address a primary pollution source identified in a Vermont Department of Environmental Conservation approved watershed implementation plan (i.e. TMDL, Flow Restoration Plan, or Phosphorus Control Plan) and is not required for the purpose of developing or redeveloping impervious surfaces. Additionally, any floodplain reconnection or stream channel restoration projects that are not included in a Flow Restoration Plan or Phosphorus Control Plan, but are necessary to meet the required pollutant reductions in a TMDL.

Habitat Block. Contiguous forested and adjacent unmanaged shrubby areas of old field, young forest, and unmanaged wetland as demarked on the Natural Resources Map. Includes areas large enough to provide habitat, either permanently, or seasonally for wider ranging species of wildlife such as bobcat, red and grey fox, white-tailed deer, river otter and fisher. These species of wildlife require larger areas (than squirrels or rabbits for example), and a variety of appropriate habitat to fulfill their daily, seasonal, and yearly habitat needs. These needs include security for breeding activities, a variety of food resources, secure cover for raising young, and the presence of water- either for drinking or in the case of aquatic species, as a general habitat. Habitat Blocks fall within a matrix of land-uses that include urban, residential, agricultural, transportation, and rural uses. Habitat Blocks at time of establishment in these Regulations are greater than 50% forested and totals at least 20 acres in size (area may, however, extend beyond City boundary). Portions of contiguous forest or shrubland that cannot be connected by an area wider than 160' are not considered habitat blocks.

Habitat Connector. Areas in the providing wildlife served by Habitat Blocks the ability to move across the landscape in stepping-stone fashion between Habitat Blocks as demarked on the Natural Resources Map. For species such as fox, fisher, and bobcat, accessing multiple Habitat Blocks make up for the smaller, more fragmented nature of the Habitat Blocks in the community.

Hazard: Floodplain overlay districts A, AE, A1-30, and 0.2% B2, River Corridors except those along intermittent streams, Very Steep Slopes, Class 1 and Class 2 wetland and associated buffers

Level I Resources: A Habitat Block or Habitat Connector.

Level II Resources: River Corridors along intermittent streams, Floodplain Overlay District Zone 0.2% B1 (500-year floodplain, Class 3 wetlands (greater than 300 square feet in size) and associated buffers, and steep slopes.

Rare, Threatened or Endangered Species. A wildlife or plant species identified by the Vermont Department of Fish & Wildlife as being rare, threatened or endangered.

Significant Wildlife Habitat. Those natural features that contribute to the survival and/ or reproduction of the native wildlife of South Burlington. This includes: (1) habitat for rare, threatened and endangered species (state or federally listed); (2) River Corridors as defined in these regulations; (3) wetlands and wetland buffers as defined in these Regulations; (4) Habitat Blocks, and (5) Habitat Connectors.

Site Balancing. Where stormwater control and/or treatment of certain limited areas of new, redeveloped, or substantially reconstructed impervious surface area are not possible, the impact from these areas of untreated impervious surfaces will be compensated on an equivalent basis by controlling and/or treating other impervious surfaces on the lot, parcel, or property. This can be accomplished by providing additional control and/or treatment beyond what is required for impervious surface areas already subject to the requirements of 12.083(C) or by providing control and/or treatment for impervious surfaces that are not otherwise required to meet the requirements of 12.083(C). The applicant must own or otherwise control the impervious surfaces used for site balancing.

Steep Slopes. Any land formation, aside from individual rocks, with a measured slope of between 15 and 25% containing a vertical drop of at least three (3) feet.

Steep Slopes, Very. Any land formation, aside from individual rocks, with a calculated slope of over 25% containing a vertical drop of at least three (3) feet.

Stream. A watercourse having a source and terminus, banks, and channel through which waters flow at least periodically.

Stream, intermittent. Streams with a drainage area smaller than .5 square miles that are not subject to the River Corridor regulations. This definition shall not include ditches and other constructed channels primarily associated with land drainage or water conveyance.

Substantial reconstruction. The reconstruction of an impervious surface where an impervious surface currently exists when such reconstruction involves site grading, subsurface excavation, or modification of existing stormwater conveyance. Substantial reconstruction does not include maintenance or management activities on impervious surfaces including any crack sealing, patching, cold planning, resurfacing, or reclaiming, or grading treatments used to maintain pavement and, bridges, or grading treatments used to maintain and-unpaved roads.

Undue Adverse Effect. An impact that 1) violates a clear, written community standard under these regulations, and that 2) cannot be mitigated through siting or design modifications or conditions of approval.

Wetland. An area that is inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include, but are not limited to, fens, marshes, swamps, sloughs, potholes, ponds, but excluding such areas as grow food or crops in connection with farming activities. The boundary of a wetland shall be delineated by the methodology set forth in the 1989 edition of the Federal Manual for Identifying and

Delineating Jurisdictional Wetlands, or any subsequent amendment or revision of that document. Wetlands are classified as Class I, Class II, or Class III wetlands by the most recently adopted Vermont Wetland Rules.

2.03 Definitions for Flood Hazard and River Corridor Purposes

Average grade level. The average of the natural or existing topography at center of all exterior walls of a building or structure to be placed on site.

Substantial damage. In Floodplain Overlay District Zones A, AE, and A1-30, ~~D~~ damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred. In Floodplain Overlay District Zones 0.2% B1 and B2, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 75 percent of the market value of the structure before the damage occurred.

Substantial improvement. In Floodplain Overlay District Zones A, AE, and A1-30, ~~A~~ any repair, reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three -years, or over the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. ~~This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of an “historic structure”, provided that the alteration will not preclude the structure’s continued designation as an “historic structure”.~~

In Floodplain Overlay District Zones 0.2% B1 and B2, any repair, reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years, or over the period of a common plan of development, cumulatively equals or exceeds 75 percent of the market value of the structure before the “start of construction” of the improvement.

This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of an “historic structure”, provided that the alteration will not preclude the structure’s continued designation as an “historic structure”.

ARTICLE 3 GENERAL PROVISIONS

3.01 Establishment of Districts and Description of Certain Districts

...

B. Description of Certain Districts.

(1) **Floodplain Overlay District.** The boundaries of the Floodplain Overlay District shall include those areas that are identified as areas of special flood hazard (Zones A, AE, A1-30, and 0.2%) in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations. Zone 0.2% has been further divided into Zone B1 and Zone B2 on Map ****, and Map *** is hereby incorporated into these Regulations. The location of the boundary shall be determined by the Administrative Officer (AO). ~~If the applicant disagrees with the determination made by the AO, a Letter of Map Amendment from FEMA shall constitute proof.~~

(a) **Floodplain Overlay District (Zones A, AE, and A1-30) Subdistrict.** The boundaries of these Zones Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict shall include those areas of special flood hazard designated in and on the above referenced studies and maps as Zones A, AE, or A1-30.

(b) **Floodplain Overlay District (sZones 0.2% B1A and B2) Subdistrict.** The boundaries of these Zones Floodplain Overlay (Zone 0.2%) Subdistrict shall include those areas of special flood hazard designated in and on the above referenced studies and maps as Zone 0.2%, and are separated into a zone that reflects generally developed and priority development areas, and a zone that reflects generally undeveloped areas.

3.02 Official Maps and Other Maps

...

~~D. **Wetlands Map.** The Wetlands Map identifies wetland areas throughout the City that are subject to the restrictions set forth in Article 12 of these regulations. The Wetlands Map is filed in the office of the City Clerk and is incorporated herein by reference.~~ **Natural Resources Map.** The Natural Resources map identifies Hazards, Level I Resources and Level II Resources that are subject to the restrictions set forth in Articles 10 and 12 of these

~~F. **Open Space Plan Areas Map** [reserved]~~

3.03 District Boundaries

...

~~D. **Wetland Boundaries.** The boundaries of wetlands shall be as shown on the Official Wetlands Map unless alternative information is submitted and reviewed pursuant to the standards and procedures for review set forth in Article 12, Section 12.02(C) and (D) of these Regulations. All wetland delineations submitted for review by the City shall be delineated by the methodology set forth in the most recent edition of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. This methodology employs three parameters: vegetation, soils and hydrology. The Development Review Board may use the most recent edition of The Wetland Plant List of the State of Vermont published by the U.S. Fish and Wildlife Service to determine the frequency of vegetation occurrence in wetlands.~~

3.04 Applicability of Regulations

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H. Undue Adverse Effect. Where the terms Undue Adverse Effect or Undue Adverse Impact are used in these Regulations, the Development Review Board shall apply the test enumerated in Figure 3-0, Determining Undue Adverse Effect

Figure 3-0 Determining Undue Adverse Effect

The following test shall be used by the Development Review Board in all circumstances when the South Burlington Land Development Regulations requires the Development Review Board to determine whether or not an undue adverse effect is being created.

1. First, the Development Review Board shall determine if a proposed project will have an adverse effect upon the resource, issue and/or facility in question. The Development Review Board shall determine such by responding to the following question:
 - (a) Will the project have an unfavorable impact upon the resource, issue and/or facility in question?
2. If it is determined by the Development Review Board that an adverse effect will be being created by a project, the Development Review Board shall then determine if the adverse effect is "undue." To determine whether or not an adverse effect is undue, the Development Review Board shall respond to the following two questions:
 - (a) Will the project conflict with a clear, written standard in these regulations or the Municipal Plan applicable to the resource, issue or facility in question?
 - (b) Can the unfavorable impact be avoided through site or design modifications, or mitigation, or other conditions of approval?

The Development Review Board shall conclude that adverse effect is "undue" if the answer to 2(a) is **YES** OR the answer to 2(b) is **NO**.

ARTICLE 9 SOUTHEAST QUADRANT – SEQ

9.06 Dimensional and Design Requirements Applicable to All Sub-Districts

...

B. Open Space and Resource Protection.

(1) Open space areas on the site shall be located in such a way as to maximize opportunities for creating usable, contiguous open spaces between adjoining parcels, creating or enhancing stream buffer areas, or creating or enhancing buffers for primary or secondary natural communities.

(2) Building lots, streets and other structures shall be located in a manner consistent with the Regulating Plan for the applicable sub-district, allowing carefully planned development at the average densities provided in this bylaw.

(3) A plan for the proposed open spaces and/or natural areas and their ongoing management shall be established by the applicant. Such plan shall describe the intended use and maintenance of each area. Continuance of agricultural uses or enhancement of wildlife habitat values in such plans for use and maintenance is encouraged. Existing natural resources on each site shall be protected through the development plan, ~~including (but not limited to) primary natural communities, streams, wetlands, floodplains, conservation areas shown in the Comprehensive Plan, and special natural and/or geologic features such as mature forests, headwaters areas, and prominent ridges.~~ In making this finding the Development Review Board shall use the provisions of Articles 10 and 12 of this bylaw related to Hazards, Level I Resources, and Level II Resources ~~wetlands and stream buffers.~~

(4) Sufficient grading and erosion controls shall be employed during construction and after construction to prevent soil erosion and runoff from creating unhealthy or dangerous conditions on the subject property and adjacent properties. In making this finding, the Development Review Board may rely on evidence that the project will be covered under the General Permit for Construction issued by the Vermont Department of Environmental Conservation.

~~(5) — Sufficient suitable landscaping and fencing shall be provided to protect wetland, stream, or primary or natural community areas and buffers in a manner that is aesthetically compatible with the surrounding landscape. The use of split rail or other fencing made of natural materials is encouraged. Chain link fencing shall be prohibited except:~~

~~(a) — fencing for agricultural purposes, and~~

~~(b) — fencing for recreational purposes, such as baseball diamonds, tennis courts, basketball courts, dog parks, or similar activities. Any chain link fencing installed for these purposes shall be plastic coated in either dark green or black.~~

~~In all cases, proposed fences shall comply with this section and section 13.17 (Fences) of these Regulations.~~

C. **Agriculture.** The conservation of existing agricultural production values is encouraged through development planning that supports agricultural uses (including but not limited to development plans that create contiguous areas of agricultural use), provides buffer areas between existing agricultural operations and new development, roads, and infrastructure, or creates new opportunities for agricultural use (on any soil group) such as but not limited to community-supported agriculture. Provisions that enhance overall neighborhood and natural resource values rather than preservation of specific soil types are strongly encouraged.

9.12 SEQ-NRP; Supplemental Regulations

A. Any lot that lies entirely within a SEQ-NRP sub-district is subject to the following supplemental regulations:

- (1)** Such lot shall be conveyed to the City of South Burlington as dedicated open space or to a qualified land trust and shall not be developed with a residence, or
- (2)** Such lot may be developed with a residence or residences pursuant to a conservation plan approved by the Development Review Board. See 9.12(B) below.
- (3)** Such lot may be developed with uses other than residences, as listed in Table C-1, subject to the Development Review Board's approval of a conservation plan that balances development or land utilization and conservation. Such lot may also include the following additional development/activities:
 - (a) Driveways, roads, underground utility services, or other appurtenant improvements to serve approved development or uses. Utility service components, such as transformers and amplifiers, may be installed at ground level where such accords with standard industry practices.
 - (b) Landscaping, regrading, or other similar activities necessary to the creation of a buildable lot.

B. A lot that was in existence on or before June 22, 1992 and which lies substantially or entirely within a SEQ-NRP sub-district may be improved with one or more single family detached dwelling units, subject to conditional use review and the following supplemental standards:

- (1)** Where the lot is less than fifteen (15) acres in size, the Development Review Board may permit no more than one (1) single family dwelling unit only if:
 - (a) The portion of the lot in any other (non-NRP) SEQ sub-district is insufficient to accommodate the construction and use of a single family dwelling unit in compliance with these Regulations, and;
 - (b) The location of structures, yards, and access drives have no portion within a ~~designated primary natural community~~ Hazard, Level I Resource, Level II Resource or its related buffers.
- (2)** Where the lot is fifteen (15) acres or more in contiguous area, the Development Review Board may allow a subdivision of no more than three (3) lots and construction of one (1) single family dwelling unit on each of these lots only if:
 - (a) The DRB shall determine whether the portion of the lot in any non-NRP SEQ sub-district is sufficient to accommodate the construction and use of at least three (3) single family dwelling units on lots approvable in compliance with these Regulations.
 - (i) Where the DRB finds that the portion of the lot in any non-NRP SEQ sub-district is sufficient to accommodate the construction and use of at least three (3) single family dwelling units on lots approvable in compliance with these Regulations, no subdivisions of land or construction of new dwelling units shall be permitted in the NRP subdistrict;
 - (ii) Where the DRB finds that the portion of the lot in any non-NRP SEQ sub-district is sufficient to accommodate the construction and use of two (2) single family dwelling units on lots approvable in compliance with these Regulations, the subdivision of land and construction of up to one (1) new dwelling unit in the NRP subdistrict may be permitted by the DRB in compliance with these Regulations;

- (iii) Where the DRB finds that the portion of the lot in any non-NRP SEQ sub-district is sufficient to accommodate the construction and use of one (1) single family dwelling units on lots approvable in compliance with these Regulations, the subdivision of land and construction of up to two (2) new dwelling unit in the NRP subdistrict may be permitted by the DRB in compliance with these Regulations;
- (iv) Where the DRB finds that the portion of the lot in any non-NRP SEQ sub-district is insufficient to accommodate the construction and use of any single family dwelling units on lots approvable in compliance with these Regulations, the subdivision of land and construction of up to three (3) new dwelling unit in the NRP subdistrict may be permitted by the DRB in compliance with these Regulations; and,
- (b) such lots shall have a minimum size of 12,000 square feet per dwelling unit , and,
- (c) the location of structures, yards, and access drives have no portion within a ~~designated primary natural community~~ Hazard, Level I Resource, Level II Resource or its related buffers, and,
- (d) The location of structures and access drives are clustered such that no dwelling unit is located more than one hundred (100) feet from any other structure, and,
- (e) The dwelling units shall be detached single family dwellings, and,
- (f) Such subdivision plan shall be subject to the Development Review Board's approval of a conservation plan in a form acceptable to the City Attorney that permanently encumbers the land against further land subdivision and development.

C. A single tax parcel existing as of the effective date of these regulations which exceeds one hundred (100) acres and is located entirely within the NRP sub-district, as shown on the South Burlington Tax Maps last revised 6/05 (June 2005), whether such lands are contiguous or not, may be subdivided at an average overall density for the entire tax parcel of one (1) single-family dwelling per ten (10) acres. Any new lots so created shall have a minimum size of 12,000 square feet per dwelling unit. Such lots shall be clustered in a manner that maximizes the resource values of the property and shall have no portion within a Hazard or Level I Resource Area ~~designated primary natural community or its related buffers~~. All dwelling units shall be detached single family houses. Such subdivision plan shall be subject to the Development Review Board's approval of a conservation plan in a form acceptable to the City Attorney that permanently encumbers the land against further land subdivision and development.

10 OVERLAY DISTRICTS FP, TR, SVP, IHO, TO, UDO, RCO

10.01 Floodplain Overlay District (FP)

[NOTE TO DRAFT: SECTION 10.01 IS DISPLAYED A COMPLETE REPLACEMENT OF THE EXISTING TEXT. EXISTING TEXT IS SHOWN WITH STRIKETHROUGH FOLLOWING SECTION]

A. Purpose. It is the purpose of the Floodplain Overlay District to:

1. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;
2. Ensure that the selection, design, creation, and use of development is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair flood plain services or the stream corridor;
3. Manage the flood hazard area designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the City of South Burlington, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

B. Authority. In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 and §4414, there is hereby established a bylaw for areas at risk of flood damage in the City of South Burlington Vermont. These regulations shall apply to development in all areas in the City of South Burlington identified as within the Floodplain Overlay District designated in Section 3.01(B).

C. [reserved]

D. Administration

- 1. Floodplain Review.** All development in the City of South Burlington located within the Floodplain Overlay District shall be subject to Floodplain Review. The Floodplain Overlay District overlays other existing zoning districts. All other requirements of the underlying district shall apply in addition to the provisions herein, unless otherwise indicated. The Floodplain Overlay District is composed of two areas:
 - a. Floodplain Overlay District Zones A, AE, and A1-30. The boundaries of these Zones include those areas of special flood hazard designated in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program and mapped as Zones A, AE, or A1-30.
 - b. Floodplain Overlay District Zones 0.2% B1 and B2. The boundaries of these Zones include those areas of special flood hazard designated in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, and on Map ****, and Map ***, and mapped as Zone 0.2% B1 and Zone 0.2% B2. Floodplain Overlay District Zone 0.2% B1 is composed of areas of the 500-year floodplain that are already substantially developed and where additional opportunities for infill development is appropriate. Floodplain Overlay District Zone 0.2% B2 is composed of areas of the 500-year floodplain that are not developed and where future development is not appropriate.

2. Interpretation. The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. However, if uncertainty exists regarding the Floodplain Overlay District boundary, the following procedure shall be followed:

- a. If uncertainty exists with respect to the boundaries of the Floodplain Overlay District Zones A, AE, and A1-30 the location of the boundary shall be determined by the Administrative Officer. If the applicant disagrees with the determination made by the Administrative Officer, a Letter of Map Amendment from FEMA shall constitute proof that the property is not located within the Special Flood Hazard Area.
- b. If uncertainty exists with respect to the boundaries of the Floodplain Overlay District Zones 0.2% B1 and B2 the location of the boundary shall be determined by the Administrative Officer. If the applicant disagrees with the determination made by the Administrative Officer, the applicant may appeal the determination in accordance with Article 17.

3. Base Flood Elevations and Floodway Limits.

- a. Where available (i.e. zones A1-A30, AE, AH, and 0.2% B1 within the floodplain of the Winooski River), the base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer and enforce the provisions of these regulations.
- b. In Zone A of the Floodplain Overlay District where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it shall be the responsibility of the applicant to develop the base flood elevation at the site using data available from state or federal agencies or other sources.

4. Warning of Disclaimer of Liability. This bylaw does not imply that land outside of the areas covered by this overlay district will be free from flood damages. These regulations shall not create liability on the part of the City of South Burlington, or any municipal official or employee thereof, for any flood damages that result from reliance on these regulations, or any administrative decision lawfully made hereunder.

5. Precedence of Bylaw. The provisions of this Floodplain Overlay District shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where these regulations imposes a greater restriction the provisions here shall take precedence.

6. Exempted Development. The following types of development are exempt from Floodplain Review. The following types of development may also still be subject to other standards in the South Burlington Land Development Regulations including Section 12.01 General Stream and Surface Water Protection Standards:

- a. The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged. Please be aware that for damaged structures where FEMA mitigation funds may be used, the damaged structure may be required to remain in place until funds are granted.
- b. Routine maintenance of existing buildings in the usual course of business required or undertaken to conserve the original condition, while compensating for normal wear and tear.

- c. Routine maintenance includes actions necessary for retaining or restoring a piece of equipment, machine, or system to the specified operable condition to achieve its maximum useful life and does not include expansions or improvements to development.
- d. Interior improvements to existing buildings that cost less than five-hundred (500) dollars.
- e. Maintenance of existing sidewalks, roads, parking areas, or stormwater drainage; this does not include expansions.
- f. Maintenance of existing bridges, culverts, and channel stabilization activities; this does not include expansions.
- g. Streambank armoring and stabilization, retaining walls, and abutment work that do not reduce the cross-sectional flow area of the river or stream channel and have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.
- h. The following activities are exempt from Floodplain Review, but may require a permit under the State's "Vermont Flood Hazard Area and River Corridor Rule" (Environmental Protection Rule, Chapter 29):
 - i. State-owned and operated institutions and facilities.
 - ii. Forestry operations and silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
 - iii. Agricultural activities conducted in accordance with the Vermont Agency of Agriculture Food and Market's Required Agricultural Practices (RAPs).
 - iv. Public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.
- i. Telecommunications facilities regulated under 30 V.S.A. § 248aPlanting projects which do not include any construction or grading activities in accordance with 24 V.S.A. § 4424(c).

E. Floodplain Review Application Requirements

1. Application Submission Requirements. All applications for Floodplain Review shall include:

- a. Floodplain Development Plan. A Floodplain Development Plan that depicts the proposed development, property boundaries, all water bodies, all boundaries (Floodplain Overlay District boundaries – all zones), the shortest horizontal distance from the proposed development to the top of bank of any river, any existing and proposed drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps; and
- b. Project Review Sheet. A completed Vermont Agency of Natural Resources Project Review Sheet. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the Administrative Officer and attached to the permit before work can begin.

2. Supplemental Application Requirements. Some applications may require additional information based on the location and type of the development. The following information shall be developed and provided with an application, as required below:

- a. Base Flood Elevation (BFE). BFE information is required for applications that include the following development located in Zones A, A1-A30, AE, AH, and 0.2% B1 within the floodplain of the Winooski River:
 - i. New, substantially improved, or substantially damaged structures;
 - ii. Projects requiring elevation or dry-floodproofing above BFE;
 - iii. Additions to existing historic structures; and
 - iv. Any accessory structure proposed to have building utility systems that will need to be protected from flood waters through elevation above the BFE.
- b. Floodway Data. The following information is required for development proposed to be located in the floodway. All floodway data shall be certified by a registered professional engineer. All submitted proposals shall include electronic input/output files mapping showing cross-section locations and the following information:
 - i. Hydraulic calculations demonstrating no rise in BFE or velocity for proposed new or expanded encroachments within the floodway.
 - ii. In accordance with 44 C.F.R. § 60.3(c)(10), where BFE data has been provided by FEMA, but no floodway areas have been designated, the applicant shall provide a floodway delineation that demonstrates that the proposed development, when combined with all existing and anticipated future development, will not increase the water surface elevation of the base flood by more than one foot at any point within the community.
- c. Average Grade Level. Information about average grade level is required for development involving all structures proposed to be located in Zone 0.2% B1 and Zone 0.2% B2.
- d. Erosion Control Projects. For projects involving erosion control measures within the floodplain on Lake Champlain, the applicant shall submit:
 - i. Renderings or other additional information relevant and necessary to evaluating the aesthetic or visual impact of the proposed improvement.
 - ii. A landscaping plan.

3. Waiver of Application Requirements. Upon written request from the applicant, the Development Review Board may waive specific application requirements when the data or information is not needed to comply with these regulations.

F. Floodplain Review - Development Review Process. All applications for development in the Floodplain Overlay District shall be reviewed according to the following procedures:

1. Referrals.

- a. **NFIP Coordinator.** Upon receipt of a complete Floodplain Review application for a substantial improvement or new construction the Administrative Officer shall forward a copy of the application and supporting information to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The Administrative Officer, and/or Development Review Board shall consider all comments from ANR.
- b. **Stream Alteration Engineer.** If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

2. Review Process.

- a. **Administrative Review.** Floodplain Review may be completed administratively by the Administrative Officer for the following types of development in the Floodplain Overlay District provided that the application is complete and the proposed development can be approved administratively under all other sections of the South Burlington Land Development Regulations:
 - i. Changes from a permitted land use to another permitted land use provided that any other changes to the site may also be administratively reviewed.
 - ii. Above grade development, which has not been elevated by the placement of fill, that is two feet above base flood elevation and documented with field-surveyed topographic information certified by a registered professional engineer or licensed land surveyor (Elevation Certificate).
 - iii. Open fencing and signs elevated on poles or posts that create minimal resistance to the movement of floodwater.
 - iv. Municipal transportation infrastructure improvements designed and constructed by the Vermont Agency of Transportation that have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in these regulations.
 - v. River and floodplain restoration projects, including dam removal, that restore natural and beneficial floodplain functions and include written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in these regulations.
 - vi. Improvements or repairs of damage to structures that do not expand the existing footprint and do not meet the definition of "substantial improvement" or "substantial damage."

vii. Accessory structures less than 500 square feet in size in the Floodplain Overlay District Zones 0.2% B1.

viii. Building utilities.

ix. Recreational vehicles. See Section 3.08 Temporary Structures and Uses for additional applicable standards.

b. **Development Review.** All development in the Floodplain Overlay District that cannot be approved through administrative Floodplain Review shall require Floodplain Review by the Development Review Board.

3. **Permits.** A permit is required from the Administrative Officer for all development, as defined in Section 2.03 (Floodplain Definitions), in the Floodplain Overlay District. A permit shall only be issued for development meeting the standards in Section 10.01(G) and the following the review process outlined in Section 10.01(F) and Article 17.

a. Within 30 days of receipt of a complete application per Section 10.01(E), including all application materials and fees, the Administrative Officer shall act to either issue or deny a permit in writing, or to refer the application to the Development Review Board. If the Administrative Officer fails to act with regard to a complete application for a permit within the 30-day period, a permit shall be deemed issued on the 31st day, unless the permit is for new construction or substantial improvement, in which case a permit shall not be issued until the Administrative Officer has complied with the requirements of Section 10.01(F)(1)).

b. No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the Development Review Board until such approval has been obtained. For permit applications that must be referred to a state agency for review, no permit shall be issued until a response has been received from the State, or the expiration of 30 days following the submission of the application to the State, whichever is sooner.

G. Floodplain Review Standards. Development in the Floodplain Overlay District shall be reviewed to ensure that it complies with the following standards:

1. **Prohibited Development.** In addition to any uses not specifically listed in this section, the following types of development are specifically prohibited in the Floodplain Overlay District:

a. New principal structures, both residential or non-residential (including the placement of manufactured homes), except within Zone 0.2% B1 of the Floodway Overlay District;

b. New accessory structures except within the Zone 0.2% B1 of the Floodplain Overlay District.

c. New critical facilities;

d. Excavation of earth products shall be prohibited in such cases where it is anticipated that such excavation will lower the level of the water table, interfere with natural flow patterns, or reduce flood storage capacity;

e. Storage or junk yards;

f. New fill except as necessary to elevate structures above the base flood elevation.

g. Within the floodway: new encroachments, except for minor improvements to existing structures or relating to bridges, culverts, roads, stabilization projects, public utilities, river and/or

floodplain restoration projects, or health and safety measures. Minor improvements are those that would not affect base flood elevations, consistent with the provisions of FEMA P-480; Desk Reference for Local Officials.

2. Development in the Floodway. Within the floodway, the following standards apply to all development:

- a. New encroachments are prohibited within the floodway, except for the following, which also shall comply with subsection (b) below:
 - i. New encroachments relating to bridges, culverts, roads, stabilization projects, public utilities, functionally dependent uses, and river or floodplain restoration projects; and
 - ii. New encroachments relating to health and safety measures, such as replacement of preexisting on-site septic and water supply systems, if no other practicable alternative is available.
- b. For all proposed new encroachments and above-grade development, a hydraulic analysis is required to be provided for review. The analysis should be performed in accordance with standard engineering practice, by a registered professional engineer, and shall certify that the proposed development will:
 - i. Not result in any increase in flood levels during the occurrence of the base flood;
 - ii. Not increase base flood velocities; and
 - iii. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
- c. For development that is either below grade or will not result in any change in grade, the hydrologic & hydraulic analyses may be waived, where the applicant will provide pre and post-development elevations demonstrating that there will be no change in grade, and that the development will be adequately protected from scour.
- d. For any new encroachment that is proposed within the Floodway where a hydraulic analysis is required, the applicant may provide a FEMA Conditional Letter of Map Revision (CLOMR) in lieu of a hydraulic analysis, to demonstrate that the proposed activity will not have an adverse impact.

3. Development in the Floodplain Overlay District. All development in the Floodplain Overlay District shall comply with the following standards:

- a. All development shall be reasonably safe from flooding, as determined by compliance with the specific standards of this subsection.
- b. All development shall be designed (I) to minimize flood damage to the proposed development and to public facilities and utilities, and (II) to provide adequate drainage to reduce exposure to flood hazards.
- c. All development shall be (I) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood, (II) be constructed with materials resistant to flood damage, (III) be constructed by methods and practices that minimize flood damage, and (IV) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

- d. **Water Supply and Wastewater.** New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- e. **Stream Alteration.** The flood carrying capacity within any portion of an altered or relocated watercourse shall be maintained.
- f. **Manufactured Homes.** Replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (pad) under the entire manufactured home is above the base flood elevation.
- g. **Structures.**
 - i. **Residential Structures**
 - a) Residential structures to be substantially improved in Floodplain Overlay District Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least two (2) feet above base flood elevation; this must be documented, in the proposed and as-built condition, with a FEMA Elevation Certificate.
 - b) Residential structures to be substantially improved in Floodplain Overlay District 0.2% Zones B1 & B2, and new structures in Floodplain Overlay District Zone 0.2% B1, shall be located such that the lowest floor is at least two (2) feet above the average grade level on-site; this must be documented, in the proposed and as-built condition, with a FEMA Elevation Certificate. Average grade level means the average of the natural or exiting topography at center of all exterior walls of a building or structure to be placed on site.
 - ii. **Non-residential Structures.** Non-residential structures to be substantially improved, and new non-residential structures in the Floodplain Overlay District 0.2% Zone B1, shall meet the following standards:
 - a) Meet the standards in Section 10.01(G)(3)(g)(i) Residential Structures; or,
 - b) Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two (2) feet above the base flood elevation (for structures in Zones A, A1-30, AE, and AH), or two (2) feet above the average grade level on-site (for structures in Zones 0.2% B1 and B2), the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection. An occupancy permit for the structure shall not be issued until an "as-built" plan has been submitted and a licensed professional engineer or architect has certified that the structure has been constructed in accordance with accepted standards of practice for meeting the provisions of this subsection.
- h. **Basements.** For all new construction and substantial improvements, fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) shall be prohibited.

- i. **Areas Below Base Flood Elevation.** For all new construction and substantial improvements, fully enclosed areas that are above grade, below the lowest floor, below Base Flood Elevation and subject to flooding, shall be (i) solely used for parking of vehicles, storage, or access, and such a condition shall clearly be stated on any permits; and, (ii) designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- j. **Impact to Base Flood Elevation.** In the AE Zone, where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than one (1) foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.
- k. **Recreational Vehicle.** All recreational vehicles shall be fully licensed and ready for highway use.
- l. **Accessory Structures.** In Floodplain Overlay District 0.2% Zone B1, a small accessory structure of 500 square feet or less in gross floor area that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on a site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria of 10.01(G)(3)(i). Accessory structures are prohibited in all other parts of the Floodplain Overlay District.
- m. **Critical Facilities.** Critical facilities that are to be replaced, substantially improved, or meet the definition of substantial damage shall be constructed so that the lowest floor, including basement, shall be elevated or dry-floodproofed at least two (2) feet above the average grade level in Floodplain Overlay District 0.2% Zone B1 and Floodplain Overlay District 0.2% Zone B2, or three (3) feet above base flood elevation in Floodplain Overlay District Zones A, AE, and A1-30. A critical facility shall have at least one access road connected to land outside the 0.2% annual chance floodplain that is capable of accommodating emergency services vehicles. The top of the access road shall be no lower than the elevation of the 0.2% annual chance flood event.
- n. **Historic Structures.** For historic structures that would meet the definition of substantial improvement or substantial damage if not for their historic structure designation, the improved or repaired building shall meet the following mitigation performance standards for areas below the base flood elevation:
 - i. Utility connections (e.g., electricity, water, sewer, natural gas) shall be protected from inundation and scour or be easily repaired;
 - ii. The building foundation shall be structurally sound and reinforced to withstand a base flood event;
 - iii. The structure's historic designation shall not be precluded;
 - iv. The likelihood of flood waters entering the structure during the base flood is reduced;
and

- v. There shall be no expansion of uses below base flood elevation except for parking, storage, building access, or, in the case of non-residential buildings, where the space is dry floodproofed.
- o. **No Rise Requirement.** No encroachment, including fill, new construction, substantial improvement, or other development, that would result in any increase in flood levels within the regulatory floodway during the occurrence of the base flood discharge, shall be permitted unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will: a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood; and b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
- p. **Erosion Control Measures on Lake Champlain.** The installation of erosion control measures within may be approved by the DRB provided the following standards are met:
 - i. The improvement involves, to the greatest extent possible, the use of natural materials such as wood and stone.
 - ii. The improvement will not increase the potential for erosion.
 - iii. The project will not have an undue adverse effect on the aesthetic integrity of the lakeshore.
 - iv. The project shall preserve, maintain and supplement existing trees and ground cover vegetation to the greatest extent possible.
- 4. **Other Applicable Standards.** Development in the Floodplain Overlay District may be subject to these additional standards:
 - a. All land lying within a River Corridor as defined in these regulations is subject to the standards of Section 10.07 in addition to the standards of this section.
 - b. All land lying within a stream or surface water buffer, and all land within the 0.2% B1A Zone, is subject to the standards of Section 12.02 in addition to the standards of this section.

H. Nonconforming Structures.

- 1. A nonconforming structure in the Floodplain Overlay District that has been substantially damaged or destroyed may be reconstructed in its original location only if it is rebuilt to comply with all requirements of the National Flood Insurance Program and these regulations;
- 2. Nonconforming structures and uses shall be considered abandoned where the structures or uses are discontinued for more than 6 months. An abandoned structure shall not be permitted for re-occupancy unless brought into compliance with these regulations and Section 3.11(G). An abandoned use shall not be permitted unless brought into compliance with these regulations.

I. Variances.

- 1. A variance for development in the Floodplain Overlay District may be granted by the Development Review Board only in accordance with Title 24, Vermont Statutes Annotated and 44 CFR Section 60.6.
- 2. Any variance issued in the Special Flood Hazard Area shall not increase flood heights, and shall inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased

flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

J. Certificate of Occupancy. A Certificate of Occupancy shall be required for all new structures or substantial improvements to structures in the Floodplain Overlay District.

1. Upon receipt of the application for a certificate of occupancy, the Administrative Officer shall review the permit conditions and inspect the premises to ensure that:

i. All required state and federal permits that have been obtained by the applicant;

ii. All work has been completed in conformance with the zoning permit and associated approvals; and

iii. All required as-built documentation has been submitted to the Administrative Officer (e.g. updated FEMA Elevation Certificate, dry floodproofing certificate, as-built volumetric analysis, or as-built floodway encroachment analysis).

K. Enforcement. Enforcement shall be conducted by the Administrative Officer. All enforcement action related to property in the Floodplain Overlay District shall be performed in compliance with Article 17 and the following procedures:

1. The State NFIP Coordinator shall be provided a copy of all notices of violation issued by the Administrative Officer for development that is not in conformance with this section.

2. If any appeals have been resolved, but the violation remains, the Administrative Officer shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

10.01 Floodplain Overlay District (FP)

A. Purpose. ~~It is the purpose of the Floodplain Overlay District to:~~

~~(1) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;~~

~~(2) Ensure that the selection, design, creation, and use of development is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair flood plain services or the stream corridor;~~

~~(3) Manage the flood hazard area designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the City of South Burlington, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.~~

B. Authority. ~~In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 and §4414, there is hereby established a bylaw for areas at risk of flood damage in the City of South Burlington Vermont. These regulations shall apply to development in all areas in the City of South Burlington identified as within the Floodplain Overlay District designated in Section 3.01(B).~~

C. Comprehensive Plan. ~~These regulations hereby implement the relevant portions of the City of South Burlington's adopted Comprehensive Plan, and are in accord with the policies set forth therein.~~

D. Warning of Disclaimer of Liability. ~~This bylaw does not imply that land outside of the areas covered by this overlay district will be free from flood damages. This regulation shall not create liability on the part of~~

the City of South Burlington, or any municipal official or employee thereof, for any flood damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

E. — Precedence of Bylaw. The provisions of this Floodplain Overlay District shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this regulation imposes a greater restriction the provisions here shall take precedence.

F. — Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict

(1) — Development Review in Hazard Areas

(a) — **Permits.** A permit is required from the Administrative Officer for all development, as defined in Section 2.03 (Floodplain Definitions), in the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict.

(b) — **Submission requirements.** In addition to all information required for permitted and conditional uses, the applicant shall prepare and submit a Project Review Sheet to Vermont Agency of Natural Resources. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the Administrative Officer and attached to the permit before work can begin.

(c) — **Referrals.**

(i) — Upon receipt of a complete application for a substantial improvement or new construction the Administrative Officer shall forward a copy of the application and supporting information to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

(ii) — If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

(d) — **Permitted Uses.** The following uses are permitted in the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict. Structures associated with any of the permitted uses below shall be allowed only as Conditional Uses subject to the provisions of this Section 10.01.

- (i) — Park;
- (ii) — Recreation path;
- (iii) — Outdoor recreation facility;
- (iv) — Non-substantial improvements of existing structures;
- (v) — Development related to on-site septic or water supply systems;
- (vi) — Building utilities;
- (vii) — At-grade parking for existing buildings; and,
- (viii) — Recreational vehicles.

~~(e) — **Conditional Uses.** The following uses are allowed in the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict as conditional uses subject to approval by the Development Review Board in accordance with the provisions of this Section 10.01 and Table C-2, Dimensional Standards:~~

- ~~(i) — Substantial improvement, elevation, relocation, or flood proofing of existing structures;~~
- ~~(ii) — Accessory structures;~~
- ~~(iii) — New or replacement storage tanks for existing structures;~~
- ~~(iv) — Grading, excavation; or the creation of a pond;~~
- ~~(v) — Improvements to existing roads;~~
- ~~(vi) — Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;~~
- ~~(vii) — Public utilities.~~

~~(f) — **Prohibited Uses.** In addition to any uses not specifically listed in this section, the following uses are specifically prohibited in the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict:~~

- ~~(i) — New residential or non-residential structures (including the placement of manufactured homes);~~
- ~~(ii) — Storage or junk yards;~~
- ~~(iii) — New fill except as necessary to elevate structures above the base flood elevation; and,~~
- ~~(iv) — Accessory structures in the floodway.~~

~~(2) — **Area, Density and Dimensional Requirements.** In the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict, all structures shall be subject to the area, density and dimensional requirements of the Residential 1 District as set forth in Section 4.01 and Table C-2, Dimensional Standards of these regulations.~~

~~(3) — **Additional Standards.**~~

~~(a) — No encroachment, including fill, new construction, substantial improvement, or other development, that would result in any increase in flood levels within the regulatory floodway during the occurrence of the base flood discharge, shall be permitted unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will: a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood; and b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.~~

~~(b) — Within the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict, excavation of earth products shall be prohibited in such cases where it is anticipated that such excavation will lower the level of the water table, interfere with natural flow patterns, or reduce flood storage capacity.~~

~~(c) — All development allowed as Conditional Uses pursuant to Section 10.01(F)(1)(e) above shall meet the following additional standards:-~~

- ~~(i) — All development shall be reasonably safe from flooding, as determined by compliance with the specific standards of this subsection.~~
- ~~(ii) — All development shall be designed (I) to minimize flood damage to the proposed development and to public facilities and utilities, and (II) to provide adequate drainage to reduce exposure to flood hazards.~~
- ~~(iii) — All development shall be (I) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood, (II) be constructed with materials resistant to flood damage, (III) be constructed by methods and practices that minimize flood damage, and (IV) be constructed with electrical, heating, ventilation,~~

~~plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

~~(iv) — New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.~~

~~(v) — On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.~~

~~(vi) — The flood carrying capacity within any portion of an altered or relocated watercourse shall be maintained.~~

~~(vii) — Replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (pad) under the entire manufactured home is above the base flood elevation.~~

~~(viii) — Structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one (1) foot above base flood elevation; this must be documented, in as-built condition, with a FEMA Elevation Certificate.~~

~~(ix) — Non-residential structures to be substantially improved shall:~~

~~(I) — Meet the standards in Section 10.01(F)(3)(c)(viii); or,~~

~~(II) — Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two (2) feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;~~

~~A permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection. An occupancy permit for the structure shall not be issued until an "as-built" plan has been submitted and a licensed professional engineer or architect has certified that the structure has been constructed in accordance with accepted standards of practice for meeting the provisions of this subsection.~~

~~(x) — For all new construction and substantial improvements, fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) shall be prohibited.~~

~~(xi) — For all new construction and substantial improvements, fully enclosed areas that are above grade, below the lowest floor, below Base Flood Elevation and subject to flooding, shall be (i) solely used for parking of vehicles, storage, or access, and such a condition shall clearly be stated on any permits; and, (ii) designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~

~~(xii) — In Special Flood Hazard Areas where base flood elevations and/or floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data.~~

- (xiii) ~~— In the AE Zone, where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than one (1) foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.~~
- (xiv) ~~— All recreational vehicles shall be fully licensed and ready for highway use.~~
- (xv) ~~— A small accessory structure of 500 square feet or less in gross floor area that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on a building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria of subsection (xi) above.~~
- (4) — Administration and Enforcement.**
- (a) ~~— The Zoning Permit issued for any development pursuant to this Section 10.01(F) shall include: a record of the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new construction or substantial improvements of structures.~~
- (b) ~~— Upon issuance of a zoning permit, the Administrative Officer shall properly file and maintain a record of:~~
- (i) ~~— Elevation Certificates with the as built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new or substantially improved structures (not including accessory structures) in the Special Flood Hazard Area;~~
- (ii) ~~— All flood proofing and other certifications required under this regulation; and,~~
- (iii) ~~— All decisions of the Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.~~
- (c) ~~— Certificate of Occupancy. A Certificate of Occupancy shall be required for all new structures or substantial improvements to structures in the Floodplain Overlay (Zones A, AE, and A1-30) Subdistrict.~~
- (d) ~~— Enforcement~~
- (i) ~~— A copy of any notice of violation of this section shall be mailed by the Administrative Officer to the State NFIP Coordinator.~~
- (ii) ~~— If any appeals have been resolved, but the violation remains, the Administrative Officer shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.~~
- (iii) ~~— Any proposed agricultural structure that does not meet the criteria and process in the Accepted Agricultural Practices will be in violation of this bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.~~
- (e) ~~— Variances~~
- (i) ~~— A variance may be granted by the Development Review Board only in accordance with Title 24, Vermont Statutes Annotated and 44 CFR Section 60.6.~~
- (ii) ~~— Any variance issued in the Special Flood Hazard Area shall not increase flood heights, and shall inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.~~

G. ~~Floodplain Overlay (Zone 0.2%) Subdistrict~~

- ~~(1) **Permits.** A permit is required from the Administrative Officer for all development, as defined in Section 2.02 (Definitions), in the Floodplain Overlay (0.2% Zone) Subdistrict.~~
- ~~(2) **Permitted Uses.** Those uses allowed as permitted uses in any underlying zoning district within the City may be permitted in the Floodplain Overlay (0.2% Zone) Subdistrict only in accordance with the provisions of this section.~~
- ~~(3) **Conditional Uses.** Those uses allowed as conditional uses in any underlying zoning district within the City may be permitted in the Floodplain Overlay (0.2% Zone) Subdistrict only in accordance with the provisions of this section.~~
- ~~(4) **Prohibited Uses.** In addition to any uses not specifically listed in the underlying zoning district, new Critical Facilities are specifically prohibited in the Floodplain Overlay (0.2% Zone) Subdistrict.~~
- ~~(5) **Area, Density and Dimensional Requirements.** In the Floodplain Overlay (0.2% Zone) Subdistrict, all structures shall be subject to the area, density and dimensional requirements of the underlying zoning district as set forth in Article IV and Table C-2, Dimensional Standards of these regulations.~~
- ~~(6) **Additional Standards.**~~
- ~~(a) Any Critical Facilities to be expanded or substantially improved in the Floodplain Overlay (0.2% Zone) Subdistrict shall be located such that the lowest floor is at least one (1) foot above base flood elevation.~~
- ~~(b) In the Floodplain Overlay (0.2% Zone) Subdistrict, where base flood elevations and/or floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data.~~
- ~~(7) **Administration and Enforcement.** Administration and enforcement of development in the Floodplain Overlay (0.2% Zone) Subdistrict shall be subject to all requirements of Article XVII (Administration and Enforcement) of these Regulations.~~
- ...

