

Burlington Planning Commission

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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, March 9, 2021, 6:30 P.M.

Remote Meeting via Zoom

To Join the Meeting on a Computer

Link: <https://us02web.zoom.us/j/82856321624>

To Join the Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 828 5632 1624

AGENDA

I. Agenda

II. 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.*

III. Proposed CDO Amendment: Short Term Rentals

The Joint Committee will continue to discuss the draft framework for regulating short-term rentals (STR) in the Burlington *Comprehensive Development Ordinance*, including elements that will be relocated to *Ch. 18 Minimum Housing Standards*.

Information related to this item is included in the agenda packet and online, including:

- Updated staff memo regarding STR amendment and remaining policy questions: p. 3
- Draft CDO (Zoning) Amendment Language: p. 8-12
- Draft Ch. 18 (Housing Code) Amendment Language: p. 13

Staff Recommendation: The Committee is requested to provide specific feedback on any further changes to the provisions in either the *CDO* or *Ch. 18*, and direction on how it wishes to move forward with this item.

IV. STR Public Forum

Public forum on the proposed framework for Short Term Rentals.

V. Commissioner Items

- a. Upcoming Meetings: March 23 and April 13, 2021 at 6:30pm

VI. Minutes & Communications

- a. The minutes of the February 23, 2021 meeting are enclosed in the agenda packet on p. 25.
- b. Communications are enclosed in the agenda packet beginning on p. 28.

VII. Adjourn

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

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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: Burlington Planning Commission & City Council
Ordinance Committee
FROM: Scott Gustin, Principal Planner & Zoning Division Manager
Meagan Tuttle, Comprehensive Planner, Office of City Planning
DATE: March 9, 2021
RE: Proposed CDO Amendment ZA-20-05: Short Term Rentals & Ch. 18 Minimum Housing Code amendments

Overview & Background

This package of amendments resulted from the 2019 Mayor's Housing Summit, and the subsequent Council Resolution in October 2019, which directed a Joint Committee of the Planning Commission & City Council Ordinance Committee to create a regulatory framework for short-term rentals that created tiers and disincentivizes the most impactful uses in order to:

- Limit the number of housing units converted for short-term rental purposes;
- Ensure that conversions contribute to efforts to preserve and expand affordable housing;
- Provide some flexibility for homeowners to earn income; and
- Recognize that some supply of short-term rentals benefits the Burlington economy.

Defining Short Term Rentals

A short term rental (or STR) is typically a dwelling unit that is rented in whole or in part to guests for less than 30 consecutive days for overnight stays. It may be an apartment, a house, or just a bedroom within a housing unit. AirBnB exemplifies short term rentals.

In the last several years, there has been significant and growing demand for STR's internationally, and locally. They benefit owners with a source of income that can help subsidize a cost of living that may otherwise be unaffordable. STR's may also encourage investment in a property. They benefit Burlington's tourism economy and provide guests with a convenient, and often more affordable, place to stay when traveling. They also generate city and state tax revenue via the Rooms & Meals Tax (RMT). Short term rentals, however, do not come without impacts. Some have the effect of removing dwelling units for long-term occupancy, and they may contribute to rising rental rates and purchase prices. Given the high turn-over of guests, short-term rentals may bring about nuisance impacts such as traffic, noise, and trash to neighborhoods.

As the Joint Committee has heard from many of the city's STR hosts, short-term rentals are uniquely flexible and come in a variety of forms—beyond the major distinction between whole unit and partial unit STR's. The same dwelling unit may alternate between long- and short-term rental uses within a relatively short period of time. A dwelling unit may serve as one's primary residence for most of the year, and serve as a short-term rental while the resident is away. A short-term rental may coexist with a number of long-term rentals within a multi-family building. This variability and flexibility needs to be considered within the context of the overarching policy objective: to protect Burlington's limited housing stock, while affording reasonable opportunity to host short-term rentals within the city.

Short Term Rentals in Burlington

Burlington has some 10,000+ rental housing units, representing 60% of all housing units. While the June 2019 Housing Summit reported hopeful trends in a slightly increasing vacancy rate and slight slowing annual rent inflation, the city's housing market remains tight with the long-time rental vacancy rate between 1% and 2%. Short-term rentals have replaced a growing number of dwelling

units citywide in recent years. According to data provided by HostCompliance, the number of short term rentals within Burlington increased 26% between 2018 and 2019. The average monthly number of short term rentals within city limits between June and September 2020 was 403 listings, representing 357 unique rentals.

As of September 2020, 71% STRs in Burlington are an entire dwelling unit, whereas 29% are partial dwelling units (i.e. bedrooms). This is a change from 67% and 33% respectively in 2019, likely due to COVID-19 concerns. In September 2020, 55% of the city's STR's were in single-family properties and 45% in multi-family properties. The COVID-19 pandemic has had wide-ranging impacts on the STR market globally and locally.

While the total number of unique properties and listings in Burlington has changed little in 2020, the number of active listings has varied this year due travel restrictions and hosts' management decisions. Stories shared by STR hosts and data from other sites, such as AirDNA, suggest that many of these listings may currently be inactive, are being rented as an STR for a longer duration (such as for weeks or months), or are being used as temporary accommodations for people who have relocated due to the pandemic. It will be some time before the long-term impacts of COVID-19 on the local STR market are understood.

Joint Committee work on STR Proposal

The Joint Committee has received information on STRs in the city during meetings spanning more than a year. In response to public and Joint Committee comments, the original draft regulatory framework has been revised in four major ways:

- Revision to STR limits within multi-unit buildings to be less than 50% of units, and a related clarification that exceeding these limits results in a "lodging" use.
- Allow some degree of off-site hosting for STR's within multi-unit buildings.
- Consider an alternative to Housing Replacement fees, such as an additional fee based on STR income. In either scenario, fees will support the City's Housing Trust Fund. This additional fee needs to be determined by the City Council, and likely through a charter change.
- Most recently, the framework has been revised to specifically enable hosts to short term rent their primary residence, no matter the residential building type.

The standard for when the host is required to live on or be the owner of the property hosting an STR(s) emerged as one of the most important policy levers in determining how many STRs would be possible within the city. The Committee deliberated this issue on many occasions, specifically with regard to how permissive the policy should be, and what recourse the City had for changing the policy or curtailing STR use if too many housing units became STRs.

As a result, staff provided a proposal for the Joint Committee's consideration to shift much of the regulatory framework from the *Comprehensive Development Ordinance (CDO)* to *Chapter 18: Minimum Housing Standards (Ch.18)* of the City's *Code of Ordinances*. This shift would preserve the ability to implement key policy objectives, but leaves a limited role for zoning regulation of STRs. Specifically, *Ch. 18* can regulate the number of STRs permitted on a property or in a building as well as host-occupancy requirements where applicable. *Ch.18* continues to be the tool to administer life safety standards and the annual rental registration process.

Moving STR standards out of the *CDO* has several benefits, such as avoiding the onerous process of requiring new zoning permits each time a unit switches from long-term and short-term use. But most significantly, it addresses the Committee's feeling that the policy may need to be adjusted in the future, and eliminates the concern that non-conforming STRs would be exempt from such changes. Because standards in *Ch.18* apply at the time of each annual rental registration, any policy changes made since an STR's last permit renewal would be applicable.

Therefore, the limited role for regulating STR's through the CDO include allowing STR's by right and creating a definition that points to the specific STR regulations in Ch. 18. Staff also proposes to condense the definitions for multiple lodging types (not including STRs) into one use/definition.

Decision-making points for March 9 Committee Meeting

Having most recently decided on the matter regarding short term rentals of a host's primary residence, only two questions remain to be addressed by the Joint Committee:

- When is the property required to be the STR host's primary residence? Under what circumstances, if any, should off-site hosting be allowed? As presently drafted, the standards allow off-site hosting only in multi-family attached dwellings of 3 or more units.
- Should whole unit STR's be allowed at all in buildings with 5 or more units? As most recently revised, the draft proposal prohibits STR's in multi-family buildings of 5 or more units. As previously drafted, 2 STR units were permitted in 5-6 unit buildings and 3 STR units were permitted in 7+ unit buildings.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

The proposed regulatory framework is aimed at minimizing the potential for adverse impacts to the city's housing stock, while balancing some flexibility for hosts to operate short term rentals. Together with amendments to Minimum Housing Standards in the City's Code of Ordinances, the proposed amendment is intended to allow the short term rental of bedrooms within a dwelling, and the use of a host's own dwelling occasionally as a short-term rental, with minimal burden to the host. Per-building caps are applied to whole unit short term rentals operated by off-site hosts so as to limit their proliferation. In an effort to balance the benefits to hosts with the preservation of long-term housing stock, short term rentals would generally be allowed wherever residential uses are allowed; however, in most scenarios, hosts must be a resident of the property.

Proposed Amendments

CDO Amendments

With the shift of much of the regulatory framework to *Ch. 18*, only limited changes to the *Burlington Comprehensive Development Ordinance* are now proposed:

1. **Amend Article 13 Definitions to define "short term rental", modify "lodging" definitions**
Define short term rental as a type of dwelling unit and refer to standards in *Ch.18*. The STR definitions have most recently been revised to reflect the state's 14-day minimum and refer to the Vermont rooms and meals tax. Additionally, the definitions of Hotel/Motel and Hostel are streamlined to a more general "Lodging" definition to reduce redundancy and inconsistencies in how various traditional lodging uses are permitted.
2. **Add STRs as a "special residential use" to Appendix A- Use Table and in Article 14- Downtown Code**
This will establish that short term rentals are allowed anywhere that residential uses are allowed, and will refer to *Ch. 18* for specific standards.

Ch. 18 Minimum Housing Code Amendments

The attached documents detail the related amendments to *Ch. 18 Minimum Housing Standards*. While *Ch. 18* amendments are not normally the purview of the Planning Commission, they are reviewed by the City Council Ordinance Committee. Further, in this instance, the Joint Committee is recommending *Ch.18* amendments because they resulted from the Committee's charge from the City Council to create a regulatory framework for STRs. These amendments include:

1. Establish standards for the number and type of STRs permitted in a building, and when the host is required to be the owner/occupant of the property.

Sets limits for the number of bedrooms rented in a Partial Unit STR, and limits for the number of Whole Unit STRs permitted in a building based on the number of units in the building. Additionally, requires host occupancy of the unit in which the STR is located except for in limited cases for STRs in multi-unit buildings of 3 or more units.

2. Establish minimum life safety standards for STRs, and requirements for annual rental registration.

Defines a limited set of life safety standards for STRs, and additional information to be provided on rental registration applications for housing units to be used as STRs.

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).

Compatibility with Proposed Future Land Use & Density

The STR proposal is intended to protect existing housing from unlimited conversion to short term rental use. Data shows increasing numbers of short term rentals in recent years, largely at the expense of long term housing stock. This increase puts additional pressure on the city's available housing and degree of affordability. The proposed measures will establish parameters for allowing short term rentals while limiting their adverse impacts on the city's housing supply and affordability.

Impact on Safe & Affordable Housing

The proposal will have no impact on the intensity or density of future land use. It will, however, ensure that future short term rentals are compatible with the residential neighborhoods that so many of them occupy. Short term rentals will be allowed wherever residential uses are allowed. Per-building caps will prevent wholesale conversion of residential units into short term rentals.

Planned Community Facilities

This amendment has no impact on any 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, Joint Cmte, based on City Council referral	Presentation to & discussion by Joint Committee 1/14, 1/28, 2/11, 2/19, 8/11, 9/23, 10/28, 11/24, 12/8, 1/12, 2/9, 3/9	Approve for Public Hearing	Public Hearing	Approve & forward to Council
				Continue discussion

City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Committee discussion	Ordinance Cmte recommends to Council	Second Read & Public Hearing	Approval & Adoption
				Rejected

Excerpt of Burlington CDO Article 13: Definitions

Note: Proposed additions are noted in red underlined text and deletions are ~~crossed out~~.

ARTICLE 13: DEFINITIONS

Sec. 13.1.1 Miscellaneous *As written.*

Sec. 13.1.2 Definitions

For the purpose of this ordinance certain terms and words are herein defined as follows:

Unless defined to the contrary in Section 4303 of the Vermont Planning and Development Act as amended, or defined otherwise in this section, definitions contained in the building code of the City of Burlington, Sections 8-2 and 13-1 of the Code of Ordinances, as amended, incorporating the currently adopted edition of the American Insurance Association's "National Building Code" and the National Fire Protection Association's "National Fire Code" shall prevail.

Additional definitions specifically pertaining to *Art. 14 planBTV: Downtown Code* can be found in Sec. 14.8, and shall take precedence without limitation over any duplicative or conflicting definitions of this Article.

All other definitions as written.

~~**Hostel:** A place where travelers may stay for a limited duration, as recognized by the International Hostel Association.~~

~~**Hotel, Inn or Motel**~~ **Lodging:** An establishment providing for a fee ~~three or more~~ temporary guest rooms and customary lodging services (such as onsite staffing at all hours, lobby space, and room service), and subject to the Vermont rooms and meals tax. Lodging may, or may not, be owner occupied. Lodging does not include historic inns or short term rentals (except when per-building short term rental limits noted in Chapter 18: Minimum Housing Standards of the City Code of Ordinances are exceeded).

Short term rental (STR): A dwelling unit that is rented in whole or in part to guests for less than thirty (30) consecutive days and for more than 14 days for overnight stays per calendar year and is subject to the Vermont rooms and meals tax, pursuant to Chapter 18: Minimum Housing Standards of the City Code of Ordinances.

Appendix A-Use Table – All Zoning Districts

	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use ^l	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
As written															
RESIDENTIAL SPECIAL 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
Rest of Residential Special Uses as written.															
<u>Short Term Rental</u> ³³	N	N	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N	N
NON-RESIDENTIAL USES	UR ²¹	RCO - A	RCO - RG	RCO - C	I	RL/W	RM	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Rest of Non-Residential Uses as written.															
Hostel	N	N	N	N	Y	N	N	CU	N	Y	Y	Y	Y	N	N
Hotel, Motel <u>Lodging</u>	N	N	N	N	CU	N	N	N	(See Sec. 4.4.1 (d) 1)	N	Y	N	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. Small daycare centers and small preschools in the RCO zones shall only be allowed as part of small museums and shall constitute less than 50% of the gross floor area of the museum.
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.

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

Appendix A-Use Table – All Zoning Districts

- 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.
- 33. Short term rentals are permitted by right, subject to per building limitations and rental registration requirements pursuant to Chapter 18: Minimum Housing Standards of the City Code of Ordinances.

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

14.3.4-H- USE TYPE**FD6**

Uses not specifically listed in a use table, and that are not similar in nature and impact to a use that is listed, are not permitted.

RESIDENTIAL - GENERAL

Attached Dwellings	P
Single Detached Dwellings (only pre-existing Buildings originally designed and constructed for such purpose)	P

RESIDENTIAL - SPECIAL

Assisted Living	P
Boarding House ¹	P
Community House (<i>Sec. 14.6.6.e</i>)	P
Convalescent /Nursing Home	P
<u>Short Term Rental (See Ch. 18: Minimum Housing)</u>	<u>P</u>

SHORT-TERM ACCOMMODATIONS

Bed and Breakfast ¹	P
Historic Inn (<i>Sec. 14.6.6.c</i>)	P
<u>Hotel</u>	<u>P</u>
<u>Lodging</u>	<u>P</u>
Shelter	P

RETAIL - GENERAL

ATM	P
Auto/Boat/RV Sales/Rentals ³	P
Convenience Store	P
Fuel Service Station ² (<i>Sec. 14.6.6.d</i>)	CU
General Merchandise/Retail	P

RETAIL - OUTDOOR

Open Air Markets	P
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KEY

Permitted Use	P
Conditional Use	CU

END NOTES

¹Must be owner-occupied.

²Automobile sales not permitted as an Accessory Use

³ Exterior storage and display not permitted.

14.3.4-H- USE TYPE**FD6****OFFICE & SERVICE**

Animal Grooming	P
Auto/Boat/RV Service ³ (<i>Sec. 14.6.6.d</i>)	P
Beauty Salon/Barber Shop/Spa	P
Car Wash	P
Crisis Counseling Center (<i>Sec. 14.6.6.g</i>)	P
Office – General	P
Office – Medical	P
Office – Technical	P
Dry Cleaning Service	P
Funeral Home	P
Health Club/Studio	P
Laundromat	P
Mental Health Crisis Center	P
Tailor Shop	P

HOSPITALITY/ ENTERTAINMENT/ RECREATION

Aquarium	P
Art Gallery/Studio	P
Bar, Tavern	P
Billiards, Bowling & Arcade	P
Café	P
Cinema	P
Club, Membership	P
Community Center	P
Conference/Convention Center	P
Museum	P
Performing Arts Center	P
Performing Arts Studio	P
Recreational Facility – Indoor	P
Restaurant	P
Restaurant – Take Out	P

14.3.5-H- USE TYPES**FD5**

Uses not specifically listed, and that are not similar in nature and impact to a use that is listed, are not permitted.

RESIDENTIAL - GENERAL

Attached Dwellings	P
Single Detached Dwellings (only pre-existing Buildings originally designed and constructed for such purpose)	P

RESIDENTIAL - SPECIAL

Assisted Living	P
Boarding House ¹	P
Community House (<i>Sec. 14.6.6.e</i>)	P
Convalescent /Nursing Home	P
Group Home	P

Short Term Rental (See Ch. 18: Minimum Housing)

P**SHORT-TERM ACCOMMODATIONS**

Bed and Breakfast ¹	<u>P</u>
Historic Inn (<i>Sec. 14.6.6.c</i>)	P
Hotel	<u>P</u>
Lodging	<u>P</u>
Shelter	P

RETAIL - GENERAL

ATM	P
Automobile and RV Sales and Rental ²	P
Convenience Store	P
Fuel Service Station ² (<i>Sec. 14.6.6.d</i>)	CU
General Merchandise/Retail	P

RETAIL - OUTDOOR

Boat Sales/Rentals	P
Garden Supply Store	P
Open Air Markets	P

14.3.5-H- USE TYPES**FD5****OFFICE & SERVICE**

Animal Grooming	P
Beauty Salon/Barber Shop/Spa	P
Car Wash	P
Crisis Counseling Center (<i>Sec. 14.6.6.g</i>)	P
Dry Cleaning Service	P
Funeral Home	P
Health Club/Studio	P
Laundromat	P
Mental Health Crisis Center	P
Office – General	P
Office – Medical	P
Office – Technical	P
Tailor Shop	P
Vehicle/Boat Repair/Service ²	P

HOSPITALITY/ ENTERTAINMENT/ RECREATION

Aquarium	P
Art Gallery/Studio	P
Bar, Tavern	P

KEY

Permitted Use	P
Conditional Use	CU

END NOTES

¹Must be owner-occupied.

² Exterior storage and display not permitted.

ARTICLE I. IN GENERAL

18-1 Short title.

This chapter shall be known and may be cited as the "Minimum Housing Standards Ordinance of the City of Burlington."

(Rev. Ords. 1962, § 921)

18-2 Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations, shall have the meanings given herein:

Host means a person who operates a short term rental (whole or partial unit). The host may be the property owner or tenant.

Hotel or motel means an establishment which holds itself out to the public by offering temporary (less than 30 days) sleeping accommodations for compensation consideration and is subject to the Vermont rooms and meals tax. Hotel or motel is defined as lodging in the Comprehensive Development Ordinance. Hotel or motel does not include short term rental.

Occupant shall mean any person including an owner living and sleeping in a dwelling unit or rooming unit.

Rental unit shall mean any structure, a part of which is rented out and occupied as a residence by another, for compensation, including duplex units, so called. Rental unit shall also include short term rental. The portion of any such unit being occupied as a residence by the owner shall be considered a rental unit.

Roominghouse shall mean any dwelling or that part thereof containing one or more rooming units in which space is let to three (3) or more persons for thirty (30) consecutive days or more.

Rooming unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes. A rooming unit does not include short term rental.

Short term rental (STR) shall mean a dwelling unit that is rented in whole or in part to guests for less than thirty (30) consecutive days and for more than 14 days for overnight stays per calendar year and is subject to the Vermont rooms and meals tax. It may be a whole unit short term rental (the entire dwelling unit) or a partial unit short term rental (just bedrooms within the dwelling unit).

Target housing means any dwelling constructed prior to 1978, except any zero (0) bedroom dwelling or any dwelling located in multiple-unit buildings or projects reserved for the exclusive use of the elderly or persons with disabilities, unless a child six (6) years of age or younger resides in or is expected to reside in that dwelling. "Target housing" does not include units in a hotel, motel, or other lodging, including condominiums that are rented for transient occupancy for less than thirty (30) days ~~or less~~.

All other definitions as written.

18-3 – 18-14 Reserved

As written.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY¹

18-15 Registration required.

(a) The owners of all rental units subject to inspection pursuant to Section 18-16 shall be required to annually file a registration application and fee with the enforcement agency, which shall be due annually on or before April 1. Additional requirements pertaining only to short term rentals are listed in subsection (f).

The owners must complete a rental property information form to be provided by the enforcement agency which contains the following information:

- (1) The address of the property.
- (2) The number of dwelling units~~s~~ at that address.
- (3) The number of rental units at that address.
- (4) The maximum number of residents in each rental unit.
- (5) The number of sleeping rooms in each rental unit.
- (6) The number of families living in each rental unit.
- (7) The number of unrelated adults in each rental unit.