10.07 River Corridor Overlay District (RCO)

[NOTE TO DRAFT: SECTION 10.07 IS DISPLAYED A COMPLETE REPLACEMENT OF THE EXISTING TEXT. EXISTING TEXT IS SHOWN WITH STRIKETHROUGH FOLLOWING SECTION]

A. **Purpose. It is the purpose of the River Corridor Overlay District to:**

- (1) Establish protection of the river corridor to provide rivers and streams with the lateral space necessary to maintain or reestablish floodplain access and minimize erosion hazards through natural, physical processes;
- (2) Allow for wise use of property within river corridors that minimizes potential damage to existing structures and development from flood-related erosion;
- (3) Discourage encroachments in undeveloped river corridors;
- (4) Protect and improve the quality of surface waters and streams within the City of South Burlington; and
- (5) Provide sufficient space for wildlife habitat along rivers and streams.

(4) Provide allowances for infill and redevelopment of designated centers that are within river corridors.

B. Authority. In accordance with 24 V.S.A. Chapter 117, §4424, and §4414, there is hereby established a bylaw for areas at risk of erosion damage in the City of South Burlington Vermont. These regulations shall apply to development in all areas in the City of South Burlington identified as within the River Corridor Overlay District designated in Section 3.01(B).

C. Comprehensive Plan. These regulations hereby implement the relevant portions of the City of South Burlington's adopted Comprehensive Plan and are in accord with the policies set forth therein.

D. Warning of Disclaimer of Liability. This bylaw does not imply that land outside of the areas covered by this overlay district will be free from erosion damages. This regulation shall not create liability on the part of the City of South Burlington, or any municipal official or employee thereof, for any erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

E. Precedence of Bylaw. The provisions of this River Corridor Overlay District shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this regulation imposes a greater restriction, the provisions in these regulations shall take precedence.

F. District General Provisions

(1) Establishment of RCO District. The RCO is an overlay district. All other requirements of the underlying district, or another overlay district such as the Flood Hazard Overlay District, shall apply in addition to the provisions herein, unless it is otherwise so indicated. If there is a conflict with another such district, the stricter provision shall apply.

(2) RCO District Boundaries. The boundaries of the RCO District are as follows:

(a) All River Corridors as published by the Vermont Agency of Natural Resources (including the Statewide River Corridors and refinements to that data based on field-based assessments which are hereby adopted by reference).

(b) All land within one hundred (100) feet horizontal of the top of bank or top of slope, whichever is applicable given the stream's fluvial geomorphology, along the reaches of the main stem of Potash

Brook where a mapped River Corridor has not been developed by the Vermont Agency of Natural Resources.

(c) All land within fifty (50) feet horizontal distance from the top of bank or top of slope, whichever is applicable given the stream's fluvial geomorphology, of all other perennial rivers and streams.

(d) All land within ten (10) feet horizontal distance from the top of the bank or top of slope of a natural intermittent stream, whichever is applicable given the stream's fluvial geomorphology.

(e) Requests to update a River Corridor map shall be in accordance with the procedure laid out in the ANR Flood Hazard Area and River Corridor Protection Procedure.

(3) RCO District – Classification. River Corridors shall be classified in the following manner per Section 12.01:

(a) River Corridors on Intermittent Streams. River Corridors on intermittent streams are Level II Resources.

(b) All Other River Corridors. River Corridors on all other streams shall be considered a Hazard resources.

(4) Jurisdictional Determination and Interpretation. The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. If uncertainty exists with respect to the boundaries of the RCO the location of the boundary on the property shall be determined by the Administrative Officer (AO). If the applicant disagrees with the determination made by the AO or the river corridor as mapped, the applicant has the option to either:

(a) Hire a licensed land surveyor or registered professional engineer to stake out the RCO boundary on the property; or

(b) Request a letter of determination from ANR which shall constitute proof of the location of the river corridor boundary. In support of a letter of determination request, applicants must provide ANR a description of the physical characteristics that bring the river corridor delineation into question (e.g. the presence of bedrock or other features that may confine lateral river channel adjustment. When ANR receives a request for a letter of determination, ANR evaluates the site and existing data to see if a change to the river corridor delineation is justified, necessitating a river corridor map update. An ANR letter of determination will either confirm the existing river corridor delineation or will result in an update to the river corridor delineation for the area in question. If a map update is justified, an updated map will be provided with the letter of determination.

G. Prohibited, Exempted, and Permitted Development in River Corridors

(1) Prohibited Development in the RCO District. The following types of development are prohibited in the RCO District:

(a) All development, including new structures, structure additions, fill, accessory dwelling units, and any other development that is not expressly listed as at least one of the Exempted Activities or Permitted Development as described below;

(b) Creation of new lawn or landscaped areas; and

(c) Snow storage areas.

(2) Exempted Activities. The following activities do not require a permit under this section of the bylaw:

- (a) The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged.
- (b) Any changes, maintenance, repairs, or renovations to a structure that will not result in a change to the footprint of the structure or a change in use.
- (c) Maintenance of existing sidewalks, roads, parking areas, or stormwater drainage; this does not include expansions.
- (d) Maintenance of existing bridges, culverts, and channel stabilization activities; this does not include expansions.
- (e) Construction or repair of stream crossing structures (bridges and culverts), associated transportation and utility networks (new transportation or utility development that runs parallel to the river is not exempt and shall meet the Development Standards in section 10.07(I) below), dams, dry hydrants, and other functionally dependent uses that must be placed in or over rivers and streams that are not located in a flood hazard area and that have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.
- (f) Activities exempt from municipal regulation and requiring a permit under the State's "Vermont Flood Hazard Area and River Corridor Rule" (Environmental Protection Rule, Chapter 29):
 - (i) State-owned and operated institutions and facilities.
 - (ii) Forestry operations or silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
 - (iii) Agricultural activities conducted in accordance with the Vermont Agency of Agriculture, Food and Market's Required Agricultural Practices (RAPs). Prior to the construction of farm structures, the farmer shall notify the AO in writing of the proposed activity. The notice shall contain a sketch of the proposed structure including setbacks.
 - (iv) Public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.
 - (v) Telecommunications facilities regulated under 30 V.S.A. § 248a.
- (g) Planting projects which do not include any construction or grading activities in accordance with 24 V.S.A. § 4424(c).
- (h) Subdivision of land that does not involve or authorize development.
- (i) Establishment and maintenance of unpaved, non-motorized trails and puncheons not to exceed ten (10) feet in width.
- (j) **Maintenance of Existing Gardens, Lawns, Driveways, and other public infrastructure.** Maintenance of existing gardens, landscaped areas/lawns, driveways and other public infrastructure within the River Corridor in existence as of the effective date of these regulations.
- (k) **Invasive Species, Nuisance Plants, and Noxious Weeds Removal.** The removal of invasive species, nuisance plants, and noxious weeds, as identified by the Vermont Agency of Agriculture, Food & Markets, within the River Corridor is an exempt from these regulations.

(3) Permitted Development. The following development activities in the RCO District are permissible upon approval, provided they meet all other requirements of the LDRs and the standards of this section.

- (a) Encroachments necessary to repair damage from a Federally-declared disaster and necessary for the protection of the public health, safety and welfare.
- (b) Restricted Infrastructure Encroachment, upon demonstration of compliance with Section 12.10 and the standards of this section.
- (c) Replacement of on-site septic systems.

H. Development Review Classification & Referral to Outside Agencies

(1) All land development proposed in the River Corridor is subject to review standards outlined in Section 12.01(D).

(2) Referrals to outside agencies

(a) Upon receipt of a complete application for development in the River Corridor, the Administrative Officer shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The AO and DRB shall consider all comments from ANR.

(b) If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be provided to the following entities: affected adjacent communities, the River Management Engineer at the Vermont Agency of Natural Resources, the Army Corps of Engineers, and the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

I. Development Standards. The criteria below are the minimum standards for development in the RCO District.

(1) New development in the River Corridor, including the creation of new lawn areas, is generally prohibited.

(2) Natural Vegetation Requirement. All lands within the River Corridor must be left in an undisturbed, naturally vegetated condition. The clearing of trees and other vegetation is generally prohibited. This standard also does not apply to forestry operations or silvicultural (forestry) activities exempt from local zoning regulation or the removal of trees that are dead, diseased, heavily damaged by ice storms or other natural events, or identified as an invasive species. The placing or storing of cut or cleared trees and other vegetation is also prohibited.

(a) Pre-existing Non-conforming Lawn Areas. The following section pertains the applications for new development on lots with pre-existing non-conforming lawn areas located within the River Corridor.

- (i) **Single-Household Dwelling and Two-Household Dwelling Land Uses.** Development on lots with existing single or two-household dwelling uses, and pre-existing non-conforming lawn areas in the River Corridor, shall not be required to be brought into conformance with the natural vegetation requirement in these regulations.
 - (ii) **All Other Land Uses.** Development on lots with any other land use (beside a single or two-household dwelling), and that also includes pre-existing non-conforming lawn areas in the River Corridor, shall only be approved if the applicant removes at least 50% of the pre-existing non-conforming lawn area within the River Corridor and completes site remediation. Site remediation shall include re-seeding the subject area with a naturalized mix of grasses rather than standard lawn grass and returning the area to a natural state (no mowing).
- (3) Restricted Infrastructure Encroachment.** Restricted Infrastructure Encroachment may be allowed in the River Corridor provided the proposed land development conforms with the following standards:
- (a) The facility shall comply with the standards in Section 12.10;
 - (b) The facility must be located at least twenty five (25) feet from the edge of the channel of the surface water for all water bodies listed in Section 10.07(F)(2)(b) above and ten (10) feet from the edge of channel of the surface water of all other streams. This standard shall not apply to the intake of municipal or community water system, or the outfall of a municipal wastewater treatment or stormwater treatment projects, all of which are functionally dependent upon access to surface waters. This standard shall also not apply to road crossings, driveway crossings, public sidewalks and recreation paths (including bridges and boardwalks) intended to connect parcels and neighborhoods, or provide recreational opportunities, approved under Section 12.10;
 - (c) Stream crossings shall provide sufficient space for the passage of small amphibian and mammalian wildlife typical to the environment in water and on land beneath the structure; and,
 - (d) The facility shall comply with Section 10.07(I)(5).
- (4) Landscaping and Fencing.** Landscaping and/or fencing shall be installed along the perimeter of the outside of the River Corridor to clearly identify and protect the River Corridor. The DRB may waive this requirement, if petitioned by the applicant, if there is existing forest and/or landscaping along the border of the River Corridor. The design and installation of any such landscaping or fencing must accommodate wildlife passage.
- (5) All land development in the River Corridor shall also comply with the following standards:**
- (a) **Within Designated Centers.** Development within Vermont designated centers shall be only allowed within the River Corridor if the applicant can demonstrate that the proposed development will not be any closer to the river than existing adjacent development.
 - (b) **Outside Designated Centers.** Development outside of designated centers shall meet the following criteria:
 - i. **Infill Development.** Infill development must be located no closer to the channel than the adjacent existing principal buildings, within a gap that is no more than 300 feet (see Figure 1); or,

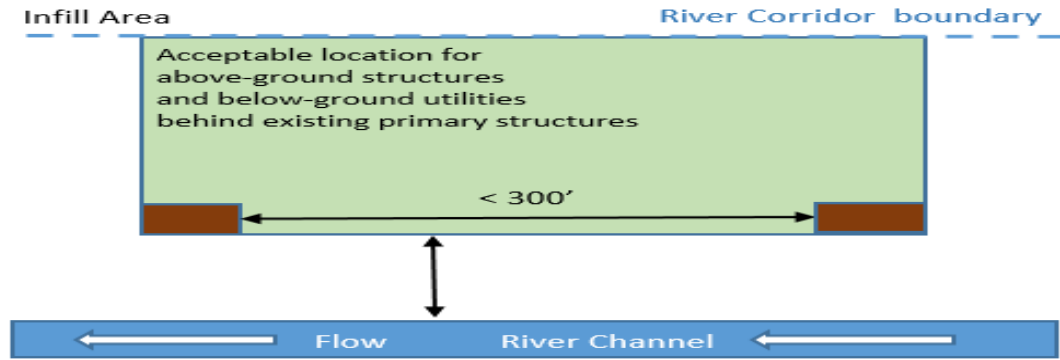


Figure 1: In-fill Development Standard

ii. **Down River Shadow.** Development shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet of the downstream side of the existing habitable structure and no closer to the top of bank or slope, as applicable. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system (see Figure 2); or,

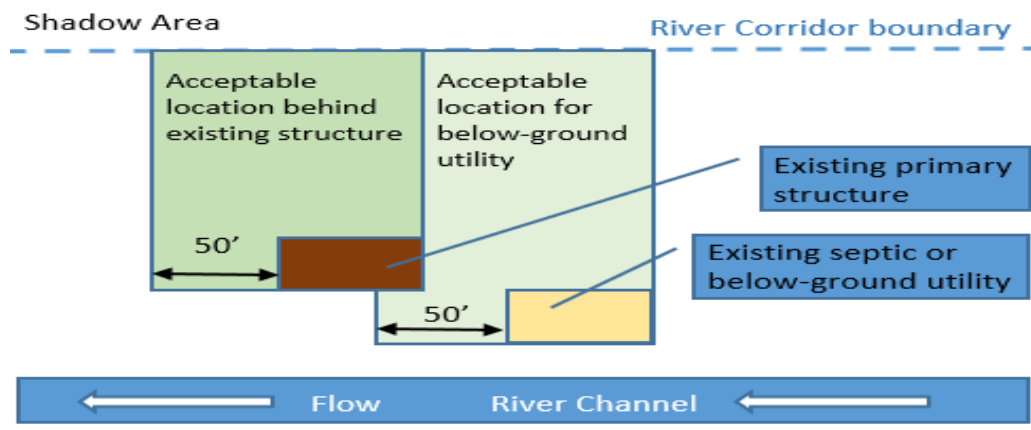


Figure 2: Shadow Area Development Standard

iii. **River Corridor Performance Standard.** The proposed development shall:

- (a) not be placed on land with a history of fluvial erosion damage or that is imminently threatened by fluvial erosion; and,
- (b) not cause the river reach to depart from, or further depart from, the channel width, depth, meander pattern or slope associated with natural stream processes and equilibrium conditions; and,

(c) not result in an immediate need or anticipated future need for stream channelization that would increase flood elevations and velocities or alter the sediment regime, triggering channel adjustments and erosion in adjacent and downstream locations.

(d) In making its determination, the DRB may request or consider additional information to determine if the proposal meets the River Corridor Performance Standard, including a description of why the criteria for infill development above cannot be met, data and analysis from a consultant qualified in the evaluation of river dynamics and erosion hazards, and comments provided by the DEC Regional Floodplain Manager on whether the proposal meets the River Corridor Performance Standard.

J. Submission Requirements. In addition to all information required for permitted development, the application shall include:

(1) Plan. A plan that depicts the proposed development, all water bodies, all River Corridor Overlay District boundaries, the shortest horizontal distance from the proposed development to the top of bank (and/or top of slope, if applicable) of any river, any existing and proposed drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;

(2) Supplemental Application Requirements.

(a) Information clearly demonstrating how the proposed development meets the requirements for infill development and certain non-habitable and accessory structures in subsection 10.07(l) Development Standards above; or

(b) A narrative and supporting technical information from a qualified consultant that demonstrates how the proposal meets the River Corridor Performance Standard in subsection 10.07(l) Development Standards above, or

(c) Evidence of an approved major or minor map update issued by ANR in accordance with the process outlined in the DEC Flood Hazard Area & River Corridor Protection Procedure, finding the proposed development is not located within the river corridor.

(3) Waiver of Application Requirements. Upon written request from the applicant, the Administrative Officer or DRB may waive specific application requirements when the data or information is not needed to comply with Section 10.07 of this bylaw.

K. Permit Conditions

(1) Permits for public water accesses and unimproved paths that provide access to the water for the general public and promote the public trust uses of the water shall include a condition prohibiting the permittee from actively managing the applicable section of river solely to protect the public water access from lateral river channel adjustment.

(2) The DRB may require mitigation, such as reduction or elimination of curbing to promote wildlife passage for any Restricted Infrastructure Encroachment projects approved within the River Corridor.

10.07 River Corridor Overlay District (RCO)

A. Purpose. It is the purpose of the River Corridor Overlay District to:

- (1) Establish protection of the river corridor to provide rivers and streams with the lateral space necessary to maintain or reestablish floodplain access and minimize erosion hazards through natural, physical processes;
- (2) Allow for wise use of property within river corridors that minimizes potential damage to existing structures and development from flood-related erosion;
- (3) Discourage encroachments in undeveloped river corridors; and
- (4) Reasonably promote and encourage infill and redevelopment of designated centers that are within river corridors.

B. Authority. In accordance with 24 V.S.A. Chapter 117, §4424, and §4414, there is hereby established a bylaw for areas at risk of erosion damage in the City of South Burlington Vermont. These regulations shall apply to development in all areas in the City of South Burlington identified as within the River Corridor Overlay District designated in Section 3.01(B).

C. Comprehensive Plan. These regulations hereby implement the relevant portions of the City of South Burlington's adopted Comprehensive Plan and are in accord with the policies set forth therein.

D. Warning of Disclaimer of Liability. This bylaw does not imply that land outside of the areas covered by this overlay district will be free from erosion damages. This regulation shall not create liability on the part of the City of South Burlington, or any municipal official or employee thereof, for any erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

E. Precedence of Bylaw. The provisions of this River Corridor Overlay District shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this regulation imposes a greater restriction, the provisions in these regulations shall take precedence.

F. District General Provisions

- (1) Establishment of RCO District. The RCO is an overlay district. All other requirements of the underlying district or another overlay district such as the Flood Hazard Overlay District, shall apply in addition to the provisions herein, unless it is otherwise so indicated. If there is a conflict with another such district, the stricter provision shall apply.
- (2) RCO District Boundaries
 - (a) Section 10.07 shall apply to the Statewide River Corridors in the City of South Burlington, Vermont, as published by the Agency of Natural Resources (ANR) including refinements to that data based on field-based assessments which are hereby adopted by reference.
 - (b) On perennial streams with a watershed size greater than half a square mile for which River Corridors have not been mapped by the State of Vermont, the standards in this Section shall apply to the area measured as fifty (50) feet from the top of the stream bank or slope, whichever is applicable

~~based on a field determination consistent with the Vermont ANR Flood Hazard and River Corridor Protection Procedure.~~

~~(c) — Requests to update a river corridor map shall be in accordance with the procedure laid out in the ANR Flood Hazard Area and River Corridor Protection Procedure.~~

~~(3) — Jurisdictional Determination and Interpretation~~

~~The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. If uncertainty exists with respect to the boundaries of the RCO the location of the boundary on the property shall be determined by the Administrative Officer (AO). If the applicant disagrees with the determination made by the AO or the river corridor as mapped, the applicant has the option to either:~~

~~(a) Hire a licensed land surveyor or registered professional engineer to stake out the RCO boundary on the property; or~~

~~(b) — Request a letter of determination from ANR which shall constitute proof of the location of the river corridor boundary. In support of a letter of determination request, applicants must provide ANR a description of the physical characteristics that bring the river corridor delineation into question (e.g. the presence of bedrock or other features that may confine lateral river channel adjustment. When ANR receives a request for a letter of determination, ANR evaluates the site and existing data to see if a change to the river corridor delineation is justified, necessitating a river corridor map update. An ANR letter of determination will either confirm the existing river corridor delineation or will result in an update to the river corridor delineation for the area in question. If a map update is justified, an updated map will be provided with the letter of determination.~~

~~G. — Prohibited, Exempted, and Permitted Development in River Corridors~~

~~(1) — Prohibited Development in the RCO District~~

~~The following are prohibited in the RCO District~~

~~(a) New structures, fill, accessory dwellings and any other development that is not expressly listed as at least one of the Exempted Activities or Permitted Development as described below.~~

~~(2) — Exempted Activities~~

~~The following activities do not require a permit under this section of the bylaw:~~

~~(a) The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged.~~

~~(b) Any changes, maintenance, repairs, or renovations to a structure that will not result in a change to the footprint of the structure or a change in use.~~

~~(c) Maintenance of existing sidewalks, roads, parking areas, or stormwater drainage; this does not include expansions.~~

~~(d) Maintenance of existing bridges, culverts, and channel stabilization activities; this does not include expansions.~~

~~(e) Construction or repair of stream crossing structures (bridges and culverts), associated transportation and utility networks (new transportation or utility development that runs parallel to the river is not exempt and shall meet the Development Standards in section 10.07(I) below), dams, dry hydrants,~~

and other functionally dependent uses that must be placed in or over rivers and streams that are not located in a flood hazard area and that have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.

~~(f) Activities exempt from municipal regulation and requiring a permit under the State's "Vermont Flood Hazard Area and River Corridor Rule" (Environmental Protection Rule, Chapter 29):~~

~~(i) State-owned and operated institutions and facilities.~~

~~(ii) Forestry operations or silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.~~

~~(iii) Agricultural activities conducted in accordance with the Vermont Agency of Agriculture, Food and Market's Required Agricultural Practices (RAPs). Prior to the construction of farm structures, the farmer shall notify the AO in writing of the proposed activity. The notice shall contain a sketch of the proposed structure including setbacks.~~

~~(iv) Public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.~~

~~(v) Telecommunications facilities regulated under 30 V.S.A. § 248a.~~

~~(g) Planting projects which do not include any construction or grading activities in accordance with 24 V.S.A. § 4424(c).~~

~~(h) Subdivision of land that does not involve or authorize development.~~

~~(3) Permitted Development. The following development activities in the RCO District are permissible upon approval, provided they meet all other requirements of the LDRs.~~

~~(a) Construction of or additions to accessory structures that do not exceed, cumulatively, 500 square feet, and are not used for habitation.~~

~~(b) Improvements to existing utilities that are within or immediately adjacent to an existing right of way and serve a building.~~

~~(c) Replacement of on-site septic systems.~~

~~(d) Construction of or additions to an unenclosed deck or patio attached to an existing structure, where such construction or additions are cumulatively 200 square feet or less and are located no less than 100 feet from the top of bank (or top of slope, if applicable).~~

~~(e) River or floodplain restoration projects that do not involve fill, structures, utilities, or other improvements, and which the ANR Regional Floodplain Manager has confirmed in writing are designed to meet or exceed the applicable standards in this bylaw.~~

~~H. Development Review Classification & Referral to Outside Agencies~~

~~(1) A zoning permit is required from the Administrative Officer for all development, as defined in Section 2.03 (Floodplain and River Corridor Definitions), in the River Corridor Overlay District. All permits shall require that a permittee have all other necessary permits from state and federal agencies before work may begin.~~

~~(a) — If a permitted development activity listed in subsection G(3) above meets the criteria for infill development and/or certain non-habitable and accessory structures in subsections I(2)(a) or I(2)(b), below, then the activity shall require an administrative review by the AO and may receive a Zoning Permit from the AO.~~

~~(b) — If permitted development activity listed in subsection G(3) above does not meet the criteria for infill development and certain non-habitable and accessory structures in subsections I(2)(a) or I(2)(b) then the proposal shall be reviewed by the Development Review Board as a Conditional Use and the DRB must find that the proposed development meets the River Corridor Performance Standard outlined in subsection I(2)(c) prior to issuance of a Zoning Permit by the AO.~~

~~(2) — Referrals to outside agencies~~

~~(a) Upon receipt of a complete application for new construction or a substantial improvement, the Administrative Officer shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The AO and DRB shall consider all comments from ANR.~~

~~(b) If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be provided to the following entities: affected adjacent communities, the River Management Engineer at the Vermont Agency of Natural Resources, the Army Corps of Engineers, and the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.~~

~~I. — Development Standards.~~

~~The criteria below are the minimum standards for development in the RCO District. Where more than one district is involved, the most restrictive standard shall take precedence.~~

~~(1) Development within designated centers shall be allowed within the river corridor if the applicant can demonstrate that the proposed development will not be any closer to the river than existing adjacent development.~~

~~(2) Development outside of designated centers shall meet the following criteria:~~

~~(a) Infill Development must be located no closer to the channel than the adjacent existing principal buildings, within a gap that is no more than 300 feet (see Figure 1); or,~~

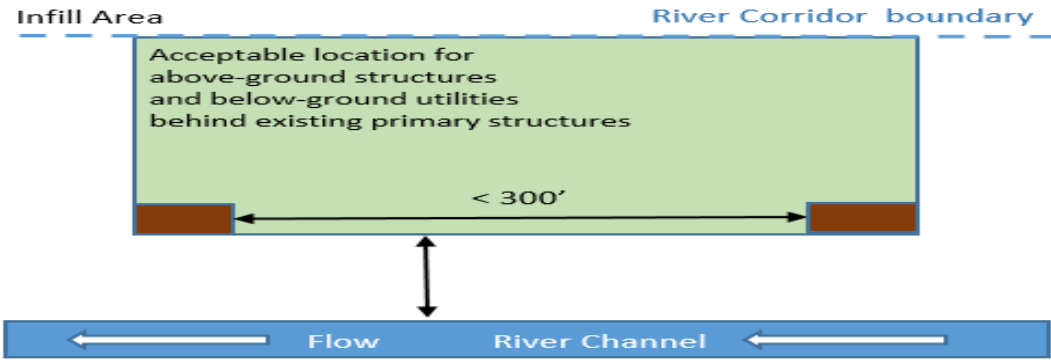


Figure 34: In-fill Development Standard

(b) ~~Down River Shadow: A non-habitable addition (garage, deck, patio, stairs, etc.) to an existing habitable structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet of the downstream side of the existing habitable structure and no closer to the top of bank or slope, as applicable. Below ground utilities may also be placed within the same shadow dimensions of an existing below-ground system (see Figure 2); or,~~

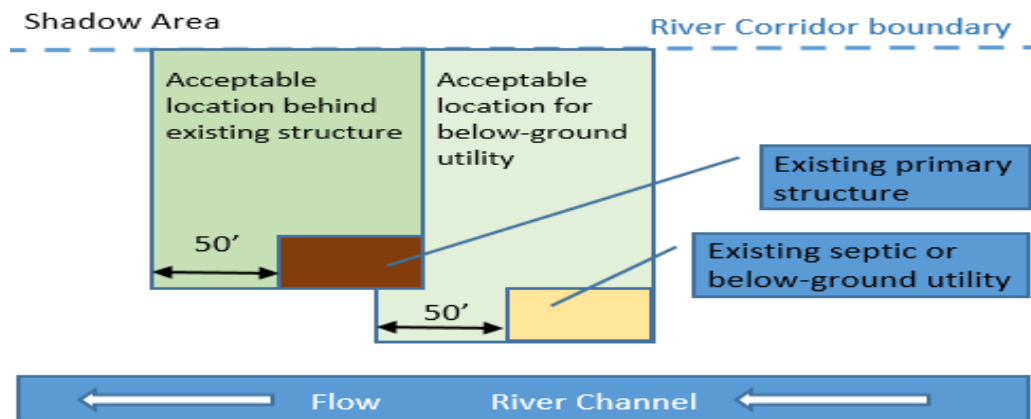


Figure 42: Shadow Area Development Standard

(c) ~~River Corridor Performance Standard.~~

(i) ~~The proposed development shall:~~

- a. ~~not be placed on land with a history of fluvial erosion damage or that is imminently threatened by fluvial erosion; and,~~
- b. ~~not cause the river reach to depart from, or further depart from, the channel width, depth, meander pattern or slope associated with natural stream processes and equilibrium conditions; and,~~

c. ~~not result in an immediate need or anticipated future need for stream channelization that would increase flood elevations and velocities or alter the sediment regime, triggering channel adjustments and erosion in adjacent and downstream locations.~~

(ii) ~~In making its determination, the DRB may request or consider additional information to determine if the proposal meets the River Corridor Performance Standard, including:~~

a. ~~Description of why the criteria for infill development and certain non-habitable and accessory structures in sub-sections 1(2)(a) and 1(2)(b) above cannot be met;~~

b. ~~Data and analysis from a consultant qualified in the evaluation of river dynamics and erosion hazards;~~

c. ~~Comments provided by the DEC Regional Floodplain Manager on whether the proposal meets the River Corridor Performance Standard.~~

J. ~~Submission Requirements.~~ ~~In addition to all information required for permitted development, the application shall include:~~

(1) ~~Plan.~~ ~~A plan that depicts the proposed development, all water bodies, all River Corridor Overlay District boundaries, the shortest horizontal distance from the proposed development to the top of bank (and/or top of slope, if applicable) of any river, any existing and proposed drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;~~

(2) ~~Project Review Sheet.~~ ~~A Vermont Agency of Natural Resources Project Review Sheet. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the Administrative Officer and attached to the zoning permit before work can begin.~~

(3) ~~Supplemental Application Requirements.~~

(a) ~~Information clearly demonstrating how the proposed development meets the requirements for infill development and certain non-habitable and accessory structures in subsection 10.07(l) Development Standards above; or~~

(b) ~~A narrative and supporting technical information from a qualified consultant that demonstrates how the proposal meets the River Corridor Performance Standard in subsection 10.07(l) Development Standards above; or~~

(c) ~~Evidence of an approved major or minor map update issued by ANR in accordance with the process outlined in the *DEC Flood Hazard Area & River Corridor Protection Procedure*, finding the proposed development is not located within the river corridor.~~

(4) ~~Waivers.~~ ~~Upon written request from the applicant, the Administrative Officer or DRB may waive specific application requirements when the data or information is not needed to comply with Section 10.07 of this bylaw.~~

K. ~~Permit Conditions~~

~~Permits for public water accesses and unimproved paths that provide access to the water for the general public and promote the public trust uses of the water shall include a condition prohibiting the permittee from actively managing the applicable section of river solely to protect the public water access from lateral river channel adjustment.~~

12 ENVIRONMENTAL PROTECTION STANDARDS

[NOTE TO DRAFT: ARTICLE 12 IS SHOWN AS A COMPLETE REPLACEMENT OF THE EXISTING TEXT. THE EXISTING TEXT IS SHOWN WITH A STRIKETHROUGH FOLLOWING THE ARTICLE].

12.01 General Protection Standards and Review Procedures

12.02 Reserved

12.03 Wetland Protection Standards and Review Procedures

12.04 Reserved

12.05 Habitat Blocks

12.06 Habitat Connectors

12.07 Habitat and Disturbance Assessment

12.08 Stormwater Management

12.09 Steep Slopes

12.10 Restricted Infrastructure Encroachment

12.01 General Protection Standards, Classifications and Review Procedures

A. Purpose. It is the purpose of this Article to implement, from a regulatory perspective, the Comprehensive Plan's goal of "emphasizing sustainability for long-term viability of a clean and green South Burlington" and objective to "promote conservation of identified important natural areas, open spaces, aquatic resources, air quality, arable land and other agricultural resources, historic sites and structures, and recreational assets" in balance with the overall goals and objectives of the Comprehensive Plan.

This Article establishes application requirements and development standards designed to avoid or minimize undue adverse effects on these natural resources. The natural resources regulated in this article may also be subject to specific subdivision or planned unit development standards. Where there is conflict between subdivision or planned unit development standards, and the standards in this article, the standard that imposes the greater restriction shall apply.

B. Classification. For the purposes of these Regulations, resources are grouped into Hazards, Level I and Level II resource areas.

Table 12-01 – Classification of Natural Resources

	<u>Location in Regulations</u>	<u>Initial Identification</u>	<u>Field Verification / HDA</u>
<u>Hazards</u>	-	-	-
<u>Floodplain (1% and 0.2% B2), Floodway</u>	<u>10.01</u>	<u>FEMA FIRM</u>	<u>Yes</u>
<u>River Corridor except intermittent streams</u>	<u>10.07</u>	<u>ANR Atlas</u>	<u>Yes</u>
<u>Class I, II Wetlands, Buffers</u>	<u>12.03</u>	<u>ANR Atlas</u>	<u>Yes</u>
<u>Very Steep Slopes (25+%)</u>	<u>12.09</u>	<u>ANR Atlas</u>	<u>If impacted</u>
<u>Level I Resources</u>	-	-	-
<u>Habitat Blocks</u>	<u>12.05</u>	<u>City LDR Map</u>	<u>HDA Optional</u>
<u>Habitat Connectors</u>	<u>12.06</u>	<u>City LDR Map</u>	<u>HDA Optional</u>
<u>Level II Resources</u>	-	-	-
<u>Floodplain (0.2% Zone B1)</u>	<u>10.01</u>	<u>FEMA FIRM</u>	<u>If Impacted</u>

<u>Class III Wetlands, Buffers</u>	<u>12.03</u>	<u>ANR Atlas</u>	<u>If impacted</u>
<u>Steep Slopes (15 to 25%)</u>	<u>12.09</u>	<u>ANR Atlas</u>	<u>If impacted</u>
<u>River Corridor - Intermittent Streams</u>	<u>10.07</u>	<u>Site Mapping</u>	<u>If impacted</u>

C. Applicability of Standards. All development must comply with the provisions of this Article, unless otherwise exempted, in order to prevent undue adverse effects on ecological resources, water quality and working lands, unless explicitly waived or amended in this section. Exemptions include:

- (1) Uses and structures exempt from local regulation pursuant to 24 V.S.A. §4413.
- (2) Construction of fences (i) that enclose cleared areas, such as lawn areas surrounding a residence, provided the clearing occurred prior to [effective date of this provision] or was approved by the DRB in accordance with this Article; or (ii) erected for standard agricultural purposes or, (iii) lower than 4 feet and that have at least 16 inches of clearance between the lowest horizontal part of the fence and the ground. In all cases, proposed fences must comply with section 13.17 (Fences) of these Regulations.
- (3) Exemptions as specified elsewhere in these Regulations.

D. Development Review Process. All development that may encroach upon a natural resource regulated in Article 12 shall be subject to Site Plan Review by the Development Review Board (see Article 14). However, if the encroachment is proposed as a part of a subdivision or Planned Unit Development application, the proposed encroachment shall be reviewed under those procedures instead of Site Plan Review. Other exceptions include:

- (1) Applications for proposed development that solely include development related to stormwater management (Section 12.08) may be reviewed via administrative Site Plan Review (Section 14.09).
- (2) Applications involving development on Steep Slopes between 15% and 25% grade (Section 12.09) shall be reviewed via administrative Site Plan Review (Section 14.09), unless the application is for a single-household dwelling or two-household dwelling or associated accessory structures, in which case the application may be approved via a zoning permit reviewed by the Administrative Officer.
- (3) Applications involving an Environmental Restoration Project may be reviewed via administrative Site Plan Review (Section 14.09).

12.02 [Reserved]

12.03 Wetland Protection Standards

A. Purpose. It is the purpose of this Section to protect the City's wetland resources in order to protect wetland functions and values related to surface and ground water protection, stormwater treatment, wildlife habitat, and flood control. The City intends to strictly protect Class I wetlands, Class II wetlands, and their respective buffers via the standards of this section. The City also intends to provide protection that offers limited flexibility for larger class III wetlands (over 300 square feet in size) and their respective buffers, and to Class II wetlands and their respective buffers in specific identified areas of the city.

B. Applicability. All development in the City of South Burlington shall comply with the requirements of this section. The requirements of this Section will apply to all lands described as follows, collectively referred to as Wetlands Areas and Related Buffers:

- (1) **Class I Wetlands and Related Buffers.**

(a) In all City Center Form-Based Code, Commercial, Industrial and Airport, and Other (Institutional and Agricultural and Municipal only) zoning districts, as established in Section 3.01 of these Regulations, all Class I wetlands, and their related buffer areas as measured in horizontal distance from the boundary of the wetland one-hundred (100) feet, are subject to the provisions of this section.

(b) **Residential Districts and the Park and Recreation Districts.** In all Residential and Other (excepting those enumerated in Subsection B(1)(a)) zoning districts, as established in Section 3.01, all Class I wetlands, and their related buffer areas as measured in horizontal distance from the boundary of the wetland two hundred (200) feet, are subject to the provisions of this section.

(2) Class II Wetlands and Related Buffers.

(a) In all City Center Form-Based Code, Commercial, Industrial and Airport, and Other (Institutional and Agricultural and Municipal only) zoning districts, as established in Section 3.01 of these Regulations, all Class II wetlands, and their related buffer areas as measured in horizontal distance from the boundary of the wetland fifty (50) feet, are subject to the provisions of this section.

(b) In all Residential and Other (excepting those enumerated in Subsection B(1)(a)) zoning districts, as established in Section 3.01, all Class II wetlands, and their related buffer areas as measured in horizontal distance from the boundary of the wetland one hundred (100) feet, are subject to the provisions of this section.

(3) Class III Wetlands. All Class III wetland areas 300 square feet or larger in size, and their related fifty (50) foot buffer areas measured in horizontal distance from the boundary of the wetland, are subject to the provisions of this section. Class III wetlands less than 300 square feet in size are not regulated by the City.

C. Application Submittal Requirements. Submittal of a preliminary and/or complete Site Conditions Map (as applicable to the stage of application) pursuant to Appendix E.

(1) Per Section 17.08, the DRB may require independent technical review of any field delineation and wetlands report.

(2) For applications involving Class I and/or Class II wetlands, the applicant's application may include a wetlands delineation approved by the Vermont Agency of Natural Resources as a part of the State Wetlands Permit. The DRB may defer to this delineation in their review of the application instead of requiring an additional or separate delineation.

D. Standards for Wetlands Protection

(1) **Class I and Class II Wetlands.** Development is generally prohibited within Class I wetlands, Class II wetlands, and their associated buffers. All lands within a Class I wetlands, Class II wetlands, and their associated buffers, shall be left in an undisturbed, naturally vegetated condition. However, an applicant may seek approval for a Limited Infrastructure Encroachment under this section or to modify this standard per the regulations in Section 12.03(E)

(2) **Class III Wetlands.** Development in a Class III wetland (meeting 300 square foot threshold), and associated buffer within all zoning districts, is generally prohibited and shall be left in an undisturbed,

naturally vegetated condition. However, an applicant may seek approved for a Limited Infrastructure Encroachment under this section or to modify this standard where allowable per the regulations in Section 12.03(E).

(3) **Landscaping and Fencing.** Landscaping and/or fencing shall be installed along the outside perimeter of the wetlands buffer to clearly identify and protect wetlands buffer. The DRB may waive this requirement, if petitioned by the applicant, if there is existing forest and/or landscaping along the border of wetland buffer or other clear, existing demarcation. The design and installation of any such landscaping or fencing must accommodate wildlife passage.

(4) **Restricted Infrastructure Encroachment.** Restricted Infrastructure Encroachment may be allowed within Class I, Class II, or Class III wetlands, and their associated buffers, without a waiver or modification provided that the applicant demonstrates the project's compliance with Section 12.10 and the following supplemental standards:

(a) Roadway paved surfaces shall be no wider than 20 feet; and,

(b) Roads that bifurcate a wetland or wetland buffer shall propose appropriate mitigation, such as reduction or elimination of curbing and installation of cross culverts, to enable wildlife passage.

E. Modifications

(1) An applicant may request a modification, in writing, from the rules of this section for any development in the following areas only:

(a) Development in a Class II wetland and associated buffer within the Form-Based Code Zoning Districts.

(b) Development in a Class III wetland exceeding 300 square feet in area and associated buffer within all zoning districts.

(2) The DRB may grant a modification from the rules of this Section only if all the following standards are met:

(a) The modification shall be the minimum required to accommodate the proposed development;

(b) The proposed development will not have an undue adverse effect on the planned character of the area, as defined by the purpose statement of the zoning district within which the project is located, or on public health and safety;

(c) The proposed development will not have an undue adverse effect on the ability of the property adequately treat stormwater from the site; and,

(d) The proposed development will not have an undue adverse effect upon specific wetland functions and values identified in the field delineation.

12.04 [Reserved]

12.05 Habitat Blocks

A. Purpose. It is the purpose of these Habitat Block standards to avoid undue adverse effects from development on these resources, promote the natural succession of vegetated areas of native vegetation

in order to support wildlife habitat and movement, promote carbon sequestration, filter air, and increase infiltration and base flows in the City's streams and Lake Champlain.

B. Applicability. The requirements of this Section apply to all development proposed in areas indicated as "Habitat Blocks" on the **Natural Resources Map**, except as follows:

- (1) On lots or parcels of less than one (1) acre in size existing as **of the effective date of these Regulations**;
- (2) On land located within 50' horizontal distance of a principal building on the subject parcel existing as of the effective date of these regulations;
- (3) On land authorized by the Development Review Board to be removed from or added to a Habitat Block pursuant to the modification options of this section or as part of a Conservation Planned Unit Development.

C. Application Submittal Requirements. Submittal of a preliminary and/or complete Site Conditions Map (as applicable to the stage of application) pursuant to Appendix E. Where an applicant elects to perform a Habitat Disturbance Assessment, the submittal requirements of Section 12.07 shall apply.

D. Modification of Habitat Block. An applicant may request approval from the Development Review Board to modify a mapped Habitat Block in any of the following manners. An applicant may select any one of the options three modification methods below. A development application may not include more than one option for any application.

Land located within the SEQ-NRP zoning subdistrict, Hazards, Level I resources, previously approved as open space or conserved land, subject to a deed restriction prohibiting development, subject to a conservation or density reduction easement, or owned by a public entity shall not be eligible for any of the modification methods for habitat blocks subject to this section.

- (1) **Minor Habitat Block Boundary Adjustment.** An applicant may apply to modify the boundary of a mapped Habitat Block by up to fifty (50) feet in any direction to account for site-specific conditions, upon written request by the applicant as part of the requisite application. Any proposed modification in Habitat Block area must be offset with an equal addition elsewhere within the same subject parcel or Planned Unit Development that is contiguous to the Habitat Block. In no case shall the Development Review Board approve a net reduction of a Habitat Block.
- (2) **Small On-Site Habitat Block Exchange.** An applicant may apply to exchange a mapped Habitat Block area not to exceed two (2) acres or ten (10) percent of the application's total land area, whichever is less, for an equal amount of land within the same Planned Unit Development or Site Plan upon written request, without requiring a Habitat and Disturbance Assessment. Such land exchange must not include Core Habitat Areas and shall not eliminate existing Habitat Connectors. To approve a small on-site habitat block exchange, the Development Review Board shall require the applicant to:
 - (a) Retain a similar or greater quality and maturity of vegetation within the proposed areas for exchange; and
 - (b) Retain mature and/or prominent tree stands.
- (3) **Larger Area Habitat Block Exchange.** An applicant may apply to exchange a mapped Habitat Block area in exchange for an equal amount of land within the same Habitat Block upon written request, and pursuant to the standards of this Section. The exchange of land within the same Habitat Block may occur within one parcel or on separate parcels.
 - (a) **Supplemental submittal requirements.**

- (i) Indicate, on the Master Plan and all subsequent plans, all proposed alterations to the Habitat Block.
 - (ii) Submit, as part of the preliminary plat application, a Habitat and Disturbance Assessment (HDA) pursuant Section 12.07 and a written assessment of compliance with the standards contained within this subsection.
 - (b) Supplemental Standards of Review.** The Development Review Board may approve a re-designation of a portion of a Habitat Block if it finds all of the criteria below to be met:
 - (i) The HDA demonstrates that the alteration will not result in a reduction in the Habitat Block's function as a significant wildlife habitat as defined in these Regulations;
 - (ii) Wildlife movement connectivity is retained between mapped Habitat Blocks; and,
 - (iii) Proposed adjacent development and infrastructure must be designed to have no undue adverse effects on habitat functions.
 - (c) Exchanged Land.** Land to be added to the Habitat Block pursuant to this section must be set aside and identified on the subdivision plat, and in associated legal documents, as one or more "Conservation Lots" as established in Section 15A, to be maintained and managed in single or common ownership, or under a conservation easement held by the City or qualified third party, such as an established land trust, that is contiguous to the habitat block and unseparated by roadways, railways, or other impeding infrastructure.
 - (i) Land located with the SEQ-NRP zoning subdistrict, Hazards, Level I resources, previously approved as open space or conserved land, subject to a deed restriction prohibiting development, subject to a conservation or density reduction easement, or owned by a public entity shall not be eligible to be used for a land exchange.
 - (ii) Any land proposed to be added / conserved shall be accompanied by a restoration plan, prepared by a landscape architect, professional wildlife biologist, or equivalent, that will result in the land functioning as a significant wildlife habitat such that within a period of ten (10) years and being classified as transitional forest / forest by a land use / land cover assessment at that time.
- E. Substantially-Habitat Block-covered lots.** A lot or parcel containing a combination of Hazards and Level I resources exceeding seventy (70) percent of the total lot area is eligible for relief from Habitat Block standards as follows:
- (1) [Reserved]
 - (2) The Development Review Board may approve exclusion of an area of land within the Habitat Block not to exceed thirty (30) percent of the total lot area. Where applicable, land shall be excluded in the following order:
 - First: Land not a Hazard or Level I resources;
 - Second: Land that is not characterized by a preponderance of mature trees;
 - Third: Land within Habitat Blocks, excluding Core Habitat Block areas or which would sever a Habitat Connector.
 - Fourth: Land within Habitat Blocks, avoiding core habitat block areas to the greatest extent possible;

- (a) **Calculation:** Land shall be selected from first to fourth If all applicable land on the lot or parcel from one category is excluded, and the thirty (30) percent allotment of excluded land has not been reached, then land from the next category land shall be selected next.
- (b) **Special Circumstances:** Where the DRB finds that exclusion of land pursuant to the priority order above is in conflict with the purposes of this section, or where it finds that strict adherence to the priority order does not allow for a unified PUD consistent with the purposes of intent of these regulations, it may approve modifications to the land selected. Any such modifications shall be minimized in terms of land area and modification to the priority order.
- (c) Any land excluded from Habitat Blocks regulated under this subsection shall remain subject to all other provisions of these Regulations.