- (8) The number of vehicles owned or used by residents of the premises and the number of parking spaces that are dedicated for the rental units at the property.
- (9) The name, address, phone number, date of birth, drivers license and state and military status (active or not) of the property owner, and if the owner is a corporation, the registered corporate agent and the president of the corporation and his/her name and address, and if the owner is a partnership, the registered partnership agent, and the names and addresses of the general partners.
- (10) The name, address and phone number of any local (within Chittenden County) managing agent. All owners who do not live within Chittenden County are required to designate a managing agent located in Chittenden County who is empowered to represent the owner in matters concerning compliance with this chapter.
- (11) The name, address and phone number of an emergency contact for this property. All properties must have an emergency contact within Chittenden County.
- (12) A designated person within the state for service of process for this property. All owners who do not live within Chittenden County are required to designate a managing agent located in Chittenden County for service of process. The name, address, phone number, date of birth, drivers license number and state and military status (active or not) of the designated agent.
- (13) State yes or no to the following question: If the number of unrelated adults listed in paragraph (a)(7) above is greater than four (4), do those adults purport to reside in the rental unit as a "functional family" as that term is defined in the Burlington Zoning Ordinance?
- (b) Upon purchase or transfer of property containing a rental unit, the purchasers shall file a new registration application and a fifty dollars (\$50.00) fee. The payment of this fee shall cover one (1) or more rental properties being transferred to a new owner on the same date.
- (c) Prior to occupancy of any newly constructed rental unit or conversion of use to a rental unit, the owner shall file an application for registration with the agency and pay the required fee which shall be the pro rata portion of the fee due for that year based on the date of registration.
- (d) It shall be a violation of the city minimum housing ordinance for an owner of any rental unit within the city to fail to register a rental unit as required by this section.

(e) Property owners shall have a continuing obligation to notify the enforcement agency of any changes in the information required under subsection (a) during the periods between the required filings of the registration applications.

(f) In addition to registration requirements for all rental units noted in (a) – (e) above, all short term rentals subject to inspection pursuant to Sec. 18-16 shall be subject to the standards of Table 18-15-1 below:

<u>Table 18-15-1 Short Term Rental Types, Limits, and Standards</u>		
<u>Whole Unit STRs</u>		
	<u>Building Type</u>	<u>STR Limit in Building</u>
<u>Dwelling unit that is not the host's primary residence but is located within the same building or property as the host's primary residence.</u>	<u>Single Detached Dwelling</u>	<u>1 Whole Unit</u>
	<u>Duplex</u>	<u>1 Whole Unit</u>
	<u>Attached Dwellings- Multi-Family (3-4 units)</u>	<u>1 Whole Unit</u>
	<u>Attached Dwellings – Multi-Family (5 or more units)</u>	<u>No STRs allowed</u>
<u>Dwelling unit that is owned by a host whose primary residence is off-site.</u>	<u>Attached Dwellings – Multi-Family (3-4 units)</u>	<u>1 Whole Unit</u>
	<u>Attached Dwellings – Multi-Family (5 or more units)</u>	<u>No STRs allowed</u>
<u>A dwelling unit that is the host's primary residence (as defined in the CDO) may be used as a STR within any building type, and are not subject to the limits above.</u>		
<u>On lots containing 2 or more detached primary structures/buildings, the STR limits are applicable to each building, based on the number of dwelling units in each building.</u>		
<u>Buildings exceeding these limits are a Lodging use, and subject to applicable standards in the Comprehensive Development Ordinance.</u>		
<u>Partial Unit STRs</u>		
	<u>Bedroom Limit within STR</u>	
<u>Dwelling unit that is the host's primary residence.</u>	<u>5 rooms let individually as an STR</u>	
<u>Rooms let individually as an STR in a dwelling unit that is not the host's primary residence is not permitted.</u>		

(1) Additional information to be included in the rental property information form provided by the enforcement agency:

(i) How many short term rentals are there in the building?

- Number of whole unit short term rentals?
- Number of partial unit short term rentals?

(ii) Will the short term rental(s) be rented for more than 183 days per year?

(iii) What is the tax account number?

(Ord. of 4-12-93; Ord. of 4-24-95; Ord. of 9-11-00)

18-16 Inspection required.

The enforcement officer or his/her delegate shall make inspections of rental units within the city, including hotel and motel rooms which are regularly let to the same tenant(s) for a period ~~in excess~~ of thirty (30) days or more, for the purpose of determining whether a violation of this chapter exists.

Excluded from periodic inspection shall be all owner-occupied dwellings containing one (1) or two (2) rooms which are rented out for compensation (including partial unit short term rentals of just one {1} or two {2} bedrooms). Also excluded from inspection are university and college dormitories that conduct regular, comprehensive inspection programs and annually certify compliance with the minimum housing standards ordinance to the enforcement agency. Inspections of dwellings and dwelling units other than those that are subject to periodic inspections, or of hospital rooms, hotel and motel rooms or dormitories not subject to periodic inspections as provided for in this section, shall be made only upon complaint or upon request of the owner thereof.

All records, including inspection reports, records of complaints received and investigated, and plan for inspections of rental units, shall be available for public inspection.

(Ord. of 4-12-93; Ord. of 9-11-00)

18-17 – 18-29

As written.

18-29a Termination of rental housing tenancy; rental housing rent increase.

(a) In any case where there is no written rental agreement, no landlord may terminate a tenancy of rental housing without cause unless at least 90 (ninety) days' advance written notice to the tenant(s) has been provided in situations where the tenancy has been less than two (2) years in duration, nor may any such

termination occur without at least one hundred twenty (120) days' advance written notice to the tenant(s) in situations where the tenancy has been for two (2) or more years.

(b) Unless inconsistent with the terms of a written rental agreement, no tenant may terminate a residential tenancy without providing actual notice to the landlord at least two (2) rental periods in advance of the termination date specified in such notice.

(c) No increase in rent for rental housing within the city shall be effectuated without at least 90 (ninety) days' advance written notice to the tenant(s).

(d) The provisions of this subsection do not apply to short term rentals.

(Ord. of 10-29-04)

18-30 Fees.

(a) *Registration fee.* Pursuant to Section [18-15](#), a registration fee shall be charged to the owner of every rental unit in the city that is subject to periodic inspections. This fee shall be in an amount determined by and dedicated solely to the cost of providing rental housing inspection services, clerical, administrative and mediation support services for the housing board of review and landlord/tenant resource services. Any surplus remaining in this fund at the end of a fiscal year shall remain part of the fund and shall be carried forward to the next fiscal year. This fee shall be reviewed annually by the finance board. The fee shall be in the amount of one hundred ten dollars (\$110.00) per unit per year except for owner occupied dwellings with two (2) or less units, in which case the fee shall be eighty dollars (\$80.00) and except for partial unit short term rentals, in which case the fee shall be fifty dollars (\$50.00).

Remainder of Sec. 18-30 as written.

18-31 – 18-69

As written.

ARTICLE III. MINIMUM STANDARDS¹

DIVISION 1. GENERALLY

18-70 Compliance with article required.

No person shall occupy as owner/occupant or shall let to another for occupancy any dwelling, roominghouse, dwelling unit or rooming unit which does not comply with the minimum standards as provided by this article, as evidenced by a current certificate of compliance or interim certificate of compliance. All repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of these standards shall be performed and installed in a skilled manner and installed in accordance with the manufacturer's installation instructions in order to allow the performance intended and anticipated by the standards to be achieved and must meet the criteria of the definition of "skilled manner" in Section [18-2](#). See Division 7 for Minimum Standards applicable to short term rentals.

18-71 – 18-120

As written.

DIVISION 7. SHORT TERM RENTAL

18-121 Compliance with article required.

No person shall establish, operate, or host guests in a short term rental which does not comply with the minimum standards as provided by this article, as evidenced by a current certificate of compliance or interim certificate of compliance. All repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of these standards shall be performed and installed in a skilled manner and installed in accordance with the manufacturer's installation instructions in order to allow the performance intended and anticipated by the standards to be achieved and must meet the criteria of the definition of "skilled manner" in Section 18-2.

18-122 Minimum Fire Safety Standards:

- (a) Smoke and carbon monoxide alarms are provided per the following:
 - i. Photoelectric type smoke alarms are required in the immediate vicinity of sleeping rooms, inside each sleeping room, and on all floor levels including the basement. All newly installed smoke alarms must be hard wired into the buildings electrical system.
 - ii. Smoke alarms in sleeping rooms of buildings constructed prior to 1994, may be of the 10- year photoelectric lithium powered tamper resistant type.
 - iii. Outside each sleeping area in the immediate vicinity of the bedrooms. An additional detector shall be installed in each sleeping room that contains a fuel- burning appliance.
 - iv. Carbon Monoxide alarms installed or replaced in a dwelling after July 1, 2005 must be directly wired to the building electrical service and have a battery backup.
 - v. Existing single family dwellings and duplexes constructed prior to July 1, 2005 may use plug in style alarm with battery backup or battery power or may be hardwired.
- (b) GFI Outlets are provided in the following areas:
 - i. Bathrooms, garages and accessory buildings having a floor located at or below grade level, not intended as a habitable room and limited to storage. Work areas, outdoors, crawl spaces, unfinished portions or areas of the basement not intended as a habitable room. Kitchen, where the receptacles are installed to serve countertop surfaces and sinks and where the receptacles are installed within 6ft from the top inside edge of the bowl of the sink. Boathouses and bathtubs or shower stalls, where receptacles are installed within 6ft of the outside edge of the bathtub or shower stall and laundry areas.
- (c) Every sleeping room is provided with a primary and secondary means of escape. A window meeting rescue and ventilation requirements can satisfy the secondary means of escape.
- (d) Heating systems (fuel and wood) have been inspected at least once every two (2) years by a certified fuel service technician.
- (e) Landings, decks, porches and balconies higher than thirty (30) inches from grade are provided with guards and intermediate rails spaced no more than four (4) inches apart. Stairs must be provided with graspable handrails.

18-123 Minimum General Standards:

- (a) Appliances are operational and in good repair, and hot and cold potable water have been supplied.
- (b) Guest rooms have been serviced and cleaned before each new guest.

- (c) Refuse containers are available and emptied at least once each week or more frequently, if necessary.
- (d) Swimming pools, recreational water facilities, and hot tubs are kept sanitary and in good repair.
- (e) Sewage system and toilets function and are in good repair.
- (f) Toxic cleaning supplies are properly labeled, safely stored and used according to the manufacturer's directions.
- (g) Guest rooms are free of any evidence of insects, rodents, and other pests.
- (h) Provision of fire extinguishers as required by NFPA and Burlington Fire Department.
- (i) Instructions for occupants regarding:
 - i. Location and use of fire extinguishers
 - ii. Emergency egress routes
 - iii. 24 hour/7 days per week emergency contact information
 - iv. Emergency shut-off of heating systems and fuel burning appliances.
- (j) Current rental registration certificate posted inside and clearly visible to occupants.

ARTICLE IV. HOUSING DISCRIMINATION

18-200 Purpose.

As written.

18-201 Definitions.

- (a) For the purpose of this article, "adverse housing action" means any of the following:
 - (1) Refusal to rent;
 - (2) Refusal to negotiate a rental;
 - (3) Making a rental unit unavailable;
 - (4) Changing of the terms, conditions, or privileges of a rental including adding or increasing rental charges;
 - (5) Falsely representing that a rental unit is not available for a prospective tenant;
 - (6) Refusal to permit reasonable changes or modifications at other than the landlord's expense to a rental unit in order to render it suitable for occupancy by a handicapped person.
- (b) For the purpose of this article, "rental unit" shall not include:
 - (1) Dormitories or other housing provided by an educational institution including fraternities and sororities;
 - (2) Dwellings which are directly or indirectly assisted or subsidized by a public agency or public monies for the purpose of making housing available for a particular group or classification of persons;
 - (3) Housing provided for pious, charitable, or public purposes;

(4) Dwellings where the available space or facilities are inadequate to house a person and all minors under applicable occupancy standards;

(5) Dwellings which are owner-occupied duplexes-;

(6) Short term rentals.

(c) Notwithstanding the above, no dormitory or other housing provided by an educational institution, including fraternities and sororities, shall take an adverse housing action against any person because of the age, sexual orientation or handicap of the person.

(Ord. of 10-9-84; Ord. of 9-24-90)

18-202 – 18-301

As written.

18-302 Exemptions.

(a) This article shall not be applicable to single-family homes and duplexes.

(b) This article shall not be applicable to properties that meet all of the following requirements:

(1) land tract with ten (10) or fewer housing units;

(2) a deed restriction making at least twenty-five (25) per cent of the housing units affordable to low income tenant households; and

(3) located in United States Census Bureau tract that contains less than fifty (50) per cent home ownership.

(c) This article shall not be applicable to short term rentals.

(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07)

18-303 – 18-501

As written.

18-502 Applicability.

(a) This article shall be applicable to all rental properties subject to the Minimum Housing Code. In mixed commercial/residential buildings this article shall apply only to the residential portion of the building. This article shall not apply to owner-occupied portions of a multi-unit building.

(b) The following properties shall be exempt from meeting the requirements of this article:

(1) Rental properties not rented between November 1 and March 31 of each year.

(2) New construction subject to and in compliance with the Energy Conservation Ordinance, B.C.O. sections [8-100](#) to [8-104](#)

(3) Hotels, motels, tourist rooming houses, dormitories, hospitals, hospices and nursing homes.

(4) Buildings or apartments where heating costs are paid by owners of the rental properties.

(5) Short term rentals.

(Ord. of 3-24-97)

18-503 – 18-511

As written.

TO: Burlington Planning Commission
FROM: Scott Gustin, Principal Planner & Zoning Division Manager
Meagan Tuttle, Comprehensive Planner, Office of City Planning
DATE: February 8, 2021
RE: Non-conformities and zoning violations

Some members of the public, STR hosts, and a few Joint Committee members have expressed an interest in enabling existing, but unpermitted STR's to continue, despite the outcome of the Committee's decisions about the policy going forward. While it may appear to be a solution that balances competing policy interests, there are a few layers to this concept that are important to outline for the Committee:

- It conflates zoning violations and legal nonconformities, which are not afforded the same legal benefits, and
- Legal nonconformities are regulated by zoning, not the Minimum Housing Code.

Basics of Nonconformities vs. Violations

As a foundation for this discussion, it is important to revisit the difference between legal nonconformities and violations. Within the **context of zoning**, land uses, structures, or lots are either:

- **conforming** to the requirements and standards of the zoning ordinance currently in effect, sometimes referred to as "legal"; or
- **legally nonconforming**, meeting a previous requirement or standard that has since been changed sometimes referred to as "pre-existing legal nonconformity"; or
- or **in violation** for operating in a way that is consistent with the standards currently in effect but without a valid zoning permit, or operating in a way that is inconsistent with the standards of the zoning ordinance and for which a nonconformity does not apply. This is sometimes referred to as "illegal".

In zoning, a legally nonconforming use, structure, or lot is allowed to continue or be altered (24 VSA 4412 (7)) within limits set forth in the *Comprehensive Development Ordinance (CDO)*. However, it is a central premise of land use law that over time nonconformities should be eliminated such that all uses, structures or lots within a community become conforming to the requirements and standards of the zoning ordinance. Additionally:

- Legally nonconforming status is predicated on a use, structure or lot being legal at the time it first began, and that it has continued uninterrupted since that time.
- VT statute does not enable a community to force a nonconformity to come into compliance within a specified period of time (known as "amortization"), so as a result a nonconformity may continue in perpetuity as long as it continues uninterrupted.

Regulating STRs To-Date

Another important piece of background is how STRs have been regulated in Burlington to-date.

Most Short term rentals (STRs) presently operating in Burlington are doing so without a zoning permit. Some of those STRs are operating in a way that is inconsistent with the present standards and would not be able to get a zoning permit. Therefore, they are **not operating legally, and as a result do not have a basis for being granted legal nonconforming status.**

STRs are currently regulated in the *CDO* as either a "bed and breakfast" (owner-occupied STRs) or a "hotel/motel" (non owner-occupied STRs). Where a use is not specified in Appendix A, the *CDO* provides that the administrative officer apply a "best fit" approach. Such is the case with STR's. While not a perfect reflection of STRs, this has been the practice since we first became aware of STRs operating in Burlington and it has been upheld by the DRB.

- Over the past 5 years, 29 STRs have been cited with notices of zoning violation (NOV) or warning letters, most of which have been resolved via issuance of a zoning permit by the DRB under the bed and breakfast standards.
- At least one non owner-occupied STR was issued an NOV for operating a hotel/motel without a zoning permit. That NOV was appealed to and upheld by the DRB.

Allowing existing, unpermitted short term rentals

Based on this background:

- To allow unpermitted STR's to continue to operate as-is is not a matter of considering them to be a legally "nonconforming use". To do so would instead require amnesty—or the creation of a specific regulation that permits by-right all of the STRs presently operating in Burlington.
- Granting amnesty is inconsistent with fair and equal treatment for STRs citywide. It disregards those STRs that have obtained zoning permits to-date—either as was required or as a result of an enforcement action—and precludes future STRs from being operated in the same way after the amnesty period.
- Granting amnesty creates a precedent for zoning violations to be cured through "forgiveness" rather than compliance with the standards, which is inconsistent with how zoning violations are resolved in all other circumstances.
- If we were to grant amnesty to currently operating unpermitted STRs, how do we justify it? Further, how would we do it, and how would we know specifically which STRs are affected? At what date would amnesty be established, and over what period of time would amnesty be granted?

Additionally, underlying this issue is a key question about what the Committee sees as the policy goal behind enabling illegal STRs to continue.

The interest in enabling existing, unpermitted STRs to continue, regardless of the policy outcome, is inconsistent with the Committee's earlier reservations about the protections afforded to legal nonconformities. Specifically, the Committee was concerned about recommending a more permissive STR policy because the rights afforded to non-conforming uses aren't flexible enough to pare back (or amortize) the number of STRs if the community deems them to be too widespread. This essentially boils down to giving amnesty to zoning violations, while simultaneously precluding a path to legal non-conformities for STRs that may be established legally in the future.

Chapter 18's Minimum Housing Standards vs. CDO's Zoning Standards

Finally, the above noted concern about the inability to amortize zoning permits was a major factor in the staff's recommendation for the Committee to consider using the Minimum Housing Code as the tool for regulating STRs. Staff was instructed at the last meeting to revise the existing STR proposal to move the bulk of the standards into the Minimum Housing Code.

The legally non-conforming provisions afforded to STR's under zoning do not apply to rental registrations issued under the Minimum Housing Code. Therefore, if the Committee remains committed to this approach, there is not a mechanism for enabling either illegal STRs or legal non-conformities under Ch. 18.

Burlington Planning Commission

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

Burlington Planning Commission

Tuesday, February 23, 2021, 6:30 P.M.

Remote Meeting via Zoom

Draft Minutes

Members Present	E Lee, A Montroll, H Roen, A Friend, J Wallace-Brodeur, Y Bradley
Staff Present	D White, M Tuttle, S Gustin, M O'Neil, K Sturtevant
Attendance	S Bushor, R Longe, A Magyar, D Agresta, C Wight, R Roman, Z Richards, S Whitman

I. Agenda

Call to Order	Time: 6:32pm
Agenda	No Change.

II. Chair Report

A Montroll	Has been almost a year since we've been meeting online. Thank you to staff, commission and public for continuing to join meetings.
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III. Director's Report

D White	Planning staff continues to dedicate some time to COVID-19 Analytics Team. After elections next week, will be working on FY22 Budget & Work Plan.
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IV. Public Forum

Name(s)	Comment
No Comments.	

V. Public Hearing ZA-21-03: R-L Boundary at 925 North Ave.

Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation. Send communication from Commission encouraging Council support for conservation of the remainder of the property.		
Motion by: H Roen	Second by: J Wallace Brodeur	Vote: Approved 5-1; YB opposed
Type: Public Hearing, Action	Presented by: M Tuttle	
The Chair opened the public hearing at 6:40pm and closed it at 6:46pm with no public comment.		
Discussion & Notes: Commissioner Roen requested a communication accompany the amendment to the Council expressing its support for action to conserve the remainder of the property, which has been a conservation priority for many years.		

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VI. Public Hearing ZA-21-04: Adaptive Reuse Definition

Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation.		
Motion by: A Friend	Second by: Y Bradley	Vote: Approved unanimously
Type: Public Hearing, Action	Presented by: S Gustin	
The Chair opened the public hearing at 6:45pm and closed it at 6:53pm with no public comment.		

VII. Public Hearing ZA-21-05: Parking Garage Illumination Standard

Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation.		
Motion by: A Friend	Second by: Y Bradley	Vote: Approved unanimously
Type: Public Hearing, Action	Presented by: S Gustin	
The Chair opened the public hearing at 6:55pm and closed it at 6:55pm with no public comment.		
Discussion & Notes:		
Commissioner Lee asked if this amendment would address issues like the YMCA lighting’s visible light bulbs, and expressed a concern that lighting standards need to be improved across the city with regard to screening and dark skies, including street lighting. Staff clarified the amendment does not address this, that a wholesale update to the lighting standards in the ordinance is on the list of future projects, and that street lighting is outside the purview of zoning.		