F. Standards for Habitat Block Protection.

- (1) **General standards.** Except as specifically exempted pursuant to Subsection (2) below, approved by the DRB pursuant to subsection (3) below, or modified in accordance with Section (D) above, all lands within a Habitat Block must be left in an undisturbed, naturally vegetated condition. Specifically:
 - (a) The clearing of trees and understory vegetation is prohibited except as specified in this section.
 - (b) The creation of new lawn areas within Habitat Blocks is prohibited.
 - (d) Snow storage areas within Habitat Blocks are prohibited.
 - (e) Building envelopes shall not contain any land within Habitat Blocks.
 - (f) Supplemental planting and landscaping with appropriate species of vegetation to achieve the objectives of this Section is permitted.

G. Exempted Uses and Activities. The following uses and activities are exempt from review under this section:

- (1) Establishment and maintenance of unpaved, non-motorized trails not to exceed ten (10) feet in width, or their width prior to adoption of these regulations, whichever is greater;
- (2) Removal of invasive species, removal of diseased vegetation, and removal of dead or dying trees posing an imminent threat to buildings or infrastructure; and,
- (3) Uses and activities enumerated in Section 12.01C.

Nothing in this subsection shall be construed to modify the boundary of a Habitat Block as shown on the Natural Resources Map.

H. Development within Habitat Blocks. The encroachment of new development activities, clearing of vegetation, establishment of lawn, or other similar activities into Habitat Blocks and Habitat Block buffers is prohibited. However, the DRB may allow the following types of development within a Habitat Block where a modification option has been approved pursuant to 12.05(D) and subject to the standards in Section 12.05(F):

- (1) Restricted Infrastructure Encroachment, pursuant to Section 12.10 and the following supplemental standards:
 - (a) The facility shall be strictly limited to be minimum width necessary to function for its intended purposes;

- (b) The clearing of vegetation adjacent to the facility shall be strictly limited to the minimum necessary width to function for its intended purposes). Street tree requirements shall not apply in these area). Street lighting shall be prohibited in these areas except as necessary to meet State or Federal law; and,
- (c) Appropriate measures shall be taken to promote safe wildlife passage, including the reduction or elimination of curbs, reduced speed limits, and/or signage altering users, and underpass or culverts.
- (2) Outdoor recreation uses, provided any building, parking and/or driveways appurtenant to such use is located outside the habitat block.
 - (a) Within a public park, structures not exceeding 500 square feet gross floor area are permitted. All such structures must be consistent with the adopted management plan for the park, if one exists. Where a management plan has been adopted for the park, the
- (3) Research and educational activities provided any building or structure (including parking and driveways) appurtenant to such use is located outside the Habitat Block.
 - (a) Research and educational structures not exceeding 500 square feet gross floor area, such as seating areas made of natural materials, storage sheds, or climbing structures, may be allowed within a Habitat Block or Habitat Block buffer.

12.06 Habitat Connectors

- A. Purpose.** It is the purpose of this Section to maintain the functionality of identified Habitat Connectors, allowing species to travel between identified Habitat Blocks, wetland areas, water bodies, and other natural resources within and adjacent to the City.
- B. Applicability.** The requirements of this Section will apply to all areas indicated as “Habitat Connectors” on the Habitat Blocks and Connectors map, except as follows:
 - (1) Lots or parcels of less than one (1) acre existing as of the effective date of these Regulations.
 - (2) Land located within 50 feet horizontal distance of a principal building existing on the same parcel as of the effective date of these regulations.
- C. Standards.**
 - (1) The applicant shall retain a 150-foot wide Habitat Connector where indicated on the Habitat Blocks and Connection Map.
 - (2) Contiguous Hazards, or other contiguous protected natural resources regulated in Article 12, may be used to count towards the connector width.
 - (3) Habitat Connectors shall be subject to the provisions of 12.05(F) Habitat Blocks Standards.
 - (4) Relocation of Habitat Connector. An applicant may apply to relocate a Habitat Connector from its location on the Habitat Blocks and Connection Map but must connect to mapped Habitat Connectors or Habitat Blocks on adjacent parcels. Any relocated portion shall be accompanied by a restoration plan, prepared by a qualified consultant (e.g. landscape architect, professional wildlife biologist or

equivalent). The restoration plan shall consist of planting native tree species (at least 2 inches in caliper) within areas of the relocated Habitat Connector and shall result in the land functioning as wildlife habitat within a period of ten (10) years time.

- (5) Restoration of Habitat Connector. The DRB shall require restoration of a Habitat Connector on parcels where development is proposed and pre-existing conditions consist of Habitat Connectors that are less than 150 feet in width along their entire length of the Habitat Connector. Restoration shall consist of planting native tree species (at least 2 inches in caliper) within areas of the Habitat Connector less than 150 feet wide. The applicant may request, in writing, to waive this requirement. The DRB may grant a waiver only if restoration of the Habitat Connector is not possible due the placement of pre-existing structures on the subject parcel.

12.07 Habitat and Disturbance Assessment (HDA)

A. Purpose. The Habitat and Disturbance Assessment (HDA) is a tool to inventory and quantify significant wildlife habitat, and the existence of rare, threatened and endangered species (RTEs), within subject properties with mapped Habitat Blocks and Habitat Connectors (Section 12.05 and Section 12.06) where an applicant is seeking to relocate a portion of the Habitat Block or Habitat Connector.

B. HDA Content Requirements. Where an HDA is required by these regulations, the applicant shall contract with a qualified wildlife biologist or ecologist to prepare the HDA. The HDA prepared for the Development Review Board shall include the following information:

- (1) Site Conditions Map including all Habitat Blocks and Habitat Connectors as indicated on the Habitat Block and Connectors map on or within 200 feet of the project site.
- (2) An inventory of existing (pre-development) wildlife habitat found on the site, including the presence of rare, threatened, and/or endangered species and significant wildlife habitat, and an inventory of the specific types of habitat found on the parcel and their relative importance to the various wildlife species that rely on that habitat for one or more life-cycle function;
- (3) An assessment of the relationship of the habitat found on the site relative to other significant wildlife habitat present in the City (e.g., does habitat found on the parcel provide for connectivity between mapped habitat blocks; is the parcel located contiguous to other significant wildlife habitat, or part of a habitat block);
- (4) Identification of the distance of all proposed development activities (as permitted), including clearing, driveways and infrastructure, and areas of disturbance, from the significant wildlife habitat and, if significant habitat is proposed to be disturbed, the total area of disturbance and the total area of the remaining (undisturbed) habitat;
- (5) An assessment of the likely impact of the proposed development, including associated activities (e.g., introduction of domestic pets, operation of vehicles and equipment, exterior lighting, introduction of non-native species for landscaping) on the ecological function of the significant wildlife habitat found on the site. This shall include an assessment of whether travel between areas of core habitat will be disrupted;
- (6) An assessment of the anticipated functionality of the Habitat Block with proposed mitigation measures and a statement identifying specific mitigation measures taken to avoid or minimize the proposed development's impact on the habitat, including buffers of habitat for specific identified species, possible replacement or provisions for substitute habitats that serve a comparable ecological

function to the impacted habitat, and/or physical design elements to incorporate into the project.

12.08 Stormwater Management

A. Purpose. The purpose of this section is:

- (1) To promote stormwater management practices that maintain pre-development hydrology through site design, site development, building design and landscape design techniques that infiltrate, filter, store, evaporate and detain stormwater close to its source;
- (2) To protect water resources, particularly streams, lakes, wetlands, floodplains and other natural aquatic systems on the development site and elsewhere from degradation that could be caused by construction activities and post-construction conditions;
- (3) To protect other properties from damage that could be caused by stormwater and sediment from improperly managed construction activities and post-construction conditions on the development site;
- (4) To reduce the impacts on surface waters from impervious surfaces such as streets, parking lots, rooftops and other paved surfaces; and
- (5) To promote public safety from flooding and streambank erosion, reduce public expenditures in removing sediment from stormwater drainage systems and natural resource areas, and to prevent damage to municipal infrastructure from inadequate stormwater controls.

B. Applicability

- (1) These regulations will apply to all development within the City of South Burlington where one-half acre or more of impervious surface area exists or is proposed to exist on an applicant's lot or parcel.
- (2) If the combination of new impervious surface area created and the redevelopment or substantial reconstruction of existing impervious surfaces is less than 5,000 s.f. then the application is exempt from requirements in this Section 12.08.
- (3) Applications meeting the criteria set forth in section 12.08(B)(1), and not exempt under section 12.08(B)(2), shall meet the application requirements in Section 12.08(C) and the site design requirements in section 12.08(D) as follows:
 - (a) If the area of the lot or parcel being redeveloped or substantially reconstructed is less than 50% of the lot's existing impervious surface area, then only those portions of the lot or parcel that are being redeveloped or substantially reconstructed must comply with all parts of Section 12.08(D). All new impervious surface area must meet the site design requirements of section 12.08(D).
 - (b) If the area of the lot or parcel that is being redeveloped or substantially reconstructed exceeds 50% of the lot or parcel's existing impervious surface area then all of the lot or parcel's impervious surfaces must comply with all parts of Section 12.08 (D). All new impervious surface area must meet the site design requirements of Section 12.08(D).

C. Application Requirements. Applicants required to comply with Section 12.08 shall provide the following information in their application:

- (1) Sub-watershed boundaries and drainage area delineations for all stormwater treatment practices.
- (2) Location, type, material, size, elevation data, and specifications for all existing and proposed stormwater collection systems, culverts, and stormwater treatment practices.

- (3) Soil types and/or hydrologic soil group, including the location and results of any soil borings, infiltration testing, or soil compaction testing. Infiltration testing shall be completed using methods identified in the VSMM (see section 4.3.3.2 in the 2017 VSMM, or as updated).
- (4) A brief written description of the proposed stormwater treatment and management techniques. Where Tier 1 practices are not proposed (see Section 12.08(C)(1)(a)), the applicant shall provide a full justification and demonstrate why the use of these practices is not possible before proposing to use Tier 2 or Tier 3 practices.
- (5) A detailed maintenance plan for all proposed stormwater treatment practices.
- (6) Modeling results that show the existing and post-development hydrographs for the WQv storm event, the one-year, twenty-four hour rain event, and the twenty-five year, twenty-four hour storm event (rainfall amounts to be determined using NOAA, Atlas 14 data and a type II rainfall distribution). Any TR-55 based model shall be suitable for this purpose. The intent of the twenty-five year storm event analysis is to ensure the proposed project does not overload an existing downstream drainage structure(s) and result in damage to private or public infrastructure or property. The analysis is also intended to ensure that stormwater infrastructure installed as a part of a development can accommodate future upstream development.
- (7) The applicant's engineer must provide such information as the stormwater superintendent or designee deems necessary to determine the adequacy of all drainage infrastructure.

D. Design Requirements - On-Site Treatment. Applicants shall meet the following standards for on-site treatment of stormwater:

- (1) The Water Quality Volume (WQv) as defined in the Vermont Stormwater Management Manual (VSMM) for the lot or parcel's impervious surfaces shall not leave the lot via overland runoff and shall be treated using Tier 1 practices as detailed in the VSMM.
 - (a) If it is not possible to treat the volume of stormwater runoff using a Tier 1 practice as specified in Section 12.08(D)(1) due to one or more of the following constraints:
 - (i) Seasonally high or shallow groundwater,
 - (ii) Shallow bedrock,
 - (iii) Soil infiltration rates of less than 0.2 inches per hour,
 - (iv) Soils contaminated with hazardous materials, as that phrase is defined by 10 V.S.A. §6602(16), as amended,
 - (v) The presence of a "stormwater hotspot" as defined in the VSMM, or
 - (vi) Other site conditions prohibitive of on-site infiltration runoff subject to the review and approval of the Development Review Board,

then the WQv shall be treated on the lot using Tier 2 practices as described in the most recently adopted version of the VSMM. A site with an existing Tier 3 practice is allowed to evaluate retrofitting/expanding this practice to meet the requirements of Section 12.08(D)(2). Existing Tier 3 practices shall only be used to satisfy the requirements of Section 12.08(D)(1) in accordance with the Water Quality Practice Selection Flowchart in the VSMM.
- (2) The post-construction peak runoff rate for the one-year, twenty-four hour (rainfall amounts to be determined using NOAA, Atlas 14 data and a type II rainfall distribution) rain event shall not exceed the

existing peak runoff rate for the same storm event from the site under conditions existing prior to submittal of an application.

(3) Applicants who demonstrate that the required control and/or treatment of stormwater runoff per section 12.08(D)(1) and 12.08(D)(2) cannot be achieved for areas subject to these regulations per Section 12.08(B) may utilize Site Balancing as defined in these Regulations.

(4) New drainage structures shall comply with the following standards:

(a) All drainage structures must be designed to safely pass the twenty-five year, twenty-four hour (4.0 inch) rain event (rainfall amounts to be determined using NOAA, Atlas 14 data and a type II rainfall distribution);

(b) Concrete risers, not brick and mortar, must be used to achieve the necessary drainage structure elevation.

(c) Driveway culverts must have a minimum diameter of 18" and 12" of cover above them.

E. Design Requirements – Impacts to Municipal System. Stormwater runoff from sites meeting the requirements of Section 12.08(D), or sites that are exempt from §12.08(D), may discharge to the municipal stormwater system, or a stormwater system within a proposed future municipal right-of-way, provided that the stormwater system has adequate capacity to convey the twenty-five year storm event from the contributing drainage area. All applicants shall meet the following standards if it is determined that their project may have impacts to municipal stormwater system:

(1) New drainage structures connected to the municipal stormwater system, or a stormwater system within a proposed future municipal right-of-way, shall comply with the following standards:

(a) New drainage structures should be located within the street right-of-way

(b) All drainage structures must be designed to safely pass the twenty-five year, twenty-four hour (4.0 inch) rain event (rainfall amounts to be determined using NOAA, Atlas 14 data and a type II rainfall distribution);

(c) Drainage pipes must have a minimum diameter of 15" and be connected to drainage structures using booted connections.

(d) Concrete risers, not brick and mortar, must be used to achieve the necessary drainage structure elevation.

(e) House footing drains shall only be connected to drainage facilities located in the street right-of-way when a suitable location to daylight the footing drain cannot be found.

(f) Footing drains must not be connected to road underdrain.

(g) Any footing drains connected to drainage facilities in the street right-of-way shall be provided with a backflow preventer.

(h) Driveway culverts must have a minimum diameter of 18" and 12" of cover above them.

(2) Drainage Structures To Accommodate Upstream Development. Culverts, pipes, or other drainage facilities shall be of sufficient size to accommodate potential runoff from the entire upstream drainage area, whether or not all or part of the upstream area is on the applicant's lot or the parcel subject to the application. In determining the anticipated amount of upstream runoff for which drainage facilities must be sized, the applicant shall design the stormwater drainage system assuming the total

potential development of upstream drainage areas. All drainage structures shall be designed to, at a minimum, safely pass the twenty-five year, twenty-four hour rain event (rainfall data to be determined using NOAA, Atlas 14 and a type II rainfall distribution).

- (3) Responsibility for Downstream Drainage Structures.** In instances where the Stormwater Superintendent anticipates that additional runoff incident from a proposed development may overload an existing downstream drainage structure(s) and result in damage to private or public infrastructure or property, the DRB shall impose conditions requiring the applicant to incorporate measures to prevent these conditions, notwithstanding whether such improvements are located on or off the applicant's property.

F. Intermittent Stream Alteration and Relocation Standard.

- (1) Alteration of Intermittent Streams.** When a development incorporates Tier 1 or Tier 2 stormwater treatment practices (as defined in the VSMM) to manage the stormwater that an intermittent stream is conveying in pre-development conditions, the intermittent stream may be altered or relocated as part of stormwater treatment, provided the stormwater management system meets all standards in this Section. An alteration or relocation of an intermittent stream is exempt from the Vermont Stream Alteration Rule.

12.09 Steep Slopes

A. Purpose. It is the purpose of this Section to protect the City's areas of steep and very steep slopes, as mapped and delineated for this purpose, in order to:

- (1) Prevent erosion and avoid stream sedimentation that may cause undue adverse effects on water quality.
- (2) Prevent hazards to life and property resulting from slope instability or failure, including rock falls, slides, slumps and other downslope movements of materials or structures.
- (3) Maintain and re-establish vegetation on steep slopes to stabilize soils.
- (4) Ensure that development on steep slopes is constructed and maintained in conformance with best management practices for construction, stormwater management and erosion control.

B. Applicability. All development is subject to the standards below where steep slopes or very steep slopes are present.

C. Application Submittal Requirements. Submittal of a preliminary and/or complete Site Conditions Map (as applicable to the stage of application) pursuant to Appendix E. An analysis of slope stability prepared by a licensed engineer shall also be submitted to ensure that no erosion hazards are created that would have an undue adverse effect on surface waters, wetlands, areas of special flood hazards, or downstream facilities, and any recommended mitigation measures

D. Review Process. Per Section 12.01(D), applications involving development on Steep Slopes between 15% and 25% grade shall be reviewed via administrative Site Plan Review (Section 14.09), unless the application is for a single-household dwelling or two-household dwelling, in which case the application may be approved via a zoning permit reviewed by the Administrative Officer.

E. Standards.

- (1) **Very Steep Slope Standards.** Development other than Restricted Infrastructure Encroachment is prohibited on slopes greater than 25%.
- (2) **Steep Slope Standards.** All development must be designed to avoid undue adverse effects on slopes between 15% and 25%. Clearing of vegetation, excavation and filling on steep slopes shall be minimized. All recommendations of the slope stability analysis submitted with the application shall be required by the DRB or Administrative Officer.

F. Exemptions.

- (1) **Removal of Earth Products.** Slopes exceeding 15 percent that are created by an approved earth products removal use shall be exempt from the regulations of this subsection.

12.10 Restricted Infrastructure Encroachment

A. Purpose. The purpose of this section is to define specific types of “restricted infrastructure” that may be allowed to encroach upon a natural resource regulated in Article 12 and to define the standards that shall be met in order for an encroachment to be allowed.

B. Types of Development. Restricted Infrastructure Encroachments are limited to the types of development listed in this subsection:

- (1) Underground public utilities systems (e.g. water, wastewater, stormwater, electric, broadband, telephone).
- (2) Public sidewalks and recreation paths (including bridges and boardwalks) intended to connect parcels and neighborhoods, or provide recreational opportunities within areas containing Hazards, Level I, and Level II resources.
- (3) Public and Private Street crossings designed to cross Hazards, Level I, and Level II resources.
- (4) Public and Private Driveway crossings designed to cross Hazards, Level I, and Level II resources.
- (5) Stormwater Facilities specifically identified as a part of an Environmental Restoration Project.

C. Qualifying Criteria. Encroachment into the resource may only be allowed if there is a finding that the proposed Restricted Infrastructure Encroachment meets one or more of the following qualifying criteria:

- (1) Is necessary to repair impacts from a Federally declared disaster, mitigate the future impacts of hazards, and/or necessary for the protection of the public health, safety and welfare;
- (2) Is for a functionally dependent purpose or use;
- (3) Is a part of an Environmental Restoration Project;
- (4) Is for purposes of crossing a natural resource area to gain access to land on the opposite side of the area; or
- (5) For purposes of providing safe access in accordance with City roadway and connectivity standards to an approved use.

D. Development Review Process. Applications involving Restricted Infrastructure Encroachments shall be subject to the development review process outlined in Section 12.01(D).

E. Standards. All Restricted Infrastructure Encroachments shall meet the following standards:

- (1) The encroachment shall not have an undue adverse effect on the subject natural resource and meet all specific, applicable standards for Restricted Infrastructure Encroachments into River Corridors (Section 10.07), Wetlands Buffers (Section 12.03), and Habitat Blocks (Section 12.05).
- (2) **Street and Driveway Crossings Not On Official Map.** Restricted Infrastructure Encroachment projects involving streets and/or driveways crossings of River Corridors (Section 10.07), Wetlands Buffers (Section 12.03), and/or Habitat Blocks (Section 12.05) that are not shown on the City Official Map may be allowed only upon a determination by the Development Review Board that all resource-specific standards and following standards have been met:
 - (a) There is no feasible alternative for providing safe access to the developable portion of the property;
 - (b) Alternative accesses through adjacent properties have been considered and, where fewer or no constraints exist, property owners have been contacted;
 - (c) The requirements of the applicable restriction will cause unnecessary or extraordinary economic hardship;
 - (d) The area served by the encroachment represents more than thirty (30) percent of the total developable land on the parcel; and,
 - (e) The encroachment represents the least impact feasible to the specific resource.

~~12 SURFACE WATER PROTECTION STANDARDS~~

~~12.01 General Stream and Surface Water Protection Standards~~

A. Purpose. It is the purpose of this Section to provide for the protection and improvement of the surface waters and streams within the City of South Burlington, Lake Champlain and Shelburne Bay, and the watersheds contained wholly or partially within the City. These regulations and standards are intended to lead to the establishment and protection of natural areas along the City's surface waters to provide improved protection for water quality and the provision of open space areas and wildlife habitat. It is the further purpose of this Section to provide for the retention of preexisting residential neighborhoods located along Lake Champlain and Potash Brook in a manner consistent with the resource protection goals of this Section and the Comprehensive Plan.

B. Comprehensive Plan. These regulations hereby implement the relevant provisions of the City of south Burlington adopted comprehensive plan and are in accord with the policies set forth therein.

C. Surface Water Buffer Standards ("Stream Buffers")

(1) Applicability. The requirements of this Section shall apply to all lands described as follows:

- (a) All land within one hundred (100) feet horizontal distance of the centerline of Muddy Brook and the main stem of Potash Brook.

- ~~(b) — All land within one hundred (100) feet horizontal distance of the edge of the channel of the Winooski River~~
- ~~(c) — All land within fifty (50) feet horizontal distance of the centerline of any minor stream~~
- ~~(d) — All land within ten (10) feet horizontal distance of the centerline of a drainage way~~
- ~~(e) — Land within or abutting the high water elevation of Lake Champlain, which for the purposes of these regulations shall be one hundred two (102) feet above mean sea level datum.~~

~~**(2) — General standards.** It is the objective of these standards to promote the establishment of heavily vegetated areas of native vegetation and trees in order to reduce the impact of stormwater runoff, reduce sedimentation, and increase infiltration and base flows in the City's streams and Lake Champlain. Therefore, except as specifically permitted by the DRB pursuant to the standards in Section 12.01(C)(3), (C)(4), (D) and/or (E) below, all lands within a required stream buffer defined above shall be left in an undisturbed, naturally vegetated condition. Supplemental planting and landscaping with appropriate species of vegetation to achieve these objectives shall be permitted. The specific standards for the vegetation and maintenance of stream buffers are as follows:~~

- ~~(a) — The clearing of trees that are not dead, heavily damaged by ice storms or other natural events, or diseased, and the clearing of any other vegetation other than invasive species, is permitted only in conjunction with DRB approval pursuant to (3) or (4) below.~~
- ~~(b) — Any areas within a required stream buffer that are not vegetated or that are disturbed during construction shall be seeded with a naturalized mix of grasses rather than standard lawn grass, and shall not be mowed.~~
- ~~(c) — The creation of new lawn areas within stream buffers is not permitted after the effective date of these regulations.~~
- ~~(d) — Snow storage areas designated pursuant to site plan or PUD review shall not be located within stream buffers unless the applicant can demonstrate that:

 - ~~(i) — There is no reasonable alternative location for snow storage on the same property.~~
 - ~~(ii) — Measures such as infiltration areas have been incorporated into the site plan and/or stormwater treatment system to reduce the potential for erosion and contaminated runoff entering the associated stream as a result of snow melt.~~~~
- ~~(e) — The placing or storing of cut or cleared trees and other vegetation within the stream buffer is prohibited.~~

~~**(3) — Expansion of pre-existing structures within stream buffers.** The expansion of pre-existing structures within stream buffers, except as provided in Section D below, shall be permitted only in accordance with the standards for non-complying structures in Article 3, Section 3.11 of these Regulations.~~

~~**(4) — New uses and encroachments within stream buffers.** The encroachment of new land development activities into the City's stream buffers is discouraged. The DRB may authorize the following as conditional uses within stream buffers, subject to the standards and conditions enumerated for each use. The DRB may grant approvals pursuant to this section as part of PUD review without a separate conditional use review.~~

- ~~(a) — Agriculture, horticulture and forestry including the keeping of livestock, provided that any building or structure appurtenant to such uses is located outside the stream buffer.~~

~~(b) — Clearing of vegetation and filling or excavating of earth materials, only to the extent directly necessitated for the construction or safe operation of a permitted or conditional use on the same property and where the DRB finds that:~~

~~(i) — There is no practicable alternative to the clearing, filling or excavating within the stream buffer; and~~

~~(ii) — The purposes of this Section will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures.~~

~~(c) — Encroachments necessary to rectify a natural catastrophe for the protection of the public health, safety and welfare.~~

~~(d) — Encroachments necessary for providing for or improving public facilities.~~

~~(e) — Public recreation paths, located at least twenty five (25) feet from the edge of channel of the surface water.~~

~~(f) — Stormwater treatment facilities meeting the Vermont Agency of Natural Resources stormwater treatment standards, and routine maintenance thereof, including necessary clearing of vegetation and dredging. Evidence of a complete application to the VANR for coverage under the applicable permitting requirements shall be required to meet this criterion for encroachment into a stream buffer.~~

~~(g) — Roadways or access drives for purposes of crossing a stream buffer area to gain access to land on the opposite side of the buffer, or for purposes of providing safe access to an approved use, in cases where there is no feasible alternative for providing safe access and the roadway or access drive is located at least twenty five (25) feet from the edge of the channel of the surface water for all water bodies listed in section 10.01(C)(1)(a) and (b) and ten (10) feet from the edge of channel of the surface water of all other streams.~~

~~(h) — Utility lines, including power, telephone, cable, sewer and water, to the extent necessary to cross or encroach into the stream buffer where there is no feasible alternative for providing or extending utility services.~~

~~(i) — Outdoor recreation, provided any building or structure (including parking and driveways) appurtenant to such use is located outside the stream buffer.~~

~~(j) — Research and educational activities provided any building or structure (including parking and driveways) appurtenant to such use is located outside the stream buffer.~~

~~(k) — Hydro-electric power generation~~

~~**D. — Erosion control measures and water-oriented development along Lake Champlain.** The installation of erosion control measures and water-oriented development within or abutting the high water elevation of Lake Champlain, may be approved by the DRB as a conditional use provided the following standards are met:~~

~~(a) — The improvement involves, to the greatest extent possible, the use of natural materials such as wood and stone.~~

~~(b) — The improvement will not increase the potential for erosion.~~

~~(c) — The improvement will not have an undue adverse impact on the aesthetic integrity of the lakeshore. In making a determination pursuant to this criterion, the DRB may request renderings or~~

other additional information relevant and necessary to evaluating the visual impact of the proposed improvement.

(d) — A landscaping plan showing plans to preserve, maintain and supplement existing trees and ground cover vegetation is submitted and the DRB finds that the overall plan will provide a visual and vegetative buffer for the lake and/or stream.

E. — Potash Brook Tributary 3 Requirements. For lands located within one hundred fifty (150) feet horizontal distance of Tributary 3 of Potash Brook, as delineated in the Potash Brook Watershed Restoration Plan, the DRB shall have the authority to invoke technical review of proposed land development activities requiring DRB approval. Such technical review shall have the specific purpose of recommending site plan, stormwater and landscaping measures that will ensure that land development activities are consistent with the City's overall plan for ecosystem restoration in the Tributary 3 watershed.

F. — Landscaping and Maintenance Standards within Stream Buffers [reserved]

G. — Watercourse Alteration and Relocation.

(1) — The alteration or relocation of a watercourse is permitted subject to the approval of the Development Review Board provided the alteration or relocation:

(a) — Is needed to accomplish a clear public purpose or objective;

(b) — Will not reduce the ability of the watercourse to carry or store flood waters adequately;

(c) — Will not have an adverse impact on downstream or upstream water quality;

(d) — Will not affect adversely the use and enjoyment of adjacent properties;

(e) — Will not affect adversely the habitat value of the watercourse or immediately adjacent areas or wetlands.

(2) — In making findings relative to these criteria, the DRB shall be authorized to invoke technical review by a professional in hydrology or geomorphology, and/or to rely on the issuance of a Stream Alteration Permit issued by the Vermont Department of Environmental Conservation as evidence that the above criteria have been met.

(3) — The South Burlington Natural Resources Committee shall in a timely manner review and make advisory comments to the DRB on any application made pursuant to this section.

12.02 Wetland Protection Standards and Review Procedures

A. — Purpose. It is the purpose of this Section to provide appropriate protection of the City's wetland resources in order to protect wetland functions and values related to surface and ground water protection, wildlife habitat, and flood control.

B. — Comprehensive Plan. These regulations hereby implement the relevant provisions of the City of south Burlington adopted comprehensive plan and are in accord with the policies set forth therein.

C. — Wetlands Map and Applicability of Standards.

(1) — All wetland areas within the City of South Burlington, whether identified on the map entitled "Wetlands Map" as set forth in Section 3.02 of these regulations or as identified through field delineation,

and a buffer area fifty (50) feet horizontal distance surrounding the boundary of any such wetland, shall be subject to the provisions of this section.

(2) — In the absence of site specific delineations, the City's Wetlands Map shall control as to the location of wetlands and wetland buffer areas subject to the provisions of this section.

D. — Submittal and Review of Field Delineation and Wetlands Report

(1) — For all properties for which any application for development requiring DRB review is made, and on which any wetland areas are indicated on the Wetlands Map, applicants are strongly encouraged to submit site specific field delineations indicating the location, classification, functions and values of all wetland areas (Class I, II and III) and an associated fifty (50) foot buffer area. In the absence of such site-specific delineations and information, the City's Wetlands Map shall control.

(2) — Applicants are encouraged to submit a field delineation and wetlands report as early in the development review process as possible.

(3) — The DRB shall have the authority to invoke technical review by a qualified wetlands consultant of any field delineation and wetlands report. The City's wetlands consultant shall submit an evaluation of the field delineation and wetlands report addressing the proposed development's consistency with the standards in (D) above, and outlining the following:

(a) — Measures that can be taken to improve the overall effect of the project on wetland resources without altering the layout of the proposed project.

(b) — Measures that can be taken to improve the overall effect of the project on wetland resources that involve altering the layout of the proposed project.

E. — Standards for Wetlands Protection

(1) — Consistent with the purposes of this Section, encroachment into wetlands and buffer areas is generally discouraged.

(2) — Encroachment into Class II wetlands is permitted by the City only in conjunction with issuance of a Conditional Use Determination (CUD) by the Vermont Department of Environmental Conservation and positive findings by the DRB pursuant to the criteria in (3) below.

(3) — Encroachment into Class II wetland buffers, Class III wetlands and Class III wetland buffers, may be permitted by the DRB upon finding that the proposed project's overall development, erosion control, stormwater treatment system, provisions for stream buffering, and landscaping plan achieve the following standards for wetland protection:

(a) — The encroachment(s) will not adversely affect the ability of the property to carry or store flood waters adequately;

(b) — The encroachment(s) will not adversely affect the ability of the proposed stormwater treatment system to reduce sedimentation according to state standards;

(c) — The impact of the encroachment(s) on the specific wetland functions and values identified in the field delineation and wetland report is minimized and/or offset by appropriate landscaping, stormwater treatment, stream buffering, and/or other mitigation measures.

12.03 Stormwater Management Standards-

A. ~~Purpose.~~ The purpose of this section is:

- (1) ~~— To promote stormwater management practices that maintain pre-development hydrology through site design, site development, building design and landscape design techniques that infiltrate, filter, store, evaporate and detain stormwater close to its source;~~
- (2) ~~— To protect water resources, particularly streams, lakes, wetlands, floodplains and other natural aquatic systems on the development site and elsewhere from degradation that could be caused by construction activities and post construction conditions;~~
- (3) ~~— To protect other properties from damage that could be caused by stormwater and sediment from improperly managed construction activities and post construction conditions on the development site;~~
- (4) ~~— To reduce the impacts on surface waters from impervious surfaces such as streets, parking lots, rooftops and other paved surfaces; and~~
- (5) ~~— To promote public safety from flooding and streambank erosion, reduce public expenditures in removing sediment from stormwater drainage systems and natural resource areas, and to prevent damage to municipal infrastructure from inadequate stormwater controls.~~

B. ~~Scope and Applicability~~

- (1) ~~— These regulations shall apply to all land development within the City of South Burlington where one-half acre or more of impervious surface area exists or is proposed to exist on an applicant's lot or parcel.~~
- (2) ~~— If the combination of new impervious surface area created and the redevelopment or substantial reconstruction of existing impervious surfaces is less than 5,000 s.f. then the application is exempt from requirements in this Section 12.03.~~
- (3) ~~— Applications meeting the criteria set forth in section 12.03(B)(1) and not exempt under section 12.03(B)(2) shall meet the requirements in section 12.03(C) as follows:~~
 - (a) ~~— If the area of the lot or parcel being redeveloped or substantially reconstructed is less than 50% of the lot's existing impervious surface area, then only those portions of the lot or parcel that are being redeveloped or substantially reconstructed must comply with all parts of Section 12.03(C). All new impervious surface area must meet the requirements of section 12.03(C).~~
 - (b) ~~— If the area of the lot or parcel that is being redeveloped or substantially reconstructed exceeds 50% of the lot or parcel's existing impervious surface area then all of the lot or parcel's impervious surfaces must comply with all parts of Section 12.03(C). All new impervious surface area must meet the requirements of Section 12.03(C).~~

C. ~~Site Design Requirements For New Development~~

- (1) ~~— The Water Quality Volume (WQv) as defined in the Vermont Stormwater Management Manual for the lot or parcel's impervious surfaces shall not leave the lot via overland runoff, and shall be infiltrated using Low Impact Development (LID) practices including, but not limited to, practices detailed in the "South Burlington Low Impact Development Guidance Manual".~~
 - (a) ~~— If it is not possible to infiltrate the volume of stormwater runoff specified in Section 12.03(C)(1) due to one or more of the following constraints:~~

- ~~(i) — Seasonally high or shallow groundwater as defined in Appendix D1 of the Vermont Stormwater Management Manual;~~
- ~~(ii) — Shallow bedrock as defined in Appendix D1 of the Vermont Stormwater Management Manual;~~
- ~~(iii) — Soil infiltration rates of less than 0.2 inches per hour;~~
- ~~(iv) — Soils contaminated with hazardous materials, as that phrase is defined by 10 V.S.A. §6602(16), as amended;~~
- ~~(v) — The presence of a “stormwater hotspot” as defined in Section 2.6 of the Vermont Stormwater Management Manual; or~~
- ~~(vi) — Other site conditions prohibitive of on-site infiltration runoff subject to the review and approval of the Development Review Board;~~

~~then the WQv shall be retained on the lot using other LID strategies and practices such as those detailed in the “South Burlington Low Impact Development Guidance Manual”, or treated by stormwater treatment practices meeting the Water Quality Treatment Standard as described in the most recently adopted version of the Vermont Stormwater Management Manual.~~

- ~~(2) — The post-construction peak runoff rate for the one-year, twenty-four hour (2.1 inch) rain event shall not exceed the existing peak runoff rate for the same storm event from the site under conditions existing prior to submittal of an application. LID practices shall be incorporated into the design as necessary to achieve the maximum allowed runoff rate. If constraints prevent the use of LID practices (see Section 12.03(C)(1)(a)), stormwater treatment practices detailed in the Vermont Stormwater Management Manual may be used to achieve the required post construction runoff rate.~~
- ~~(3) — Applicants who demonstrate that the required control and/or treatment of stormwater runoff per section 12.03(C)(1) and 12.03(C)(2) cannot be achieved for areas subject to these regulations per section 12.03(B) may utilize “site balancing”.~~

~~D. — Additional Site Plan Requirements~~

- ~~(1) — Applicants required to comply with Section 12.03(C) must include the following information in their site plan submission:~~
 - ~~(a) — Sub watershed boundaries and drainage area delineations for all stormwater treatment practices.~~
 - ~~(b) — Location, type, material, size, elevation data, and specifications for all existing and proposed stormwater collection systems, culverts, detention basins, LID installations, and other stormwater treatment practices.~~
 - ~~(c) — Soil types and/or hydrologic soil group, including the results of any soil borings, infiltration testing, or soil compaction testing.~~
 - ~~(d) — A brief written description of the proposed stormwater treatment and management techniques. Where LID design approaches are not proposed (see Section 12.03(C)(1)(a)), the applicant shall provide a full justification and demonstrate why the use of LID approaches is not possible before proposing to use conventional structural stormwater management measures.~~
 - ~~(e) — A detailed maintenance plan for all proposed stormwater treatment practices.~~

~~(f) — Modeling results that show the existing and post-development hydrographs for the WQv (0.9-inch) and the one-year, twenty-four hour (2.1-inch) rain event. Any TR 55-based model shall be suitable for this purpose.~~

~~E. — Drainage Structures~~

~~(1) — Removal of Runoff — The applicant shall remove any impervious surface runoff that exists as a result of the proposed land development. Drainage facilities shall be located in the street right-of-way where feasible. All drainage facilities shall be designed in accordance with Public Works Standards and Specifications. Drainage facilities shall also conform to the provisions of Section 12.01 Surface Water Buffer Standards ("Stream Buffers").~~

~~(2) — Drainage Structures To Accommodate Upstream Development — Culverts or other drainage facilities shall be of sufficient size to accommodate potential runoff from the entire upstream drainage area, whether or not all or part of the upstream area is on the applicant's lot or the parcel subject to the application. In determining the anticipated amount of upstream runoff for which drainage facilities must be sized, the applicant shall design the stormwater drainage system assuming the total potential development of upstream drainage areas. All drainage structures shall be designed to, at a minimum, safely pass the twenty-five year, twenty-four hour (4.0-inch) rain event. The applicant's engineer shall provide such information as the Stormwater Superintendent or his designee deems necessary to determine the adequacy of all drainage structures.~~

~~(3) — Responsibility for Downstream Drainage Structures — The applicant shall provide the Stormwater Superintendent or his designee with such information as the Superintendent deems necessary to determine the effects of the application on drainage structures located downstream of the applicant's lot or the parcel subject to the application, notwithstanding whether these structures are located on land owned or controlled by the applicant. This analysis shall be conducted using the twenty-five year, twenty-four hour (4.0-inch) storm event. In instances where the Superintendent anticipates that additional runoff incident to the application may overload an existing downstream drainage structure(s) and result in damage to private or public infrastructure or property, the DRB shall impose conditions requiring the applicant to incorporate measures to prevent these conditions, notwithstanding whether such improvements are located on or off the applicant's property.~~

~~12.04 Stormwater Management Overlay District (SMO) [Reserved]~~

15 SUBDIVISION and PLANNED UNIT DEVELOPMENT REVIEW

...

15.02 Authority and Required Review

A. Authority

(1) Pursuant to Section 4413 through Section 4421 of 24 VSA Chapter 117, as amended, the Development Review Board shall have the authority to review and approve, approve with conditions or deny an application for subdivision of land pursuant to the standards in these Regulations.

(2) In accordance with the provisions of Subsections (3) and (12) of Section 4407 of Title 24 VSA Chapter 117, the Development Review Board shall have the authority to review and approve, approve with modifications, or deny Planned Unit Developments and Planned Residential Developments (PUDs). Planned Unit Developments shall not be permitted within The City Center FBC District.

(3) In conjunction with PUD review, the modification of these Land Development Regulations is permitted subject to the conditions and standards in this Article and other applicable provisions of these Regulations.

(4) Notwithstanding section 15.02(A)(3), however, the following standards shall apply to all PUDs:

(a) in no case shall the DRB permit the location of a new structure less than five (5) feet from any property boundary, and, in no case shall the DRB permit the location of a structure not in compliance with Section 15.03(D).

(b) In no case shall be the DRB allow land development creating a total site coverage exceeding the allowable limit for the applicable zoning district in the case of new development, or increasing the coverage on sites where the pre-existing condition exceeds the applicable limit.

(c) In no case shall the DRB permit the location of parking not in compliance with Section 14.06 (B) (2).

(d) PUD review does not provide for modification of standards related to Hazards, Level I Resources, or Level II Resources beyond those specifically enumerated in Articles 10 and 12 of these Regulations.

(5) Pursuant to this Article, the South Burlington Development Review Board shall have the further authority to review and approve, approve with modifications, or deny a Master Plan reviewed in conjunction with a PUD. A Master Plan shall be a binding sub-part of a PUD approval and shall not be construed as a separate land development review procedure from the PUD procedures set forth in this Article.

(6) The modification of the maximum residential density for a zoning district shall be permitted only as provided in the applicable district regulations and/or for the provision of affordable housing pursuant to Section 18.01 and 18.02 of these Regulations.

...

15.18 Criteria for Review of PUDs, Subdivisions, Transect Zone Subdivisions, and Master Plans

A. **General Standards.** In all zoning districts of the City, the DRB shall make findings of fact on a PUD, subdivision Transect Zone subdivision, and/or Master Plan in keeping with the standards for approval of subdivisions in Article 15 and/or site plans and conditional uses in Article 14 For PUD, subdivision and/or

Master Plan applications within the SEQ, IO and R1-Lakeshore districts, the DRB shall also make positive findings with respect to the project's compliance with the specific criteria in this section.

The general standards applicable to all PUDs, subdivisions, Transect Zone subdivisions, and Master Plans are, except as noted below:

...

(4) The project's design respects and will provide suitable protection to Hazards, Level I Resources, and Level II Resources ~~wetlands, streams, wildlife habitat as identified in the Open Space Strategy~~, and any unique natural features on the site. In making this finding the DRB shall utilize the provisions of Articles 10 and 12 of these Regulations related to Hazards, Level I Resources, and Level II Resources ~~wetlands and stream buffers~~, and may seek comment from the Natural Resources Committee with respect to the project's impact on natural resources.

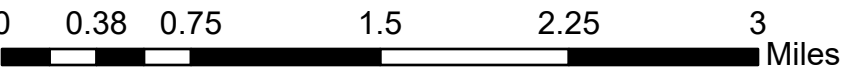
...

(6) Open space areas on the site have been located in such a way as to maximize opportunities for creating contiguous open spaces between adjoining parcels, habitat blocks, habitat connectors, wetlands, and/or river corridors ~~stream buffer areas~~. For Transect Zone subdivisions, this standard shall apply only to the location of natural resources identified in Articles 10 and 12 of these Regulations and proposed open spaces to be dedicated to the City of South Burlington.