VIII. Public Hearing ZA-21-06: Shoreline Property Setbacks & Buffer

Action: Approve Municipal Bylaw Amendment report and refer to City Council with recommendation.		
Motion by: J Wallace Brodeur	Second by: H Roen	Vote: Approved unanimously
Type: Public Hearing, Action	Presented by: S Gustin	
The Chair opened the public hearing at 7:10pm and closed it at 7:15pm with the following comments:		
S Bushor: Concerned 50' max depth for no-mow zone is too close to the water's edge. Encourage the Commission to consider whether 50' is adequate; recommend 75'.		
Discussion & Notes:		
- S Gustin noted that 50' is an existing buffer for wetlands, where the state's requirements are more complex, so goal was to establish a revegetated area without requiring it of the whole property. - Commissioner Roen expressed that definition of no-mow seemed to conflict itself, and would like to re-naturalize as much of the lake shore as possible. S Gustin noted that some plants need to be mowed in order to enable them to mature, while others should not be. Conservation Board was comfortable with this amendment. - Z Richards of Conservation Board commented that the state feels that this amendment is really positive for redevelopment in the city, whereas the standards for new development are much more stringent. - Commissioner Bradley expressed that it's important to balance naturalization with the ability to see the lake from the property, so 50' depth and the ability to annually mow is important.		

IX. Open Space Protection Plan Addendum

Action: None required		
Motion by:	Second by:	Vote:
Type: Discussion	Presented by: S Gustin; Z Richards & R Roman of Conservation Bd.; Steve Whitman, Consultant	
Discussion & Notes:		

Tuesday, February 23, 2021

- R Roman notes that the Supplements Open Space Protection Plan and Climate Action Plan to enhance Nature Based Solutions to Climate Change. Focus on connections between citizens and natural areas, city departments, and across the landscape.
- S Whitman shared that the team is exploring NBS about both nature and people that will focus on protection, stewardship, and restoration across different types of land covers.
- Asking for help in spreading the word about a March 29 Summit to explore NBS for Burlington.
- J Wallace-Brodeur- excited about the initiative and excited to learn more about what individuals can do. New topic, but makes sense.

X. Commissioner Items

Executive	Committee met before meeting for updates from staff on work that has been underway, as well as a preview on the workload anticipated for FY22.
Ordinance	No Report
Long Range	No Report
Next Meeting is Mar 9, 6:30pm as Joint Committee Meeting with Council Ordinance Committee.	

XI. Minutes and Communications

Action: Approve the minutes and accept the communications		
Motion by: y Bradley	Second by: E Lee	Vote: Approved unanimously
Minutes Filed: February 9, 2021		
Communications Filed:		
• In the agenda packet and posted online		

XII. Adjourn

Adjournment	Time: 7:35pm	
Motion: H Roen	Second: J Wallace-Brodeur	Vote: Approved Unanimously

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

Memorandum in Response to Burton Memorandum on Soil Testing

Laurie Smith et al. hereby respond to the memorandum filed by Burton on the subject of soil testing.

Burton's basic argument is that the "I Rule" is designed to address soil contamination, and, if contamination is found, the I Rule is the proper avenue for responding to soil contamination. Therefore the Commission need not be provided the results of soil testing. See, e.g., p. 4 ("The law and Burton's application provide sufficient assurances that any hazardous waste issues that arise will be addressed appropriately if and when they arise.")

Two legal issues are raised by Burton's position, neither of which its memorandum addresses.

First, this approach contradicts the Supreme Court's application of Act 250. Act 250 requires that the Act 250 criterion be satisfied *as part of the Act 250 proceeding*, and prohibit basing an Act 250 permit upon assurance, such as the Burton Corporation has submitted, that the state regulatory statute process will take care of the problem if and when it arises. *In re Hinesburg Hannaford*, 2017 VT 106 ¶¶ 51-53, 2016 Vt. 118, 179 A.3d 727 (reversing Environmental Division's grant of an Act 250 permit where Division lacked evidence that stormwater control swale would function to filter stormwater and instead relied on applicant's assurance that, in the future, if the swale did not function properly, the NRB would require some other stormwater control method to ensure compliance with Act 250); *In re SP Land Co.*, 2011 VT 104, ¶ 25, 190 Vt. 418, 35 A.3d 1007 (even where Rule 21 applies and a ruling on less than all criteria is authorized, "a permit may issue

only when positive findings of fact and conclusions of law have been made under *all* criteria and subcriteria”[emphasis in the original]).

Here, there is undisputed evidence that the overall site contains contaminated soils. See Applicant’s Exhibit 12. The unanswered questions include whether contaminants will be found at the precise locations where construction for this project will occur, whether construction will release them into the air or water, and, if so, whether the releases can be adequately mitigated.

Burton’s memorandum at pages 4, 5 and 6 asserts precisely what the Supreme Court has rejected. At page 4 Burton argues that if contaminated soils are found, “the I Rule mandates corrective actions ...‘to the maximum extent practicable...’” At page 5 Burton argues that it has satisfied Criterion 1(B) because it will comply with the I Rule. At page 6 it argues that it has satisfied Criterion 9(K) because if any release occurs, “appropriate corrective actions would safeguard the water supply by operation of the I Rule process.”

Without data showing that, notwithstanding the known presence of contaminants on the site, the locations that will be disturbed during construction of this project do not contain those soils, the Commission cannot make the findings required under Criterion 1(B). This burden falls on the applicant. *In re Katzenbach*, Docket No. 124-9-17 Vtec, Decision on the Merits (Vt. Super. Ct, Env’l Div.)(Walsh, J.), January 2, 2019.

A second legal issue raised by Burton’s memorandum is the Natural Resource’s Board’s rules. Remediation of hazardous sites is accomplished by means of Corrective Action Plans. Corrective Action Plans must be approved of by the Department of Environmental Conservation pursuant to I Rule §§ 35-606 and 35-607. Burton’s memorandum repeatedly relies (pages 3, 4, 5 and 6) on the expected approval by DEC of

its remediation plans, *i.e.*, formal approval of its Corrective Action Plan. Obviously, that Plan does not yet exist, has not been submitted to DEC and has not been approved. Board Rules 19(A)-(D) require the Commission's consent if the applicant seeks to proceed forward without the approval in hand and authorizes the Commission to delay the hearing until the Corrective Action Plan has been approved.

Conclusion

The Burton Corporation must submit to the Commission and the parties soil testing data before completion of the hearing on the merits; if the data shows that a Corrective Action Plan is needed, this matter should be continued until a Corrective Action Plan has been approved.

Date: February 24, 2021

/s/James A. Dumont

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

CERTIFICATE OF SERVICE

I certify that I have today delivered a Memorandum in Response to Burton Memorandum on Soil Testing 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: 2/24/2021

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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)

**APPLICANT THE BURTON CORPORATION’S OPPOSITION TO SMITH ET AL.’S
MOTION FOR ORDER REQUIRING SUBMISSION OF NOISE DOCUMENTATION**

On February 10, 2021, Lawrence Smith, on behalf of 12 other individuals (the “Smith Opponents”) filed a Motion for an Order requiring Applicant The Burton Corporation (“Burton”) to produce the following eight categories of documents:

1. RSG design and calculations and “fit up” acoustical consultant design and calculations.
2. RSG survey data, meter files, recordings and field notes acquired during sound level monitoring at Higher Ground’s existing facility in South Burlington during a hard rock concert on August 17, 2019.
3. Project noise model (the CADNA model) for maximum recurring octave band and dBA hard rock concert sound levels starting from the design basis, and supporting assumptions, through specific model inputs for exterior and interior noise sources and noise attenuation of building elements, barriers, and other noise controls, propagation and comparison to existing background sound levels.
4. Project architect’s stamped plans and sections drawings addressing consultants’ noise control and fit-up requirements.
5. Engineering stamped calculations and drawings for HVAC, load-bearing capacity and requirements and roof modifications and wall modifications addressing consultants’ noise-control and fit-up requirements.
6. Renovation/fit-up noise controls with complete specifications including any structural and roof mass loading modifications, materials, baffling, curtains, barriers, absorbers, silencers, duct and equipment lagging, enclosures, doors and door seals.
7. New, modified and existing noise producing mechanical equipment specifications, including sound power level specifications and noise control packages.

8. Build-out design basis and sound power level assumptions and noise calculations for number and locations of people and vehicles making noise onsite during events for full built-out capacity.

The Commission should deny the Smith Opponents' Motion. The letter from the Smith Opponents' consultant—Robert Rand of Rand Acoustics, LLC—that the group uses to support its request (the “Rand Memo”) is based on a review of information not in the record and therefore cannot serve as a proper basis for the request. Moreover, the lion's share of the Smith Opponents' requests—specifically, Items 1, 4, 5, and 6—seek information that does not exist, and is irrelevant to the Commission's review of Burton's application. Most of the remaining requests—specifically, the requests in Items 3, 7, and 8—seek information already in the Smith Group's possession. Indeed, most of it can be found in the November 4, 2020 Noise Assessment Burton submitted as Exhibit 9 to its application (the “Nov. 4 Noise Assessment”).

Finally, although the Smith Opponents' Motion does not articulate any valid reason for requiring Burton to produce *any* additional information, Burton will voluntarily produce the information requested in Item 2. Burton also submits, for the record, a memorandum from its acoustics consultant, RSG (the “RSG Memo,” attached as **Exhibit 1**) responding to the critiques in the Rand Memo and correcting the minor reporting error in RSG's prior noise assessments that Mr. Rand identifies.

I. The Smith Opponents' request is based on a review of information not in the record and does not support their request.

In their Motion, the Smith Opponents rely primarily on the Rand Memo, arguing that Mr. Rand “reviewed the RSG reports and found that [RSG's] noise predictions are contradicted by the limited data contained in the report,” that the “predictions fall below typical sound levels for rock concerts,” and that additional documents are “needed to arrive at an accurate understanding

of the likely noise impacts” of the Project. Smith Opponents Mot. at 3. But Mr. Rand’s Memo does not support the Smith Opponents’ broad request for more information.

First, Mr. Rand did not even review the correct noise assessment. In his Memo, Mr. Rand references reports prepared by RSG in connection with Burton’s local zoning permit application last year—see Rand Memo at 1 (listing reports dated April 20 and August 3, 2020)—and *not* the November 4, 2020 RSG report Burton has submitted to the Commission in connection with its application. See Nov. 4 Noise Assessment. That error is significant because the previous noise assessments are not in the record in this proceeding; they represent an earlier version of the Project submitted to the Burlington Development Review Board (“DRB”). The version of the Project described in the Nov. 4 Noise Assessment—which Mr. Rand does *not* appear to have reviewed, and which is the Project at issue here—represents the Project as conditioned by the DRB.

Second, as explained in the RSG Memo, it is simply not true that RSG’s “noise predictions are contradicted by the limited data contained in” its reports, as the Smith Opponents’ Motion states. Mr. Rand is correct that one of the tables in RSG’s reports (including the Nov. 4 Noise Assessment) contains what amounts to a transcription mistake,¹ but RSG has demonstrated that the error did not have any impact on its modeling, and Mr. Rand does not even attempt to explain how the error supports the Smith Opponents’ request for *any* of the information listed in its Motion.

¹ For a detailed description of the mistake, and a corrected table, please see RSG Memo at 3. In short, it appears that RSG’s reporting software mistakenly pulled center frequency data from each full octave run through its model instead of summing the three frequencies in each. The correct data was, however, run through the actual model RSG used to determine exterior sound levels.

And finally, Mr. Rand's opinion that RSG's interior sound level predictions "fall below typical sound levels for rock concerts," Smith Opponents Mot. at 3, does not provide any reason for the Commission to require the production of additional information.² If the Smith Opponents believe that RSG's assumptions about interior sound levels are not valid, they can explain the basis for that belief. A simple disagreement about RSG's interior noise assumptions does not support a request to produce additional, unrelated information.³ See RSG Memo at 3.

II. Items 1, 4, 5, and 6 seek information that does not exist and is not relevant to the Commission's review of Burton's application.

In Items 1, 4, 5, and 6, the Smith Opponents seek architectural and engineering drawings and specifications showing the actual "noise control" and "fit-up" methods Burton will use to achieve the noise reduction values reflected in RSG's modeling. See Rand Memo at 1 (noting that "fit-up" details were not provided in RSG's modeling). As explained in the RSG Memo, however, those materials do not exist, and in any event are irrelevant to the Commission's review of this application. See RSG Memo at 3.

Final engineering of a Project typically does not take place until land use permits are secured. That makes sense because until those permits are secured and any relevant conditions are imposed, a developer does not know precisely what performance specifications it will be required to meet. Consistent with that usual process, Burton has not yet developed the final architectural and engineering plans or specifications requested in Items 1, 4, 5, and 6. It will

² Moreover, had Mr. Rand reviewed the correct report, he might have noticed that RSG also ran a much higher interior sound level (106 dBA)—based on the L_{max} observed during its testing at the current Higher Ground location—through its modeling, undermining his critique that RSG should have used a higher value than 99 dBA.

³ In any event, as discussed below, although the Smith Opponents' Motion does not provide any valid reason for the Commission to *order* production of additional data, Burton will voluntarily produce the empirical data on which it relied in arriving at its base interior sound levels—i.e., actual sound testing at a hard rock concert at Higher Ground's current location—for the Commission's consideration.

prepare those materials once the permit is issued—and any relevant conditions are imposed—and it knows precisely what acoustical performance standards it will be required to meet.

In the Nov. 4 Noise Assessment, RSG *does* provide a basis for its sound attenuation assumptions, but the precise methods by which Burton will achieve the required attenuation is not set in stone—see RSG Memo at 3—nor should it be. It is simply not relevant to the Commission’s review *how* Burton achieves the sound reduction required by its permits, only that it does. Therefore, the information requested in Items 1, 4, 5, and 6 is neither available nor relevant to the Commission’s review of Burton’s application.

III. The Smith Opponents already have all the information requested in Items 3, 7, and 8 to which they are entitled.

The Smith Opponents already have virtually all the information sought in Items 3, 7, and 8, and have had that information since at least the initiation of this proceeding, and in some instances for much longer. For example, the relevant raw model input data sought in Item 3 was provided to Mr. Smith in April 2020, well in advance of the Burlington DRB’s consideration of Burton’s application. Moreover, the Nov. 4 Noise Assessment—which Mr. Rand apparently has not reviewed—again provides that data and expressly describes the industry-standard modeling processed used by RSG. See Nov. 4 Noise Assessment at 15; Appendix B. Plainly, Mr. Rand and the Smith Opponents have everything they need to assess RSG’s modeling. Nonetheless, neither the Smith Opponents nor Mr. Rand have raised any concerns with either the model inputs or RSG’s modeling itself. Burton is not obligated to provide any additional information in response to Item 3.

The Nov. 4 Noise Assessment also contains the information sought in Items 7 and 8. Item 7 seeks sound power level specifications for noise producing mechanical equipment. The Nov. 4 Noise Assessment modeled all mechanical noise sources; the particular sound emission

figures used were from manufacturer data of representative equipment and have been provided at page 17, Table 2.⁴

Item 8 seeks the design basis and sound power level assumptions associated with the parking lot during full capacity events. The Nov. 4 Noise Assessment already provides this information at page 16–17, Table 2, and provides additional model input data in Appendix B. Sound power level assumptions for vehicles accessing the parking lot are calculated based on German standard RLS-90 through the Cadna A software. See RSG Memo at 3–4.

IV. Burton will voluntarily produce the information requested in Item 2, which validates the base interior sound levels used in its modeling.

As we discuss above, the Smith Opponents’ consultant takes issue with the interior sound levels RSG used in its modeling for a hard rock concert, noting—without providing any conflicting data—that in his “experience,” the 99 dBA figure RSG used is “well below typical loudest recurring sound levels during interior hard rock concerts.” Rand Memo at 1. Again, though, had Mr. Rand reviewed the correct report, he may have noticed that RSG also took into account maximum values of 106 dBA in its modeling, and found that the resulting exterior sound at the nearest adjacent residence would still fall within applicable limits. See RSG Memo at 3; Nov. 4 Noise Assessment at 24–25. Mr. Rand’s concerns, therefore, do not support the Smith Opponents’ request in Item 2 for additional noise monitoring data from Higher Ground.

⁴ As discussed above, to the extent the request calls for equipment-specific documentation, that is irrelevant to the Commission’s review, which is concerned with noise mitigation, not engineering review. Again, as discussed above, it is immaterial *how* Burton achieves any required mitigation, only that it does achieve the standard—especially as design details are subject to change.

Nonetheless, while both the Smith Opponents and the Commission already have all they need to validate the conclusions of Burton's application, Burton is willing to provide additional detail in support of RSG's interior sound assumptions as requested in Item 2.

Dated at Burlington, Vermont this 25th day of February, 2021.

DUNKIEL SAUNDERS ELLIOTT
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By: _____


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Attorneys for the Applicant

MEMO

TO: Justin Worthley

FROM: Eddie Duncan, INCE Bd. Cert.

CC: Brian Dunkiel, Esq.

DATE: February 25, 2021

SUBJECT: Response to Robert Rand's letter to James Dumont regarding his noise review of Burton Snowboard's Hub Project

This memorandum is in response to a letter¹ from Robert Rand to James Dumont regarding Mr. Rand's review of RSG documents discussing a noise assessment of Burton Snowboard's Hub Project ("Project").

In his letter to Mr. Dumont, Mr. Rand discusses "discrepancies" he found in an RSG report titled, "Burton Snowboards & Higher Ground Hub Project, Noise Assessment," April 20, 2020. It is important to first note that the referenced report is not the noise assessment report that was provided with the Hub Project's Act 250 application. With the Act 250 application, RSG provided a report titled "Burton Snowboards & Higher Ground Hub Project, Act 250 Noise Assessment," November 4, 2020 ("Act 250 Noise Assessment"). That is, the documents Mr. Rand has reviewed are not the documents related to noise impacts that were submitted with the Project's Act 250 application. Nonetheless, we provide responses to comments raised by Mr. Rand. Specifically, this memorandum addresses:

- Modeled interior octave band sound levels,
- Modeled overall sound levels of a hard rock concert,
- Building transmission loss values, and
- Parking lot noise modeling.

Modeled Interior Octave Band Sound Levels

Mr. Rand correctly points out that the Z-weighted sound levels reported by full octave band in Table 2 of the report he reviewed do not add up to the total interior level that is referenced in the same table. If the full octave band sound levels are A-weighted and logarithmically summed, the total value should equal the overall sound level reported in

¹ Robert W. Rand to James A. Dumont, February 9, 2021, re: RSG Noise Assessment Report, April 20, 2020, RSG Memo to Justin Worthley, August 3, 2020, Burton Snowboards & Higher Ground Hub Project

the table, but as reported, they do not. This is a reporting mistake that does not change the reported model results or the conclusion of the assessment. The sound level that was input into the model was entered in by 1/3 octave bands and when the input data was exported from the model for reporting purposes, the table only pulled the sound level from the 1/3 octave band that matches the center frequency of each full octave. The 1/3 octave bands that were used in the model should have been summed when reporting the full octave band sound levels that were used in the model. This is illustrated in Table 1 below, along with the correct full octave band values that were modeled. Again, this is strictly an error in reporting the input into the model and does not affect the model results or conclusions that were previously reported.

TABLE 1: MODELED INTERIOR SOUND PRESSURE LEVELS BY 1/3 AND 1/1 OCTAVE BANDS

Frequency	Hard Rock Concert			Adjacent Spaces During Hard Rock Concert		
	Reported Octave Band Sound Levels	Modeled 1/3 Octave Band Sound Levels	Actual Modeled Full Octave Band Sound Levels	Reported Octave Band Sound Levels	Modeled 1/3 Octave Band Sound Levels	Actual Modeled Full Octave Band Sound Levels
25		67			59	
31.5	84	84	95	76	76	86
40		94			86	
50		105			97	
63	100	100	107	92	92	98
80		94			86	
100		99			88	
125	100	100	104	89	89	93
160		99			87	
200		98			86	
250	94	94	101	83	83	89
315		95			84	
400		93			80	
500	90	90	96	76	76	83
630		91			78	
800		90			77	
1000	89	89	94	76	76	81
1250		88			74	
1600		82			69	
2000	80	80	86	67	67	72
2500		80			67	
3150		80			67	
4000	79	79	85	66	66	71
5000		80			66	
6300		78			65	
8000	75	75	80	62	62	67
10000		70			57	
Total A-weighted Sound Level		99	99		86	86



Modeled Overall Sound Levels of a Hard Rock Concert

The error in the reported interior sound levels that were modeled is the only discrepancy that Mr. Rand discusses in his letter. The other issue that Mr. Rand raises is not a discrepancy, but rather a disagreement. Mr. Rand contends that 99 dBA is below the sound levels during an interior hard rock concert. As discussed in the Act 250 Noise Assessment, these are the levels that were actually monitored during a hard rock concert at Higher Ground on August 17, 2019. Footnote 11 of the Act 250 Noise Assessment on page 17, which Mr. Rand didn't review, states:

The hard rock music was a moderately consistent source of sound with the quietest 10% (L_{90}) of music at 95 dBA and the loudest 10% (L_{10}) of music at 101 dBA. The L_{max} for one second during the evening was 106 dBA. While there were brief periods when the interior sound level exceeded 99 dBA, the 99 dBA is representative 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.