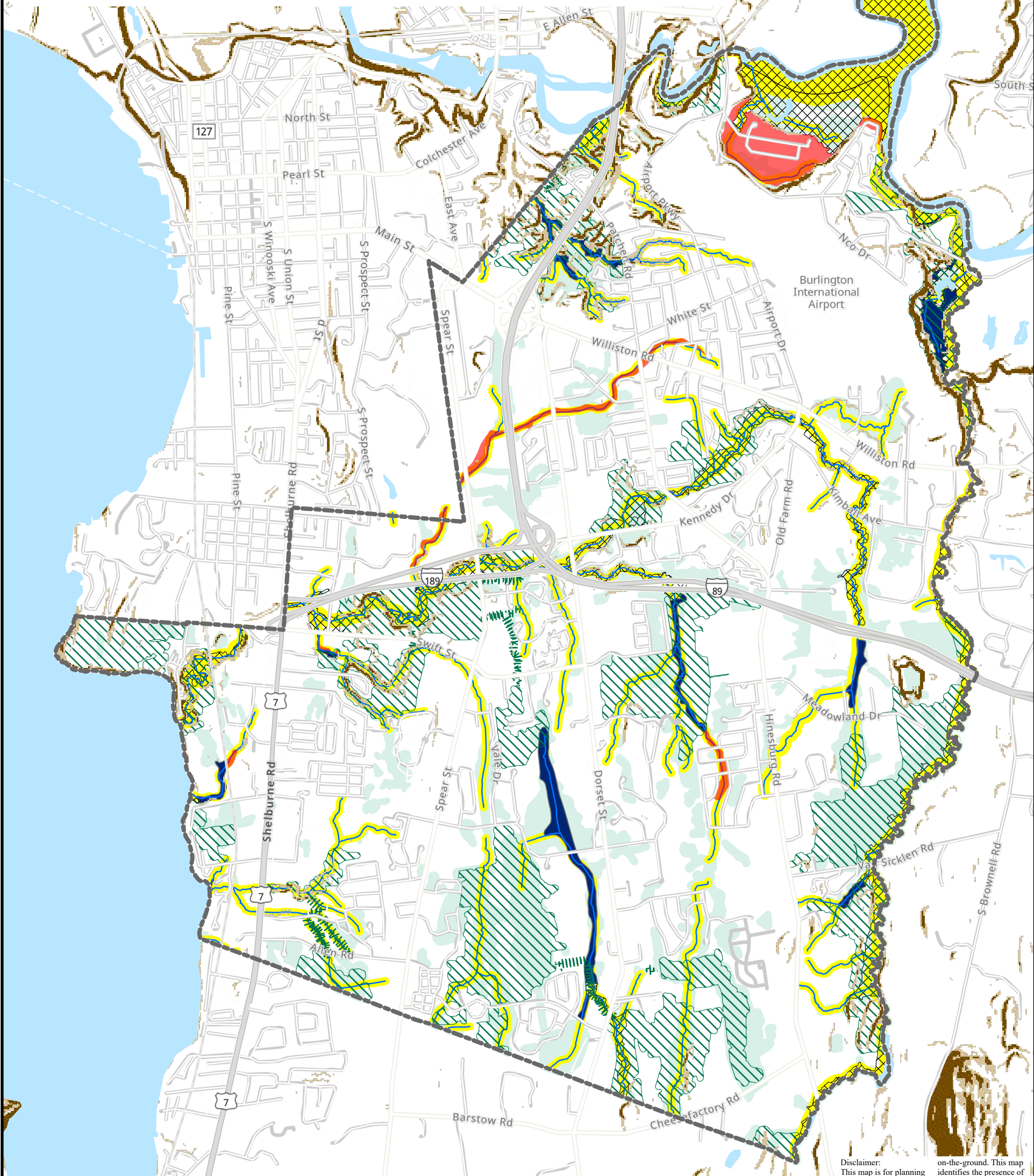
APPENDIX E SUBMISSION REQUIREMENTS										
All Districts Except City Center FBC						City Center FBC District				
Site Plan	Sketch Plan	Master Plan	Major Prelim	Major Subdivision Final	Minor Final	Subdiv Sketch	Subdiv Final	DRB Non-subdiv.	Admin / Site Plan	Submittal requirement
...										
LANDSCAPE FEATURES										
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Existing water courses & buffers, wetlands & buffers, base flood elevations if located in an area of special flood hazard, wooded areas, ledge outcrops, and other natural features.
✓	✓	✓				✓				Initial Site Conditions Map
										<u>Surface waters & buffers. Existing mapped data for permanent surface waters; estimates for top of bank/stream; estimated locations of intermittent streams.</u>
										<u>Wetland areas and buffers. Existing mapped data from Vermont Significant Wetland Inventory, Vermont Significant Wetland Inventory Advisory Layer, Hydric Soils, and other known sources. Applicant-estimated areas for potential Class III areas.</u>
										<u>Habitat Blocks: City-Mapped Habitat Blocks.</u>
										<u>Habitat Connectors: City-Mapped Habitat Connectors.</u>
										<u>Steep Slopes: Existing mapped data of steep and very steep slopes</u>
✓			✓	✓	✓		✓	✓	✓	Complete Site Conditions Map
										<u>Surface waters & buffers. Field verification/ delineation of top of bank / top of slope for permanent and intermittent surface waters by a qualified professional</u>
										<u>Wetland areas and buffers. Field delineation and report of functions and values of all wetland areas prepared by a qualified wetlands consultant</u>
										<u>Habitat Blocks: Mapped Habitat Blocks or Habitat and Disturbance Assessment if applicable.</u>
										<u>Habitat Connectors: Mapped Habitat Connectors or Habitat and Disturbance Assessment if applicable.</u>
										<u>Steep Slopes: Mapped data of unaffected steep or very steep slopes; Field or LiDAR-derived delineation of steep and very steep slopes with a vertical drop exceeding three (3) feet proposed to be impacted</u>

Natural Resources Map

South Burlington, Vermont
Effective INSERT DATE



Date:3/24/2021
DRAFT



Legend

Hazards

- Stream or River Centerline
- Special Flood Hazard Area or 100 Year Flood
- Wetland and 50' or 100' Buffer
- 100' Buffer on Potash Brook
- B2: 500 Year Flood/0.2% Annual Chance of Flood Hazard
- River Corridor
- Very Steep Slopes (25% + Slope)

Level I Resources

- Habitat Block
- Habitat Connector

Level II Resources

- B1: 500 Year Flood/0.2% Annual Chance of Flood Hazard
- Steep Slopes (15% to 25%)

Disclaimer:
This map is for planning purposes. The accuracy of information presented is determined by its sources. Errors and omissions may exist. The Chittenden County Regional Planning Commission is not responsible for these. 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.
Data Source:
Special Flood Hazard Area, Wetland, River Corridor (2019)-ANR
Parcel Boundary, Zoning District-City of South Burlington
Map Prepared by M. Needle using ArcGIS Pro. All Data is in VT State Plan NAD 1983.



Wetlands Map South Burlington, Vermont

-  Town Boundary
-  Roads
-  Stream Centerline
-  Water Body
-  Water Body
-  Ponds
-  Wetlands

Sources:

1:5,000 1999 digital orthophotos.

1:40,000 1992 CIR photos.

2000 O'Brien Wetland Study.

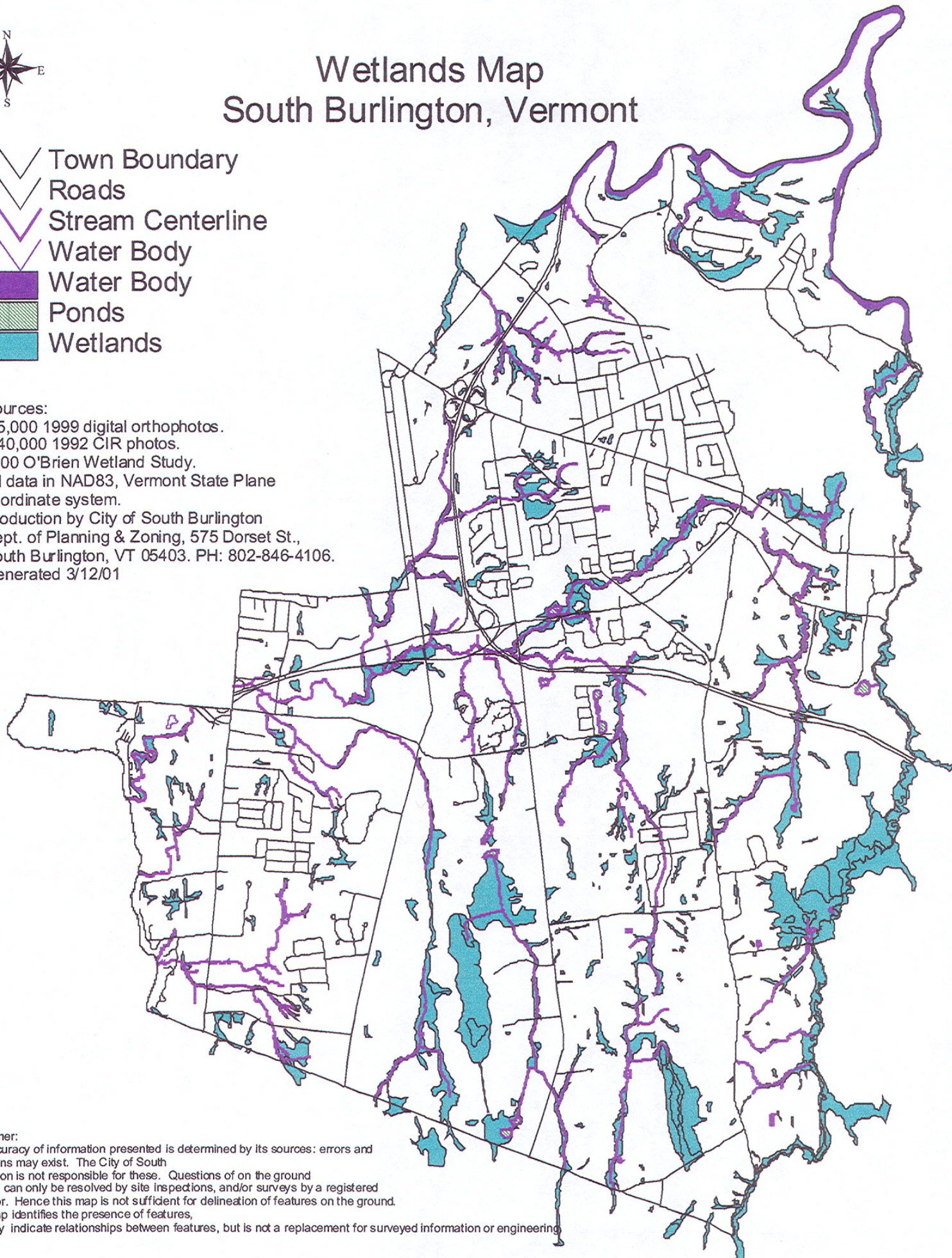
All data in NAD83, Vermont State Plane coordinate system.

Production by City of South Burlington

Dept. of Planning & Zoning, 575 Dorset St.,

South Burlington, VT 05403. PH: 802-846-4106.

Generated 3/12/01



Disclaimer:

The accuracy of information presented is determined by its sources; errors and omissions may exist. The City of South Burlington is not responsible for these. Questions of on the ground location can only be resolved by site inspections, and/or surveys by a registered surveyor. Hence 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.

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**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
OFFICE OF PLANNING**

RE: THE BURTON CORPORATION	)	DISTRICT ENVIRONMENTAL
	)	COMMISSION # 4
	)	
	)	APPLICATION # 4C0174-6,4C0368-3
	)	
	)	April 26, 2021

ENTRY OF APPEARANCE

Please enter the appearance of the Agency of Natural Resources ("Agency"), State of Vermont, by and through its staff, Jennifer Mojo, in the above-captioned matter.

HEARING RECESS ORDER COMMENTS

Please find the attached memo from the Agency's Sites Management Section (SMS, Section) regarding its review of the Burton location in accordance with the Agency's Investigation and Remediation of Contaminated Properties Rule (IRule). In its March 26, 2021 Hearing Recess Order, the Commission requests comments and conditions to prevent releases of hazardous materials into the environment. Through implementation of the workplan identified in the memo, future required sampling, any required corrective action, and proposed soil pre-characterization sampling, the Agency will ensure that human health and the environment will be protected from releases of hazardous materials. Per the IRule, Burton is required to work with the SMS until any identified hazardous releases are addressed through necessary corrective actions. Although it is already required for Burton to comply with the IRule, the Commission could include the following condition stating:

The Permittee shall comply with the Agency's Investigation and Remediation of Contaminated Properties Rule (IRule) to perform and complete any necessary investigations and corrective actions regarding releases of hazardous materials at the project site.

Respectfully submitted,
State of Vermont
Agency of Natural Resources

By:

/s/Jennifer Mojo
Jennifer Mojo
Senior Planner
ANR Office of Planning
802-923-6647

State of Vermont
Department of Environmental Conservation
Waste Management & Prevention Division
1 National Life Drive – Davis 1
Montpelier, VT 05620-3704
(802) 828-1138

AGENCY OF NATURAL RESOURCES

MEMORANDUM

To: Jen Mojo, VT ANR Office of Planning
District 4 Environmental Commission

From: Lynda Provencher, VTDEC Sites Management Section

Date: April 23, 2021

RE: Status of 266 Queen City Park Road, Burlington (Burton Snowboards) site

The purpose of this memo is to provide a status update on the Burton Snowboards project on 266 Queen City Park Road, as it relates to the Sites Management Section (SMS) Hazardous Sites Program and to respond to the District 4 Commission's March 26, 2021 Hearing Recess Order.

The SMS oversees the investigation and cleanup of properties where releases of hazardous materials have occurred. Investigations and remediations must comply with the VTDEC's Investigation and Remediation of Contaminated Properties Rule (IRule). The IRule establishes procedures and requirements for conducting investigations and corrective actions to address releases of hazardous materials to environmental media (soil, groundwater, surface water, sediment, indoor air, soil gas).

The SMS was contacted in the Fall of 2020 regarding concerns surrounding historical contamination at the former General Dynamics facility located at 266 Queen City Park Road, currently owned and occupied by Burton Snowboards. Following review of historical site files, the SMS had concerns regarding potential historic contamination which was not investigated, as well as threats of releases from historic operations that may be present and causing impacts and exposures to human health and the environment. Per the VTDEC's IRule §35-1001(f), the SMS may reopen sites which had previously been granted a Site Management Activity Completed (SMAC) designation under certain circumstances (the site had been on the VTDEC's Hazardous Sites List in the 1990s, and was given a SMAC designation in 1998). On October 23, 2020, the SMS sent a request letter to Burton Snowboards to conduct a site investigation to evaluate the identified historic and potential releases.

A work plan was submitted to the SMS on December 15, 2020 by Burton's consultant, VHB. Comments were submitted to VHB regarding the work plan, which was revised and approved by the SMS on January 12, 2021. The site investigation is being conducted as an iterative process, beginning with sampling potential areas of contamination in the sub-slab soil gas, and outside of the building in one area where landfarming of soils occurred. Additional site investigation activities will be determined based on the results of the initial investigation, combined with historical site information.



This work is being conducted in conformance with the IRule. All reports are required to be submitted to the SMS for review. The SMS is also required, per the IRule, to review and respond to site deliverables. Once all site investigation work has been completed, the site will be eligible for closure, per IRule Subchapter 10.

SMS understands Burton is, in addition to the required site investigations, proposing to perform pre-characterization of soil in advance of construction activities; mainly associated with the parking lot and stormwater system. While the soil pre-characterization work is not required by SMS, SMS is in favor of any entity conducting proactive sampling to avoid inadvertent disposal/movement of contaminated soils and identify potential releases. Should any of the soil pre-characterization samples indicate that a release of a hazardous material has occurred, Burton is required to report the release to the VTDEC and address contamination in accordance with the IRule.

E-Notification CERTIFICATE OF SERVICE FILE # 4C0174-6, 4C0368-3

I hereby certify that I, Jennifer Mojo, Senior Planner, for the Agency of Natural Resources Office of Planning, sent a copy of the foregoing **Agency Hearing Recess Order Comments, Entry of Appearance, and Sites Management Section Memo** dated April 26, 2021, regarding File # 4C0174-6, 4C0368-3 by U.S. mail, postage prepaid, to the individuals without email addresses and by electronic mail to those with email addresses as indicated:

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Tyler Barnard, Paul Boisvert Engineering Ventures 208 Flynn Ave, Suite 2A Burlington, VT 05401 tylerb@engineeringventures.com; paulb@engineeringventures.com		FOR YOUR INFORMATION District #4 Environmental Commission Thomas Little, Chair Monique Gilbert/Pam Loranger 111 West Street Essex Junction, VT 05452 nrb.act250essex@vermont.gov
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/s/Jennifer Mojo
Jennifer Mojo, Senior Planner
Office of Planning

**STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION**

Act 250 Land Use Permit Application)
#4C0174-6 & 4C0368-3)
The Burton Corporation, Burlington)

CERTIFICATE OF SERVICE

I, Grace Grundhauser, certify that on April 26, 2021, I served copies of the *Letter in Response to March 26, 2021 Hearing Recess Order Request for Supplemental Evidence* with associated exhibits and *Proposed Findings of Fact and Conclusions of Law* on behalf of Applicant, the Burton Corporation in the above-referenced proceeding to the service list below by the delivery method noted:

By Email:

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Dated at Burlington, Vermont, this 26th day of April, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
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Memo

Date: April 23, 2021

To: District 4 Environmental Commission c/o Aaron Brondyke, State Coordinator

From: Susan Molzon, Senior Public Works Engineer

CC: Norman Baldwin, Assistant Director/City Engineer

Subject: Responses to Burton Corporation Act 250 Hearing Recess Order #4C0174-6,
4C0368-3

This communication is being submitted in response to the Commission's Hearing Recess Order and request for the City of Burlington to provide additional information related to the above referenced Act 250 application. Specifically, this Memo is in response to III. Supplemental Evidence, Items 7 and 8.

Item 7. Please advise the Commission as to your anticipated timeframe for installing sidewalks along the length of Queen City Park Road, and describe the planned design thereof.

The timeframe for installing sidewalks along the length of Queen City Park Road is currently unknown. The Chittenden County Regional Planning Commission (CCRPC), in cooperation with the City of Burlington and South Burlington, is conducting a sidewalk scoping study to improve pedestrian safety and access along Queen City Park Road. This study will inform the design, and provide a construction cost estimate.

It is anticipated that CCRPC will host the first public meeting for this scoping study in July 2021, a second public meeting to review alternatives in October 2021, and present a final report and recommendations in January 2022. Additional information about this sidewalk scoping study or questions about this scoping process should be directed to CCRPC.

Once the study is complete, the City will advance the preliminary and final design, and construction of sidewalk subject to the availability of funding from the City's capital program, outside grants, or other private sources to contribute to the project's costs.

Item 8. Please also advise the Commission as to whether the City's pedestrian infrastructure improvement plans would include a bike path and/or crosswalk near the intersection of Queen City Park Road and Central Avenue.

Throughout the Queen City Park Road Sidewalk Scoping process, public input will be received and alternatives will be analyzed to determine if a sidewalk or sidepath along Queen City Park Road will be pursued and whether or not a crosswalk will be installed at the Queen City Park Road and Central Ave intersection.

CERTIFICATE OF SERVICE

I hereby certify on this 26th day of April, 2021, a copy of the foregoing letter dated April 23, 2021 from Susan Molzon, Senior Engineer, Department of Public Works, City of Burlington, concerning Act 250 Land Use Permit Application 4C0174-6,4C0368-3 Hearing Recess Order, was sent to the following individuals by email at the addresses listed.

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Dated at Hinesburg, Vermont, this 26th day of April, 2021.

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April 26, 2021

Via First Class Mail & Email

Aaron Brondyke, State Coordinator
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Re: Act 250 Land Use Permit Application Nos. 4C0174-6, 4C0368-3 – The Burton Corporation, Burlington

Dear Aaron:

Applicant Burton Corporation (“Burton”) of the above-referenced permit applications provides the following exhibits and responses to the District 4 Environmental Commission’s request for Supplemental Evidence in its March 26, 2021 Hearing Recess Order. At the Commission’s invitation, Burton is also submitting its *Proposed Findings of Fact and Conclusions of Law* for the Commission’s consideration.

Supplemental Evidence Request #1: A site plan that depicts where soil pre-characterization will occur.

Please refer to the attached *VHB Scope of Work for Burton Soil Pre-Characterization* (“Pre-Char Plan”). Specifically, Figures 1 and 2 of that exhibit provide the requested site plans.

Supplemental Evidence Request #2: A narrative that explains the pre-characterization testing process and how you will identify and respond to any potential contamination on the site, including the possible etching waste trench about which the opponents have testified.

Please see the attached Pre-Char Plan for a narrative of the planned pre-characterization process, which provides for 11 sampling locations in the area of the one-time release of etching solution described in opponents’ testimony.

Supplemental Evidence Request #3: A narrative that explains the anticipated timeframes for: a) completing work on the DEC-approved workplan; and b) completing soil characterization work.

Work on the DEC-approved workplan is ongoing and is being conducted as an iterative process that may or may not require additional investigation, therefore the applicant is not able to provide a timeframe for completion.

Soil pre-characterization work would begin after approval of the above-referenced permits. The Pre-Char Plan provides a timeframe for completing that work once Burton commences work under this application.

Supplemental Evidence Request #4: The Commission has noted that the RSG report mentions adding sheetrock to a ceiling and a portion of the southern exterior wall, as well as insulation to that southern exterior wall, as potential measures to mitigate noise impacts from the Project. Please explain in greater detail how you propose to modify the building's construction to mitigate noise impacts and the level of mitigation that each modification is expected to achieve.

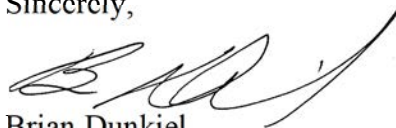
Please see the attached *RSG Response to Hearing Recess Order*, which addresses this request.

Supplemental Evidence Request #5: Your conditional use approval from the Burlington Development Review Board requires you to perform, within the first 6 months of operation, a traffic assessment of how the Operational Management Plan is addressing traffic impacts. Please describe the types of additional traffic congestion and traffic safety mitigation measures that you could implement if the traffic mitigation measures proposed in the application require modification.

Please see the attached *VHB Memo re: Act 250 Recess Order (Traffic)*, which addresses this request.

Please let me know if you or the Commission have any questions about this submission.

Sincerely,



Brian Dunkiel

On behalf of the Burton Corporation

cc: Service List (via Email)

**STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION**

Act 250 Land Use Permit Application)
#4C0174-6 & 4C0368-3)
The Burton Corporation, Burlington)

**APPLICANT THE BURTON CORPORATION'S
PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW**

Submitted by:



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I. GENERAL FINDINGS

1. Applicant, the Burton Corporation (“Burton”), is a locally-owned company with a global reach headquartered on Queen City Park Road in Burlington. Ex. 001 at 2.
2. Burton owns two adjoining properties on Queen City Park Road, known as parcels 180 and 266 (individually, the “180 Property” and the “266 Property”; collectively, the “Site”). The Site takes up a total of approximately 15.6 acres of land area. *Id.*
3. The Site is located within an established industrial park in the City of Burlington’s Enterprise-Light Manufacturing zoning district. It is bounded on the east by an active rail line operated by Vermont Rail Systems, on the north by Home Avenue—which is a major east/west “Collector Street” connecting several South End neighborhoods to Pine Street and U.S. Route 7—and on the west and south by Queen City Park Road. The southern section of Queen City Park Road also includes the boundary between the City of Burlington and the City of South Burlington. Exs. 001 at 2, 001b at 10.
4. The Site is subject to existing Land Use Permit Nos. 4C0368 through 4C0368-2 and 4C0174-3 through 4C0174-5b. Ex. 001 at 2.
5. Burton’s application seeks Land Use Permit amendments for a project (the “Project”) at the Site consisting of two primary components. *Id.*
6. First, Burton seeks approval for the reconfiguration and resurfacing of the physically and functionally obsolete parking lots on the Site—along with other associated Site improvements—to improve their performance and accommodate new stormwater treatment systems necessary for compliance with new water quality and stormwater management regulations implemented under 2015 Vt. Acts & Resolves No. 64 (“Act 64”). *Id.*; Ex. 136 at 8; Worthley H’g Testimony (3/10/21).
7. Second, Burton seeks to convert an aging and underutilized space in the existing 83,000-square-foot manufacturing building on the 266 Property into a mixed-use “Hub” facility, including the use of approximately 11,560 square feet as a Performing Arts Center (“PAC”) anticipated to be operated by OB2, LLC d/b/a Higher Ground (“Higher Ground”). Ex. 001 at 2–3; Ex. 136 at 10; Worthley H’g Testimony (3/10/21).
8. Both components of the Project have received local zoning approval from the City of Burlington Development Review Board (“DRB”). Ex. 007, 008, 021, 023.
9. After the Project application was deemed complete, the Commission held a site visit at the Site and a virtual (videoconference) pre-hearing conference on January 13, 2021. Interested parties attended the prehearing conference and requested party status on various Act 250 criteria at the prehearing and in subsequent communications with the Commission.
10. The District Commission received evidence in the form of live testimony during a hearing held on March 10, 2021, in addition to prefiled testimony, exhibits, and other filings by the parties.

II. ACT 250 FINDINGS OF FACT

Criterion 1 – Air Pollution

11. The existing commercial buildings, which the Project will make use of, are currently heated and cooled with a combination of natural gas-fired and electric HVAC equipment. The Performing Arts Center in the 266 Property building will use the same type of HVAC equipment, including new roof-top mounted units. Ex. 001b at 10.
12. The Project will not utilize any wood-burning fireplaces, stoves, or boilers. Ex. 001b at 10.
13. The Project is located within Burlington’s Enterprise-Light Manufacturing (E-LM) zoning district, which is intended primarily for manufacturing, processing, distribution and other similar, non-residential uses, though the district also allows commercial uses to support a wide range of services and employment opportunities. Ex. 001b at 10; City of Burlington Comprehensive Development Ordinance (“CDO”) § 4.4.3(a)(1), *available at* <https://www.burlingtonvt.gov/DPI/CDO>.
14. The Project will not result in any process emissions, dust, smoke, or odors in its operation. Ex. 136 at 13; Caulo H’s Testimony (3/10/21); Ex. 001b at 10.
15. The Project does not require blasting, either for construction or use. Ex. 001b at 11.
16. Construction hours will be limited to 7:00 AM to 5:30 PM Monday through Friday and 8:00 AM to 4:30 PM Saturday, if required. Ex. 001b at 11.
17. RSG, Inc. prepared a Noise Assessment for Burton’s Performing Arts Center use on November 4, 2020 (the “Noise Assessment”), and supplemental memoranda on February 25, 2021 and April 26, 2021. Ex. 001b at 10; Exs. 009, 085; Memo from Eddie Duncan to Justin Worthley re Response to Hearing Recess Order (submitted Apr. 26, 2021, concurrently with these *Findings*) [hereinafter, the “April 26 Noise Memo”].
18. The Noise Assessment reports background sound levels that are representative of typical land use in the Project area, which includes a mixture of industrial, transportation (roadway, rail, and bus), utilities, and residential areas. Ex. 009 at 11.
19. RSG previously monitored background sound levels in the area for other projects; the monitor locations and data are representative of the background sound levels in the area impacted by the Project. Ex. 009 at 11.
20. Background sound levels (L_{eq}) during the day (7:00 AM to 10:00 PM) are generally between 47 and 52 dBA. The primary sources of noise during the day are local and distant traffic, aircraft flyovers, and equipment at the surrounding industrial, utility, and transportation facilities. Ex. 009 at 11.
21. Background sound levels (L_{eq}) at night (10:00 PM to 7:00 AM) are generally between 40 and 45 dBA. During the quietest times at night, sound levels can be in the low 30’s dBA.

- The primary sources of noise during the night are similar to the daytime sources (distant traffic and mechanical/electrical equipment at surrounding properties). Ex. 009 at 11.
22. Existing maximum background sound levels ($L_{\max}$) during both the day and night are higher, are generally 50-70 dBA during the day and 35 dBA up to 70 dBA at night. Ex. 009 at 13–14.
 23. RSG modeled anticipated sound propagation throughout the area surrounding the Project using the International Standards Organization ISO 9613-2 standard, “Acoustics – Attenuation of sound during propagation outdoors, Part 2: General Method of Calculation,” as implemented in the Cadna A acoustical modeling software. This ISO standard predicts sound propagation through the environment under conditions favorable to propagation, including those that occur at nighttime. Ex. 009 at 15.
 24. The Cadna A modeling standard is internationally accepted, and has been viewed as reliable for many years as a noise modeling methodology by Act 250 commissions, the former Environmental Board, the Vermont Superior Court Environmental Division, and the Vermont Supreme Court. Ex. 009 at 15.
 25. RSG modeled sound levels resulting from the proposed Project at 192 nearby residences based on Vermont E911 data. Ex. 009 at 15–16, Appendix C.
 26. The Noise Assessment took into account anticipated noise associated with interior concert events; associated exterior noise, including new and existing rooftop mechanical equipment, and voices in the outdoor lounge area; and the post-concert exit of vehicles in the parking lot. Ex. 001b at 10; Ex. 009 at 16–18.
 27. The interior noise source for the PAC is amplified music, the type and level of which will vary from concert to concert. Ex. 009 at 17.
 28. To represent a conservatively loud concert for its Noise Assessment, RSG conducted sound level monitoring at Higher Ground’s existing facility in South Burlington during a hard rock concert on August 17, 2019. The event was selected in consultation with Higher Ground to ensure that it would be a representative of an event that produces high sound levels compared to other events that are held by the venue. Ex. 009 at 17.
 29. The monitored representative concert produced a moderately consistent sound level (L_{eq}) of 99 dBA, with the quietest 10% (L_{90}) of music at 95 dBA and the loudest 10% (L_{10}) of music at 101 dBA. Ex. 009 at 17.
 30. 99 dBA is typical for a loud concert and consistent with World Health Organization Guidelines for entertainment events which protect against hearing impairment of attendees. Ex. 009 at 17.
 31. During brief periods the monitored interior sound level exceeded 99 dBA, with a one-second $L_{\max}$ value over the course of the evening of 106 dBA. Ex. 009 at 17.

32. Compared to this $L_{\max}$ value, the 99 dBA L_{eq} value is more representative of the effect of the diffuse field (where the sound pressure is nearly the same around the room, except near the sound source) that would impinge on the building envelope while music is being played, and is therefore an appropriate value to use in modeling breakout noise through the structure. Ex. 009 at 17.
33. RSG used the monitored 99 dBA L_{eq} value to model interior sound in the proposed PAC concert space in the 266 Property building. The Noise Assessment also takes into account interior sound propagating from adjacent interior spaces such as backstage and the lobby. RSG also provided analysis using the one-second $L_{\max}$ value of 106 dBA. Ex. 009 at 17, 24.
34. RSG also modeled a number of exterior sound sources. Ex. 009 at 16.
35. On the rooftop of the 266 Property building, eight new air-handling units supplying the PAC concert venue and food services area will supplement eleven existing air-handling units, five new hood exhaust fans, and five new hood intake fans. RSG modeled the sound emissions of this rooftop mechanical equipment based on manufacturer data. Ex. 009 at 16–17.
36. RSG modeled the use of the outdoor lounge area based on 50 loud male voices speaking simultaneously, representing approximately 100 people socializing in the lounge area. Ex. 009 at 16–17.
37. The contribution of the outdoor lounge conversational noise to ultimate sound pressures at the closest receiving residences is 8 dBA out of a total 42 dBA. Ex. 009 at 21.
38. Because decibel levels are logarithmic, this value represents a de minimis contribution, and any variance in the realized sound from the lounge is unlikely to impact the total sound level. Duncan H’g Testimony (3/10/21).
39. Finally, RSG modeled the sound associated with vehicles entering or exiting the parking lot. RSG modeled two scenarios: 100 vehicles accessing the lot while a concert was underway, and 500 vehicles—approximately a full lot capacity from a sold-out show—exiting the parking lot at the end of the show. Ex. 009 at 16–17.
40. The Noise Assessment model also includes sound mitigation measures that attenuate the interior sound sources. Ex. 009 at 20.
41. Mitigation is called for to address the two acoustically weakest areas of the building shell on the 266 Property: the ceiling-roof assembly and portions of the southern exterior walls that are solely metal siding. April 26 Noise Memo at 1, 3.
42. Breakout concert sound through these two portions of the building is mitigated by specifying an acoustical performance standard that the final building construction will be required to meet. The attenuation of breakout sound in the performance standard varies by frequency and is set out in Section 5.3 of the Noise Assessment, Ex. 009 at 20; April 26 Noise Memo at 1, 3.

43. The performance standard in both cases can be achieved with standard construction materials—through the addition of a sheetrock partition—that are generally available. April 26 Noise Memo at 1, 3.
44. Additional mitigation measures include double sets of doors at the main entrance and at the exit to the outdoor lounge area that act as a sound lock to prevent music propagated through the open door and an 8-foot sound attenuation barrier surrounding the outdoor lounge area. Ex. 009 at 20.
45. With these inputs and mitigation measures, the Noise Assessment reports the modeled sound pressures experienced at all 192 nearby residences it evaluated under two scenarios: an ongoing hard rock concert with all rooftop mechanical equipment (including HVAC) running at full capacity and 100 cars accessing the lot, and an end-of-show scenario with 500 cars leaving a sold-out performance and again all rooftop mechanical equipment running at full capacity. Both of these scenarios represent conservatively loud conditions; real world conditions may not require similar use of the rooftop equipment, and may have smaller or quieter shows. Ex. 009 at 21.
46. In both scenarios, RSG reports the sound pressure values as one-hour averages. Ex. 009 at 21–25.
47. L_{eq} values allow for a direct quantitative comparison to established community noise guidelines that utilize average sound levels to assess noise impacts. The South Burlington Zoning Regulations also use L_{eq} (1-hour). Ex. 009 at 24.
48. L_{eq} values also allow for comparison between the noise generated by the Project and the measured existing sound levels in the area which also are generated by moderately consistent sources. Ex. 009 at 24.
49. The rooftop mechanical equipment produces steady sound levels over time and is also the loudest source of sound from the Project under either operating scenario. Because the loudest sound source fluctuates little, L_{eq} values for the Project are nearly equivalent to the L_{max} values. Ex. 009 at 24.
50. The L_{eq} sound level experienced at the closest residence (20 Arthur Court) during the concert scenario was 42 dBA, comprised of the following component parts: rooftop mechanical equipment, 41 dBA; Vehicles, 34 dBA; Music, 32 dBA; Outdoor Lounge, 8 dBA. Ex. 009 at 21.
51. The sound level experienced at that same residence during the end-of-concert scenario was 44 dBA, with the vehicles exiting the parking generating a similar magnitude of sound to the rooftop mechanical equipment. Ex. 009 at 21.
52. For all other residences beyond Arthur Court, noise levels fall below 40 dBA. Ex. 009 at 22–23.
53. RSG also evaluated the impact of modeling the maximum concert sound levels in addition to L_{eq} values. Using the observed 106 dBA L_{max} of music during the concert

scenario resulted in a 2-dBA increase to total sound levels experienced at 20 Arthur Court, for a total of 44 dBA (or the equivalent of the end-of-concert sound level). Rooftop mechanical equipment remains the greatest contributor to total sound levels in that scenario as well. Ex. 009 at 24–25.

- 54. Under all scenarios, model results indicate that all residences will experience sound levels less than 45 dBA. Ex. 009 at 26.
- 55. These model results are comparable to the existing nighttime sound levels in the area. Ex. 009 at 26.
- 56. The World Health Organization publishes Community Noise Guidelines to guide environmental health authorities. World Health Organization, editors Birgitta Berglund, Thomas Lindvall, and Dietrich H. Schwela, *Guidelines for Community Noise* (2000). The WHO guideline for night is 45 dBA averaged over an 8-hour period (11:00 PM to 7:00 AM) to protect against sleep disturbance. Ex. 009 at 9.
- 57. The WHO also provides guidelines for annoyance. The guideline to protect against serious annoyance is 55 dBA averaged over a 16-hour period, and the guideline to protect against moderate annoyance is 50 dBA over an 8-hour period. Ex. 009 at 9.
- 58. The projected sound levels are below the WHO’s nighttime noise guideline and its guidelines for annoyance at all modeled receptors. Ex. 009 at 26.
- 59. The Project will not result in undue air pollution.

Criterion 1(A) – Headwaters

- 60. The Project is not located in any headwaters area. Ex. 001b at 11.
- 61. There will be no impact on headwaters as a result of this Project.

Criterion 1(B) – Waste Disposal

- 62. The Project will produce a wastewater flow of 9,690 gallons per day. Ex. 133.
- 63. The applicant has secured a Wastewater System and Potable Water Supply Permit for the Project’s changes to the building located at 266 Queen City Park Road from the Vermont Agency of Natural Resources. Ex. 133.
- 64. The Applicant has secured a Wastewater System and Potable Water Supply Permit for the relocation of an existing sewer line on the 180 Queen City Park Road property as part of the Project. Ex. 132.
- 65. The City of Burlington Department of Public Works has concluded that the City’s water and wastewater facilities have sufficient capacity to handle flows associated with the Project. Ex. 025.

66. The City of Burlington’s Development Review Board has also concluded that the “[s]ufficient water and sewer service are available” to support the Project. Ex. 008 at 2.
67. The Project will disturb approximately 6.6 acres of surface during construction. Ex. 001b at 12.
68. The Applicant has prepared an Erosion Prevention and Sediment Control Plan for the construction phase of the Project. Exs. 033, 048.
69. During construction, Burton will employ erosion control measures including catch basin inlet protection, temporary stabilized construction entrances; permanent erosion control netting; and silt fencing downslope of disturbed soils and staging areas. Erosion control measures will be inspected weekly and within 24 hours of a significant rain event. Ex. 001b at 16–17; Exs. 033, 048.
70. Following construction, existing disturbed vegetative areas will be stabilized with grass cover or hardscape material. Ex. 001b at 17; Exs. 033, 048.
71. The Applicant has obtained authorization from the State of Vermont to discharge stormwater during construction under General Permit 3-9020. Ex. 011.
72. Currently, the Project Site includes approximately 8.58 acres of impervious surface. Ex. 001b at 12.
73. After construction, the total impervious surface is expected to be reduced to approximately 8.48 acres. Ex. 001b at 12.
74. The genesis of the Project arose as a result of the need to modernize the existing stormwater treatment system on the property in accordance with Act 64. Worthley H’g Testimony at 3/10/21.
75. Currently, stormwater runoff from the property flows into Lake Champlain with essentially no treatment. Caulo H’g Testimony at 3/10/21.
76. The Project will reconfigure existing parking areas and driveways to create space for a new gravel wetland treatment system located north of the treatment basin it will replace. The new system is designed to 2017 Vermont Stormwater Management Manual standards, and is intended to meet pending State stormwater requirements for all parking areas located south of 180 Queen City Park Road, with the exception of the parking area immediately southeast of the building currently situated on that property. Stormwater treatment for that parking area will be provided in a small gravel wetland located east of the building on the 180 Queen City Park Road property. Ex. 001b at 12; Exs. 036, 037a, 038a.
77. Burton has obtained operational stormwater discharge coverage under the Vermont Agency of Natural Resources General Permit No. 3-9015. Ex. 011.

78. All construction debris and other waste resulting from construction will be disposed of in accordance with local and State regulations. To the maximum extent practical, Project related construction debris will be recycled, and waste soil resulting from parking lot reconstruction will be exported from the Site in accordance with Vermont Department of Environmental Conservation regulations. Ex. 001b at 13.
79. Details of construction phase waste disposal are incorporated into a Waste Management and Prevention Division Construction Site Waste Reduction Plan. Ex. 013a.
80. The Project does not involve the manufacturing or storage of any hazardous materials. Ex. 001b at 13.
81. Several residents from nearby neighborhoods and South Burlington Fire District #1 (“SBFD #1”) have expressed concerns about the possibility that the Project will disturb contaminated soils. Those concerns arise out of (1) the Site’s history as a contaminated site on which investigations and remediation efforts took place under the supervision of the Vermont Department of Environmental Conservation’s Site Management Section (“SMS”), and (2) more recent investigatory efforts initiated by the SMS under the State of Vermont’s Investigation and Remediation of Contaminated Properties Rule, Environmental Protection Rules Chapter 35 (adopted July 6, 2019) (the “IRule”). Exs. 083, 086.
82. In 1998, the prior owner of the Project Site received a Site Management Activity Completed (“SMAC”) designation from the SMS concluding that “the site does not pose any unacceptable risk to human health or the environment.” Ex. 012.
83. More recently, independent of the Act 250 review process, and pursuant to its authority under the IRule, the SMS asked Burton to provide a work plan to conduct further investigation of the Project Site. Ex. 106. The SMS did not issue its request for a work plan as a result of any evidence of a release, or in response to Burton’s Act 250 application. Exs. 079, 106.
84. Burton’s consultant, VHB, produced the requested work plan on December 20, 2020 (the “December 2020 Work Plan”). Ex. 107.
85. The December 2020 Work Plan did not call for testing in any area to be disturbed by the Project. Caulo H’g Testimony (3/10/21); Ex. 107 at 30; Ex. 038a.
86. As a standard risk- and cost-mitigation measure, Burton has committed to pre-characterization of soils likely to be disturbed by the Project prior to construction. Caulo H’g Testimony (3/10/21); Ex. 079.
87. The pre-characterization process involves the sampling of soils by a qualified environmental consultant on a grid pattern across the Project Site, taking into account areas likely to be disturbed during construction. Caulo H’g Testimony (3/10/21).
88. At the Commission’s request Burton has submitted a Scope of Work for Soil Pre-Characterization Sampling Prior to Parking Lot Reconstruction, prepared by qualified

environmental professionals at VHB. Soil Pre-Characterization Plan (submitted Apr. 26, 2021 in response to Hearing Recess Order) [hereinafter, the “Soil Pre-Char Plan”].

89. The Soil Pre-Char Plan provides for the drilling of 45 soil borings in areas where site soils are to be disturbed during construction of the Project, and material from each of those borings will be pre-screened for the presence of volatile organic compounds (“VOCs”). Composite samples will then be subject to testing for the presence of VOCs, semi-volatile organic compounds (“SVOCs”), polychlorinated biphenyls (“PCBs”), and a list of eight Resource Conservation and Recovery Act (“RCRA”) metals including arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver. Soil Pre-Char Plan at 2–3.
90. If contamination exceeding applicable residential standards is identified as a part of the pre-characterization process, VHB will report those results to the SMS and prepare a Soil Management Plan (“SMP”) that is compliant with the requirements of the IRule. Soil Pre-Char Plan; Caulo H’g Testimony (3/10/21); Ex. 079.

Criterion 1(C) – Water Conservation

91. The current 266 Property building is permitted for a design flow of 1,350 gallons per day (“gpd”) for bathrooms, drinking fountains, and cleaning purposes. Ex. 001b at 13.
92. The Project received permit #WW-4-2436-2 from the ANR Drinking Water and Groundwater Protection Division on January 7, 2021, authorizing a design flow of 9,690 (gpd) to serve the Project’s proposed uses. Ex. 133.
93. Low-flow lavatory faucets and toilets are and will continue to be utilized. Ex. 001b at 13.
94. The Project will not draw water from rivers, streams, or any bodies of water, nor use water for any manufacturing or processing. Ex. 001b at 13.
95. The Project will use the best available water conservation technology.

Criterion 1(D) – Floodways

96. No portion of the Project is within 100’ of a perennial stream or river. Ex. 001b at 14.
97. No portion of the Project is within a Special Flood Hazard Area. Ex. 001b at 14.
98. No portion of the Project is within a River Corridor. Ex. 001b at 14.
99. The Project is not within a floodway or floodway fringe and therefore would not impact any mapped floodplains.

Criterion 1(E) – Streams

100. The Project is not located near any stream or watercourse, and therefore there will be no impacts on streams. Ex. 001b at 14.

Criterion 1(F) – Shorelines

101. The Project is not located on or near any shorelines and therefore will not result in the development or subdivision of shorelines. Ex. 001b at 14–15.

Criterion 1(G) – Significant Wetlands

102. The Project tract does not contain any Class I wetlands. A presumptive Class II wetland is depicted in the far northern corner of the 180 Property parcel. There is a 50' wetland buffer for this area. No Project construction activities will occur within 500' of this wetland. Ex. 001b at 15; Ex. 032a.
103. The Project will not result in any impacts to designated significant wetlands.

Criterion 2 & 3 – Water Supply

104. Water is currently provided to the Project Site by the City of Burlington. Ex. 001b at 15.
105. The Project will continue to be fully served by City of Burlington municipal and Champlain Water District systems. Ex. 001b at 15-16.
106. The Project received permit #WW-4-2436-2 from the ANR Drinking Water and Groundwater Protection Division on January 7, 2021, authorizing a design flow of 9,690 (gpd) to serve the Project's proposed uses. Ex. 0133.
107. No existing water supplies will be restricted or negatively affected by the Project. Ex. 001b at 16.
108. The Project has sufficient water for its needs.
109. The Project will not cause an unreasonable burden on an existing water supply.

Criterion 4 – Soil Erosion

110. The Project Site is a 15.6-acre commercial development on open and flat terrain. Much of the Site is built up, including two commercial buildings totaling 151,000 square feet and parking for 416 vehicles. Ex. 001b at 16.
111. The Project Site has been in continuous operation since the late 1950's and the existing parking lot is physically and functionally obsolete. The parking lot area suffers from inadequate stormwater collection and treatment which has also accelerated the deterioration of the parking surface. Ex. 001b at 16. Currently, stormwater at the Site is essentially untreated. Ex. 136 at 8; Worthley H's Testimony (3/10/21).
112. The Project will reconstruct the parking area and provide stormwater treatment. The Project will bring the Project Site into compliance with the three-acre stormwater general permit enacted under Act 64. Ex. 001b at 16.