Furthermore, the Act 250 Noise Assessment discusses what the difference in the projected sound levels would be if the L_{max} from the hard rock concert, 106 dBA, was used in the model. As such, Mr. Rand's concerns about the overall interior sound levels that were modeled is not a discrepancy, but either a misunderstanding based on the fact that he did not review the Act 250 Noise Assessment or a disagreement about what interior sound level should have been used, even though the interior sound levels that were used were actually measured at a concert at Higher Ground.

Building Transmission Loss Values

In the letter, Mr. Rand requests "RSG design and calculations and "fit-up" acoustical consultant design and calculations." RSG did not design any fit-up, partition, or ceiling assemblies as part of the Act 250 Noise Assessment. Rather, an acoustical specification for the exterior walls and ceiling/roof assembly is provided in Section 5.3 of the report in the form of transmission loss values. These are the specifications that the final design of the building will need to meet in order for the model results to hold true. In addition, to those specifications, the modeled transmission loss values of other building elements are provided in Appendix B, Table 6.

Parking Lot Noise Modeling

Mr. Rand also requested, "Build-out design basis and sound power level assumptions and noise calculations for number and locations of people and vehicles making noise onsite during events for full build-out capacity." This information is summarized in the Act 250 Noise Assessment. Section 5.2, page 16, discusses the sound emissions from people socializing in the outdoor lounge area, and the sound from vehicles accessing the parking lot during and after a concert event. The sound power level of the outdoor lounge and the vehicles in the parking lot are provided in Table 2 on page 17. The sound

power level of the 100 vehicles accessing the lot during a concert and the 500 vehicles accessing the lot after a concert were calculated based on those number of vehicles per the German standard RLS-90 as implemented in the sound propagation modeling software Cadna A. Additional information on Cadna A can be found in the Act 250 Noise Assessment in Section 5.1, and the model input data is provided in Appendix B.

**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 February 25, 2021, I served copies of the *Memorandum in Opposition to Smith Request for Noise Data* and associated exhibit on behalf of the Burton Corporation to the service list below by the delivery method noted:

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Dated at Burlington, Vermont, this 25th day of February, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal

February 19, 2021
Thomas A. Little, Esq.
Chair

District 4 Environmental Commission
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Aaron Brondyke, State Coordinator
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Re: Burton Corporation Applications 4C0174-6; 4C0358-3

Dear Chairman Little and Coordinator Brondyke:

Thank you for the opportunity to provide these comments for the Act 250 District Commission's consideration.

South Burlington Fire District #1 (SBFD#1) is a municipal corporation within South Burlington which under a Prudential Committee (PC) manages functions of town government that either are not available throughout the entire town or are better administered by a distinct, special-purpose entity. In our case, this includes a drinking water system that serves more than 80 municipal connections and various landholdings such as a green, basketball court, playground, parking lots, and beach access points.

SBFD#1 is also known as Queen City Park (QCP), which is zoned under the South Burlington Land Development regulations as the Queen City Park District. The purpose of this regulation is to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood to promote the area's historic development pattern.

On January 13, 2021, SBFD#1 submitted a petition for party status to ensure the ongoing viability of our high quality water source. In the process of reviewing the proposed project the presence of several sources of toxic contamination on the project site have come to light. The VT Agency of Natural Resources has required the project applicant to conduct an investigation into the nature of the contamination, and to fill in crucial gaps in that information. That process is ongoing.

At the February 16, 2021, Prudential Committee meeting of SBFD#1, the PC voted to submit further comment to the District Commission regarding the protection of the SBFD#1 assets from the impacts that will likely result from the approval of the Burton project. These assets include:

- 1.35 acre parcel comprised of a green, basketball court, play structures, and 2 parking lots
- .26 acre parcel that includes a lake overlook and stairway access to Lake Champlain.
- .10 acre parcel that provides access to Lake Champlain

- .41 acre parking area along Central Ave.
- 14 acre parcel of largely wooded land with community garden and community firehouse
- .25 acre parcel that connects SBFD#1 to Red Rocks Park including the drinking water well and all associated equipment.

The SBFD#1 recognizes that this amended application should have been filed by the date of the Prehearing Conference. However, the SBFD#1 acts through the PC which takes time to meet and consider actions. Also, it has not been clear whether as a municipal body we need to make a showing to qualify for party status. NRB Rule 6(C) allows extensions of time where the extension would not delay or disrupt the Commission's proceedings. Therefore we ask for permission to make this late filing and also to submit witnesses at the hearing to provide evidence about our standing to raise these issues. We hereby name Sharon Behar and Stephen Cafilisch as our designated representatives for the hearing on March 10th. The delay will have no effect on the District Commission's schedule. Other parties are already raising these issues.

OVERVIEW:

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own green, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the green. The houses are close together and close to the street, creating a dense and closely connected residential neighborhood.

This project as proposed threatens the character of our neighborhood and will have a harmful impact on our community assets and quality of life. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, on SBFD#1 property. There is currently no enforceable way to prevent attendees to this venue from entering SBFD#1 in the Burton project application. Adding numerous visitors on warm summer nights is likely to overburden the Fire District and damage our assets both before and after concerts. This impact will be worsened substantially by the lack of adequate parking at the venue.

We are asking that enforceable conditions be attached to any permit approval by the District Commission to specifically address and mitigate the additional concerns expressed below.

The Impact of Insufficient Parking

Insufficient parking at the venue will have numerous adverse effects on SBFD#1 properties, including parking lots, as well as on community members using and seeking to access SBFD#1 properties.

1. The proposed venue has 426 parking spaces for shows. The Federal Highway Administration has found that a reliable average number of persons per vehicle at performance events are between 2.2 and 2.8, which could mean up to 680 parking spaces are needed, on average, just for the sold out performance events. Plus there will be staff vehicles and show crew vehicles, and vehicles of employees of Higher Ground, Burton, the Talent Skate Park and the Cafés.
2. There are no public municipal parking lots available for concert attendees, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is Central Avenue, which is the sole access road to the SBFD#1. Many patrons who cannot find parking at the venue (or who anticipate they will not find parking at the venue) will undoubtedly travel into SBFD#1, and some will park in our community parking lots, thus reducing the availability of the lots for QCP residents and increase the cost of managing and maintaining the lots. Others will park on the streets. Still others will need to turn around and exit because they cannot find parking in the neighborhood
3. Concertgoers seeking parking in Queen City Park, whether in SBFD#1 parking lots or on the streets, will cause congestion and dangerous conditions for community members, including those using or seeking to access SBFD#1 property.
4. The congestion and dangerous conditions will impair access by emergency vehicles to the neighborhood, including access to deal with emergencies on SBFD#1 property.
5. Patrons who park in QCP due to the lack of adequate parking at the venue will also use other SBFD#1 assets, worsening the impacts discussed in the next section and increasing management and maintenance expenses for the District.

Impacts of Concert Goers

Even if the Burton parking lot suffices and there are no cars parked in our parking lots, the impacts will be severe. Undoubtedly, concert goers will filter into SBFD#1 pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the SBFD#1 assets and potentially create safety issues, both of which will impact our ability to manage and maintain these assets.

The SBFD#1 green is 1,100 feet from the proposed venue. Concert attendees will use the green and the associated equipment, as well as the park and beach access points, both before and after concerts. This project will negatively impact our resident's ability to enjoy our community assets. Additionally, increased use by non-resident concert goers of our SBFD#1 community green, parking areas, and beach access will result in increased litter, and wear and tear, which will dramatically degrade the aesthetics of these areas which we must manage and collect taxes to

maintain. This increased use will also cause congestion that will impact our community's use and enjoyment of these assets.

Summary

There are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of the SBFD #1 assets. It is critical that effort be made by Burton/Higher Ground and the Commission to ensure that the SBFD#1 and property are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to this currently not-heavily-trafficked area, which will undoubtedly result in an increase of vehicle traffic and patron usage of our assets attributable to Higher Ground events. The SBFD#1 property could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate either before or after events.

In addition to the protections for our drinking water source that we previously submitted, we request that as part of any approval of this project, the Commission impose enforceable conditions of approval that protect the SBFD#1 assets from the management and maintenance impacts of this project and additionally protect this municipality from all potential disturbances caused by this proposed development. We request that if the Commission approves this application they include conditions to: restrict venue size and hours of operation; establish an enforceable traffic management and parking plan that prevents venue attendees from utilizing SBFD#1 assets; require the venue to provide a security officer accessible to SBFD#1 before, during, and after all events to address any venue attendee impacts on SBFD#1 assets; require Burton to purchase, install and maintain any signage needed to direct attendees or to protect SBFD#1 assets; and any other conditions to protect the character and assets of SBFD#1.

Thank you again for your consideration of and potential action on behalf of our concerns and supporting comments.

Sincerely,

/s/ Jed Lowy
SBFD#1 PC Chair
South Burlington Fire District #1
C/O Mandy McDermott
5 Pine Place
South Burlington, VT 05403

To: District 4 Environmental Commission
From: South Burlington Fire District #1 (SBFD#1), by Stephen Crowley, Asst. Water Operator
Re: Act 250 Land Use Permit Application Nos. 4C0174-6, 4C0368-3 – The Burton Corporation, Burlington
Date: February 25, 2021

SBFD#1 RESPONSE TO BURTON MEMORANDUM REGARDING
CONSIDERATION OF SOIL TEST RESULTS, dated Feb. 10, 2021

In this memorandum, Burton alleges that the issues regarding soil contamination on the site of the proposed development are entirely covered by DEC's application of the IRule, and not under jurisdiction of Act 250 review. To a large extent, we agree with this. But there are specific instances in which this is not the case, and there are important considerations for review in this proceeding.

In general we agree that any prior contamination that will not be disturbed by this project is not subject to review here. But there are several areas where disturbances by this project have the potential to enhance any threat of contamination off site, and potentially threaten the SBFD#1 water supply.

1. According to the attached document, prior owners utilized a trench, located at the northwest corner of the property, for disposal of etching waste. Among other materials, this contained chromate, a known hazardous material. While there is no record, we also know that the use of chromates in the etching process was often facilitated with PFAS materials. PFAS compounds were not recognized at that time, or even at the time of the most recent site assessment, as representing a significant hazard, but we know better now. Both the chromates and the potential PFAS represent materials of concern for the SBFD#1 water supply.

It is not known precisely where this pit was located. But we do see that the current proposal includes a stormwater pond approximately in the same location. This is not currently part of the review plan being undertaken by Burton under the IRule. This may happen at a future date. But in any case, construction and operation of this stormwater pond or associated drainage swales, etc., could, we believe, aggravate a previously dormant contamination site.