113. The Project will not result in any increase to impervious surface area, rather impervious coverage is decreased by .1 acre—approximately 1 percent of the existing coverage. Ex. 001b at 16.
114. The existing parking area will be excavated to depths of approximately 2' (new parking) to 6' (gravel wetland stormwater features). Caulo H'g Testimony (3/10/21).
115. Burton will employ erosion control measures including catch basin inlet protection, temporary stabilized construction entrances; permanent erosion control netting; and silt fencing downslope of disturbed soils and staging areas. Erosion control measures will be inspected weekly and within 24 hours of a significant rain event. Ex. 001b at 16–17; Exs. 033, 048.
116. On April 10, 2020, ANR issued to Burton a Notice of Authorization under Construction General Permit 3-9020 to undertake the parking lot and stormwater improvements—the ground disturbing components of the Project. Ex 011.
117. Following construction, existing disturbed vegetative areas will be stabilized with grass cover or hardscape material. Ex. 001b at 16; Exs. 033, 048.
118. The Project will not cause unreasonable soil erosion and will not cause a reduction in the capacity of the land to hold water so that a dangerous situation results.

Criterion 5(A) & (B) – Transportation and Demand Management

119. The Project Site is an existing commercial development with approximately 2,350 lineal feet of road frontage along Queen City Park Road (“QCPR”), a public highway owned and maintained by the City of Burlington. Ex. 001b at 17.
120. QCPR is a Class 2 Town Highway at the southernmost edge of Burlington, connecting Home Avenue in Burlington to the north with US-7/ Shelburne Road in South Burlington to the southeast. Ex. 014 at 3.
121. Access to QCPR from the north is by Home Avenue and Pine Street, which connect to the downtown core of Burlington and US-7. Both roads are 25-mph facilities. Ex 014 at 3.
122. Access to QCPR from the south is by the US-7 corridor and Interstate-189, which intersects with US-7 just north of the intersection with QCPR. Ex. 014 at 2–3.
123. The posted speed limit for the length of QCPR is 25 mph. Ex. 014 at 3.
124. According to the Burlington Department of Public Works, the 85th percentile speed on QCPR is 23 mph. Ex. 128.
125. South of the Project, QCPR crosses a single-lane bridge with no traffic control. An adjacent pedestrian bridge provides for bicycle and pedestrian use of the bridge. Ex. 014 at 3.

126. South of the Project Site lies Central Avenue in South Burlington, which accesses the Queen City Park Neighborhood. Central Avenue intersects QCPR at a three-way unsignalized intersection. Ex. 014 at 2.
127. There are currently five access points from Queen City Park Road onto the Project Site and its parking lots. Ex. 001b at 17; Ex. 032a.
128. The proposed parking lot work reconfigures the access points and existing parking. Ex. 001b at 17; Exs. 036, 037a.
129. The City of Burlington Department of Public Works (“DPW”), has approved the Project access. Ex. 021; Ex. 025 at 8 (Burlington DPW curb cut approval).
130. VHB has prepared a Traffic Impact Study (“TIS”) and supplemental analyses for the Project. Ex. 001b at 17–18; Exs. 014–020.
131. In preparing the TIS for the Burlington DRB, VHB worked closely with DPW to develop a study that provided the City with all the required information required to assess the Project. VHB also produced a memo addressing traffic impacts to South Burlington incorporating input from South Burlington’s DPW. Exs. 001b at 18, 015; Conley H’g Testimony (3/10/21).
132. The TIS reviewed the design, operations, and safety of the existing transportation network. Ex. 001b at 18; Ex. 014 at 1–2.
133. The TIS considers the impact of the proposed Champlain Parkway project that is expected to be constructed in upcoming years. The Champlain Parkway is a transportation link that passes near the Project area and connects Interstate 189 and US-7 to the Burlington downtown core. Ex. 014 at 5–6.
134. The TIS evaluates future conditions both with and without the Champlain Parkway constructed. Ex. 014 at 5–6.
135. The TIS focuses on trip generation and traffic impacts during the morning and evening peak hours, rather than daily totals. This approach is reasonable because the PAC operates its largest events in the evening when existing traffic is low, and the greatest impacts on traffic are experienced whenever vehicles traveling to the PAC overlap with commuter traffic. Burlington DPW’s traffic consultant agreed that this was an appropriate approach. Conley H’g Testimony (3/10/21).
136. Trip generation as a result of the PAC use was based on the existing conditions at Higher Ground’s current location in South Burlington. Ex. 014 at 7–8; Conley H’g Testimony (3/10/21).
137. The existing Higher Ground location shares parking capacity with neighboring businesses operating during the daytime with a total supply of 350 parking spaces. Ex. 014 at 6–7; Conley H’g Testimony (3/10/21).

138. This lot is able to accommodate a sold-out show at the current venue with 1,050 attendees, generating one vehicle trip per three attendees. Ex. 014 at 6–7.
139. At this same rate, the proposed PAC during a peak occupancy event of 1,500 attendees would generate 500 trips per show. Ex. 014 at 7.
140. Michael Santos testified on behalf of several nearby residents (“neighbors”) that the Federal Highway Administration (“FHWA”) provides trip generation guidelines for “special planned events,” which recommend a vehicle occupancy factor of 2.5 attendees per vehicle, with a range of 2.2–2.8. Mr. Santos testified that the three attendees/vehicle rate is too high. Santos H’g Testimony (3/10/21); Ex. 126.
141. The FHWA guidelines appear to refer to event attendance at very large events and venues, such as professional sporting stadiums in metro areas, and the data contained in the guidelines indicates that these events also exceed three persons/vehicle at times. Conley H’g Testimony (3/10/21); Ex. 126.
142. The FHWA guidelines also predate ride-sharing services, such as Uber. Conley H’g Testimony (3/10/21).
143. The FHWA guidelines are theoretical and of broad application, while the rate VHB used is based on actual recent attendance at Higher Ground events. Conley H’g Testimony (3/10/21).
144. The TIS also created trip generation estimates for the other existing and proposed uses of the Project Site, including office use, R&D, manufacturing, retail, warehousing, dining, and the indoor skate park. Trip generation values for these uses are based on rates published by the Institute of Transportation Engineers. Ex. 014 at 6–7.
145. VHB’s calculation of total trip generation conservatively estimated that 30 percent of PAC vehicle trips would occur during the commuter peak hour, although shows are expected to begin significantly after the peak hour. Ex. 014 at 7.
146. VHB estimated that the Project will result in six additional trips during the morning peak hour and 222 trips during the evening peak hour. Ex. 014 at 7.
147. Trip distribution for the Project was also evaluated by the TIS. Ex. 014 at 7.
148. For Burton employees and visitors to Burton’s existing facilities, trip patterns were assigned based on existing traffic patterns. Ex. 014 at 7.
149. For Higher Ground patrons, VHB analyzed credit card data from concert-goers in the year preceding the TIS to determine where trips were likely to originate from. Ex. 014 at 7.
150. Based on this data, VHB predicted that approximately 30 percent of vehicles attending the PAC would approach from local origins to the north, 20 percent locally from the south, and 50 percent arriving from regional origin points via Interstate 89. Ex. 014 at 7.

Routing software was used to develop these likely trip patterns. Conley H's Testimony (3/10/21).

151. VHB also considered how the Champlain Parkway would impact likely trip patterns. Reviewing data developed for the Parkway, VHB concluded that the Parkway was unlikely to affect local trips unless congestion was present on US-7, but that regional trips along I-189 would continue along the Champlain Parkway to Home Avenue and the Project. Ex. 014 at 8.
152. The Parkway construction is unlikely to alter existing traffic patterns accessing other locations along QCPR. Ex. 014 at 10.
153. Based on the trip distribution, the TIS reports congestion impacts on the surrounding intersections, expressed as Level of Service ("LOS"), which defines the expected conditions at the intersection. LOS range from A to F, with LOS A representing generally free-flowing conditions and LOS F representing generally congested conditions. Ex. 014 at 11–14.
154. For signalized intersections, without construction of the Champlain Parkway, all signalized intersections would continue to operate at LOS C or better, with the exception of the I-189 ramp on US-7. That intersection currently experiences LOS E during the evening peak hour. The Project is expected to add less than four seconds of delay to that intersection and drop to LOS F. Ex. 014 at 11–12.
155. If the Parkway is constructed, that impact on the I-189 ramp is eliminated and operation improves to LOS C. Ex. 014 at 11–12.
156. If built, the Champlain Parkway and Home Avenue intersection would experience delays of less than 20 seconds in the evening peak hour due to traffic associated with the PAC. Ex. 014 at 11–12.
157. Local unsignalized intersections, with or without the presence of the Champlain Parkway will also all experience LOS C or better with the exception of the intersection of US 7 and QCPR northbound (which will experience LOS D) and the intersection of Home and Pine Avenues, which are addressed below. Ex. 014 at 13–14.
158. The Home and Pine intersection currently operates between LOS C and LOS F during both peak hours. Without the Champlain Parkway, the Project would increase delays during the evening peak hour at this intersection, with LOS largely remaining the same. Ex. 014 at 13–14.
159. Construction of the Champlain Parkway would alleviate any current or potential issues at the Home and Pine intersection, and the Project would increase delays by less than four seconds for all intersection approaches. Ex. 014 at 13–14.
160. The one-lane bridge on QCPR operates as an unsignalized intersection with vehicles yielding to each other. Ex. 014 at 15.

161. Based on anticipated traffic patterns, generated by mapping software and smartphone apps that PAC visitors would follow to the Site during the evening peak hour, vehicles are more likely to access the Site from Home Avenue to the north than across the one-lane bridge. Ex. 014 at 15.
162. PAC visitors leaving after an event are more likely to route across the one-lane bridge. During this time, typical traffic volumes on QCPR will be much lower than during the evening peak hour and little to no opposing traffic is likely to be encountered. Ex. 014 at 15.
163. At the direction of Burlington DPW's traffic consultant, VHB simulated traffic flow across the one-lane bridge. Ex. 014 at 15.
164. Under current conditions, the simulated delay at the bridge less than eight seconds. Ex. 014 at 15.
165. The simulated impact of PAC operation indicates that the bridge will operate with similar delays during end-of-concert conditions, adding only one second of delay. At times, the traffic is able to flow freely across the bridge without any opposing traffic. Ex. 014 at 15.
166. DPW's consultant agreed with this analysis for the one-lane bridge, finding that it can accommodate the projected traffic as patrons exit the Project Site during evening conditions. Ex. 018.
167. In issuing Burton's Conditional Use permit, the City of Burlington conditioned the PAC operation to eliminate overlap of PAC traffic and the commuter peak periods. Ex. 001b at 18; Ex. 008 at 11; Ex. 020.
168. Daytime use of the PAC is limited to 300 patrons. Doors will not open for daytime uses of the PAC before 9:00 AM, and events will not end between 4:00 PM and 6:00 PM. Ex. 008 at 11, Ex. 010a at 2.
169. Evening use of the PAC is limited to 1,500 attendees. Doors will not open for weekday evening uses of the PAC before 6:30 PM (6:00 PM for weekends and holidays). No events will end later than 2:00 AM. Ex. 008 at 11; Ex. 010a at 2.
170. Removing the PAC trips during these peak periods significantly reduces trip generation associated with Project during the higher volume evening peak. As conditioned by the City, the Project will now result in a net increase of 74 vehicle trips over current conditions—a decrease of 66 percent from the 222 vehicle trips previously predicted. Ex. 020.
171. As a result, the operational impacts on area intersections outlined in the TIS are also significantly higher than what will be experienced due to the currently proposed Project which incorporates these DRB conditions into the PAC Operational Management Plan ("OMP"). Ex. 001b at 18; Ex. 020.

172. Based on the impacts identified in the TIS and review and feedback from Burlington DPW and its consultant, the OMP provides mitigation measures to address traffic concerns. Exs. 010a, 020.
173. Specifically, during large events exceeding 1,000 patrons, Burton will provide event traffic control at the intersection of Home and Pine Avenue, the intersection of Central Avenue and QCPR, and at the one-lane bridge. Ex. 010a.
174. The Conditional Use permit also requires Burton to conduct a traffic assessment within the first six months of operation to determine how the OMP is addressing traffic impacts and return to the DRB if modifications to the OMP are required. Ex. 008 at 11.
175. Traffic counts and analysis for this follow-up assessment will confirm whether anticipated Project impacts and concerns raised during this proceeding are realized. The follow-up analysis will also account for the presence or absence of the Champlain Parkway. Memo from Jenn Conley to John Caulo re Act 250 Recess Order (submitted Apr. 26, 2021, concurrently with these *Findings*) [hereinafter, the “April 26 Traffic Memo”].
176. In the event that ultimate traffic impacts are greater or lesser than anticipated, Burton—at the direction of the Burlington DRB—can alter PAC staffing, event signage, the level of traffic officer control, and direct traffic exiting the Site away from more-impacted roadways and intersections. April 26 Traffic Memo.
177. Security will coordinate with Cities of Burlington and South Burlington to ensure applicable on-street parking rules are followed. Ex. 010a.
178. Prior to large events (750 patrons or more), Higher Ground will place a partial barrier at the end of Central Avenue that indicates: “Dead End No Event Parking” (pending approval and coordination with the City of South Burlington). Ex. 010a at 2.
179. In 2020, the City of Burlington repaved a portion of QCPR between Central Avenue and points to the north of the Project. Ex. 128.
180. At that time, the City of Burlington also re-striped QCPR with advisory shoulders that provide a prioritized space for bicycles and pedestrians on either side of the road. Ex. 128.
181. The City explained that this work was recommended by the planBTV Walk Bike Master Plan as part of Burlington’s long-term bikeway network. Ex. 128.
182. The City also explained that FHWA guidance indicates that advisory shoulders are most appropriate on streets with less than 3,000 average daily vehicle trips and operating speeds below 25 mph. Ex. 128.
183. Existing average daily traffic volume on QCPR is 1,390 vehicles, including the existing use of the Project Site. The construction of the Champlain Parkway is not anticipated to impact these volumes. Ex. 128.

184. Testifying for a group of neighbors, Michael Santos questioned whether the FHWA guidance for small town and rural networks is appropriately applied in Burlington. Mr. Santos highlighted the 3,000 trip/day qualifier as the preferred range for streets using advisory shoulders. Santos H’g Testimony (3/10/21).
185. Mr. Santos did not present any data regarding the safety of advisory shoulders.
186. A full-capacity evening concert at the PAC is anticipated to generate approximately 500 vehicle trips. As the FHWA guidance is based on average daily total trips, any combination of the trips generated due to the PAC use is doubtful to increase the average trips per day above 3,000 vehicles on QCPR.
187. Burlington DPW concluded that based on the available traffic data, anticipated Project trip generation, and operating speeds on QCPR, that the advisory shoulders are acceptable on QCPR. Ex. 128.
188. Several neighbors testified to personal experiences with the advisory shoulders as pedestrians or cyclists. Neighbors recalled situations where they felt fearful traveling the advisory shoulders and where opposing two-way traffic slowed or stopped as it encountered them. Bratt H’g Testimony (3/10/21); Waters H’g Testimony (3/10/21).
189. The neighbors’ anecdotes demonstrate the advisory lanes are functioning as intended—drivers were recounted to have slowed or stopped when confronted with the novel lane striping and pedestrians. Conley H’g Testimony (3/10/21).
190. Neighbors did not identify an unsafe condition created by the advisory lanes or their use with the additional trips generated by the Project.
191. There is no documented crash history involving the QCPR advisory lanes that would indicate that they present a safety concern. Conley H’g Testimony (3/10/21).
192. Neighbors assert that traffic will significantly increase on QCPR as a result of the Project, but do not contest the TIS assumption, in light of the DRB-imposed conditions, that these trips will not overlap with existing peaks.
193. Neighbors and the SBFD #1 also assert that parking is insufficient at the venue and that PAC patrons will use Central Avenue and the SBFD #1 property in the Queen City Park neighborhood as overflow parking. These parties do not explain why the OMP provisions detailed above to address these concerns will not in fact prevent patrons from using Central Avenue for parking. Ex. 010a.
194. Many adjacent industrial properties exist that have parking lots that are likely to be vacant at night with whom Burton may seek to enter into overflow parking arrangements should it prove necessary. Conley H’g Testimony (3/10/21).
195. The City of Burlington’s municipal zoning requirements prescribe 375 parking spaces for the PAC use, which are available in the reconfigured Project lot during the nighttime when large-capacity PAC events are ongoing. Exs. 014, 017.

196. Burton is exploring the feasibility of area colleges participating in a campus shuttle system for PAC events. Ex. 001b at 18.
197. The Project Site is currently traversed by a system of pedestrian walkways. Ex. 001b at 18.
198. The Project will have short- and long-term bike parking; Burton will coordinate with Local Motion, a non-profit bicycle advocacy group, to collaborate on managing bike parking during large events. Ex. 017.
199. Ten priority car-pooling spaces will be available. Ex. 017.
200. As part of initial marketing of the PAC use, and continuing into its operational plan, Burton will both educate and encourage employees and patrons to use alternative transportation modes to access the Project Site. Ex. 017.
201. The Project will not cause unreasonable congestion or unsafe conditions, will incorporate appropriate transportation demand management strategies, and provide safe access and connections to adjacent lands, facilities, and existing and planned pedestrian, bicycle, and transit networks and services.

Criterion 6 – Educational Services

202. The reconstruction of the existing parking lot to include stormwater infrastructure will not result in any impact on Burlington’s ability to provide educational services. Ex. 001b at 19.
203. The addition of the Performing Arts Center use to the existing uses at the 266 Property building will not result in any impact on Burlington’s ability to provide educational services. Ex. 001b at 19.

Criterion 7 – Municipal Services

204. The Project will utilize police, fire protection, and ambulance services, require road maintenance, and receive municipal water supply and sewage disposal. Ex. 001b at 019.
205. Because the Project will treat all stormwater on site, the Burlington Department of Public Works will charge Burton a fee to offset increased wastewater flows which will remove stormwater elsewhere in the Burlington combined sewer system. This fee will be invoiced once the Project is fully permitted. Ex. 025.
206. The affected municipal departments have indicated that they are able to serve the needs of the Project without an unreasonable burden on municipal services. Ex. 025.
207. The City of South Burlington requested consideration of whether recent force reductions in the Burlington Police Department (“BPD”) would impact BPD’s ability to serve the Project and require support from South Burlington police and emergency services. Ex. 069.

- 208. However, in a supplemental letter, Jon Murad, Acting Chief of Police for the BPD, writes that any force reductions do not change BPD's support of the Project, noting that service disruptions would take place between 3:00 and 7:30 AM—when the Performing Arts Center would not be operating. Ex. 134.
- 209. BPD's ability to serve the Performing Arts Center use is conditional on Burton's implementation of its Operational Management Plan. Exs. 025, 134.
- 210. The OMP is based on Higher Ground's experience at its Williston Road location and at larger festival events, and employs event security industry "gold standard" practices to control patrons and ensure safety. Balderston H'g Testimony (3/10/21).
- 211. Burton's Conditional Use permit requires consistent implementation of the OMP. Ex. 008.
- 212. The Project will not cause an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

Criterion 8 – Scenic Beauty, Historic Sites, and Natural Areas

- 213. The Project Site is an existing 15.6-acre commercial development within a long-established industrial park. An active rail line bounds the Project to the east. Ex. 001b at 19–20.
- 214. The Site lies on open and flat ground and is improved with two commercial structures totaling 151,000 square feet and a 416-space parking lot. Ex. 001b at 20; Ex. 014.
- 215. Beyond the boundaries of the Industrial Park (E-LM zone), are single- and multi-family residential developments to the west and east of the Project Site. Ex. 001b at 20.
- 216. South of the Project Site is an electrical substation, wastewater treatment facilities, Red Rocks Park, and the Queen City Park neighborhood in South Burlington. Ex. 001b at 20.
- 217. The scale, mass, and functionality of the existing buildings on the Project Site will remain unchanged. The Project incorporates a retrofit to the 266 Property building façade along with updated parking lot construction, landscaping, illumination, and enhanced pedestrian connections, all of which will transform an underutilized industrial site into a modern, visually pleasing model of adaptive reuse. Ex. 001b at 20.
- 218. The current construction of the 266 Property building—metal-sided with a flat roof—is consistent with other structures in the industrial park along QCPR and similar manufacturing buildings throughout Burlington's E-LM district. Ex. 001b at 20.
- 219. The proposed façade renovations will be consistent with the character of the area with dark and muted colors. Ex. 001b at 20–21; Ex. 026.
- 220. Site signage will be updated and is subject to review by the Burlington DRB. Ex. 001b at 21.

- 221. Site lighting has been approved by the Burlington DRB and is dark-sky compatible and fixtures are fully shielded for most applications. Ex. 001b at 21; Exs. 027, 030.
- 222. Electrical service to the Project is undergrounded. Ex. 001b at 21.
- 223. Noise associated with construction is temporary and will last no longer than 12 months. The primary construction noise will be generated by trucks—a typical noise source in the industrial E-LM zone. Ex. 001b at 20.
- 224. Projected noise impacts from the PAC use are presented in the RSG Noise Assessment discussed in detail under Criterion 1.
- 225. Noise originating from the PAC use is anticipated to be comparable to existing nighttime sound levels in the area. Ex. 001b at 20; Ex. 009.
- 226. The WHO and ANSI standards evaluated in the RSG Noise Assessment are guidelines that address many of the same qualitative features of the Act 250 *Quechee Test*’s “shocking and offensive” factor. Ex. 009.
- 227. Burlington has qualitative noise standards only—no Burlington regulation applies quantitative noise performance standards. The Burlington noise ordinance states:

It shall be unlawful for any person to make or cause to be made any loud or unreasonable noise. Noise shall be deemed to be unreasonable when it disturbs, injures or endangers the peace or health of another or when it endangers the health, safety or welfare of the community. Any such noise shall be considered to be a noise disturbance and a public nuisance.

The ordinance also provides more specific prohibitions for music:

The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.

Ex. 009.

- 228. The WHO guidelines provide a quantitative standard to address health impacts that is congruent with the Burlington noise ordinance. The WHO standard can be used to understand compliance with the Burlington noise ordinance. Ex. 009.
- 229. South Burlington’s Land Development Regulations have quantitative standards that prohibit creation of noise in excess of 45 dBA (Leq, 1-hour) at an adjoining property. These regulations do not apply to a land use in Burlington. Ex. 009.

- 230. The anticipated average sound level at the nearest and most impacted residence, 42 dBA during a conservatively loud concert and 44 dBA during an end-of-concert scenario, is below both the WHO and ANSI guidelines. Ex. 009.
- 231. These sound levels are also below the South Burlington standard. Ex. 009.
- 232. Noise from the PAC would not be considered shocking or offensive to an average person, and is compliant with all written standards that could be considered clear, written community standards. Ex. 009.
- 233. Burton has also taken a number of measures to mitigate noise impacts. Exs. 009, 010a.
- 234. With respect to sound attenuation, the weakest point in the 266 Property building's envelope is the ceiling assembly and a section of wall that is uninsulated metal siding. Ex. 009; April 26 Noise Memo.
- 235. Burton will retrofit these two components of the PAC space to a performance standard set out in the RSG Noise Assessment. This performance standard is achievable using standard drywall construction techniques, although other constructions are possible. Ex. 009; April 26 Noise Memo.
- 236. Once designed to the performance standard, the PAC should achieve the modeled sound attenuation described in the RSG Noise Assessment. Ex. 009; April 26 Noise Memo.
- 237. The 266 Property building will also employ double doors at its entrance and at the exit to the outdoor lounge area that prevents sound breakout through open doors, and a solid eight-foot sound barrier will be erected around the lounge area. Ex. 009.
- 238. Tailgating and outdoor music is prohibited, and PAC staff will work to ensure guests leave the Site as quickly and quietly as possible to minimize noise disruption during end-of-concert conditions. Ex. 010a.
- 239. PAC staff will be available in the parking lots to address excessive noise issues. Ex. 010a.
- 240. Burton will conduct an operational noise assessment of three full capacity events within the first six months of operation to determine whether additional sound mitigation is needed. Burton must report its findings to the Burlington DRB, which may impose additional conditions at that time. Exs. 008, 010a.
- 241. Burton has taken generally-available mitigating steps to improve the Project's fit with its surroundings.
- 242. The Project will not create an undue adverse impact on aesthetics.

Criterion 8(A) – Wildlife and Endangered Species

- 243. There is no necessary wildlife habitat or endangered species at the existing Site. Ex. 001b at 22.

244. The Project will not destroy or significantly imperil wildlife or endangered species habitat.

Criterion 9(A) – Impact of Growth

245. The Project is a commercial and industrial re-purposing of an existing development. Ex. 001b at 22; Ex. 136; Caulo H’g Testimony (3/10/21).
246. The proposed Performing Arts Center use is anticipated to require approximately 25 employees. Ex. 001b at 22.
247. Property tax for both the 180 and 266 parcels making up the Burton Site is currently approximately \$225,000. Based on the current Burlington tax rate, the proposed Project improvements would result in collection of an additional \$10,000–\$12,000 per year. Ex. 001b at 22.
248. The Project will not significantly affect the ability of the City and region to accommodate growth.

Criterion 9(B) – Primary Agricultural Soils

249. The Vermont Agency of Agriculture concluded that any Project impacts to primary agricultural soils are de minimis due to the pre-existing development impact on the Site. The Agency did not recommend any mitigation measures. Ex. 050.
250. The Project will not reduce the agricultural potential of any agricultural soils on the Site or on adjoining land. Ex. 001b at 23.

Criterion 9(C) – Productive Forest Soils

251. The Project Site does not contain productive forest soils and therefore will not result in any reduction in the potential of productive forest soils. Ex. 001b at 23.

Criterion 9(D) & (E) – Earth Resources

252. There are no mineral or earth resources on the Site with a high potential for extraction and therefore will not interfere with the future extraction of earth resources. Ex. 001b at 23–24.

Criterion 9(F) – Energy Conservation

253. Burton certifies that the Project will comply with the Commercial Building Energy Standard (“CBES”). Ex. 001b at 24.
254. Burton asserts that it will submit a CBES Certificate to the Department of Public Service prior to Project occupancy. Ex. 001b at 24.
255. Project final designs are not complete, but at minimum the building construction will incorporate an R-42 insulated roof envelope; R-28 insulated exterior walls; double-

glazed, insulated, and thermally-broken exterior door windows where applicable; LED lighting with dimmable controls and occupancy sensors; and high efficiency HVAC equipment. Ex. 001b at 24.

- 256. As discussed under Criterion 5, the Project Site will incorporate bike paths and bike racks. The parking lot will include six dedicated carpool spaces. Burton states that it and its Project partners will actively promote alternative and low emission transportation options in marketing messages. Ex. 001b at 24.
- 257. Burton's facilities currently utilize renewables including a solar array currently installed on the 180 Property building's roof. As part of this Project, Burton will install conduit in the 266 Property building to facilitate future solar installations on that building. Ex. 001b at 25.
- 258. Burton states that it will incorporate into the Project design: at least 10 parking spaces with charging capacity for electric vehicles, to increase with future demand; six dedicated spaces for high occupancy vehicles during Performing Arts Center events; and covered bike parking. Burton will promote alternative and low emission transportation options in its marketing. Ex. 001b at 25.
- 259. Burton will work with the Burlington Electric Department ("BED") to develop strategies for a practical and energy-efficient thermal envelope for the Performing Arts Center. Ex. 001b at 25.
- 260. BED will also assist Burton in designing a CBES-compliant building design. Ex. 025.
- 261. The Project reflects the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporates the best available technology for energy efficiency.

Criterion 9(G) – Private Utilities

- 262. No private utilities are proposed as part of this Project. Ex. 001b at 25.

Criterion 9(H) – Scattered Development

- 263. The Project is located within Burlington city limits and is within an existing settlement. Ex. 001b at 25.

Criterion 9(J) – Public Utilities

- 264. As discussed in Criterion 7, the public utilities serving the Project have all indicated the ability to accommodate the Project's requirements. Ex. 001b at 26; Ex. 025.
- 265. The Project Site currently makes use of solid waste and recycling services that will not be impacted by the proposed Project. Ex. 001b at 25.
- 266. The Project will not place an excessive or uneconomic demand on any necessary governmental or public services or utilities.

Criterion 9(K) – Public Investments

- 267. Concerns about two public investments have been raised in this proceeding—a public water supply well owned and operated by the SBFD #1, and Red Rocks Park in South Burlington.
- 268. SBFD #1 questioned whether potential disturbance of historical contamination on the Site, described under Criteria 1B, posed a risk to the well it operates.
- 269. The SBFD #1 well is located under the Queen City Park neighborhood adjacent to Red Rocks Park. Ex. 130.
- 270. The Source Protection Area (“SPA”) for the well extends into Red Rocks Park, but the Project is not located within the well SPA; therefore, the Project is not adjacent to the SBFD #1 well. Ex. 130, Caulo H’g Testimony (3/10/21).
- 271. As discussed under Criteria 1B, the historical contamination received a SMAC designation and the existing work plan scope does not involve areas to be disturbed by the Project. There is no evidence of any release or threat of release of hazardous materials as a result of the Project.
- 272. In the event hazardous materials are identified as a part of Burton’s soil pre-characterization efforts, or in connection with construction of the Project, Burton will act in accordance with DEC’s IRule, which is designed to prevent the introduction of hazardous materials into sensitive receptors, such as wells. Ex. 001b at 13.
- 273. The current SBFD #1 water source is very high quality and not impacted by hazardous materials. Crowley H’g Testimony (3/10/21). There does not appear to be any evidence of historical releases on the Project Site impacting the well.
- 274. The Project will not materially jeopardize or interfere with the function or safety of the SBFD #1 well.
- 275. Red Rocks Park is a 100-acre community park and natural area that lies across QCPR to the south and southwest of the Project Site. Ex. 137.
- 276. The Park is operated by the South Burlington Recreation & Parks Department and maintained by the Department of Public Works. Ex. 137.
- 277. The Park is divided into two sections for management. The eastern section is the “developed” zone that includes parking lots, a picnic area, beach, and a water easement. This zone borders the Queen City Park neighborhood to the east and QCPR and the Project Site to the north. Recreation access is the primary goal of this zone. Ex. 137.
- 278. The western section is the “natural” zone that extends to the western boundary of the Park at Lake Champlain. Ecosystem health and wildlife values are prioritized in this zone. Ex. 137.

279. The park sees heavy recreational use and faces several management challenges including: invasive species, off-leash dog impacts, unofficial trail use, forest health, and park signage. Ex. 137.
280. The Park is heavily trailed with sanctioned and unsanctioned trails. For Park wildlife, there may be few locations in the Park free from the stress and disruption of passing visitors. Ex. 137.
281. Neighbors testified that the Park is currently heavily trafficked, notably due to a surge in outdoor activity during the Covid-19 pandemic. See, e.g., Walrath H’g Testimony (3/10/21). Neighbor Laurie Smith testified that he walks his dog in the Park regularly at night and observes other Park-goers regularly walking at night. Smith H’g Testimony (3/10/21).
282. The mere presence of pets (leashed or not) and people is enough to flush and deter many species of mammals and birds from utilizing a natural area. Exs. 137, 138.
283. Neighbors and the City of South Burlington have raised two potential impacts from the Burton Project on Red Rocks Park, the first being noise from PAC events.
284. Eddie Duncan testified that his noise model results show sound levels above 40 dBA from a conservatively loud PAC event only in the northeast corner of Red Rocks Park closest to the Project Site. This is the “developed” zone of the Park, including the entrance and parking area. Ex. 009; Duncan H’g Testimony (3/10/21).
285. These sound levels are consistent with existing background sound levels in the area. Ex. 009.
286. In the remainder of the Park, including in zones dedicated to wildlife values, sound levels drop steadily to below 30 dBA. Ex. 009; Duncan H’g Testimony (3/10/21).
287. The Project will not create noise impacts that materially jeopardize or interfere with the function of Red Rocks Park or the public use and enjoyment of the Park.
288. Neighbors and the City of South Burlington raised a second potential impact: whether the Project’s proximity to Red Rocks Park would attract concertgoers to gather in the Park to its detriment.
289. Notwithstanding that these parties have not provided evidence, beyond speculation, that concert-goers would use the Park in a manner that interferes or jeopardizes the Park’s function, and in sufficient numbers to actually have that effect, Burton’s OMP addresses these concerns regarding improper use of the Park. Ex. 010a
290. At the end of concerts, PAC staff will ensure all guests exit the Site as quickly and quietly as possible to minimize any disruption to neighbors. The parking lot will be emptied within 30 minutes. Ex. 010a.

- 291. During large events, security staff will also discourage pedestrians from entering Red Rocks Park. Ex. 010a.
- 292. Concert attendees are not allowed to exit and reenter for any reason. Ex. 010a.
- 293. A partial barrier at the end of Central Avenue will discourage parking at the Red Rocks parking lot on Central Avenue. Ex. 010a.
- 294. No testimony was presented demonstrating how these operational procedures would not discourage patrons from visiting the Park.
- 295. The Project will not materially jeopardize or interfere with the function or public use and enjoyment of Red Rocks Park.

Criterion 9(L) – Settlement Patterns

- 296. The Project, located within the Burlington city limits, is inside an existing settlement. Ex. 001b at 26.
- 297. The Project is re-purposing an existing development and makes use of the existing building and parking lot footprint. Ex. 001b at 26.
- 298. The Project makes efficient use of land and does not contribute to a pattern of strip development along public highways, nor is the Project a strip development. Ex. 001b at 26.

Criterion 10 – Local and Regional Plans

- 299. The Project is located in the City of Burlington’s Enterprise – Light Manufacturing zoning district, and is found in the southern part of that district. Ex. 001b at 27.
- 300. The City of Burlington’s *planBTV: South End*—the Municipal Development Plan covering the Project location—identifies the southern part of the City’s Enterprise Zoning District as an important area to preserve for traditional and emerging industrial, R&D, and art/maker uses. At the same time, the Plan recognizes the challenge of preserving industrial uses given the market realities and cost of space across Burlington’s South End, and the need to come up with creative solutions to support these uses. Ex. 127 at 2.
- 301. *planBTV: South End* does not identify an exhaustive list of commercial uses that can be permitted or not, but suggests only that commercial uses not related to industrial and maker enterprises should be limited, and not be standalone uses. Ex. 001b at 27.
- 302. Consistent with the concerns expressed in *planBTV: South End*, in 2019 the Burlington City Council passed an amendment to the City’s Comprehensive Development Ordinance (the City’s zoning ordinance) to expand the use of various non-industrial commercial uses in the E-LM district to help subsidize the cost of space for uses related to industrial and arts purposes. Ex. 024; Ex. 127 at 2.

303. Also consistent with the goals identified in *planBTV: South End*, the 2019 zoning amendment expanded the geographic and size limitations for performing arts center uses in the E-LM district, so long as the use is included on a lot with an industrial use. The amendment allows for performing arts centers as conditional uses so long as the use does not exceed 15,000 square feet (for properties fronting Queen City Park Road), and total non-industrial uses on the lot do not exceed 49% of gross floor area. Ex. 024.
304. The Project falls within the size and percentage-use limitations of the zoning ordinance. Ex. 008 at 7.
305. The City of Burlington’s Office of City Planning has submitted a letter expressing the Planning Office’s position that the Project is consistent with *planBTV: South End* for the reasons discussed above. Ex. 127.
306. The Burlington Development Review Board has found that the performing arts center use proposed by Burton is consistent with the intent of the 2019 zoning amendment and, by extension, the Burlington Municipal Development Plan, and that it is “a newly allowable use of an acceptable size and serves to make Burton’s primary industrial use more vibrant.” Ex. 008 at 3.
307. *planBTV: South End* also calls out the fact that the industrial uses prominent in the South End require a lot of pavement and other impervious surface, creating concerns about the impact of stormwater runoff from this area on the health of Lake Champlain. The Plan discusses the need to “seek out any and all opportunities to reduce and clean stormwater, ranging from retrofits to existing systems, to implementing the most effective and innovative systems in new public and private projects.” *planBTV: South End* at 101, available at https://www.burlingtonvt.gov/sites/default/files/planBTVSouthEnd_AdoptedMar2019.pdf.
308. The Project involves updating the Site’s stormwater treatment system for compliance with the latest regulatory guidance, and will treat stormwater runoff that previously was untreated. Ex. 001 at 12; Worthley H’g Testimony (3/10/21).
309. The Project also falls within the area covered by the Chittenden County Regional Planning Commission’s “ECOS Plan.” Ex. 001b at 28.
310. The Project’s two primary components—a new performing arts center and upgraded stormwater treatment systems—are consistent with numerous goals identified in the ECOS Plan. Ex. 001b at 28.
- a. Goal #1: Ecological Systems (Habitats, Water Quality, Air Quality) – Conserve, protect, and improve the health of native species habitats, water quality and quantity, and air quality.
 - b. Goal #3: Climate Change – Reduce greenhouse gas emissions contributing to climate change and adapt to become more resilient to a changing climate.

- c. Goal #7: Social Connectedness – Increase opportunities for people of all backgrounds to engage in the multicultural social fabric and activities of the community.
 - d. Goal #8: Arts, Culture and Recreation – Increase access to, and participation in, arts, culture, and recreation activities.
 - e. Goal #10: Economy – Retain and support existing employers and job growth; grow target sector employers and entrepreneurs; and work to attract a greater diversity of employers and employees.
 - f. Goal #13: Land Use – Encourage future growth in the Center, Metro, Enterprise, Suburban, and Village Planning Areas to maintain Vermont’s historic settlement pattern and respect working and natural landscapes.
311. The Enterprise Planning Area is identified in the ECOS Plan as an area planned for growth, and therefore the proposed Project is consistent with Strategy #2 of the Plan, which calls for 80% of new development in areas planned for growth. Ex. 068.
312. The Chittenden County Regional Planning Commission submitted a letter in this proceeding concluding that the Project is consistent with the ECOS Plan’s “Planning Areas” and that the Project does not cause CCRP any traffic concerns. Ex. 068.
313. A representative of the South Burlington City Council submitted comments to the effect that Burlington’s 2019 zoning amendment—which authorizes the use contemplated by the Project—conflicts with language in *planBTV: South End* identifying the area in which the Project sits primarily as an opportunity for “infill development” with uses focused on “supporting the needs of light industrial, R&D and industrial arts/maker businesses,” and requiring the need for “performance standards to mitigate noise, smell, and/or traffic on nearby residences.” Ex. 069.
314. However, *planBTV: South End* does not specify the type of “infill development” to be provided, and as discussed above, the 2019 zoning amendment arose out of a desire to implement the Plan’s concern for “supporting the needs of light industrial” businesses by providing economic support for the property’s industrial use in the form of attendant commercial uses. Moreover, the zoning ordinance under which the Project was reviewed includes “performance standards to mitigate noise, smell, and/or traffic on nearby residences,” as does Act 250, under which the current application is being reviewed.
315. In the comment letter and at the hearing, the South Burlington City Council representative also expressed concerns about the City of Burlington’s compliance with a section of the broader *planBTV: 2019 Comprehensive Plan* document making clear that planning along the “Shelburne Road Corridor & Neighborhood Activity Centers” should be “coordinated with the City of South Burlington.” Ex. 069 at 2. The commenter suggested at the hearing that the City of Burlington did not coordinate with the City of South Burlington before passing the 2019 zoning amendment that effectively authorized the Project. Emery H’g Testimony (3/10/21).

316. However, the section referenced in the commenter's submission does not apply to the Project, which is not in the "Shelburne Road Corridor."
317. Moreover, materials submitted by Burton following the hearing show that the City of Burlington's planning commission did offer South Burlington the opportunity to comment on and participate in hearings related to the 2019 zoning amendment prior to its passage. Exs. 140, 141.
318. The City of Burlington has a duly adopted capital program. The Project is to be privately funded, and any development impact fees will be assessed and assigned as required. Ex. 001b at 28.

III. PROPOSED CONCLUSIONS OF LAW

Criterion 1 – Air Pollution

Under Criterion 1, the Commission must find that the Project will not result in undue water or air pollution. 10 V.S.A. § 6086(a)(1). The burden of proof under Criterion 1 is on the applicant. Air pollution can include noise, dust, and air pollutants. *Re: Pike Industries, Inc. and Inez M. Lemieux*, Land Use Permit #5R1415-EB, FCO at 31 (Vt. Env. Bd., Jun. 7, 2005). The operation of the Project will not create any process emissions, dust, or smoke.

Noise may constitute undue air pollution if the impacts of the noise rise “above annoyance and aggravation to cause adverse health effects such as hearing damage.” *Re: Talon Hill Gun Club' Inc. and John Swinington*, No. 9AO192-2-EB, 1995 WL 405039 at *7 (Vt. Env. Bd., June 7, 1995). Burton’s expert testimony and evidence demonstrates that noise generated by the Project falls under the World Health Organization (“WHO”) guideline for mild annoyance, and further still, under the nighttime guideline for sleep disturbance. No other party presented expert evidence or any alternative noise analysis to rebut Burton’s evidence, which establishes that the Project will not result in noise pollution sufficient to cause adverse health effects.

The evidence in this case demonstrates that the Project will not result in undue air pollution. Water pollution considerations are discussed under Criterion 1(B).

Criterion 1(A) – Headwaters

Under Criterion 1(A), the applicant has the burden to demonstrate that the Project will “meet any applicable Health and Environmental Conservation Department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development,” and are considered headwaters under 10 V.S.A. § 6086(a)(1)(A)(i)–(v). The Project is not within a headwaters area under the applicable statutory

criteria. No parties other than the City presented any evidence on this criterion. The evidence shows that this criterion is satisfied.

Criterion 1(B) – Waste Disposal

Under Criterion 1(B), the applicant has the burden to demonstrate that the Project “will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.” 10 V.S.A. § 6086(a)(1)(B). In general, water quality permits issued by the Agency of Natural Resources (“ANR”) create presumptions that a project complies with Criterion 1. See Act 250 Rule 19(E); see also, e.g., *In re Harvey & West 65-unit Campground Act 250 Application (Appeal of True)*, Docket No. 110-7-10 Vtec, Decision and Order at 9–10 (Nov. 9, 2011) (ANR Wastewater System and Potable Water Supply Permit creates rebuttable presumption of compliance with Criterion 1(B)). Burton has obtained Wastewater System and Potable Water Supply permits covering the Project from ANR, as well as coverage under ANR general permits for construction and operational phase stormwater discharges. These permits create presumptions that the Project will comply with the Criterion 1(B) for the areas of the Project covered by those permits, and those presumptions were not rebutted by any record evidence.

Burton has also presented evidence that construction debris and waste from construction will be disposed of in accordance with local and State regulations, and that to the maximum extent practicable, Project-related construction debris will be recycled, as described in Burton’s Waste Reduction Plan.

Several residents from nearby neighborhoods and South Burlington Fire District #1 raised concerns at the hearing and in pre-hearing filings about the fact that the Project Site was previously a contaminated site managed by the Vermont Department of Environmental

Conservation (“DEC”) and about the DEC’s recent efforts to further investigate the site. There is no evidence, however, of any current release or threatened release of hazardous materials at the Project Site. Indeed, site history documents introduced before and at the hearing show that historic contamination was properly addressed pursuant to existing DEC regulations and that areas identified by DEC and Project consultants for additional sampling and analysis as part of DEC’s investigation will not be disturbed by Project construction. Concerns raised in pre-hearing filings and at the hearing about contamination are, at this point, based entirely on speculation.

Moreover, if contaminants are ultimately located in the area likely to be disturbed by the Project, those contaminants will be reported and managed in accordance with DEC’s Investigation and Remediation of Contaminated Properties Rule (the “IRule”), which is designed to protect against releases of hazardous materials. There is no record evidence that Burton will not be able to comply with the requirements of the IRule should contaminants be found.

Finally, at the Commission’s request, Burton has submitted a soil pre-characterization plan under which Burton will conduct extensive testing to “pre-characterize” site soils by testing them for a variety of contaminants of concern. If that screening process identifies any contamination exceeding residential screening values, Burton will report and manage any impacted soils in accordance with the IRule.

Burton has satisfied its burden of demonstrating that the Project will therefore meet all applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Criterion 1(C) – Water Conservation

Under Criterion 1(C), “[a] permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.” 10 V.S.A. § 6086(a)(1)(C). The increased water usage demand from the Project comes primarily from bathrooms, drinking fountains, and cleaning. No water is to be used for commercial or industrial manufacturing or processing, and no water will be drawn directly from rivers, streams, or other bodies of water. Burton has received water supply and wastewater permits for the Project. The Project design will incorporate low-flow lavatory faucets and low-flow toilets. Burton has demonstrated that that the Project will use the best available water conservation technology.

Criterion 1(D) – Floodways

The Project is not located in any floodway or floodway fringe, and therefore there will be no impact on floodways.

Criterion 1(E) – Streams

The Project is not located near any stream or watercourse, and therefore there will be no impacts on streams.

Criterion 1(F) – Shorelines

The Project is not located on or near any shorelines, and therefore will not result in the development or subdivision of shorelines.

Criterion 1(G) – Significant Wetlands

Under Criterion 1(G), the Commission must find that the Project will comply with regulations related to Class I and Class II wetlands. *Re: John J. Flynn Estate & Keystone*

Development Corp., Land Use Permit #4C0790-2-EB, MOD at 4 n.1 (Vt. Env. Bd., Jul. 10, 2003). The burden is on the applicant to show compliance.

The Project Site does not contain any Class I wetlands, though a presumptive Class II wetland is located in the far northern corner of the 180 Property. No Project construction activity will occur within 500 feet of this wetland or its 50-foot wetland buffer, and no Vermont wetland permit is required. The Project will not result in any impact to significant wetlands.

Criterion 2 & 3 – Water Supply

Criterion 2, “water supply,” is considered in conjunction with Criterion 3, impact on “existing water suppl[ies],” which “specifically addresses whether a development will cause an unreasonable burden on neighboring water supplies.” *In re: Route 103 Quarry (J.P. Carrara and Sons, Inc.)*, 2008 VT 88 ¶ 18 (2008). “Criterion 3 does not govern possible contamination of existing water supplies. Rather, criterion 3 is concerned with ‘impacts on the ability to meet demand of neighboring wells or water sources if those other wells or water sources share the same basic source of water.’” *In re Pion Sand & Gravel Pit*, Docket No. 245-12-09 Vtec, slip op. at 11–12 (Jul. 2, 2010) (quoting *Re: MBL Assocs.*, No. 4C0948-EB (Altered), FCO at 28 (Vt. Env. Bd., May 2, 1995)).

The Project will receive its water from the City of Burlington municipal and Champlain Water District systems. There is no evidence of any other existing water supply that would be burdened by the Project. Burton has met its burden of showing that the Project has sufficient water available for its needs, and that the Project will not cause an unreasonable burden on an existing water supply.

Criterion 4 – Soil Erosion

Under Criterion 4, the Commission must find that the Project will not cause unreasonable soil erosion and will not reduce the capacity of the land to hold water so that a dangerous

condition would result. 10 V.S.A. § 6086(a)(4). The burden of proof is on the applicant.

Stormwater discharge permits establish a presumption of compliance with this criterion. *Re:*

John J. Flynn Estate and Keystone Development Corp., Land Use Permit #4C0790-2-EB, Docket No. 831, FCO at 20 (Vt. Env. Bd., May 4, 2004). ANR has issued a construction general permit for the Project and no party has raised any evidence challenging the presumption of compliance. The Project will result in significantly improved stormwater performance on the Site in order to meet the requirements of the three-acre general permit. The evidence demonstrates that Burton has satisfied this criterion.

Criterion 5(A) & (B) – Transportation and Demand Management

There are two subcriteria under Criterion 5, each addressed in turn. Under Criterion 5(A), the Commission must find that the Project “[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.” 10 V.S.A. § 6086(a)(5)(A). The burden of proof is on those opposing the Project, but the applicant must provide sufficient information for the District Commission to make affirmative findings. *Re: Barre Granite Quarries, LLC, William and Margaret Dyott*, Land Use Permit Application #7C1079 (Revised)-EB, Docket No. 739, FCO at 50 (Vt. Env. Bd., Dec. 8, 2000). The District Commission cannot deny a project an Act 250 permit on the basis of Criterion 5, but it may impose reasonable conditions. *Re: Times and Seasons, LLC and Hubert K. Benoit*, Land Use Permit Application #3W0839-2-EB (Altered), FCO at 37 (Vt. Env. Bd., Nov. 4, 2005).

One measure of traffic congestion is the Level of Service (“LOS”) at roadway intersections. The evidence demonstrates that the Project will not meaningfully impact the anticipated LOS at the intersections and roadways surrounding the Project, with one exception. This is because increased trip generation associated with the Project is primarily due to the PAC

use, which only operates at full capacity during the evening after the peak commuter traffic has already subsided. Indeed, the Burlington Development Review Board (“DRB”) specifically conditioned the PAC’s operating hours to ensure that vehicles attending concerts would not overlap with commuters during peak congestion periods. Burton’s TIS study was completed before—and informed—these conditions and therefore the already minimal impacts on area intersections identified in the TIS are substantially reduced.

One intersection does present congestion concerns—the unsignalized intersection of Home and Pine Avenue, which already experiences reduced service and congestion during peak commuter hours as an outlet. The Project will add to delays at this intersection during the evening commuter period, although LOS largely remains the same. These impacts will be substantially reduced by restricted PAC operational hours to prevent the overlap of PAC traffic and commuters, as required by the DRB. The construction of the Champlain Parkway will alleviate any issues at this intersection.

Burton will implement mitigation measures to address concerns raised by the TIS and by the other parties before the DRB and this Commission. During large PAC events, traffic control will be employed at the Home-Pine Avenue intersection and at the one-lane bridge south of the Project Site. Burton will also conduct a traffic assessment once the PAC is operational to determine if the level of mitigation should be increased or decreased. It has been suggested that the congestion will occur at the one-lane bridge during end-of-concert scenarios, however, modeling completed in coordination with the Burlington Department of Public Works indicated that average delays at that bridge are anticipated to increase by only one second over current conditions. That is because vehicles exiting a show will encounter very little oncoming traffic late in the evening. Nonetheless, in response to these concerns Burton’s operating plan provides for traffic control at this roadway feature during large events. Additional traffic analysis

performed once the Project is in operation will confirm whether the proposed mitigation should be increased or decreased and is subject to review by the Burlington DRB. The Project will not result in any unreasonable congestion.

Neighbors have questioned whether the Project will result in unsafe conditions along Queen City Park Road (“QCPR”) for pedestrians. This analysis overlaps with Criterion 5(B), under which the Commission must find that the Project will, as appropriate, “incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A. § 6086(a)(5)(B).

These concerns arise from the City of Burlington’s application of advisory shoulder lanes to create bicycle and pedestrian facilities on the moderately-traveled QCPR. Neighbors testified to experiences they have had with the advisory lanes, which have been in place since the fall of 2020. Neighbors also testified to their fear that the Project will significantly increase traffic on QCPR and thus exacerbate their concerns with the advisory shoulders.

The evidence presented by Neighbors was anecdotal in nature and described disturbances to pedestrians and cyclists rather than safety issues or traffic impacts. *In re: Eastview at Middlebury, Inc.*, Appeal of Act 250 Permit #9A0314, Docket No. 256-11-06 Vtec, Decision on the Merits at 11 (Feb. 15, 2008) (disturbance to walkers, joggers, and bicyclists tranquil use of the road not an appropriate consideration under criterion 5). The Neighbors’ testimony raises subjective fears about the operation of the road, but does not describe an existing or potential safety concern. To the contrary, the Neighbors’ testimony indicated that drivers stopped and slowed when approaching pedestrians—demonstrating that the advisory shoulders were functioning as anticipated to avoid unsafe conditions. There is no evidence in this proceeding quantitatively demonstrating that unsafe conditions exist or will occur. There is

evidence, provided by the Burlington DPW and Burton's traffic expert that the advisory lanes are an appropriate application on QCPR and do not pose a safety concern.

Finally, neighbors and SBFD #1 have raised concerns that parking at the Project Site is insufficient and that PAC patrons will travel down the narrow Central Avenue in search of parking. The Project Site provides in excess of the 375 parking spaces for PAC use as prescribed by Burlington's zoning ordinances. Burton's parking plan allows for the existing parking capacity to serve daytime uses at the Project Site and evening PAC use. Neighboring industrial properties may provide additional parking capacity during evening PAC events if necessary.

In addition, Burton has incorporated mitigation measures to address these parking concerns. Burton will provide traffic control and a partial barrier at the intersection of Central Avenue and QCPR. Burton will also cooperate with the Cities of South Burlington and Burlington to enforce parking issues, and agreed to assist in the installation of additional signage if requested by South Burlington. No party has provided evidence that these mitigation measures would not address the concerns regarding use of Central Avenue, and therefore opponents on this criterion have failed to meet their burden of persuasion.

The evidence demonstrates that the Project will not cause unreasonable congestion or unsafe conditions and will provide appropriate transportation demand strategies. The Project conforms with this criterion.

Criterion 6 – Educational Services

Under Criterion 6, the Commission must find that the Project will not cause an unreasonable burden on the ability of local governments to provide educational services. 10 V.S.A. § 6086(a)(6). The evidence shows that the Project will not impact the City of Burlington's ability to provide educational services. No party other than Burton presented evidence on this issue. The evidence shows that the Project will not cause any burden on the

ability of local governments to provide educational services, and that Burton has satisfied this criterion.

Criterion 7 – Municipal Services

Under Criterion 7, the Commission must find that the Project will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services. An Act 250 permit cannot be denied on the basis of Criterion 7, and the burden of proof is on opponents of the Project. *In re: Rivers Dev. Act 250 Appeal*, Docket No. 68-3-07 Vtec, Decision on the Merits at 33, 39 (Mar. 25, 2010).

Burton provided “ability to serve” letters from all affected municipal departments in the City of Burlington. The evidence demonstrates that the Project will not have an unreasonable burden on the local government.

The City of South Burlington and the Smith Opponents have questioned whether the Burlington Police Department (“BPD”) has sufficient resources to respond to incidents at the PAC following ongoing force reductions at the direction of the Burlington City Council. After the parties raised this issue, BPD submitted an updated ability to serve letter reiterating its support for the Project notwithstanding force reductions. No party has presented evidence contradicting BPD’s assessment of its current resources, and no party has presented evidence demonstrating that the Operational Management Plan for the PAC does not address concerns raised by the BPD.

Criterion 8 – Scenic Beauty, Historic Sites, and Natural Areas

The Commission must find that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, the aesthetics of the area, any historic sites, and any rare or irreplaceable natural areas (RINAs). 10 V.S.A. § 6086(a)(8). The burden of proof under Criterion 8 is “on any party opposing the applicant.” *In re Denio*, 158 Vt. 230, 236 (1992), 10

V.S.A. § 6088(b). Further, where there is no evidence of historic sites or rare and irreplaceable natural areas located on the property or surrounding areas, Criterion 8 review is limited to the project's impact upon scenic or natural beauty of the area and its aesthetics. *Re: Chaves Londonderry Gravel Pit, LLC, Jurisdictional Opinion #2-257 and Re: Chaves Londonderry Gravel Pit, LLC, and David Chaves Act 250 App.*, Docket Nos. 267-11-08 and 60-4-11 Vtec at 22 (Jan. 17, 2013). As there has been no evidence of the presence of historic sites or RINAs presented, this discussion will focus on aesthetics.

The legal standard applied to the aesthetics analysis under Criterion 8 is the Quechee Test, which asks two main questions. *In re: Free Heel, Inc.*, Docket No. 217-9-06 Vtec, Decision and Order at 5 (Mar. 21, 2007) (citing *In re Quechee Lakes Corporation*, 154 Vt. 543 (1990); *In re Quechee Lakes Corporation*, Docket No. 3W0411-A-EB (Vt. Env. Bd., Nov. 4, 1985). The first question is whether the project will fit within its surrounding context. If not, then the project involves adverse aesthetic impacts. *Id.* If the project will have adverse impacts, the second question asks whether those adverse impacts will be undue. *Id.* Undue adverse impacts will be found if the project violates a clear, written community standard that is intended to preserve the aesthetics or scenic or natural beauty of the area, or if the project would be offensive to the average person because it is so out of character with its surroundings, or if the applicant has failed to take generally-available mitigating steps to improve the project's fit with its surroundings. *Re: Times and Seasons, LLC and Hubert K. Benoit*, Land Use Permit #3W0839-2-EB (Altered), FCO at 41 (Vt. Env. Bd., Nov. 4, 2005).

The visual impact of the Project fits within the surrounding context of historical industrial buildings within the E-LM district. The building façade and landscaping are updated, but the built form remains the same. No party provided any evidence on visual aesthetic impacts and the evidence in this case demonstrates that the Project will not have any adverse visual impacts.

Project opponents do have concerns about the noise impacts associated with the PAC. Although noise generated by the PAC use is generally consistent with the existing background noise in the industrial park and surrounding residential areas, some adverse aesthetic impacts may occur as the PAC introduces a new use into the E-LM district. Therefore, the Commission considers whether any undue adverse impact is presented by the PAC use. It is important to note that although Act 250 prevents undue adverse aesthetic impacts, Criterion 8 does not guarantee that there will be no changes in sounds and other aesthetic features for anyone's property. *Re: Okemo Mountain Inc.*, Land Use Permit #2W5051-8-EB, FCO at 9 (Vt. Env. Bd., Dec. 18, 1986).

The first question is whether the Project will violate any clear, written community standard intended to preserve aesthetic values in the area. There are no clear, written community standards that apply to the Project area because clear, written community standards identify specific resources in the Project area rather than apply generally to the community at large. *Re: Town of Barre*, Land Use Permit #5W1167-EB, FCO at 21 (Vt. Env. Bd., Jun. 2, 1994). Burlington's noise ordinance is a general public welfare regulation that applies generally across the City and does not appear to preserve specific aesthetic values in the Project area. Neighbors have also presented several South Burlington ordinances to the Commission. These ordinances do not regulate land uses in Burlington and are not a community standard applicable to the Project. *Re: Talon Hill Gun Club, Inc. and John Swinington*, Land Use Permit #9A0192-2-EB, 1995 WL 405039, at *7 (Vt. Env. Bd., Jun. 7, 1995) ("The Town of Brandon's zoning ordinance contains a noise limitation provision which is applicable in Brandon. The Board does not opine on whether this provision applies to the Gun Club which, as stated earlier, is located in Leicester.

If it is applicable, it is not violated by the Station Changes.”).¹ The South Burlington regulations are also generally applicable and do not relate to the preservation of specific aesthetic values.

Even if these standards apply to the Project, the Noise Assessment clearly demonstrates that the PAC use will not violate Burlington’s qualitative noise ordinance or South Burlington’s quantitative zoning regulation performance standards. No party presented evidence beyond speculation that anticipated noise impacts would be otherwise than modeled in the Noise Assessment. The Project therefore does not violate any clear, written community standard.

The Noise Assessment also demonstrates that the PAC will not create noise that would be considered shocking or offensive to an average person. Indeed, the Noise Assessment shows that PAC noise is well below applicable noise guidelines for “annoyance,” below nighttime limits for sleep disturbance at any residence in the area, and compatible with the urban/suburban environment where the Project is located. All of these standards can be considered to be a stricter threshold than “shocking” or “offensive” impacts. The loudest source of noise from the operating PAC originates from the rooftop mechanical equipment and is consistent with background noise in the area, which is also comprised of industrial rooftop equipment during nighttime hours. Such an impact does not shock or offend the average person.

¹ See also, *In re Amended Petition of UPC Vermont Wind, LLC*, Docket No. 7156, Order granting Certificate of Public Good at 67 (Vt. P. S. B., Aug. 8, 2007) (holding that neighboring town plan is not a “clear, written, community standard” for purposes of *Quechee Lakes* test in § 248 proceeding); *aff’d*, 2009 VT 19. In this order, the Public Service Board (now Public Utility Commission, or “PUC”) explains that:

To the extent that a municipality wishes to have some control over land outside of its borders, it should participate in the development of the regional plan. . . . [I]f the town plans of neighboring municipalities were considered in planning decisions, it would undermine the municipal planning process by allowing municipalities to make planning decisions for neighboring towns.

Id. While the PUC made this determination in applying the *Quechee Lakes* test under the similar Section 248 analysis, the rationale should apply with equal force under Act 250. Indeed, the PUC believed its holding was consistent with Act 250 practice, noting that considering the aesthetic impacts under a neighboring town was a “policy that has not been applied by any other regulatory body in Vermont.” *Id.*

Finally, Burton has taken generally available mitigation measures to reduce the impacts of PAC noise. The PAC building itself will be retrofitted to meet a readily achievable performance standard for sound attenuation that reduces concert breakout sound through the building, and will utilize double doors at all PAC entrances. The PAC Operational Management Plan (“OMP”) also provides for operational mitigation measures, including restricting all outdoor music and tailgating, quickly and quietly emptying the parking lot after shows, and stationing staff to respond to excessive noise creation outside the venue.

Neighbors have raised concerns about noise impacts they contend will be created as a result of the PAC, but do not provide any competing evidence to support their claims or to dispute the conclusions of the Noise Assessment. Therefore, the Project opponents have not met their burden of proof. Burton’s evidence is sufficient for the Commission to conclude that noise from the Project’s operation will not result in an undue adverse impact.

Criterion 8(A) – Wildlife and Endangered Species

Under this subcriterion, the Commission must find that the Project does not destroy or imperil any necessary wildlife or endangered species habitat. 10 V.S.A. § 6086(a)(8)(A). No such habitat has been identified. South Burlington and the neighbors have testified that noise from the Project will impact wildlife in Red Rocks Park, but no party has presented evidence of necessary wildlife or endangered species habitat that might be imperiled by the Project. Nor has any party presented competing evidence tending to show that the noise impacts on Red Rocks Park are elevated above the existing background levels or have any impact beyond the “developed” portion of the Park. Burton’s evidence demonstrates that the Project satisfies this subcriterion.

Criterion 9(A) – Impact of Growth

The Project is not anticipated to result in a significant amount of growth in relation to historic growth rates for the City of Burlington or the region. The Project is a commercial and industrial re-purposing of an existing development. The PAC use is anticipated to require approximately 25 employees, and completion of the Project is anticipated to result in additional \$10–12,000 per year in property taxes. The Project will not significantly affect the ability of the City and region to accommodate growth.

Criterion 9(B) – Primary Agricultural Soils

The Vermont Agency of Agriculture has concluded that any Project impacts to primary agricultural soils are de minimus due to the pre-existing development on the property and does not recommend any remediation measures. Therefore, the Project will not reduce the agricultural potential of any agricultural soils on the Site or on adjoining land.

Criterion 9(C) – Productive Forest Soils

The Project does not involve any productive forest soils that could support an economic or commercial forestry operation and therefore the Project satisfies this subcriterion.

Criterion 9(D) & (E) – Earth Resources

The Project does not involve the extraction of earth resources and the Project Site does not contain any earth resources. Therefore, the Parkway satisfies these subcriteria.

Criterion 9(F) – Energy Conservation

The Project will comply with Commercial Building Energy Standards under 30 V.S.A. § 53, and Burton will certify its compliance with those standards to the Department of Public Service prior to occupancy. The Project design also incorporates a variety of energy efficiency components, as well as conduit to facilitate future solar installations. The Project Site will incorporate bike paths and bike racks, six dedicated carpool spaces, and at least ten parking

spaces with charging capacity for electric vehicles. Burton has committed to work with the Burlington Electric Department to develop strategies for a practical and energy-efficient thermal envelope for the PAC. No parties other than Burton presented any evidence on this issue. Burton has met its burden of demonstrating that the Project reflects the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporates the best available technology for energy efficiency.

Criterion 9(G) – Private Utilities

The Project does not make use of or involve any private utilities. No party other than Burton presented any evidence on this issue and the Project satisfies this subcriterion.

Criterion 9(H) – Scattered Development

The Project repurposes a pre-existing development within an existing settlement—the City of Burlington—and does not contribute to scattered development. No party other than Burton presented any evidence on this issue and the Project satisfies this subcriterion.

Criterion 9(J) – Public Utilities

Under Criterion 9(J), the Commission is required to find that the Project will not cause excessive demands on municipal or public utility facilities and services, including facilities and services that are either not available or not planned for in the municipality. 10 V.S.A. § 6086(a)(9)(J). The evidence demonstrates that municipal and public utilities are able to serve the Project, which therefore complies with this subcriterion.

Criterion 9(K) – Public Investments

Under Criterion 9(K), the Commission must find that when a project is located on lands that are adjacent to governmental and public utility facilities, or other such facilities in which the public has an investment, the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility or materially jeopardize or interfere with the function,

efficiency, or safety of, or the public's use or enjoyment of or access to, the facility, service, or lands. 10 V.S.A. § 6086(a)(9)(K). *In re: Rivers Dev. Act 250 Appeal*, Docket No. 68-3-07 Vtec, Decision on the Merits at 66 (Mar. 25, 2010). As with Criteria 6, 7, and 9(A), the purpose of this criterion is to protect government finances from the burdens that can be caused by new development. *Re: St. Albans Group and Wal-Mart Stores, Inc.*, Application #6F0471-EB (Altered) (Vt. Env. Bd., Jun. 27, 1995). The burden of proof is on the applicant. 10 V.S.A. § 6088(a).

There are two public investments at issue in this proceeding: the SBFD #1 public water supply and Red Rocks Park.

There is no evidence that the Project will have any impact on the SBFD #1 well. The Project lies outside the Source Protection Area ("SPA") for the well and there is no current evidence of contamination at the well. There is no evidence that the Project will cause a release of any hazardous substances, and in the event that it did, Burton would coordinate with DEC according to the IRule, which is designed to protect sensitive receptors such as water supplies. The evidence shows that the Project will not unnecessarily or unreasonably endanger the public investment in the well and not materially jeopardize its function and safety.

The City of South Burlington and some neighbors suggested that noise from PAC operation would impact Red Rocks Park wildlife. Impacts on natural resources and wildlife may be considered under this criterion. *Re: Vermont Department of Forests, Parks, and Recreation (Phen Basin)*, Land Use Permit Amendment No #5W0905-7-EB, FCO, 2005 WL 2251941, at *11 (Vt. Env. Bd., Sept. 7, 2005). However, the opposing parties did not present evidence of impacts on park wildlife beyond anecdotal recounting of wildlife observed. Noise impacts from the PAC comparable to the existing background noise levels and are localized to the "developed" portion of the park. Several neighbors testified that the park is heavily trafficked, including

during the nighttime. The evidence shows that although Red Rocks Park is an important natural amenity enjoyed by many in the community, the existing use already is likely to cause disruptions to wildlife and there is no evidence that the Project will cause additional impacts.

Opposing parties have also suggested that the attendees of the PAC will visit Red Rocks Park before and after concerts and act in a manner disruptive to the public use of the park or to the detriment of park resources. There is no evidence, beyond speculation, to suggest what attendees will do, or whether their lawful use of a well-frequented *public* park would cause impacts of concern under this criterion. Regardless, Burton has designed its OMP to address concerns raised by Project opponents, and directs its event staff to discourage attendees from visiting Red Rocks Park and to quickly depart after shows. Taking into account these mitigation measures, the evidence demonstrates that the Project will neither endanger the public investment in Red Rocks Park nor materially jeopardize its functioning. The Project is in conformance with Criterion 9(K).

Criterion 9(L) – Settlement Patterns

The Project is not located outside of an existing settlement and therefore satisfies this subcriterion.

Criterion 10 – Local and Regional Plans

Under Criterion 10, the Commission must find that the Project will conform to all specific policies and enforceable standards in the applicable municipal and regional plans. 10 V.S.A. § 6086(a)(10); *In re: John A. Russell Corp.*, 2003 VT 93, ¶ 16 (quoting *In re: MBL Assocs.*, 166 Vt. 606, 607 (1997)). The evaluation of a project’s conformity with a municipal development plan, however, is limited to areas of the plan that set out a “specific policy” that is “stated in language that is clear and unqualified, and creates no ambiguity.” *In re: John A. Russell Corp.*, 2003 VT 93, ¶ 16 (quoting *In re: MBL Assocs.*, 166 Vt. 606, 607 (1997)). “Broad

policy statements phrased as non-regulatory abstractions . . . may not be given the legal force of zoning laws, which are designed to implement the town plan, and may provide meaning where the plan is ambiguous.” *Id.* (quotations omitted).

Here, there can be little doubt that the Project conforms with the relevant municipal development plan, known as *planBTV: South End*. That plan encourages policy makers to think creatively about ways to support traditional industrial uses in the Enterprise Zoning District. The City’s 2019 zoning amendment allowing for the expansion of certain commercial uses—including performing arts centers—in the Enterprise District in connection with traditional industrial and artistic uses accomplishes that purposes. And as the Burlington Development Review Board found, the Project is consistent with the standards set forth in that zoning amendment and the broad goals of *planBTV: South End*: “It is a newly allowable use of an acceptable size and serves to make Burton’s primary industrial use more viable.” Exhibit 8 at 3.

Moreover, the Project is also consistent with *plan BTV: South End*’s identification of the South End as an area in which it makes sense to seek out opportunities to improve stormwater treatment and minimize phosphorous flow into Lake Champlain. The Project involves significant stormwater treatment enhancements designed to comply with the latest regulatory standards, and will treat substantial amounts of runoff from impervious surfaces that previously flowed, untreated, into Lake Champlain.

The Project is also consistent with several goals of the Chittenden County Regional Planning Commission’s 2018 ECOS Plan:

- The stormwater upgrades to be completed as part of the Project will improve water quality, consistent with Goal #1 of the ECOS Plan.
- The HUB Project in general, including the Performing Arts Center, will increase opportunities for people of all backgrounds to socialize and engage in community activities, consistent with Goal #7 of the ECOS Plan.
- The Project will increase access to, and participation in, arts, culture, and recreation activities, consistent with Goal #8 of the ECOS Plan.

- Consistent with Goal #10 of the ECOS Plan, approval of the Project would help to support and retain significant area employers, and could help to attract a greater diversity of employees.
- Consistent with Goal #13 of the ECOS Plan, the Project is located in the Enterprise Planning Area, where growth is encouraged.

A commenter from South Burlington offered comments and testified to the effect that the 2019 zoning amendment passed by the Burlington City Council was inconsistent with *planBTV: South End*'s vision for the southern part of the Enterprise District, which calls for uses to "be focused on supporting the needs of light industrial, R&D and industrial arts/maker businesses." See *Exhibit 069; planBTV: South End* at 52. That is not the sort of "specific policy" statement that can serve as the basis for evaluation of a Project's compliance with a town plan. As discussed above, and as Burlington planning office has explained, the 2019 zoning amendment under which this Project was authorized is consistent with that broad purpose expressed in the cited provision, as the new, permissible commercial uses established by the zoning amendment were designed to "support" existing industrial and artistic uses. See *generally* Exhibits 024, 127.

The same commenter also raised the issue of the Project's compliance with the following language in Appendix E (at page 127) of the *planBTV: Comprehensive Plan* document, discussing areas of potential coordination and cooperation with the City of South Burlington:

In the case of the proposed land uses near the intersection of Industrial Parkway, Queen City Park Road, and Central Ave at Red Rocks Park, *planBTV: South End Master Plan* includes strategies aimed at reducing the impacts of industrial activities on adjacent neighborhoods and recreational amenities.

Exhibit 069 at 2. Again, broad, aspirational language like this cannot support a finding of non-conformity with a municipal plan. Moreover, the commenter does not identify which specific "strategies" are referred to in this provision, or explain how the Project fails to comply with those strategies, which according to this provision, are "aimed at reducing the impacts of

industrial activities on adjacent neighborhoods and recreational activities.” (Emphasis added.).

The Project does not increase the industrial activities already taking place at the Site.

Finally, the commenter expressed concern that the City of Burlington did not properly “coordinate” with the City of South Burlington before implementing the 2019 zoning amendment that led to the Project’s authorization. Exhibit 069 at 2; Emery H’g Testimony (3/10/21). That argument is based on the following provision of the *planBTV: Comprehensive Plan* document, addressing future planning for the “Shelburne Road Corridor & Neighborhood Activity Centers”:

This evolution [i.e., evolution of the corridor “from single-use development to mixed-use development in strategic locations”] should be guided by a detailed plan which considers the land use, development, and transportation influences and opportunities along this corridor. Further, this study should be coordinated with the City of South Burlington. Shelburne Road/Route 7 is an important connection between these communities, and opportunities for infill and redevelopment of the large vacant and/or underutilized sites near the border of these two cities have the potential to impact and be impacted by the land use policies of the other.

planBTV: Comprehensive Plan at 100. Again, this language is not specific enough to create an enforceable standard for purposes of Criterion 10. Moreover, it is not even clear that this language is intended to apply at all to development in the Enterprise District; instead, the provision seems to be simply suggesting coordination between the two Cities on development of a “study” regarding the “evolution” of the “Shelburne Road Corridor” of which the Site is not a part. Finally, the record evidence suggests that the City of Burlington did at least put the City of South Burlington on notice before implementing the 2019 zoning amendment. *Exhibits 140, 141.*

Burton has satisfied its burden of demonstrating the Project’s compliance with local and regional plans.

IV. CONCLUSION

The Project complies with all Act 250 criteria.

MEMO

TO: Justin Worthley

FROM: Eddie Duncan, INCE Bd. Cert.

CC: Brian Dunkiel, Esq.

DATE: April 14, 2021

SUBJECT: Response to Hearing Recess Order for Burton's Hub Project (#4C0174-6 & #4C0368-3)

On March 26, 2021, the District 4 Environmental Commission issued a Hearing Recess Order that requested, among other items, an explanation of how Burton proposes to “modify the building’s construction to mitigate noise impacts and the level of mitigation that each modification is expected to achieve.”

Modifications to the building’s construction are available to address interior noise sources, which in this case is music sound, comprising 32 dBA L_{eq} and 39 dBA L_{max} of the total sound at the worst-case residence. Breakout sound from music has been mitigated by specifying acoustical performance standards or specifications in Section 5.3 of the Act 250 Noise Assessment that improve the transmission loss of the two acoustically weakest areas of the building shell, namely the ceiling-roof assembly and portions of the southern exterior walls. The acoustical performance standards are specified sound transmission loss ratings that were used in the sound propagation model that need to be achieved with the construction for the fit-up of the concert venue. Transmission loss is a metric that quantifies how much sound is prevented from traveling through a structure such as a wall or a ceiling. As long as the specified transmission loss ratings in Section 5.3 of the Noise Assessment are met with the concert fit-up construction, then the results of the sound propagation model will be achieved.

The detailed construction of the concert venue fit-up has not been planned yet. The design team for the fit-up will be able to take the acoustical performance standard from the Noise Assessment and design the walls and ceiling-roof assembly to meet that specification.

In the Noise Assessment, we provided examples of constructions that represent generally available and reasonable mitigation measures which may be considered to achieve the acoustical performance standard but are not necessarily the design that will be used in the concert venue fit-up. The modeled transmission loss values for the existing building constructions are provided in Table 6 in Appendix B of the Noise

Assessment. The following sections discuss the existing transmission loss and how the specified acoustical performance standard will improve the facility.

Ceiling-Roof Assembly

The existing roof is modeled as a fairly standard commercial roof with the transmission loss shown in Table 1 below. Note that transmission loss varies by frequency. That is, for a given construction, low frequency (31.5 to 125 Hz), mid frequency (250 Hz to 1,000 Hz) and high frequency (2,000 Hz and above) all attenuate differently, with high frequency typically reduced more easily than low frequency. Table 1 also shows the specified acoustical performance of the concert venue fit-up for the ceiling roof assembly and how much sound will be further reduced per octave band by meeting the performance standard.

TABLE 1: MODELED TRANSMISSION LOSS (dB) OF THE EXISTING COMMERCIAL ROOF AND THE SPECIFIED ACOUSTICAL PERFORMANCE STANDARD FOR THE CONCERT VENUE FIT-UP

CONSTRUCTION	OCTAVE BAND CENTER FREQUENCY (HZ)								
	31.5	63	125	250	500	1000	2000	4000	8000
Existing Commercial Roof	6	10	27	47	57	61	63	54	66
Specified Acoustical Performance Standard for Concert Venue Fit-up of the Roof	17	20	36	52	62	67	64	75	79
Improved Reduction	11	10	9	5	5	6	1	21	13

As discussed in Section 5.3 of the Noise Assessment, the performance standard may be achieved using standard construction materials and methods by adding a layer of sheetrock to the underside of the existing steel trusses. Currently the space where the venue is proposed is open to the underside of the roof deck and by adding a ceiling, as suggested, the construction will be composed of multiple mass layers separated by an air space, which is more effective at attenuating sound because of the varying impedances.

As part of the three-part test to determine if an adverse impact is undue under Criterion 8, the Commission may “impose conditions necessary to alleviate adverse impacts with respect to the ten Act 250 criteria.” Quechee Test, the conditions must be “reasonable” and “generally available”. In this case, the generally available mitigation measures required to reduce music noise from concert venues is to provide sufficient sound transmission loss in the structure. Given the improvement in the transmission losses outlined in the performance standard and the availability of partition designs, including those that use standard construction materials and methods, that can accomplish these transmission losses, we conclude that our recommendations represent a generally available and reasonable mitigation measure for the Project.



Exterior Wall

Portions of the exterior wall of the concert venue are just metal siding. The transmission loss used in the model for metal siding is shown in Table 2 below. Also provided in Table 2 is the specified acoustical performance of the fit-up to improve the portions of the exterior wall that are currently just metal siding.

TABLE 2: MODELED TRANSMISSION LOSS (dB) OF THE EXISTING METAL SIDING AND THE SPECIFIED ACOUSTICAL PERFORMANCE STANDARD FOR THE CONCERT VENUE FIT-UP

CONSTRUCTION	OCTAVE BAND CENTER FREQUENCY (HZ)								
	31.5	63	125	250	500	1000	2000	4000	8000
Existing Metal Siding	7	13	12	23	27	29	31	36	35
Specified Acoustical Performance Standard for Concert Venue Fit-up of the Exterior Wall	13	14	21	36	46	52	55	44	48
Improved Reduction	6	1	9	13	19	23	24	8	13

As discussed in Section 5.3 of the Noise Assessment, the performance standard for the exterior wall can be met using standard construction materials and methods by framing up an interior wall with insulation and 5/8-inch Type X sheetrock.

Given the improvement in the transmission losses outlined in the exterior wall performance standard and the availability of partition designs that can accomplish these transmission losses, we conclude that our recommendations represent a generally available and reasonable mitigation measure for the Project.

Discussion

For both the ceiling-roof assembly and the portions of the exterior wall that are currently just metal siding, the proposed improvements from the specified acoustical performance standards should be considered the minimum design requirements for the fit-up of the concert venue. There are several different construction options that could be used in the fit-up design to achieve the specified performance standard. The options discussed in the Noise Assessment and in the memo are just examples that can be evaluated and considered in the final construction fit-up design. The examples used to achieve the performance standard are composed of standard construction material that represent generally available and reasonable mitigation measures. Once the interior fit-up is planned the acoustical performance of the constructions may exceed what is specified in the Noise Assessment which would only further reduce the breakout sound of the concert venue.



Memorandum

To: John Caulo, Project Manager

Date: April 26, 2021

Project #: 58237.00

From: Jenn Conley, PE, PTOE

Re: ACT 250 Recess Order

VHB has reviewed the *Act 250 Hearing Recess Order #4C0174-6,4C0368-3 – The Burton Corporation* and provides the following information regarding item 5.

5. Your conditional use approval from the Burlington Development Review Board requires you to perform, within the first 6 months of operation, a traffic assessment of how the Operational Management Plan is addressing traffic impacts. Please describe the types of additional traffic congestion and traffic safety mitigation measures that you could implement if the traffic mitigation measures proposed in the application require modification.

Although the findings of the traffic study reviewed by the City anticipate little traffic impact as a result of the project, the DRB included a condition to conduct a traffic review of how the Operational Management Plan is addressing traffic impacts and return to the Development Review Board, including opportunity for public comment, to determine if traffic conditions require modification.

Parts of the Operational Management Plan were developed to address concerns raised during the DRB proceeding regarding particular issues that may occur. In addition, the traffic analysis identified potential locations of concern beyond the immediate vicinity of the site based on future projections of traffic volumes in the area roadway network as well as future projections of traffic volumes for the site redevelopment. Based on those projected volumes, there was a different location of concern identified along Home Avenue depending on the presence of the Champlain Parkway. The traffic study demonstrates that even without the Champlain Parkway, there will be no undue traffic impacts, but its presence or absence may inform the design of future mitigation measures.

Once the proposed project is in place, traffic counts and analysis will confirm if the project is generating traffic consistent with what was envisioned in the initial traffic study or if that impact is greater or less significant at the locations of concern. Traffic counts, observations, and analysis will confirm if the vehicular delays and queues anticipated at the intersection of Home Avenue and Pine Street (without Champlain Parkway), Home Avenue and the Champlain Parkway (with Champlain Parkway) and are realized or not and whether concerns raised regarding the one lane bridge (either condition) are validated or not.

The traffic conditions will be observed to ensure that traffic entering and exiting the facility is consistent with the procedure outlined in the Operational Management Plan. The traffic review may confirm that the anticipated impacts were accurate and that the Operational Management Plan is necessary and addressing those impacts. In the event that the actual impacts are greater and less than was anticipated, the following mitigation may be considered or altered:

- changes to the number of staff,
- signage used for particular events,
- level of traffic officer control.

40 IDX Drive, Building 100

Suite 200

South Burlington, Vermont 05403

- If impacts are felt more significantly in either direction exiting the site, staff could direct exiting traffic in such a way that it would balance better and reduce impacts.

The effectiveness of these mitigation measures must be considered specific to the problem identified and with knowledge of the impacts of any mitigation considered, based on observed impacts.

The concerns raised at the single lane bridge are not anticipated based on any analysis. Analysis was prepared to model the existing condition during the commuter peak periods at the single lane bridge and then also conducted to model a peak event exit period. The delays experienced during the peak event exit period were consistent with those analyzed and noted in the field during the commuter periods. However, there is a concern that because this traffic is not composed of commuters or area residents, that it may not operate the same way. As a result, observations of traffic patterns may reveal that the concerns are unfounded and that even with Project traffic the bridge operates much as it currently does. However, if observations reveal that lengthy delays or queues develop or that drivers are not yielding as appropriate, a potential mitigation would be traffic officer direction and/or enforcement. The observations of the operations will determine what level of event results in the impact and needs mitigation.



April 3, 2021

Ref: 58539.00

Justin Worthley
Senior Vice President
The Burton Corporation
180 Queen City Park Road
Burlington, Vermont 05401

**Re: Scope of Work for Soil Pre-Characterization Sampling prior to Parking Lot Reconstruction,
180 and 266 Queen City Park Road
Burlington, Vermont**

Dear Justin:

Vanasse Hangen Brustlin, Inc. ("VHB") is pleased to present The Burton Corporation ("Burton") with the following Scope of Work for soil pre-characterization sampling, which is proposed to support the planned redevelopment of the parking lots and stormwater retention features located at 180 Queen City Park Road ("180 QCPR") and 266 Queen City Park Road ("266 QCPR", referred to as Building #41) in Burlington, Vermont (the "Project Area"). Current design plans suggested soil disturbance will be required east and south of the building at 180 QCPR (extending to the building located at 266 Queen City Park Road) and west and south of the building at 266 QCPR (see **Figure 1** and **Figure 2**).

The objective of this proposed soil pre-characterization task is to proactively evaluate soil quality in the Project Area to depths that are anticipated to be excavated during redevelopment, and use these data to make more informed soil management decisions prior to construction. Specifically, this work is intended to identify if, and where, soils that are to be disturbed during construction are impacted by contaminants at concentrations that exceed the applicable Vermont Soil Standards ("VSS"). Should impacted soils be identified the data generated should be sufficient to establish pre-approval from potential receiving landfills. Pre-approval will streamline construction by allowing excavated material to be "live-loaded" on to trucks for offsite disposal or reuse, and therefore reduce the need to handle soil multiple times. Similarly, these data will be used to understand what soil is not impacted and therefore could be reused in an unrestricted manner offsite. This approach to pre-characterization is consistent with several recent soil assessments performed by VHB on other projects in Burlington which have subsequently been transitioned into Corrective Action Plans approved by the Vermont Department of Environmental Conservation ("DEC"). It is anticipated that approximately 14,800 cubic yards (22,200 tons) will require excavation and offsite management. Specifically, this total amount is comprised of approximately 7,635 CY (11,450 tons) from the 266 QCPR parcel and 7,165 CY (10,750 tons) from the 180 QCPR parcel.

Based on prior documentation, a one-time release of etching solution in 1970 was reported to have occurred in an area northwest of Building #41. The release was reportedly neutralized and after assessing the site, sampling Potash Brook and nearby municipal drinking water supply wells, in 1985 DEC deemed this to be a "low priority". The proposed soil pre-characterization effort includes 11 soil sample locations in the

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Suite 200

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area northwest of Building #41 and therefore in the unlikely event that significant residual impacts remain in shallow soil in this area they should be identified through implementation of this plan.

1.0 Scope of Work

Prior to intrusive activity, VHB will pre-mark the proposed soil boring locations and submit a DigSafe® ticket. A small drill rig will be mobilized to the Site to advance a total of 49 soil borings at pre-determined locations. One soil boring will be advanced at the approximate center of each of the grids shown in **Figure 1** and **Figure 2**. Forty-five (45) of the 49 soil borings will be advanced from ground surface to depths ranging between 1.5 fbgs and 3 fbgs to better understand soil quality at locations proposed to be redeveloped as parking lots, sidewalks, and associated greenspaces. The remaining 4 of the 49 soil borings will be advanced from ground surface to depths ranging from 6 fbgs to 10 fbgs to better understand soil quality at locations proposed to be redeveloped as stormwater retention features. Soil sample locations and depths were determined based on the anticipated excavation depths and locations shown on Engineering Ventures' *Earthwork Exhibit (1 of 2)* and *Earthwork Exhibit (2 of 2)* figures dated November 18, 2020. The specific boring depth at each sample location will be based on the maximum anticipated cut depth shown within the respective grid on these two Exhibits (see **Figure 1** and **Figure 2**). Additionally, Burton provided two figures showing locations within the Project Area that had been previously excavated to depths of at least 2 fbgs in 2010 and 2017 for parking lot and driveway construction. According to Burton, the previously excavated material was removed from the site and new imported sub-base material was installed at these reconstructed locations. It is anticipated that this more recently imported sub-base will be able to be reused and therefore, no soil excavation or pre-characterization sampling will be required at these locations (see **Attachment A**).

At each soil boring location VHB will inspect the soil cores for visual, olfactory, or textural evidence of impacts and will screen the soil core for volatile organic compounds ("VOCs") using a calibrated photoionization detector ("PID"). PID screening results and descriptions of the soil core will be recorded on soil boring logs. Soil samples will be collected immediately after soil screening following the methodology and analyzed per the approach outlined below. This methodology has been approved by the landfill receiving facility and DEC as an acceptable approach to pre-characterize material on several recent project.

Sample Methodology

- One, 4-part composite sample per 1,600 tons will be analyzed. In some instances, 2 or 3-part composite samples may be more appropriate. Composite samples will be comprised of sub-samples (e.g.: a 4-part composite will consist of 4 sub-samples).
 - o Each sub-sample represents approximately 400 tons.
 - o A total of 56 sub-samples proposed.
- Each composite sample will be representative of a particular depth interval and sub-portion of the Project Area. Each sub-sample will correspond with a specific grid location and depth interval shown on the attached figures and described below.
 - o For soil borings that are advanced to depths that are less than or equal to 3 fbgs, one sub-sample comprised of the depth interval from ground surface to the termination depth of the soil boring will be collected.



- o For soil borings that are advanced to depths greater than 3 fbgs but less than or equal to 7 fbgs, a total of two sub-samples will be collected to represent shallow and deep depth intervals.
 - o For soil borings that are advanced to depths greater than 7 fbgs, a total of three sub-samples will be collected to represent shallow, middle, and deep depth intervals.
- Total number of proposed composite samples (see attached figures):
 - o 12, 4-part composite samples.
 - o 2, 3-part composite samples.
 - o 1, 2-part composite sample.

Analyses

- All composite samples will be immediately analyzed for the following analytical suites. Should no exceedances of the residential (or background, when applicable) soil standards be identified in data for these analyses, no further analysis of the composite sample or associated sub-samples will be performed.
 - o Volatile Organic Compounds ("VOCs").
Note – VOC samples will be immediately placed in methanol preserved aliquots for sample preservation purposes.
 - o Semi-volatile Organic Compounds ("SVOCs").
 - o Polychlorinated Biphenyls ("PCBs").
 - o The list of 8 Resource Conservation and Recovery Act metals ("RCRA 8 metals") including arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver.
- Additional composite sample material and sub-sample material will be placed on-hold at the laboratory for potential analysis if composite sample results exceed residential standards (or background, when applicable).
 - o Sub-samples will be analyzed for analytes associated with exceedances in the respective composite sample. The sub-samples will only be analyzed for the specific contaminant/analyte associated with the exceedance in order to potentially reduce the volume of soil associated with the reported composite sample exceedance.
 - o Composite samples and sub-samples will be analyzed via Toxicity Characteristic Leaching Procedure ("TCLP") for select analytes if totals results for the respective analytes are greater than 20x the respective TCLP Regulatory Level.
 - o Composite samples will be analyzed for the following waste characterization analyses if the respective composite sample results exceed residential standards (or background, when applicable); therefore, potentially requiring disposal at a certified landfill.
 - Pesticides
 - Herbicides
 - Total Petroleum Hydrocarbons ("TPH")
 - Reactivity
 - Corrosivity
 - Ignitability
- Additional investigation may be necessary to determine nature and extent of impacts, should analytical results suggest a release has occurred.



Reporting/Soil Management Plan

Following completion of the soil pre-characterization sampling and receipt of analytical results, VHB will evaluate the data to determine if any special management of soil will be required during construction. If soil data suggests concentrations exceed the VSS, DEC will be notified and VHB will prepare a Soil Management Plan ("SMP") that is compliant with the 2019 Investigation and Remediation of Contaminated Properties Rule (IRule). The results of the soil pre-characterization sampling will be included in the SMP which will also describe the proposed redevelopment plan as well as the required actions to mitigate the potential risk associated with soil impacts that will need to be addressed during construction should any exist.

2.0 Schedule

VHB understands that Burton will not implement this pre-characterization plan without having been issued the Act 250 permit for the redevelopment. VHB will conduct the Scope of Work upon receipt of written authorization to proceed ("ATP") from Burton in general accordance with the timeframes presented below.

- DigSafe pre-mark and coordinate subcontractors (2 weeks after ATP)
- Drilling and soil sampling (4 weeks after ATP, pending driller availability)
- Receipt of all final analytical results (4 weeks after drilling)
- Submit DRAFT SMP to Burton (8 weeks after receipt of final analytical results)
- Submit SMP to DEC (4 weeks after DRAFT SMP is submitted to Burton)

We appreciate the opportunity to present this Scope of Work and Cost Estimate to provide Burton with soil pre-characterization sampling to support the proposed redevelopment project at 180 and 266 Queen City Park Road. We look forward to continuing to work with you. Should you have any questions pertaining to this proposal, please feel free to contact me at (802) 778-1278.

Sincerely,

Kurt Muller, P.E.
Vermont Director of Site Investigation and Remediation

Attachments:

Figure 1 – Proposed Sample Locations South and West of 266 QCPR
Figure 2 – Proposed Sample Locations South and East of 180 QCPR
Attachment A – Previously Reconstruction portions of Project Area

References:

EBI, 2005. Phase I Environmental Site Assessment Report. General Dynamics 152 Industrial Parkway, Burlington, Vermont. May 25.
EPA, 1985. Trip Report of Site B Visit to General Electric. EPA #VTD000649780. December 17.
Wehran Engineering Corporation. 1989. Corrective Action Program, Tank #25, Industrial Park Site. Prepared for General Electric Company, Lakeside Avenue, Burlington, VT. July.

FIGURE 1 - PROPOSED SAMPLE LOCATIONS SOUTH AND WEST OF 266 QCPR

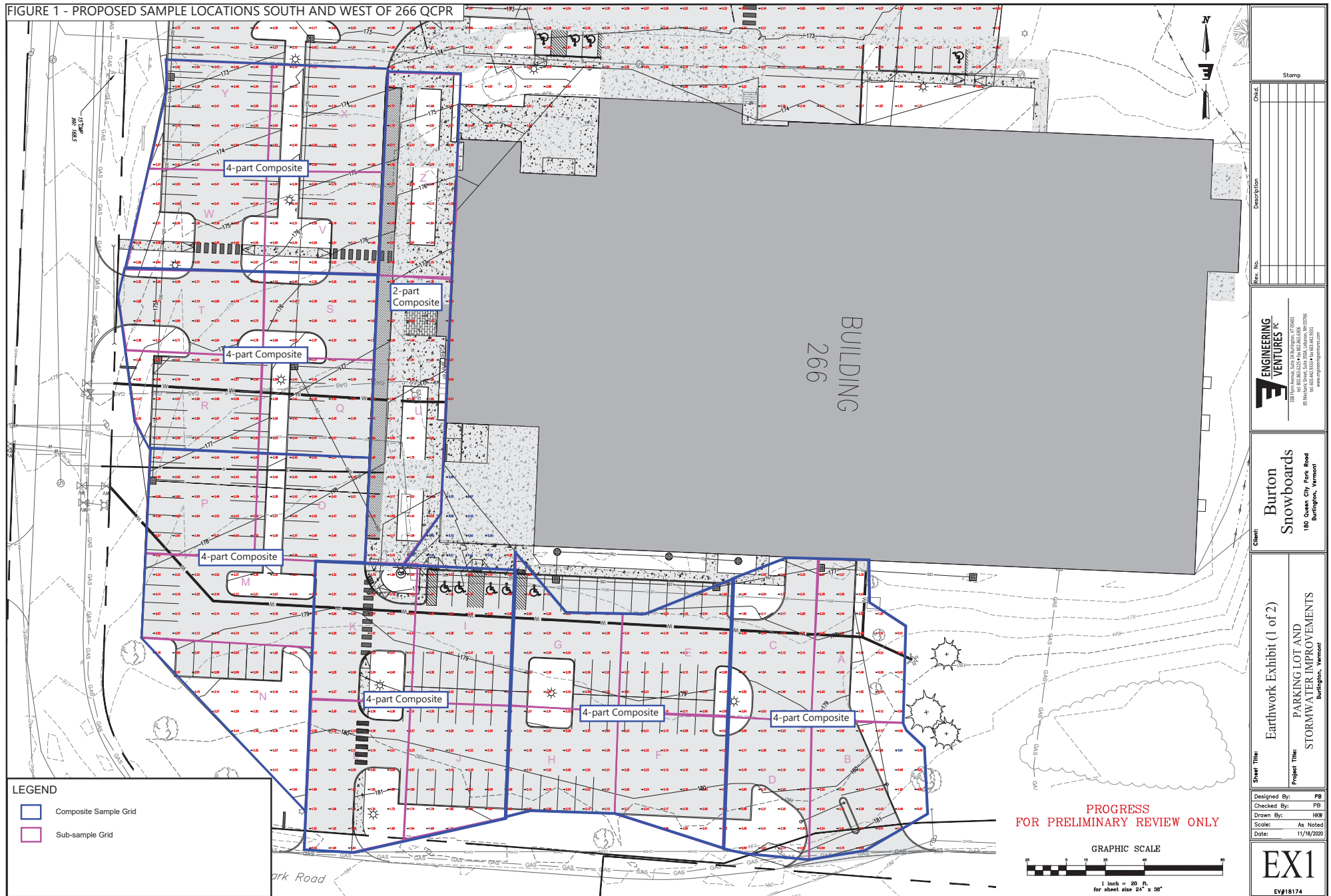
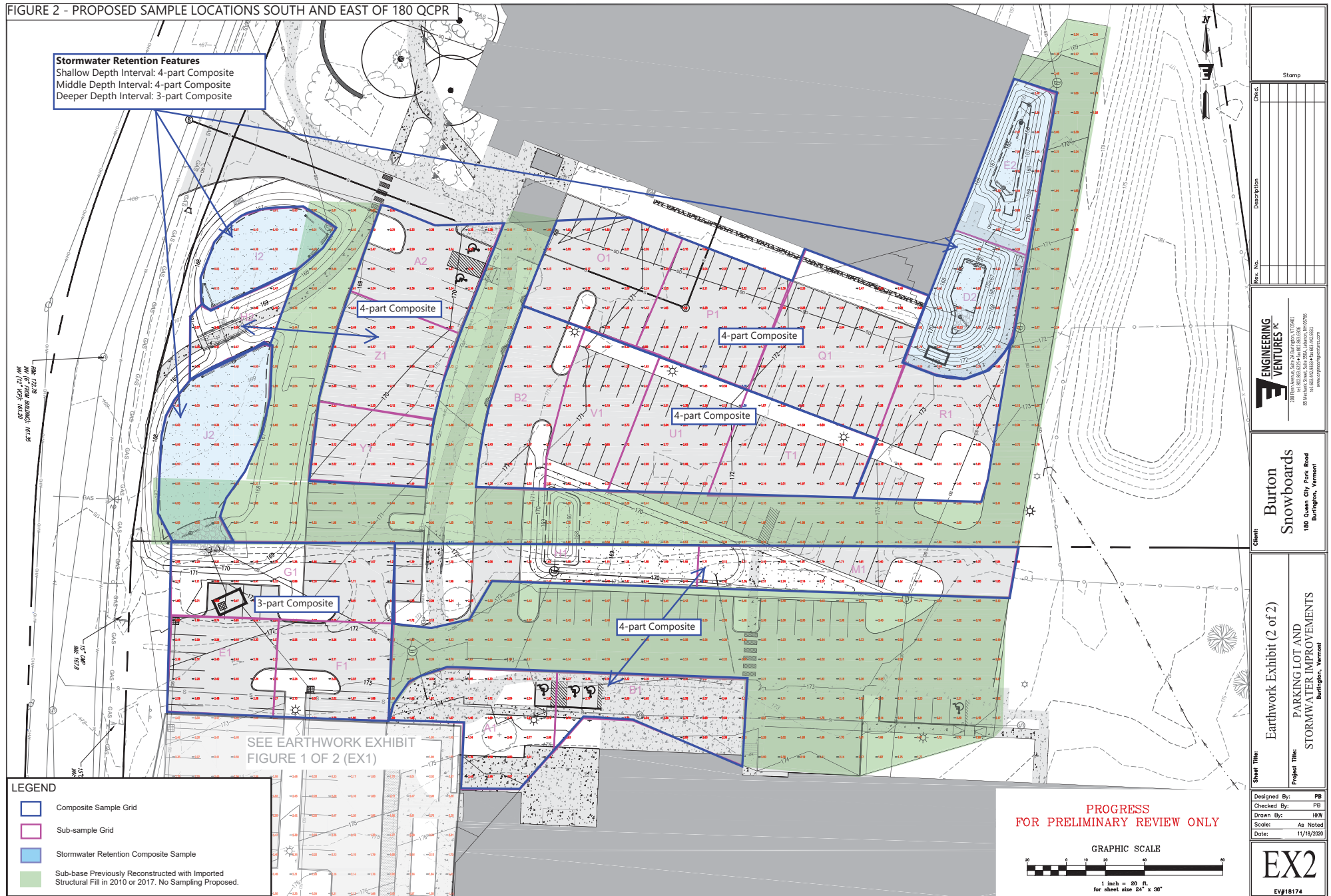
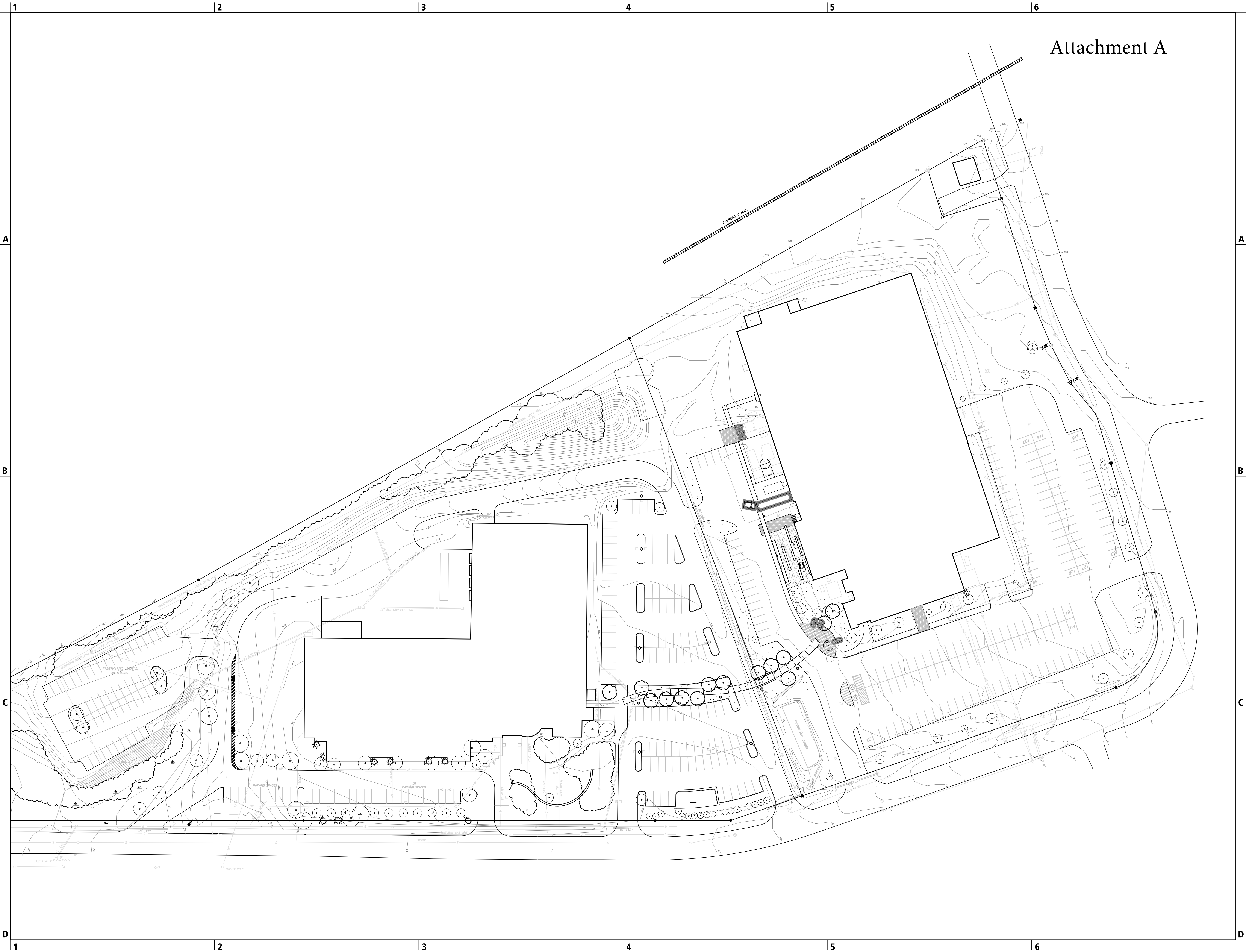


FIGURE 2 - PROPOSED SAMPLE LOCATIONS SOUTH AND EAST OF 180 QCPR





Attachment A

truexcollins

209 BATTERY STREET BURLINGTON, VERMONT 05401 USA
Phone 802.658.2775 800.227.1076
ARCHITECTURE | INTERIOR DESIGN  TRUEXCOLLINS.COM

No.	Description	Date
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Client Name

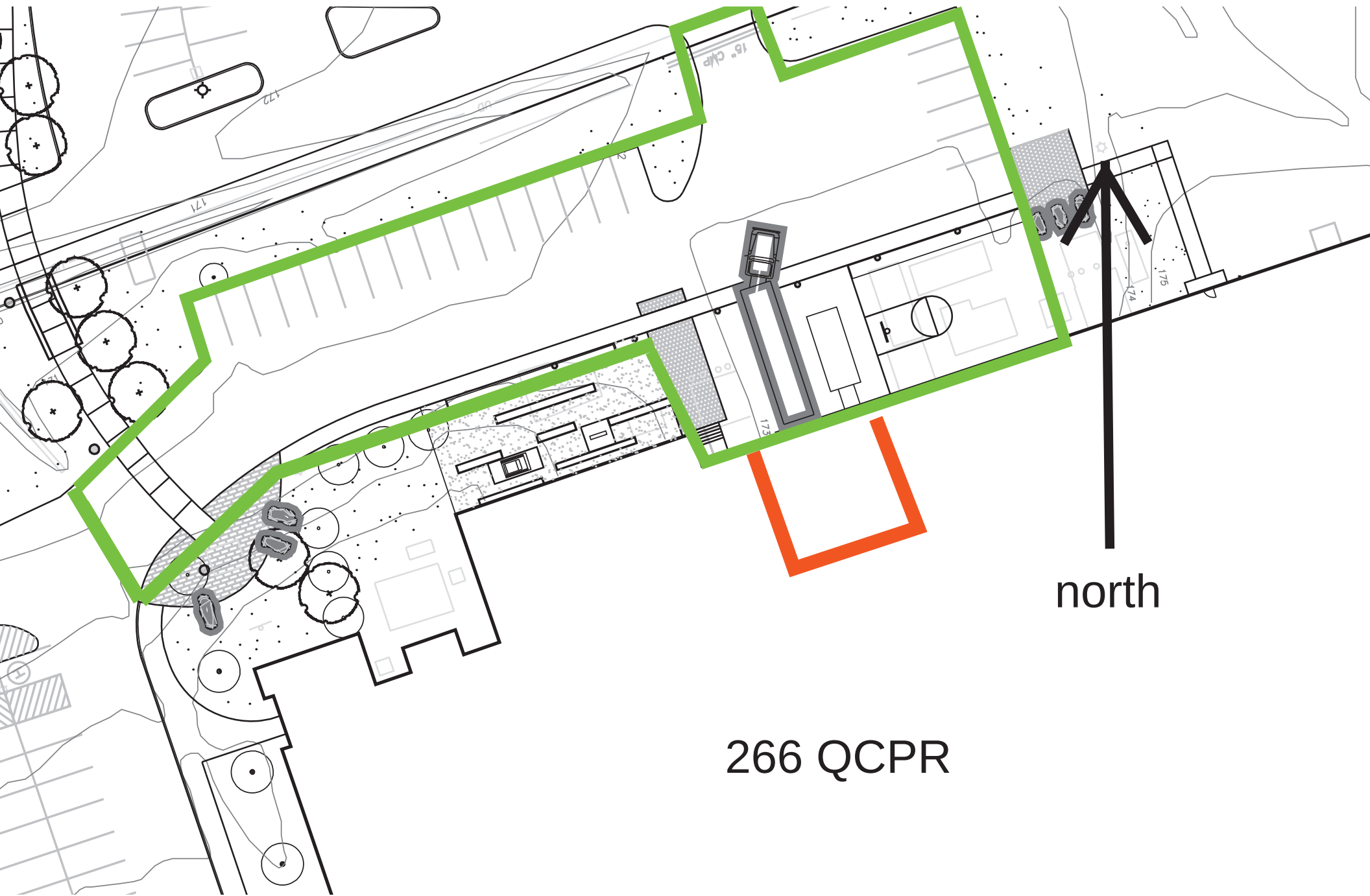
Burton Snowboards

Site Plan

Project number :	2000.01
Date :	01 January, 2000
Drawn by :	DRW
Checked by :	CHK
Project Phase :	Project Status

A101

Scale : 1" = 50'



266 QCPR

north

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

CERTIFICATE OF SERVICE

I certify that I have today delivered Proposed Findings of Fact and Conclusions of Law Submitted by Smith et al. to all other parties to this case as follows:

o By Electronic Mail

The name and address of the party to whom the mail was addressed or personal delivery was made are as follows:

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Dated: 4/26/2021

/s/ Caroline Engvall
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District 4 Environmental Commission

The Burton Corporation

Case No. 4C0174-6; 4C0358-3

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
SUBMITTED BY SMITH ET AL.

Introduction

Mr. Smith, Ms. Waters, Mr. Turner, Mr. Logan, Ms. De Terra, Mr. Goodman, Ms. Landauer, Ms. Bratt, Ms. O'Neill, Dr. Walrath, Ms. Herrick and Ms. Ellis submit these proposed findings and conclusions of law.

Smith et al. ask that the Commission conclude that each has party status under the listed criteria. They also ask that the Commission deny the application for the following reasons:

- ▶ Failure to satisfy the burden of production with regard to noise impacts under Criteria 1, 8, 9(K) and 10.
- ▶ Failure to satisfy the burden of production with regard to water pollution under Criteria 1 and 1(B).

In the event the application is not denied, Smith et al. submit detailed proposed conditions that address impacts under Criteria 1, 1(B), 5(A), 5(B), 7, 8, 9(K) and 10.

PROPOSED FINDINGS

A. Party Status

1. Lawrence Smith, Laura Waters, Michael Turner, Luc Logan, Diane de Terra, Doug Goodman, Almy Landauer, Wendy Bratt, Sharon O'Neill, Dana Walrath, Stephanie Herrick, and Janice Ellis submitted detailed prefiled testimony in support of the applications for party status.
2. The Burton Corporation did not object to the prefiled testimony.
3. The Burton Corporation did not cross-examine any of the applicants for party status.
4. Lawrence Smith and Laura Waters, 50 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative

Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

5. Michael Turner, 110 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

6. Luc Logan, 39 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

7. Diane De Terra, 39 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

8. Doug Goodman, 66 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

9. Almy Landauer, 161 Austin Drive, Unit 139, Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

10. Wendy Bratt, 52 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

11. Sharon O'Neill, 20 Arthur Court, Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

12. Dana Walrath, 46 Central Ave., South Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

13. Stephanie Herrick, 161 Austin drive, Unit 151, Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

14. Janice Ellis, 161 Austin Drive, Unit 83, Burlington, may suffer particularized harm under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

B. The Proposed Land Use Application

15. Burton proposes a change to the use of its existing manufacturing and retail facility and parking lot so that the site will be a performing arts center, operated by Higher Ground. Ex. 8, 136

16. Burton plans to host up to 1500 visitors at these events. The events will be held indoors, for the most part, but patrons also will be offered the use of an outdoor patio. Ex. 8.

17. Burton sought and obtained permission from the Burlington Development Review Board to operate its facility until 2 am every night of the week, and seeks that permission here. Ex. 8 pp.6, 11.

18. Burton plans to reconfigure its existing parking lot to provide 426 spaces. Ex. 8 pp.9-10.

19. The Burton site is located in the Enterprise-Light Manufacturing district, which is sandwiched between two residential districts, one including Arthur Court and the other including Austin Drive. Ex.113 (Burlington Comprehensive Plan) p. 12.

C. Red Rocks Park

20. The application completed by Burton stated that the site is not adjacent to any parks. Worthley testimony; Ex. 1.

20.1 Similarly, in the PowerPoint presentation submitted at the hearing in this matter, Burton stated that the site “is bounded by established urban development patterns on all sides.” Ex. 136 p.4

21. In fact, the Burton site is adjacent to Red Rocks Park in South Burlington. Red Rocks Park is directly across the street from the Burton site. There are no intervening properties, other than the street. Adjacent means “Not distant; nearby.” Merriam-Webster.com

22. Red Rocks Park is a forested park located on the shore of Lake Champlain. It is a place of quiet natural beauty. It is frequently visited and relied upon by many of the individual parties in this matter as well as many members of the public. Testimony of Emery; Testimony and Prefiled Testimony of Smith, Walrath, Waters, Goodman, O’Neill, De Terra, Ellis.

23. Red Rocks Park is regarded by South Burlington as the crown jewel of its parks. Emery Testimony.

24. Burton submitted no data, estimates or other evidence about the existing condition, existing uses of, or past municipal investment in, Red Rocks Park.

25. Burton submitted no data, estimates or other evidence about the changes that the proposed use would cause to the park’s existing condition, or the existing uses of the park, or about whether these changes would necessitate additional maintenance of, or security measures at, or improvements in Red Rocks Park.

D. Noise

26. Burton’s expert, RSG, provide computer modeling and estimates of noise impacts. Ex. 9.

27. The modeling was limited to 1-hour average Leq impacts Ex. 9 § 5.5 and Figures, 5, 6 & 7.

28. RSG did not submit modeling or estimates of the Lmax impacts of the proposal, with one exception, its estimate of Lmax impacts on Arthur Court residences (discussed below). Ex. 9 § 5.4 p.21 (RSG modeled the 1-hour average Leq), and § 5.5 p.24 (1-hour Leq results).

29. The Lmax noise impacts on the residences at Austin Drive and Central Avenue, and on areas of frequent use such as Red Rocks Park, were not modelled or estimated. Id.

30. If Lmax values had been modelled, rather than 1-hour Leq, the effects of short-term loud noises would have been taken into account. Although Burton included the noise of 500 vehicles in its 1-hour Leq modeling (Ex. 9, Table 2, p.19), the noises of car horns and car doors being slammed closed are the types of noises that Lmax modeling, not Leq modeling, is designed to evaluate. Ex. 9 p.24 (Lmax measures the effect of sounds such as a truck tailgate banging).

31. Mr. Goodman’s and Ms. O’Neill’s residential properties on Arthur Court are adjacent to the Burton parking lot. Only the rail line separates them. Goodman and O’Neill Testimony and Prefiled Testimony; Ex. 121 (Arthur Court photographs).

32. There are no walls or buildings between the parking lot and the neighbors' backyards and houses. Goodman and O'Neill Testimony and Prefiled Testimony; Ex. 121 (Arthur Court photographs).

33. RSG provided an estimate of Lmax impacts on the residences on Arthur Court. Ex. 9 pp.24-25; Duncan Testimony.

34. RSG's estimate of the Lmax impacts on the residences on Arthur Court assumed that all of the noise was the kind of noise that a 1-hour Leq reliably captures, and therefore the Leq values could be used as reliable estimates of the Lmax impacts on Arthur Court properties. For example, air conditioners on the roof of the facility can be expected to provide continuous levels of noise. Ex. 9 pp.24-25; Duncan Testimony.

35. The noises of car horns and car doors being slammed closed in the parking lot adjacent to Mr. Goodman's property and Ms. O'Neill's property differ from the continuous noise of air conditioning units. The loud but short-term noises would have little influence on the 1-hour Leq average. Ex. 9 p.24 (Lmax measures the effect of sounds such as a truck tailgate banging).

36. Humans voices in the parking lot were not modeled using Leq modeling or Lmax modeling at any property line, residence or outside area of frequent use. Ex.9; Duncan Testimony.

37. The Lmax or Leq impacts of human voices in the parking lot at the property line, at residences surrounding the Burton site, and at outside areas of frequent use, also were not estimated by RSG. Ex. 9, Duncan Testimony.

38. RSG's estimate for residences on Arthur Court which are adjacent to the parking lot therefore did not include the noise of up to 1500 human voices in the parking lot as they await entry into the building before events, or spill out of the building at the end of each event. Ex.9; Duncan Testimony.

39. Human voices are a potent source of noise. Fifty human voices create the same level of sound pressure as the noises of 100 cars. Ex. 9, § 5.2, pp16-17 and Table 2 (93 dBA sound pressure level for 50 voices and for 100 vehicles).

40. The outdoor patio is separated from the homes on Arthur Court by the Burton building. Ex. 9, Figure 5, p.19.

41. The southern and northern parts of the parking lot are not separated from Arthur Court by any buildings. Ex. 9, Figure 5, p.19.

42. RSG only modeled the noise impacts of 50 voices, and only modeled them for the outdoor patio, which is designed to have a noise barrier surrounding it. Id., Duncan Testimony.

43. RSG did not model more than 50 voices and did not model human voices in the parking lot. Id., Duncan Testimony.

44. Modeling of 50 voices on the outdoor patio did not provide Leq or Lmax results for the noise impact of 50, 100 or 1000 voices in the parking lot. Id.

45. The voices of a few people in the Burton parking lot already are heard by residential neighbors on Arthur Court and Austin Drive in their backyards and, during the warmer months, inside their homes. O'Neill Testimony; Ellis Testimony.

46. The only evidence Burton submitted that pertained to Red Rocks Park was modeling of the 1-hour Leq impacts of some aspects of operating the proposed event facility. Ex. 9

47. Burton did not submit any evidence of the baseline level of noise at Red Rocks Park.

48. RSG's witness, Mr. Duncan, testified that the Park is only open during the daytime, while Higher Ground events will only occur at night, so noise impacts on the park are irrelevant. Duncan Testimony.

49. The Commission may take judicial notice that the posted closing time for the Park, as shown by signs in the Park, is "dusk."

50. Dusk means "the darker part of twilight especially at night." Merriam-Webster.com (accessed 4/25/21).

51. The Commission may also take judicial notice that at the latitude of Burlington, Vermont, the sun sets on summer evenings around quarter of 9 pm, and twilight occurs for a half an hour after sunset, so "dusk" occurs around 9 pm in July. See [Sunrise and sunset times in Burlington, July 2021 \(timeanddate.com\)](http://SunriseandSunsetTimes.com).

52. Mr. Smith and other parties testified that they routinely walk in Red Rocks Park on summer evenings, including walks to watch the sun set over the lake. Testimony of Smith, Waters, Walrath and O'Neill; Prefiled Testimony of Smith, Waters.

53. Burton plans to start its events at 7:30 or 8:30 pm, and to open its doors an hour before that time. Ex. 14 p.7.

E. Municipal and Regional Plans

54. The Burlington Comprehensive Plan, Ex. 113, on pp. 89-91, classifies Arthur Court and Austin Drive as planned residential areas.

55. The Burlington Comprehensive Plan states that "small and subtle changes over time" are expected and appropriate in these areas, and that "we are planning to maintain the primarily residential character, while allowing for some modifications which enable these neighborhoods to continue to be vital, better connected, and more resilient to the influence of nearby growth areas."

In these parts of the community, we anticipate small and incremental change that is consistent with the existing development pattern, building scale, and neighborhood character—details which are unique to various parts of the city. These include our residential neighborhoods, where it is important to preserve and enhance what makes them great. However, these areas aren't locked in time. This plan anticipates that these areas will see some small and subtle changes over time that support their ability to meet the evolving needs of current and future families and households. How these neighborhoods evolve depends on their current development pattern and unique influences and threats relative to the rest of the city.

The purpose of these areas is to strengthen existing neighborhoods which feature predominantly residential uses. Throughout the city, there is great diversity in the housing density (single-family or multi-family), pattern (buildings' features and layout of streets), and scale (height or intensity of development) of these neighborhoods and their relationship to nearby civic, commercial, and recreational resources. Within these areas, we are planning to maintain the primarily residential character, while allowing for some modifications which enable these neighborhoods to continue to be vital, better connected, and more resilient to the influences of nearby growth areas.

56. Pages 98-99 of the Burlington Comprehensive Plan discuss further commercial/industrial growth in the Enterprise – Light Manufacturing district that lies between the Arthur Court and Austin Drive residential districts:

Further, this plan anticipates the implementation of projects and policies that will protect adjacent neighborhoods from impacts such as traffic, air quality, and noise from nearby uses, and that will improve pedestrian and bicycle safety, expand neighborhood-serving businesses and amenities, and increase connectivity to nearby parks and the lake.

57. South Burlington's Comprehensive Plan, Ex.116, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

58. The Chittenden County Regional Plan, ECOS, (quoted in Ex.05 p.10) sets forth Goal No. 2, "*Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.*" Without Lmax data, the Commission cannot determine whether the proposed use will harm the valued scenic and recreational resource that is Red Rocks Park.

F. Water Pollution

59. Toxic chemicals reside in the soils at the 15.6-acre site. Exs. 12, 107 (p.3) and 143 (p.14).

60. The ground water table at the site is only two feet deep because of a silty layer about two feet deep. Ex. 107 (p.3).

61. One of the known locations of toxic chemicals is the trench into which chemicals used to etch metals were poured. The trench is on the northwest portion of the site, according to an EPA report. Ex. 104, pp.218, 223 (pdf pp. 5 & 10).

62. The northwest part of the site appears to be where the wetland pond and the pretreatment swale for the proposed new use would be located. Ex. 34.

63. Ex. 104, p.221 and 233 (pdf pp.8 and 10), the EPA report, warned “Potential Groundwater contamination could migrate to a municipal well.”

64. The EPA report identified only one municipal well – the Fire District well – and stated that it is 1050 feet from the site. Chemicals released into the groundwater at the site by construction and operation of the proposed wetland pond and pretreatment swale, if they flow south or southwest, may fulfill the EPA prophecy. See, e.g., Ex.136 p.22, showing the VELCO site overlapping with the Source Protection Area.

65. Exhibit 107 states that groundwater flow is to the northwest -- but, as Mr. Crowley testified, the cited source for this conclusion is a single study from 1989, which drilled several test wells on the north side of the property, and then assumed this data applies everywhere in the vicinity. There is no data about ground water flow to the south and southwest, in the direction of the Fire District well and Source Protection Area. The closest is a relatively recent well at the VELCO substation, which went through 50 feet of sand before reaching a few feet of clay then bedrock; no contaminant testing or flow assessment has been conducted on this well. Crowley testimony.

66. The only way to ascertain whether ground water flows toward the well and Source Protection Area is to drill a small number of test wells in a strategic pattern along the southern perimeter of the site, comparing pressures and direction of flow, as well as relative height of the water table. Crowley Testimony

G. Traffic and Parking

67. Michael Santos, PE, is a professional traffic engineer with over 19 years of experience. Santos Testimony.

68. Mr. Santos reviewed the traffic studies conducted by VHB. He found that there was insufficient information to determine the impacts of the overall development. Santos Testimony.

69. The traffic studies presented trip generation estimates and analyses for the weekday morning and evening peak commuting periods. The performing arts center is expected to experience peak operations outside of the commuting peak periods. Events are expected to start between 7:30 and 8:30 PM, with doors opening between 6:30 and 7:30 PM on weekdays and 6:00 PM on weekends, and it can be expected that the center will experience peak entering traffic volumes after the typical commuter peak hour. Santos Testimony; Ex.8.

70. The project will have traffic impacts to adjacent residential neighborhoods that occur outside of the peak hours that were analyzed in the studies. The studies indicate that the capacity of the venue will be approximately 1,500 patrons and estimates that there could be a peak performing arts center demand of 500 vehicles traveling to and from the venue. The traffic studies do not adequately identify the peak hours of traffic impact for the proposed facility due to the lack of information related to the center. Santos Testimony.

71. Chapter 22 of the “Traffic Access and Impact Studies” in the Manual of Transportation Engineering Studies, 2nd Edition, states that the “critical time period” for a given project is directly associated with the peaking characteristics of project-related travel and areawide transportation system. The peak of the adjacent roadway and the generator under consideration are equivalent in some situations and different in other situations. The peak period of the adjacent roadway is typically examined even if it does not correspond to the peak period of the generator because there can be significant impact from the additional vehicles to the traffic stream. The peaking characteristics of the adjacent street and highway system are determined by analyzing the traffic count data for the area and projecting peak demand periods for the development. That was not done by VHB. Santos Testimony

72. Analyzing the morning and evening peak hours is typically sufficient for many types of developments such as residential and commercial projects that follow commuter travel patterns. However, the performing arts center is a major component of the Project and will have significantly different travel patterns that do not follow typical commuter patterns. The traffic studies do not identify the peak periods of demand for the project by omitting the peak demands of the PAC, which occur outside of the peak commuting periods. The peak demands of the PAC may have negative impacts to the surrounding area. These impacts were not evaluated in the traffic studies. Santos Testimony.

73. The traffic studies also do not provide trip generation estimates for the Project over the course of a day (daily trip generation). The daily trip generation is used to determine appropriate roadway treatments, cross sections, and pedestrian/bicycle facilities. Due to the lack of this trip generation information, conclusions related to the impacts of the project cannot be adequately determined. There may be measurable impacts to the local roadways and adjacent residential neighborhoods that were not identified because no analysis was conducted. Santos Testimony.

74. The traffic studies also indicate that pedestrians may choose to proceed in either direction (north or south on Queen City Park Road). Currently, Queen City Park Road is striped with “advisory shoulders”, which serve as accommodation for both bicycles and pedestrians due to lack of formal sidewalks. This type of treatment is presented in FHWA’s “Small Town and Rural Multimodal Networks” manual as being preferred for roadways that serve 3,000 or fewer vehicles per day with operating speeds of 25 miles per hour or less. Santos Testimony.

75. The traffic studies did not conduct daily traffic counts along Queen City Park Road to determine daily traffic or vehicular speeds, which help engineers and planners determine the correct pedestrian and bicycle facilities for a given roadway. However, the City of Burlington

DPW issued a letter indicating that a count station along QCP Road counted 1,390 vehicles per day, just south of Home Avenue, which may not be representative of the traffic volumes in the vicinity of the Project site due to additional development along the southern portion of the corridor. Additionally, due to the lack of trip generation estimates for daily traffic related to the Project, it is unclear what the projected daily volumes on Queen City Park Road are expected to be. Due to the lack of this information, a definite conclusion cannot be made to determine if the advisory shoulders will still remain the most appropriate treatment for pedestrians and bicycles upon completion of the Project. Santos Testimony.

76. Mr. Santos also raised qualitative concerns related to the lack of pedestrian infrastructure that will accommodate patrons of the Project site. Currently, there is a sidewalk along the south side of QCP Road, extending from Central Avenue toward the one-lane bridge, where it becomes part of the traveled roadway with no defined lanes. This segment of QCP Road is not marked with advisory lanes or any other pavement markings, creating a potentially hazardous safety condition for patrons of the PAC, especially when leaving the venue. A marked crosswalk is also not provided to allow people to safely exit the venue, cross QCP Road, and walk along the sidewalk and unmarked pedestrian path. Due to the lack of evaluation and trip generation estimates for the peak hours of the PAC, a qualitative evaluation of safety cannot be reliably conducted to determine if additional measures are necessary for safe pedestrian travel. Santos Testimony.

77. The one-lane bridge on Queen City Park Road can safely handle increased traffic from events if either a traffic light is installed or flaggers are placed at both ends of the bridge before and after events. Santos Testimony Ex. 125 (photographs of one-lane bridge).

78. A review of the parking supply and demand was conducted in the traffic studies. The traffic studies indicate that a peak vehicular demand will be 500 trips per show based on the existing Higher Ground facility's parking supply of 350 vehicles. The traffic studies did not provide an evaluation of actual parking demand at the existing facility. It is also unclear whether patrons of the existing facility use adjacent properties for parking, which may indicate that the actual demand exceeds 350 parking spaces during sold-out events. The traffic studies developed a vehicle occupancy rate of 3 people per vehicle based on the 350 parking space capacity and 1,050 person venue capacity at the existing facility. This rate of 3 people per vehicle was applied to the new 1,500 person venue capacity to determine that the parking demand will be 500 vehicles. Santos Testimony.

79. The existing Higher Ground venue is within a reasonable walking distance (under one mile) from the University of Vermont and several hotels, which may attract a higher percentage of non-vehicular trips when compared to the proposed location. Due to the location of the existing venue, the overall parking demand (number of parking spaces per person of venue capacity) may be lower than the proposed venue. Santos Testimony.

80. The 2009 National Household Travel Survey indicates that vehicle occupancy rates are 2.21 persons per vehicle for social and recreational uses. Based on this rate, the site would experience a demand of 678 parking spaces, assuming all patrons arrive by vehicle. Santos Testimony.

81. The Federal Highway Administration has found that a reliable average number of persons per vehicle at performance events is between 2.2 and 2.8. Ex.126, page 6 of 16.

82. The commonly used vehicle occupancy factor for public events at permanent venues is 2.5 persons per vehicle. Id.

83. The FHWA guidance corroborates the National Household Travel Survey. It is likely that large events at the facility will exceed the capacity of the planned 426-space parking lot.

84. Using the commonly used FHWA vehicle occupancy factor of 2.5, 600 parking spaces are needed, on average, for full capacity performance events -- without including customers at the proposed cafes, the skate park, the performers or Burton's and Higher Grounds' employees. $1500/2.5 = 600$.

85. If the rate is 2.1, 714 spaces will be needed. If the rate is 2.2, 682 spaces will be needed. If the rate is 2.8, 536 spaces will be needed.

86. Additionally, there will be: a) vehicles bringing patrons to the Burton Campus for the proposed Cafés, which will be open to all during performance events; b) customers of the Talent Skate Park, which will be operating past the starting time of concerts; and c) buses and cars of the performers and of the employees of Higher Ground, Burton, the Talent Skate Park and the Cafés. Ex. 136 p.10 (cafes); Ex. 8 p.7 (skate park and food court); Smith Prefiled Testimony p.4 (explaining that Burton's proposed parking plans do not include any spaces for performers and employees).

87. The Burton site is planned to have 426 total parking spaces. This means that there will at times be hundreds of vehicles looking for parking spaces "off campus". There are no municipal parking lots in the area, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. Prefiled Testimony of Smith, p.4.

88. Central Avenue, which intersects with Queen City Park Road at the Burton parking lot, is a narrow road with homes close to the street. Prefiled Testimony of Smith, Waters, Goodman, De Terra. Logan and Walrath; Ex. 122 (Central Ave. photographs).

89. Arthur Court is close to the Burton Parking lot and may be inviting to Higher Ground patrons who cannot find a space on the lot. Prefiled Testimony of Goodman and O'Neill; Ex.121 (photographs of Arthur Court).

90. Parked vehicles will cause congestion and dangerous conditions for Smith, Waters, Goodman, O'Neill and their neighbors, and will bring late-night noise in front of their houses as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting. Prefiled Testimony of Smith, Waters; Ex. 122 (Central Ave. photographs).

CONCLUSIONS OF LAW

A. Party Status

Lawrence Smith and Laura Waters, 50 Central Ave., South Burlington, are granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Michael Turner, 110 Central Ave., South Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Luc Logan, 39 Central Ave., South Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Diane De Terra, 39 Central Ave., South Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Doug Goodman, 66 Central Ave., South Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Almy Landauer, 161 Austin Drive, Unit 139, Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Wendy Bratt, 52 Central Ave., South Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Sharon O'Neill, 20 Arthur Court, Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Dana Walrath, 46 Central Ave., South Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park

residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Stephanie Herrick, 161 Austin drive, Unit 151, Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

Janice Ellis, 161 Austin Drive, Unit 83, Burlington, is granted party status under Criterion 1 (Water Pollution), 1(B) (Waste Disposal), 5(A) (Traffic), 5(B) (Alternative Transportation), 7(B) (Ability of the Local Government to Provide Services), 8 (Aesthetics of the Queen City Park residential neighborhood, Aesthetics and Natural Beauty of Red Rocks Park), 9(K) (Public Investment in Red Rocks Park) and 10 (Local and Regional Plans).

B. Burton Did Not Satisfy Its Burden to Produce Sufficient Evidence Upon Which to Base Findings on Noise Under Criteria 1, 8, 9(K) and 10

Under each of the criteria, the applicant must meet an initial burden of production, regardless of which party has been allocated the burden of proof by the statute. Without admissible evidence sufficient to base a finding upon, with regard to that criterion, a permit cannot be issued.

Applicants, however, always bear the burden of production and must offer the fact finder "evidence sufficient to enable [the district commission or this Court] to make the requisite positive findings on all of the criteria." *In re Rinkers, Inc.*, No. 302-12-08 Vtec, slip op. at 11 (Vt. Env'tl. Ct. May 17, 2010) (Wright, J.) (quotation omitted). Said another way, an applicant must meet his or her burden of production for each criterion by establishing a "prima facie case on each of the elements." *In re Champlain Parkway Act 250 Permit*, 2015 VT 105, ¶ 15, 200 Vt. 158, 129 A.3d 670 (quoting *State v. Baker*, 154 Vt. 411, 414, 579 A.2d 479 (1990))

In re Katzenbach (Superior Ct., Env'l Div.) (Walsh, J.), Dkt No. 124-9-17 Vtec, Decision on the Merits, Jan. 2, 2019, slip op. at 6-7.

The requirement that the applicant satisfy the initial burden of production, when applied to the potential noise impacts of the Higher Ground proposal under Criteria 1, 8, 9(K) and 10, compels denial of the application, for several interrelated reasons.

First, the applicant did not submit modeling or estimates of the Lmax impacts of the proposal at the property line, at surrounding residences, and at outside areas of frequent use, with one exception. See Ex. 9 § 5.4 p.21 (RSG modeled the 1-hour average Leq), and § 5.5 p.24 (1-hour Leq results). In *In re Application of Lathrop L.P. I*, 2015 VT 49, 199 Vt. 19, 121 A.23d 630, the neighbors made much the same argument as here – that “during the warm season when windows are open and people spend more time outdoors” the Lmax impacts could be unacceptable. In that case it was not the noise of the gravel extraction itself, but of the trucks going to and from the pit. *Id.* at ¶ 79. The Environmental Division judge did not consider these Lmax impacts, instead relying on Leq projections. The Supreme Court reversed the ruling. The Court reiterated the holdings of Environmental Board and Court precedent generally limiting Lmax impacts to 70 dBA at the property line and 55 dBA at surrounding residences and outside areas of frequent use. The Court held that while the 70dBA/55dBA standards may be applied flexibly, the Lmax impacts at the property line, at residences, and at outside areas of frequent use must be taken into consideration. *Id.* at ¶¶ 80-88.

Lathrop confirmed longstanding Environmental Board decisions that instantaneous, and not averaged, noise levels provide the yardstick necessary for evaluating noise impacts under Criterion 8 because the averaging of noise levels does not accurately capture the impact on the community.¹ The Environmental Board and the Environmental Court had determined that

1. *In Re: McLean Enterprises Corporation*, #281147-1-EB, Findings of Fact, Conclusions of Law, and Order (November 24, 2004) at 15-16, 47-49. See also *Big Rock Gravel Act 250 Permit*,

instantaneous noise above 55 dB at residences and above 70 dB at the project property line is either shocking and offensive under the *Quechee Lakes* test, or is the level to which mitigation must reduce noise under the *Quechee Lakes* test, or both.

The Board's OMYA decision is instructive. The preexisting average traffic count on Route 7 in Brandon was 10,000-11,000 vehicles per day of which 907 were trucks. The trucks produced noise ranging from 76 to 84 db Lmax on at front of one inn and from 74 to 82 db Lmax at front of another inn. OMYA proposed to increase the number of trucks by 170; this would have been only a 19% increase in the number of trucks. The Board found that the average noise level would not be significantly changed, since heavy trucks already passed through the area on a regular basis. However, "[w]hen evaluating the real effect on people from the noise of passing trucks, it is more appropriate to consider the instantaneous noise from the trucks as they pass because that is what people experience." The Board concluded that adding the 19% increase would shock and offend the average person because the addition of 170 OMYA truck trips would result in "additional sleep disruptions, additional activity interference, and increased annoyance." *Re: OMYA, Inc., and Foster Brothers Farm, Inc.*, Findings of Fact, Conclusions of Law and Order, No. 9A0107-2EB (May 25, 1999) at pp.11-12, 28.

The Lmax impacts at the Burton property line and at surrounding residences and outside areas of frequent use cannot be taken into consideration by the Commission -- because the data necessary to do so have not been submitted by Burton. Burton' evidence on noise impacts was

Docket No. 45-3-12 Vtec (Nov. 28, 2012) (Walsh, J.) at 10; *Re: Alpine Stone Corporation ADA Chester Corp. and Ugo Quazzo*, No. 2S1103-EB, Findings of Fact, Concl. Of Law, and Order, at 32 (Vt. Env'tl. Bd, Feb. 4 2002) at 24; *In re Barre Granite Quarries, LLC and William and Margaret Dyott*, #7C1079-EB, Findings of Fact, Conclusions of Law and Order (December 8, 2000) at 54-55.

limited to 1-hour average Leq impacts, with one incomplete exception, discussed below. See Ex. 9 § 5.5 and Figures, 5, 6 & 7. The Lmax noise impacts on the residences at Austin Drive and Central Avenue, and on areas of frequent use such as Red Rocks Park, were not modelled or estimated. Burton has made it impossible for the Commission to make findings under Criteria 1 (health effects of routinely being awakened in the middle of night) and 8 (aesthetics/annoyance impacts on residences and Red Rocks Park). The application must be denied.

If Lmax values had been modelled, rather than 1-hour Leq, the effects of short-term loud noises would have been taken into account. Although Burton included the noise of 500 vehicles in its 1-hour Leq modeling (Ex. 9, Table 2, p.19), the noises of car horns and car doors being slammed closed are the types of noises that Lmax modeling, not Leq modeling, is designed to evaluate. *Lathrop, supra*, at ¶ 86; *OMYA, Id.*; Ex. 9 p.24 (Lmax measures the effect of sounds such as a truck tailgate banging). Averaged over an hour, blaring horns or car doors being slammed shut may result in a low Leq, regardless of whether they produce an Lmax value that exceeds 70 dBA at the property line, or 55 dBA at residences or outside areas of frequent use.

The one estimate of Lmax impacts that RSG presented – the residences on Arthur Court - - demonstrated the poverty of RSG’s narrow-focus 1-hour Leq presentation. Exhibit 9 pp.24-25. Mr. Goodman’s and Ms. O’Neill’s residential properties on Arthur Court are adjacent to the Burton parking lot. Only the rail line separates them. Mr. Duncan’s estimate of the Lmax impacts on the residences on Arthur Court assumed that all of the noise was the kind of noise that a 1-hour Leq reliably captures, and therefore the Leq values could be used as reliable estimates of the Lmax impacts on Arthur Court properties. This makes sense for the air conditioning units on the roof of the Burton building, which run continuously at the same sound pressure level for hours. It does not make sense for noisy mufflers on cars and trucks entering or leaving the parking lot, for drivers

honking their car horns in the parking lot, or for car occupants slamming shut their car doors when the exit or enter their cars. These noises all can be measured with a 1-hour Leq, as RSG did, but application of only 1-hour Leq analysis to these vehicle noises did not suffice in *Lathrop* and *OMYA* and should not suffice here.

The RSG estimate for Arthur Court also did not include the noise generated by up to 1500 human voices in the parking lot as they await entry into the building before events, or spill out of the building at the end of each event. Human voices are a potent source of noise. Fifty human voices create the same level of sound pressure as the noises of 100 cars. Ex. 9, § 5.2, pp16-17 and Table 2 (93 dBA sound pressure level for 50 voices and for 100 vehicles). RSG only modeled the noise impacts of 50 voices, and only modeled them for the outdoor patio, which is designed to have a noise barrier surrounding it. Duncan Testimony. RSG did not model human voices in the parking lot. The outdoor patio is separated from the homes on Arthur Court by the Burton building; most of the parking lot is not. Ex. 9, Figure 5, p.19.

The noise impacts of human voices in the parking lot was not even subject to Leq modeling, so it was not included in the estimate of Lmax impacts for Arthur Court. It was not modelled, for Leq or for Lmax, for any location.

In this respect, Burton's failure to model Lmax impacts of human voices, vehicle mufflers, car horns and slammed doors in the parking lot is indistinguishable from the truck noise in *Lathrop*. In *Lathrop* the noise of gravel extraction itself was successfully mitigated by the design of the pit, because the pit walls served as a sound barrier; the Lmax impacts of the trucking noise created outside the pit also had to be considered – and weren't. Here, the noise of concerts will generally be buffered by the walls of the building, and have been modelled -- but the Lmax impacts of the

noise in the parking lot, as patrons arrive and depart from concerts, has not been modelled or estimated.

This not a theoretical concern. The Burton parking lot is adjacent to numerous homes on Arthur Court. There are no walls or buildings between the parking lot and the neighbors' backyards and houses. The voices of a few people in the Burton parking lot already are heard by residential neighbors in their backyards and, during the warmer months, inside their homes. Alcohol will be served, and loud music will be played, so there is no reason to expect, or to predict, that event-attendees will be as quiet as churchgoers in a church parking lot before and after events. When up to 1500 patrons gather to enter the event facility or spill out of the facility at midnight will the Lmax standards of *Lathrop* be exceeded at the property line, at residences, or at outside areas of frequent use? The record is silent. Burton has made it impossible for the Commission to make findings under Criteria 1 (health effects of routinely being awakened in the middle of night) and 8 (aesthetics/annoyance impacts).

Burton has failed to meet its burden of production in another very important respect. Red Rocks Park is adjacent² to the Burton site but when Mr. Worthley completed the application he stated that there are no parks adjacent to the project site. Burton, therefore, submitted no evidence about the baseline noise levels in Red Rocks Park, the projected increase in noise levels within the park, or whether these increases levels would be undue or would interfere with the enjoyment of the park by its users. Without this data, the Commission cannot make necessary findings under

2. Merriam-Webster.com defines "adjacent" as "Not distant; nearby." In *Re: L&S Associates*, No. 2W0434-8-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Envtl. Bd., Sept. 22, 1993) at 50. The Board stated that "adjacent," in this context is "a relative term that must be considered in the context of the scale of the project." The Board supported this contention with a definition of "adjacent" from Black's Law Dictionary: "lying near or close to."

Criteria 8 (aesthetics/annoyance impacts on Red Rocks Park users) and 9(K) (material interference with enjoyment of this adjacent park by its users).

Burton's shortage of evidence under Criterion 9(K) creates a stark contrast with the requirements of the Act. In order to address "material interference," it is necessary to establish the baseline and context, and then evaluate the likely change to that baseline or context. *In re Hinesburg Hannaford Act 250 Application*, Docket No. 113-8-14 Vtec, Decision on Motion to Reconsider (Superior Ct., Env'l Div.), (July 7, 2016), slip op. at 12 ("the context or baseline from which we must measure the aesthetic and visual impacts from a proposed project matters greatly."), *rev'd on other grounds*, 2017 VT 106, 2016 Vt. 118, 179 A.3d 727. Because Burton submitted no evidence on the baseline noise levels within Red Rocks Park, it is impossible for the Commission to make necessary findings under Criterion 9(K).

Burton's expert, Mr. Duncan, offered a meritless justification for departing from the Act. He testified that the Park is only open during the daytime, while Higher Ground events will only occur at night, so noise impacts on the park are irrelevant. Mr. Duncan was incorrect. The Commission may take judicial notice that the posted closing time for the Park is "dusk." Dusk means "the darker part of twilight especially at night." [Merriam-Webster.com](https://www.merriam-webster.com/dictionary/dusk) (accessed 4/25/21). The Commission may also take judicial notice that at the latitude of Burlington Vermont, the sun sets on summer evenings around quarter of 9 pm, and twilight occurs for a half an hour after sunset, so "dusk" occurs around 9 pm in July. See [Sunrise and sunset times in Burlington, July 2021 \(timeanddate.com\)](https://timeanddate.com). Mr. Smith and other parties testified that they routinely walk in Red Rocks Park on summer evenings, including walks to watch the sun set over the lake. The applicant plans to start its events at 7:30 or 8:30 pm, and to open its doors an hour before that time (Exhibit 14 p.7). The noise of up to 1500 patrons and their cars, in the parking lot across the street from Red

Rocks Park, will arise during Mr. Smith's and other parties' summer evening use of Red Rocks Park. Burton failed to satisfy its burden of production under Criterion 9(K).

In sum, neither the test from *Quechee Lakes Corporation*, Findings of Fact, Conclusions of Law and Order, LUP #3W0411-EB, #W0439-EB, 11/4/85, and nor baseline comparison from *Hinesburg Hannaford Act 250 Application* can be applied. Were the Commission to attempt to apply the *Quechee Lakes* test to the unknown Lmax noise impacts of a proposed 1500-person concert event, in the midst of residential neighborhoods and across the street from the park that the City of South Burlington treats as the crown jewel of its parks, the Commission would be engaging in speculation. Were the Commission to attempt to determine the extent of the change in noise at the Park from the baseline of existing noise, the Commission would have to invent the baseline data out of thin air. The application must be dismissed.

The same problem plagues application of Criterion 10 – in the absence of Lmax modeling, surmise and guesswork must be called upon to predict conformance to the Burlington and South Burlington Comprehensive Plans and the Regional Plan. The Burlington Comprehensive Plan, Ex. 113, on pp. 89-91, classifies Arthur Court and Austin Drive as planned residential areas. It states that “small and subtle changes over time” are expected and appropriate in these areas, and that “we are planning to maintain the primarily residential character, while allowing for some modifications which enable these neighborhoods to continue to be vital, better connected, and more resilient to the influence of nearby growth areas.”

In these parts of the community, we anticipate small and incremental change that is consistent with the existing development pattern, building scale, and neighborhood character—details which are unique to various parts of the city. These include our residential neighborhoods, where it is important to preserve and enhance what makes them great. However, these areas aren't locked in time. This plan anticipates that these areas will see some small and subtle changes over time that support their ability to meet the evolving needs of current and future families and households.

How these neighborhoods evolve depends on their current development pattern and unique influences and threats relative to the rest of the city.

The purpose of these areas is to strengthen existing neighborhoods which feature predominantly residential uses. Throughout the city, there is great diversity in the housing density (single-family or multi-family), pattern (buildings' features and layout of streets), and scale (height or intensity of development) of these neighborhoods and their relationship to nearby civic, commercial, and recreational resources. Within these areas, we are planning to maintain the primarily residential character, while allowing for some modifications which enable these neighborhoods to continue to be vital, better connected, and more resilient to the influences of nearby growth areas.

Pages 98-99 discuss further commercial/industrial growth in the Enterprise district sandwiched between the Arthur Court and Austin Drive residential districts -- but adds this (emphasis added):

Further, this plan anticipates the implementation of projects and policies that will protect adjacent neighborhoods from impacts such as traffic, air quality, and noise from nearby uses, and that will improve pedestrian and bicycle safety, expand neighborhood-serving businesses and amenities, and increase connectivity to nearby parks and the lake.

“Small and subtle changes” to these residential neighborhoods would not encompass nightly violations of statewide standards for noise. A new use in the Enterprise zone that does not “protect” the adjacent residential neighborhoods from this noise would conflict with the Plan. Burton’s failure to provide Lmax predictions deprive the Commission of the ability to make findings about conformance to the Burlington Comprehensive Plan.

South Burlington’s Comprehensive Plan, Ex.116, at page 3-27, states that in the Queen City Park area, “residential and open space uses should continue to predominate.” The Burton commercial use will predominate if that use produces sound impacts that exceed 70 dbA Lmax at the property line, or 55 dBA at residents’ homes or on trails at Red Rocks Park. Without Lmax data, the Commission cannot determine what use will predominate.

The Chittenden County Regional Plan, ECOS, (quoted in Ex.05 p.10) sets forth Goal No. 2, “*Conserve, protect and improve valued scenic, recreational, and historic resources and*

opportunities.” Without Lmax data, the Commission cannot determine whether the proposed use will harm the valued scenic and recreational resource that is Red Rocks Park.

C. Burton Did Not Satisfy Its Burden to Produce Sufficient Evidence Upon Which to Base Findings on Water Contamination Under Criteria 1 and 1(B)

Burton also has failed to satisfy its burden of production under Criteria 1 and 1(B). The Act requires submission of evidence sufficient to base a finding upon that toxic chemicals or other pollutants that may be released by the project will not find their way into water supplies. In *Re Sherman Hollow, Inc.*, 4C0-4225-EB (2/17/89), for example, a golf course was proposed. Maintenance of the golf course would require use of pesticides and fertilizers. The site had permeable soils and a shallow ground water table. The applicant proposed a condition requiring it to monitor ground water for several years and report results to the Department of Health. The Board ruled that this did not suffice. The applicant was required, in order to meet its burden of production, to submit evidence about “the rate and direction of groundwater flow” and the “depth of the water table” throughout the site. It had not done so. *Id.* at 31-34. The permit was denied.

In the present matter, the failure to produce necessary data is more problematic than it was in *Sherman Hollow*. Toxic chemicals reside in the soils at the 15.6-acre site, and the ground water table at the site is only two feet deep because of a silty layer about two feet deep. Exhibits 12, 107 (p.3) and 143 (p.14). One of the known locations of toxic chemicals is the trench into which chemicals used to etch metals were poured. The trench is on the northwest portion of the site, according to an EPA report. Ex. 104, pp.218, 223 (pdf pp. 5 & 10). The northwest part of the site appears to be where the wetland pond and the pretreatment swale for the proposed new use would be located. Ex. 34.

Ex. 104, p.221 and 233 (pdf pp.8 and 10), the EPA report, warned “Potential Groundwater contamination could migrate to a municipal well.” The EPA report identified only one municipal well – the Fire District well – and stated that it is 1050 feet from the site. Chemicals released into the groundwater at the site by construction and operation of the proposed wetland pond and pretreatment swale, if they flow south or southwest, may fulfill the EPA prophecy. See, e.g., Ex.136 p.22, showing the VELCO site overlapping with the Source Protection Area.

Exhibit 107 states that groundwater flow is to the northwest -- but, as Mr. Crowley testified, the cited source for this conclusion is a single study from 1989, which drilled several test wells on the north side of the property, and then assumed this data applies everywhere in the vicinity. There is no data about ground water flow to the south and southwest, in the direction of the Fire District well and Source Protection Area. The closest is a relatively recent well at the VELCO substation, which went through 50 feet of sand before reaching a few feet of clay then bedrock; no contaminant testing or flow assessment has been conducted on this well. S. Crowley testimony.

The only way to ascertain whether ground water flows toward the well and Source Protection Area is to drill a small number of test wells in a strategic pattern along the southern perimeter of the site, comparing pressures and direction of flow, as well as relative height of the water table. Until that is done, the Commission cannot make findings under Criteria 1 and 1(B).

D. Proposed Conditions

If the Commission decides to issue a permit, the following conditions are sought.

- 1. Noise at Arthur Court, Austin Drive, Queen City Park Residential Properties and Red Rocks Park (Criteria 1, 7, 8, 9(K) and 10).**

The following conditions are based upon Ex. 9, Act 250 precedents, and the examination of Mr. Duncan.

- A. Noise subject to these conditions includes noise from events, noise of persons on the patio, noise of persons and cars in parking lots, noise from persons walking to and from cars parked on streets at close of events, and noise of cars parked on streets at close of events.
- B. Noise limit of 70 dbA Lmax at the Burton property line and 55 dbA Lmax at areas of frequent outdoor use such as Red Rocks Park trails, and private residential backyards and patios.
- C. Noise limit of 45 dbA 8-hour Leq at residences (outside, one meter from wall) in nighttime. This is the World Health Organization standard.
- D. Independent noise monitoring at applicant's expense for first three years of operation, at property line E of site (3 locations, one S and two N of building), at property line S of site, at property line W of site (2 locations), and on property line N of site, at closest 2 backyards on Arthur Court, at backyard of Red Rocks Condominiums (but not behind Rhino or Edland), at De Terra residence on Central Ave., and at nearest trail at Red Rocks Park.

2. Red Rocks Park Additional Mitigation (Criteria 8, 9(K) and 10)

The Massachusetts L90 standard should be complied with, in addition to the 55 dBA standard. It states:

A noise source will be considered to be violating the Department's noise regulation (310 CMR 7.10) if the source:

- 1. Increases the broadband sound level by more than 10 dB(A) above ambient, or
- 2. Produces a "pure tone" condition - when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. 'Ambient' is defined as the background A-weighted sound level that is exceeded 90% of the time, measured during equipment operating hours. 'Ambient' may also be established by other means with consent of the Department.

Paulini Loam LLC v. Ottaviana (MA Land Ct. 2015), 23 LCR 436, 2015 Mass. LCR LEXIS 131, 2015 WL 4158239.

As applied to Red Rocks Park, this condition would read as follows:

A. Noise subject to these conditions includes noise from events, noise of persons on the patio, noise of persons and cars in parking lots, noise from persons walking to and from cars parked on streets at close of events, and noise of cars parked on streets at close of events.

B. The Higher Ground/Burton project shall create no noise that: 1) increases the broadband sound level by more than 10 dB(A) above ambient, or 2) produces a "pure tone" condition - when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured at the nearest Red Rocks Park trail. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during Higher Ground operating hours.

C. Independent noise monitoring at applicant's expense for first three years of operation at nearest RRP trail.

3. Limits on the hours of operation (Criteria 1, 5, 7, 8, 9(K) and 10).

- A. Events, and all associated activities such as patio use and restaurant use, shall terminate no later than 10 pm except as set forth in B and C.
- B. One weekend night per week, either a Friday or Saturday, all events and associated activities such as patio use and restaurant use will terminate no later than 11 pm. A weekend is Friday evening or Saturday evening.
- C. Up to 4 events per calendar year may close after midnight. Burton shall provide public notice on its website at least 30 days in advance of each such event.
- D. The total number of events per year shall not exceed 120 evenings; daytime events are not subject to this limit.
- E. On weekdays doors will open for events no earlier than 6:30 and on weekends no earlier than 6:00 as conditioned in the DRB approval.

4. Limits on number of tickets (Criteria 1, 5, 7, 8, 9(K) and 10)

Although enforcement of no-parking rules may help (see below), persons who have paid for their event tickets, and/or driven a significant distance, are not going to turn around and drive home when they find that the Burton lot is full. They will park wherever they can find a space, and will treat the cost of a parking ticket as part of the price of attendance. Therefore, the following is needed.

- A. Tickets sold shall be limited to 1000. This is the number of parking spaces approved by DRB, 426, times 2.5 = 1065, based on the FHWA guidance document, minus parking spaces for staff and entertainers and their trucks and buses.

- B. If additional parking spaces are leased, or use of shuttle buses from UVM or downtown parking garages has been demonstrated to reduce number of cars driven, Burton may return to the District Commission for amendment of permit.

5. Law Enforcement at Burton/HG expense (Criteria 5, 7, 8, 9(K) and 10)

- A. Burton and/or Higher Ground contract with a Sheriff's Department for one or more officers to be on duty in South Burlington, Burlington and Red Rocks Park, to enforce parking bans, authorize towing of parked vehicles, enforce violations of Burlington and South Burlington ordinances as well as state law and direct traffic. The Sheriff's Department shall commence duty two hours before event times until after event starts; return to duty at scheduled end of event at least one hour, until the parking lot is empty of customer cars.

6. Pedestrian and bicyclist safety (Criterion 5)

- A. Prior to opening of the venue, there shall be completed a continuous sidewalk, signaled crosswalks and protected bike lanes on Queen City Park Road from Pine Street to Home Avenue and on Home Avenue to Pine Street.

7. Curb cuts (Criterion 5)

- A. The property curb cuts shall be relocated to the western edge of the property onto the north south portion of QCP Road to reduce congestion on the one lane bridge and in preparation for the eventual completion of the Champlain Parkway.

8. Signaling or signage at the one lane bridge (Criterion 5)

- A. In addition to the conditions imposed by the Development Review Board, a traffic signal or two flaggers shall be on duty at the one-lane bridge during the hour before and the hour after events.

9. No outdoor live music in any part of the outdoor hub (Criteria 1, 8, 9(K) and 10)

- A. No outdoor live music or recorded music is allowed at any part of the site.

10. Indemnification and Surety Bond (Criteria 1 and 7)

Pursuant to Criterion 7, the following conditions are appropriate (see, e.g., *Re Howard and Louise Leach Land Use Application*, #6FO316-EB, Findings of Fact and Conclusions of Law, 6/11/86 at p.30).

- A. Burton shall reimburse the City of South Burlington for the increased costs at Red Rocks Park caused by Higher Ground events, including but not limited to costs of security and maintenance.
- B. Burton shall reimburse Fire District No.1 for its increased costs caused by Higher Ground events, including but not limited to costs of security and maintenance, and also any increased costs caused by potential or demonstrated migration of contaminants, including but not limited to increased monitoring costs and costs of remediation.
- C. In the event payment is not promptly made after billing, the City of South Burlington and/or the Fire District may request amendment of this condition to require that a surety bond shall be posted by Burton to indemnify the City of South Burlington or the Fire District for the amounts set forth above. The amount of the bond shall be determined by the Commission and may be revised at any time upon application by the City of South Burlington, Fire District No.1, or Burton.

11. Entertainment Permit (Criteria 1, 5, 7, 8, 9(K) and 10)

- A. Conditions 1-10 shall be incorporated into every application for a Burlington Entertainment permit as a proposed condition of that permit.
- B. Every application for an entertainment permit shall be warned at least 14 days in advance of the filing of the permit application by email or mail to residents of Queen City Park, Arthur Court, and Austin Drive, including a representative of the City of South Burlington, who inform Burton that they wish to be notified and state the manner of notice; the application for the Entertainment Permit shall certify that this notice has occurred.

12. Violation of Conditions

- A. Significant violation of any of these conditions is grounds for permit revocation.

Date: April 26, 2021

/s/James A. Dumont
James A. Dumont, Esq.
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15 Main St./PO Box 229
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STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION

Act 250 Land Use Permit Application)
#4C0174-6 & 4C0368-3)
The Burton Corporation, Burlington)

**CITY OF SOUTH BURLINGTON'S MEMORANDUM IN SUPPORT OF THE SMITH,
ET AL. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NOW COMES party-by-right, City of South Burlington, by and through its City Attorney and, for the reasons set forth in the Proposed Findings of Fact and Conclusions of Law submitted by Smith, et al., filed of even date herewith, asks that the Commission deny the application submitted by the Burton Corporation. Specifically, the Commission should find and conclude that the application has failed to satisfy its burden of production with regard to impacts under Criterion 9(K). In the alternative, if the application is not denied, that the proposed conditions submitted by Smith, et al. be applied to the permit.

Memorandum

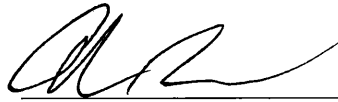
As set forth in the Proposed Findings of Fact and Conclusions of Law submitted by Smith, et al., which the City of South Burlington joins and adopts by reference, the applicant has failed to meet its burden of production particularly with regards to noise and traffic impacts on the wildlife, natural resources, and recreational use of the vital Red Rocks Park natural area – an area of substantial public stewardship and investment. For the many reasons discussed in the Smith, et al. Proposed Findings of Fact and Conclusions of Law, the Commission should deny the Burton Corporation's application.

In the alternative, if the Commission decides to issue the permit, the City of South Burlington requests that the reasonable conditions submitted by Smith, et al., which the City

hereby joins and adopts by reference, be applied to the permit in order to mitigate noise and traffic impacts to the City's public investments and natural areas.

DATED at South Burlington, Vermont this 26th day of April 2021.

By:



Andrew M. Bolduc, Esq.
City of South Burlington
575 Dorset Street
South Burlington, VT 05403
(802) 846-4117
abolduc@sburl.com

CERTIFICATE OF SERVICE

I hereby certify on this 26th day of April, 2021, a copy of the foregoing City of South Burlington's Memorandum in Support of the Smith, et al. Proposed Finds of Fact and Conclusions of Law concerning Act 250 Land Use Permit Application 4C0174-6,4C0368-3, was sent via email to the individuals at their email addresses listed below.

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FOR YOUR INFORMATION

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DATED at South Burlington, Vermont this 26th day of April, 2021.

/s/ Andrew Bolduc
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**ACT 250 NOTICE
MINOR APPLICATION #4C0051-3
10 V.S.A. §§ 6001 - 6093**

On April 16, 2021, City of Burlington Parks, Recreation & Waterfront, 645 Pine Street, Burlington, VT 05401 filed application number 4C0051-3 for a project generally described as rehabilitation of existing multi-use path through Oakledge Park and construction of a new universally accessible playground, path connections, 8 new universally accessible parking spaces, ADA compliant beach access, restroom improvements, landscaping, and lighting upgrades. The project is located on Flynn Avenue in Burlington, Vermont.

The District 4 Environmental Commission is reviewing this application under Act 250 Rule 51—Minor Applications. A copy of the application and proposed permit are available for review at the office listed below. The application and a draft permit may also be viewed on the Natural Resources Board's web site (<http://nrb.vermont.gov>) by clicking on "Act 250 Database" and entering the project number "4C0051-3."

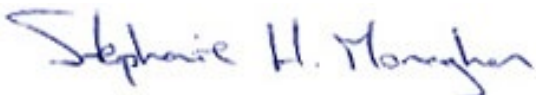
No hearing will be held and a permit may be issued unless, on or before **May 14, 2021**, a person notifies the Commission of an issue or issues requiring the presentation of evidence at a hearing, or the Commission sets the matter for a hearing on its own motion. Any person as defined in 10 V.S.A. § 6085(c)(1) may request a hearing. Any hearing request must be in writing to the address below, must state the criteria or sub-criteria at issue, why a hearing is required and what additional evidence will be presented at the hearing. Any hearing request by an adjoining property owner or other person eligible for party status under 10 V.S.A. § 6085(c)(1)(E) must include a petition for party status under the Act 250 Rules. Prior to submitting a request for a hearing, please contact the district coordinator at the telephone number listed below for more information. Prior to convening a hearing, the Commission must determine that substantive issues requiring a hearing have been raised. Findings of Fact and Conclusions of Law may not be prepared unless the Commission holds a public hearing.

If you feel that any of the District Commission members listed on the attached Certificate of Service under "For Your Information" may have a conflict of interest, or if there is any other reason a member should be disqualified from sitting on this case, please contact the District Coordinator as soon as possible, and by no later than May 14, 2021.

If you have a disability for which you need accommodation in order to participate in this process (including participating in a public hearing, if one is held), please notify us as soon as possible, in order to allow us as much time as possible to accommodate your needs.

Parties entitled to participate are the Municipality, the Municipal Planning Commission, the Regional Planning Commission, affected state agencies, and adjoining property owners and other persons to the extent that they have a particularized interest that may be affected by the proposed project under the Act 250 criteria. Non-party participants may also be allowed under 10 V.S.A. Section 6085(c)(5).

Dated at Essex Junction, Vermont this 23rd day of April, 2021.

By: 
Stephanie H. Monaghan, District Coordinator
111 West Street
Essex Junction, VT 05452
802-879-5662
Stephanie.Monaghan@vermont.gov



LAND USE PERMIT AMENDMENT

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

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

[phone] 802-879-5614

This is a **PROPOSED** permit; please submit any written comments to Stephanie H. Monaghan, 111 West Street, Essex Junction, VT 05452 by **May 14, 2021**.

A permit will NOT be issued until the District Commission receives and reviews the following information:

1. Vermont Wetland Permit issued by the ANR-DEC Watershed Management Division.
2. Construction General Permit issued by the ANR-DEC Watershed Management Division.
3. ANR review of project as it relates to tree cutting and bat habitat.
4. ANR review of riparian buffer and wetland buffer – proposed conditions for each buffer.
5. Confirm maximum mounting height of new light fixtures at 14 ft (see Condition 28).
6. Sign off from VT Division for Historic Preservation.

CASE NO: 4C0051-3
City of Burlington Parks, Recreation &
Waterfront
645 Pine Street
Burlington, VT 05401

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment #4C0051-3, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 205, Page 239; and Book 361, Page 776, of the land records of the City of Burlington, Vermont, as the subject of deeds to the City of Burlington.

This permit specifically authorizes the rehabilitation of the existing multi-use path through Oakledge Park and construction of a new universally accessible playground, path connections, 8 new universally accessible parking spaces, ADA compliant beach access,



restroom improvements, landscaping, and lighting upgrades. The project is located on Flynn Avenue in Burlington, Vermont.

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

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

The approved plans are:

"Site Plan for Oakledge Park," dated 12/13/20 (Exhibit #004);
Sheet 18 - "Landscape Layout Plan," dated 4/12/21 (Exhibit #010);
Sheet 26 - "Planting Plan," dated 4/12/21 (Exhibit #012);
Sheet 1 - "VWP Impact Exhibit," dated 2/26/21 (Exhibit #013);
Sheet 41 - "EPSC Narrative (Sheet 1 of 2)," dated 4/13/21 (Exhibit #014);
Sheet 42 - "EPSC Narrative (Sheet 2 of 2)," dated 4/13/21 (Exhibit #015);
Sheet 43 - "EPSC Details," dated 4/13/21 (Exhibit #016);
Sheet 44 - "EPSC Plans (Sheet 1 of 5)," dated 4/13/21 (Exhibit #017);
Sheet 45 - "EPSC Plans (Sheet 2 of 5)," dated 4/13/21 (Exhibit #018);
Sheet 46 - "EPSC Plans (Sheet 3 of 5)," dated 4/13/21 (Exhibit #019);
Sheet 47 - "EPSC Plans (Sheet 4 of 5)," dated 4/13/21 (Exhibit #020);
Sheet 48 - "EPSC Plans (Sheet 5 of 5)," dated 4/13/21 (Exhibit #021);
Sheet 18 - "Landscape Layout Plan," dated 4/12/21 (Exhibit #024);
Sheet 20 - "Landscape Layout Plan," dated 4/12/21 (Exhibit #025);
Sheet 32 - "Traffic Sign Summary Sheet," dated 4/13/21 (Exhibit #026);
Sheet 33 - "Sign Detail Sheet," dated 4/13/21 (Exhibit #027);
"Signage for Playground," dated 4/1/21 (Exhibit #028);
Sheet 30 - "Landscape Lighting Plan," dated 4/12/21 (Exhibit #030);
Sheet 31 - "Lighting Details," dated 4/12/21 (Exhibit #031);

Sheet L1-1 - "Playground Lighting Plan," dated 4/1/21 (Exhibit #032);
Sheet 27 - "Planting Plan," dated 4/9/21 (Exhibit #033);
Sheet 27 - "Landscape Plan," dated 4/12/21 (Exhibit #034);
Sheet L 1-1 - "Materials Plan," dated 8/4/17, last revision 11/20 (Exhibit #035);
Sheet 13 - "Plan and Profile (Sheet 1 of 5)," dated 4/13/21 (Exhibit #037);
Sheet 14 - "Plan and Profile (Sheet 2 of 5)," dated 4/13/21 (Exhibit #038);
Sheet 15 - "Plan and Profile (Sheet 3 of 5)," dated 4/13/21 (Exhibit #039);
Sheet 16 - "Plan and Profile (Sheet 4 of 5)," dated 4/13/21 (Exhibit #040);
Sheet 17 - "Plan and Profile (Sheet 5 of 5)," dated 4/13/21 (Exhibit #041);
Sheet 5 - "Typical Sections (1 of 2)," dated 4/13/21 (Exhibit #045);
Sheet 6 - "Typical Sections (2 of 2)," dated 4/13/21 (Exhibit #046);
Sheet 21 - "Grading Plan," dated 4/12/21 (Exhibit #047);
Sheet L 3-1 - "Grading & Drainage Plan," dated 8/4/17, last revision 11/20 (Exhibit #048);
and
"Illustrative Plan," dated 8/4/17, last revision 11/20 (Exhibit #050).

3. All conditions of Land Use Permit #4C0051 and amendments are in full force and effect except as further amended herein.
4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Authorization of Notice of Intent (NOI #) under Construction General Permit 3-9020 issued on (date) by the ANR Watershed Management Division; and
 - b. Individual Wetland Permit (permit #) issued on (date) by the ANR Watershed Management Division.
5. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
7. A copy of this permit and plans shall be on the site at all times throughout the construction process.

8. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
12. No new floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
13. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
14. The Permittee shall comply with Exhibits #001b, 014-021, and 047-048 (Revised Schedule B; EPSC Narratives and Plans; Pause Place Grading; and Playground Grading) for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
15. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
16. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each workday. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is

occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches).

17. All disturbed areas of the site shall be stabilized, seeded, and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 15. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
18. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snow fencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
19. Starting at the commencement of construction, a Professional Engineer or other soil erosion expert approved in writing by the District Commission shall inspect the site at least once per week and at critical times until the project is completed to ensure that the erosion prevention and sediment control plans are being followed. He or she shall certify by submitting a monthly site inspection report to the Commission that all erosion prevention and sediment controls are in place as specified and approved herein, properly maintained, and effective. Any corrective measures noted by the Professional Engineer shall be implemented immediately.
20. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
21. [Riparian buffer zone condition placeholder]
22. [Wetland buffer zone condition placeholder]
23. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
24. [Bat condition placeholder]
25. [VT DHP condition placeholder]
26. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits #012 and 033-035 (Planting Plans – Flynn Intersection; Planting Plans – Austin Drive; Planting Plans- Upper Parking Lot; and

Playground Landscaping Plan) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.

27. Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree line and around trees to be retained as depicted on Exhibits #012 and 033-035.
28. The installation of exterior light fixtures is limited to those approved in Exhibits #029-032 (BPRW Lighting Standards; Greenway Lighting Plans (2); and Playground Lighting Plan) and shall be mounted no higher than 14 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
29. The installation of exterior signage is limited to those approved in Exhibits #023-028 (BPRW Signage Standards; and Greenway Signage Plans). The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
30. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment before any written contract of sale is entered into.
31. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
32. All site work and construction shall be completed in accordance with the approved plans by **October 1, 2024**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
33. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by

check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

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

Dated this ____ day of May, 2021.

By _____
Thomas A. Little, Chair
District 4 Commission

Members participating in this decision:

Monique Gilbert

Scott Baldwin

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

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

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

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

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

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

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CERTIFICATE OF SERVICE

I hereby certify on this 23rd day of April, 2021, a copy of the foregoing ACT 250 MINOR NOTICE #4C0051-3, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to NRB.Act250Essex@vermont.gov

City of Burlington Parks, Recreation, & Waterfront
c/o Sophie Sauve
645 Pine Street
Burlington, VT 05401
ssauve@burlingtonvt.gov

Global Petroleum
22 Flynn Avenue
Burlington, VT 05401
sdecell@globalp.com

Katherine Schadt, City Clerk
Chair, Selectboard/Chair, Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov; lolberg@burlingtonvt.gov

Chittenden County Regional Planning Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov; PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

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

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
Thomas Little, Chair
Monique Gilbert/Scott Baldwin
111 West Street
Essex Junction, VT 05452

Natural Resources Conservation Service
68 Catamount Park, Ste. B
Middlebury, VT 05753
marybeth.whitten@vt.usda.gov

Winooski NRCD Office
617 Comstock Road, Suite 1
Berlin, VT 05602
info@winooskinrcd.org

Ethan Tapper, County Forester/FPR
John Gobeille/Toni Mikula, ANR/Dept. of Fish & Wildlife
111 West Street
Essex Junction, VT 05452
ethan.tapper@vermont.gov
john.gobeille@vermont.gov; toni.mikula@vermont.gov

Seven Days Classified Ad Section
255 South Champlain Street, PO Box 1164
Burlington, VT 05402
classifieds@sevendaysvt.com

Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05446
kim.jones@greenmountainpower.com

Vermont Gas Systems
PO Box 467
Burlington, VT 05402
efficiency@vermontgas.com

Efficiency Vermont
128 Lakeside Ave., Suite 401
Burlington, VT 05401
pics@veic.org

Champlain Water District
403 Queen City Park Road
South Burlington, VT 05403
mike.barsotti@champlainwater.org

ADJOINING LANDOWNERS

Available via:
[https://anrweb.vt.gov/PubDocs/ANR/Planning/4C0051-3/Application%20Documents/005a%20Oakledge%20Adjoiner%20Mailing%20Labels%20\(4-20-2021\).pdf](https://anrweb.vt.gov/PubDocs/ANR/Planning/4C0051-3/Application%20Documents/005a%20Oakledge%20Adjoiner%20Mailing%20Labels%20(4-20-2021).pdf)

Dated at Essex Junction, Vermont, this 23rd day of April, 2021.



Jessica Mason
Natural Resources Board Technician
802-879-5614
Jessica.Mason@vermont.gov

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LAND USE PERMIT AMENDMENT

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

[phone] 802-879-5614

CASE NO: 4C1043-1A

University of Vermont and State
Agricultural College
16 Colchester Avenue
Burlington, VT 05405

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment #4C1043-1A, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 979, Page 409; Book 154, Page 681; Book 54, Page 67; Book 31, Page 168; and Book 5, Page 365, of the land records of the City of Burlington, Vermont, as the subject of deeds to University of Vermont and State Agricultural College.

This permit specifically authorizes the temporary suspension of a 200 space off-campus parking lot as required in item 4(b) of UVM's Local Parking Management Plan (Exhibit #018 of LUP #4C1043-1). The parking lot is located at 351 Pine Street in Burlington and is associated with UVM's Health Science Research Facility located at 149 Beaumont Avenue in Burlington, Vermont.

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

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



3. All conditions of Land Use Permit #4C1043, Land Use Permit #4C0852, and amendments are in full force and effect except as further amended herein.
4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
6. No further subdivision, alteration, and/or development on the tracts of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
7. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
8. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
9. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment before any written contract of sale is entered into.
10. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #4C1043-1A in all deeds of conveyance and leases.
11. The Permittee is authorized for a temporary suspension of item 4(b) of UVM's Local Parking Management Plan (Exhibit #018 of LUP #4C1043-1) until either: (1) UVM's parking utilization rate reaches 83%, or (2) the Health Science Research Facility opens for use, whichever comes first. The Permittee will evaluate the parking utilization rate monthly and provide this data to the District Commission as it becomes available.
12. The Project shall be completed in accordance with the approved plans by **October 1, 2023**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
13. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information

necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

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

Dated this 26th day of April, 2021.

By /s/Parker Riehle
Parker Riehle, Vice Chair
District 4 Commission

Members participating in this decision:

Monique Gilbert

Kate Purcell

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

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

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

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

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

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

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Exhibit List

Application #	4C1043-1A (3/23/21)
Applicant(s)	The University of Vermont & State Agricultural College
Landowner(s)	The University of Vermont & State Agricultural College
Project Town(s):	Burlington, Vermont



Natural Resources
Board

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	3/19/21	001 Act 250 Application for Temporary LPMP Adjustment	Applicant
002	3/19/21	002 Cover Letter	Applicant
003	3/19/21	003 Schedule G	Applicant
004	3/19/21	004 UVM Main Campus List of Adjoiners	Applicant
005	3/19/21	005 UVM List of Courtesy Notifications	Applicant
006	3/19/21	006 UVM Firestone Adjoiners and Courtesy Notifications Map	Applicant
007	3/19/21	007 JIPMP 2020-2022 FINAL	Applicant
008	3/19/21	008 JIPMP Supplement 2020-2022 FINAL	Applicant
009	3/19/21	009 CATMA COVID-19 Memo to City	Applicant
010	3/19/21	010 UVM Local Parking Management Plan	Applicant
011	3/19/21	011 C1.00 Overall Site Plan UVM Firestone Addition	Applicant
012	3/19/21	012 Application Signature Pages	Applicant
013	3/23/21	013 Lease Agreement for 351 Pine Street, Burlington - Vermont Railways, Inc. to University of Vermont (10/11/19)	Applicant
014		014	
015		015	
016		016	
017		017	
018		018	
019		019	
020		020	

CERTIFICATE OF SERVICE

I hereby certify on this 26th day of April, 2021, a copy of the foregoing ACT 250 LAND USE PERMIT #4C1043-1A, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to NRB.Act250Essex@vermont.gov

University of Vermont
c/o Lani Ravin
16 Colchester Avenue
Burlington, VT 05405
Lani.ravin@uvm.edu; lisa.kingsbury@uvm.edu

Katherine Schadt, City Clerk
Chair, Selectboard/Chair, Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov;
lolberg@burlingtonvt.gov

Chittenden County Regional Planning Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov; PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

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

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
Parker Riehle, Vice Chair
Monique Gilbert/Kate Purcell
111 West Street
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 26th day of April, 2021.



Jessica Mason
Natural Resources Board Technician
802-879-5614
Jessica.Mason@vermont.gov

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Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur

Burlington Planning Commission

Tuesday, April 27, 2021, 6:30 P.M.

Remote Meeting via Zoom

Minutes

Members Present	E Lee, A Montroll, H Roen, A Friend, J Wallace-Brodeur, B Baker
Staff Present	D White, M Tuttle, S Gustin, K Sturtevant
Attendance	S Bushor, A Gonyaw, D Lyons, Lindsay

I. Agenda

Call to Order	Time: 6:32pm
Agenda	No Change.

II. Chair Report

A Montroll	Next Executive Committee meeting will be on May 11 before the Planning Commission meeting. Requested housing topic to be part of the Executive Committee meeting agenda.
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III. Director's Report

D White	Upcoming work on FY22 Budget and work plan. Will be working with Mayor's office on another Housing Summit related to racial equity and missing middle housing. Met with Councilor Hanson who wants to pursue eliminating parking minimums city-wide.
---------	--

IV. Public Forum

Name(s)	Comment
A Gonyaw:	Own a 3-unit at King St. & Pine St. 2019 FD5 boundary included properties near this location, and believe that the property should have been included. Would like the Commission to strongly consider this request to use building in a way that is appropriate in FD5, such as a first level store front.

V. Proposed CDO Amendment: Height Measurement, Dormers & Eaves

Action: Approve Municipal Bylaw Amendment report and warn for public hearing		
Motion by: A Friend	Second by: J Wallace Brodeur	Vote: Approved unanimously
Type: Action	Presented by: D White	
Two amendments brought from the Ordinance Committee to clarify how building height is measured, how to measure dormers, and to define eaves. In particular, helps clarify measurement along a street, and to ensure that building height measured along a slope helps a building stair-step and mimic the topography.		

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

VI. Proposed CDO Amendment: Act179 Changes

Action: Approve Municipal Bylaw Amendment report and warn for public hearing		
Motion by: E Lee	Second by: J Wallace Brodeur	Vote: Approved unanimously
Type: Action	Presented by: D White	
Purpose is to amendment CDO to be consistent with statutory changes by the VT legislature intended to promote housing. Changes the CDO for definition and size requirements for ADUs, development on pre-existing small lots, and character of the area standards relative to projects of 4 or fewer units. Ordinance Committee recommended an approach offered by staff to ensure that residential uses are not Conditional Use in residential districts. Change applies to duplexes in R-L district and multi-unit dwellings of 3+ units within Institutional District. Specific changes are outlined in agenda materials posted at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas Discussion: - Commissioners supported this change and several indicated that it is important to have a conversation about allowing multi-family in RL. - A Commissioner also noted that if not changing the exterior of a building, this makes the process of adding an additional unit more predictable. - S Bushor spoke to the changes for bedrooms and occupants for ADU's and concerned that this will become a workaround for off-campus student housing and getting around the 4-unrelated ordinance.		

VII. Proposed CDO Amendment: Article 14 Updates

Action: Refer to Planning Commission Ordinance Committee to review, and to consider request to amend the Form District 5 Boundary		
Motion by:	Second by:	Vote: Approved unanimously
Type: Action	Presented by: D White	
Amendment is a package of amendments including clarifications, corrections, and minor modifications to the downtown form-based code since it was adopted several years ago. Specific changes are outlined in agenda materials posted at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas		
Discussion & Notes:		
• A Commissioner requested that the code reference consideration for the carbon impact of materials, particularly for sustainable hardwoods for decks that discourage use of Ipe; an exemption for requirement for canopies for high performance energy buildings; and to allow cast concrete to be used as a material. • A Commissioner asked for clarification about the change to definition and standards for the location of parking. D White clarified that it is just to clarify whether the parking is incorporated within a building or in a standalone building behind another principal building. • A Commissioner asked about the new civic space type intended for Perkins Pier. D White noted that it is intended to create a civic space type that reflects the level of lot coverage and types of uses that enable Perkins Pier to be reimaged, and reflects work done several years ago to identify allowable lot coverage for each City park.		

VIII. Commissioner Items

Next Meetings are on May 11 and 25 at 6:30pm.
J Wallace-Brodeur shared that she will not be reapplying to the Planning Commission.

*Tuesday, April 27, 2021***IX. Minutes and Communications**

Action: Approve the minutes and accept the communications		
Motion by: A Friend	Second by: H Roen	Vote: Approved unanimously
Minutes Approved: April 13, 2021		
Communications Filed:		
In the agenda packet and posted online		

X. Adjourn

Adjournment	Time: 7:47pm	
Motion: H Roen	Second: E Lee	Vote: Approved Unanimously



Andy Montroll, Chair

Signed: May 12, 2021

Respectfully submitted by:



Meagan Tuttle, Comprehensive Planner