2. There is potential for other work on this project to significantly affect contaminated soils. We know there were activities inside the building, such as accidental or deliberate spills and inappropriate use of floor drains, that have left a legacy of contamination under the floor. If there is digging in these areas, that activity has the potential to mobilize toxins. This may be addressed under the IRule, depending on details of the current or subsequent site study. The study proposal approved by DEC does not provide specificity about sample locations, or about follow-up in a second phase of that review. The lack of specificity makes it impossible

to know with any certainty that this project will not cause further harm. It's worth pointing out that the separation of the site evaluation into a phase one and later phase two was initiated by Burton's own contractor, inevitably stretching out their time frame.

3. The site review plan under the IRule does not include any further characterization of groundwater flow. This is crucial, especially given the highly permeable nature of the sandy soils and the fractured bedrock underneath.

In its memorandum, Burton acknowledges that these are potential concerns. We concur with this assessment. We also agree that there is potential that a full site study under DEC's application of the IRule could manage these concerns adequately. But the burden of proof here is in the hands of the applicant. All they can say at this point is that there is the potential that we don't have a problem. At this point, we don't have results of the first round of sampling. We don't know what will be required for or found from the anticipated second round. And we certainly don't have any way to know what kind of remediation will be required. All of this directly impacts what will or should be done as part of this project. We maintain that these concerns do fall under Act 250 review for this project, and until these matters are settled, there is no way Burton can meet its burden under Act 250.

**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, Stephen Crowley, certify that on February 25, 2021, I served copies of the SBFD#1 RESPONSE TO BURTON MEMORANDUM REGARDING CONSIDERATION OF SOIL TEST RESULTS and associated exhibit on behalf of the South Burlington Fire District#1 to the service list below by the delivery method noted:

By Email:

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Attn: Sharon Behar & Stephen Caflisch c/o Jed
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Dated at South Burlington, Vermont, Feb. 25,
2021.

By: Stephen Crowley
Asst Water Operator

General Electric
Armament and Electrical Systems Department

EPA ID # VTD 000649780

Potential Hazardous Waste Site
Preliminary Assessment

December 1985

Waste Management Division

Department of Water Resources

Vermont Agency of Environmental Conservation

The General Electric Armaments and Electrical Systems Department (G.E.) Plating Shop is located on Industrial Parkway, Burlington, Vermont. The building is located in an industrial park, developed by the Greater Burlington Industrial Corporation in 1961. The building known as G.E. Building #41 or the Plating Shop, was leased by G.E. from 1962 until 1985, when G.E. purchased it from GBID.

The plating shop site is bounded by the Vermont Railroad right of way, a 35 foot deep ravine directly to the east; by the former Hayward Taylor building, recently purchased by G.E. to the north; by the Edlund Company to the west, across Industrial Parkway; and by a wooded area across Central Avenue, South Burlington to the south.

The plating shop site is situated on an area of unconsolidated lacustrine deposits. The soils in the area are classified sandy and permeable by the USDA. The underlying bedrock, known as the Monkton Quartzite, is predominantly red quartzite and dolomite. Approximately 1/4 mile to the southwest is Red Rock Park, so named for extensive outcropping of the Monkton Quartzite.

The site is located approximately 1/4 mile from the north shore of the Shelburne Bay area of Lake Champlain. Surface water

drains into Potash Brook to the east, which flows south westward into Lake Champlain at Shelburne Bay.

Interviews with employees were conducted during a site visit and perimeter survey on December 17, 1985 by Tom Moye and Bill Barry of the Vermont Agency of Environmental Conservation. The plating shop began operations in 1962 as a sheet metal and plastics assembly shop, where re-entry pods for missiles were assembled.

Industrial processes at the Plating Shop were originally sheet metal forming, compression molding of plastics, metal finishing and painting. The original building occupied some 65,000 square feet, and a 20,000 square foot addition was completed in 1979 to house a wiring and electrical assembly operation. The facility now assembles and finishes pods for armament systems, and does heat treating and fusion welding of aluminum as well as assembly and spray painting.

The present processes at the plating shop generate acidic, caustic, and chromate wastes. This waste is transported in drums, to the main plant on Lakeside Avenue. Occasionally it is held temporarily in a 1,000 gallon holding tank on site. Aside from this holding tank, no waste is stored at the facility. Spray painting operations utilize a continuous spraywash for

emission control. This water is continuously recycled and changed at 6 month intervals, with water skimmings and sludges transported to Lakeside Avenue in drums for storage.

Trichloroethylene (TCE), freon TMS, and alcohols are used for degreasing and are sent in drums to Lakeside Avenue for storage. On an annual basis RCRA files show the following wastes generated at the plating shop facility:

Solvents	3,000 kg/yr
Corrosive Liquid	870 kg/yr
Caustic Solids	900 kg/yr
Paint Sludges	500 kg/yr
Waste Oils	600 kg/yr

In 1981 General Electric submitted a CERCLA 103c notification to EPA reporting the onsite disposal of 1,200 gallons of etching solution during 1970. A 600 gallon tank used in etching aluminum was emptied into a 30' X 5' X 3' ditch at the north side of the property. The solution was spread over ferrous ammonium sulfate, then covered with lime, and the ditch filled with soil. This was done according to recommendations made by the G.E. laboratory, because the waste treatment tank at Lakeside Avenue was being repaired. When questioned during the site visit in December 1985, plant personnel stated that the tank

was emptied only once and the figure reported should have been 600 gallons rather than 1,200 gallons.

General Electric laboratory records indicate that the etching solution included 30 grams/litre of sodium dichromate and 3 grams/litre of sulfuric acid, but did not give a complete analysis of the material poured into the ditch. The location of this ditch is now under the asphalt drive into the shipping and receiving yard at the northwest corner of the plant at the fence line surrounding the facility.

Homes near the site north of the Burlington City boundary are served by the Champlain Water District. A 210 foot deep bedrock well that serves 75 homes in the Queen City Park area of South Burlington is located 1050 feet to the southwest of the plating shop. Red Rocks Park, a picnic and recreational area owned by the City of South Burlington, is also located within 1/4 mile to the southwest.

Based on the information collected for the preliminary assessment, it is recommended that a site inspection be conducted at the General Electric Plating Shop based on the following:

- *Notification of hazardous waste disposal (form 8900-1).
- *Unknown composition of etching solutions dumped on site.
- *Potential groundwater contamination.

*Proximity of bedrock well serving as a municipal water supply for 75 homes.

*No sampling of nearby well for chromium

Site inspection should include water sampling of the well, and surface water of Potash Brook. Although this site inspection has been given low priority due to the small quantity of hazardous waste disposed of on only one occasion, the nearby municipal well serving as a drinking water supply must be considered.

BB/11

G.E. Plating Shop References

VT AEC Air and Solid Waste Industry Files

VT AEC Ground Water Management
APA Files, South Burlington

USGS Topographic Map 15 minute series
Burlington Quadrangle revised 1972

VT AEC Waste Management RCRA Files
Report of Inspection - Brian Fitzgerald 12/4/84

EPA Form 8900-1 Initial Notification
of Hazardous Waste Disposal

Perimeter Survey and Facility Inspection 12/17/85 Bill Barry
Tom Moye, VT AEC; Fred Lugano and Don Stewart, G.E. A & ESD

VT aerial photos 62 H 14 227
62 H 14 228



POTENTIAL HAZARDOUS WASTE SITE
PRELIMINARY ASSESSMENT
PART 1 - SITE INFORMATION AND ASSESSMENT

I. IDENTIFICATION

01 STATE 02 SITE NUMBER
VTD 000649780

II. SITE NAME AND LOCATION

01 SITE NAME (Legal, common, or descriptive name of site) General Electric Plating Shop		02 STREET, ROUTE NO., OR SPECIFIC LOCATION IDENTIFIER Industrial Parkway			
03 CITY Burlington	04 STATE VT	05 ZIP CODE 05402	06 COUNTY Chittenden	07 COUNTY CODE 007	08 CONG DIST 01
09 COORDINATES LATITUDE 44 26 58 LONGITUDE 73 12 56					

10 DIRECTIONS TO SITE (Starting from nearest public road)

North on U.S. 7, left onto Home Avenue, Cross railroad tracks - left turn onto Industrial Parkway. Plating shop is last building on left.

III. RESPONSIBLE PARTIES

01 OWNER (if known) General Electric A & ESD		02 STREET (Business, mailing, residential) Lakeside Avenue			
03 CITY Burlington	04 STATE VT	05 ZIP CODE 05402	06 TELEPHONE NUMBER 802 657-6876		
07 OPERATOR (if known and different from owner)		08 STREET (Business, mailing, residential)			
09 CITY	10 STATE	11 ZIP CODE	12 TELEPHONE NUMBER		

13 TYPE OF OWNERSHIP (Check one)

☒ A. PRIVATE ☐ B. FEDERAL (Agency name)
☐ C. STATE ☐ D. COUNTY ☐ E. MUNICIPAL
☐ F. OTHER (Specify)
☐ G. UNKNOWN

14 OWNER OPERATOR NOTIFICATION ON FILE (Check all that apply)

☐ A. RCRA 3001 DATE RECEIVED: / /
☒ B. UNCONTROLLED WASTE SITE (CERCLA 103(c)) DATE RECEIVED: 6 / 12 / 81
☐ C. NONE

IV. CHARACTERIZATION OF POTENTIAL HAZARD

01 ON SITE INSPECTION ☒ YES DATE 12 / 17 / 85 ☐ NO		BY (Check all that apply) ☐ A. EPA ☐ B. EPA CONTRACTOR ☒ C. STATE ☐ D. OTHER CONTRACTOR ☐ E. LOCAL HEALTH OFFICIAL ☐ F. OTHER (Specify) CONTRACTOR NAME(S):			
02 SITE STATUS (Check one) ☒ A. ACTIVE ☐ B. INACTIVE ☐ C. UNKNOWN		03 YEARS OF OPERATION 1962 Present BEGINNING YEAR ENDING YEAR ☐ UNKNOWN			

04 DESCRIPTION OF SUBSTANCES POSSIBLY PRESENT, KNOWN, OR ALLEGED

Solution which included sodium dichromate and sulfuric Acid used in etching aluminum, was poured over Ferrous Ammonium sulfate.

05 DESCRIPTION OF POTENTIAL HAZARD TO ENVIRONMENT AND/OR POPULATION

Potential groundwater contamination could migrate to a municipal well. Contamination could impact surface water in Potash Brook.

V. PRIORITY ASSESSMENT

01 PRIORITY FOR INSPECTION (Check one if high or medium is checked, complete Part 2 - Waste Information and Part 3 - Description of Hazardous Conditions and Remedies)

☐ A. HIGH (Inspection required promptly) ☐ B. MEDIUM (Inspection required)
☒ C. LOW (Inspection time available but not required) ☐ D. NONE (No further action needed, complete current disposition form)

VI. INFORMATION AVAILABLE FROM

01 CONTACT Tom Moyer	02 OF (Agency Organization) VT AEC Waste Management Division	03 TELEPHONE NUMBER 802 828-3395
04 PERSON RESPONSIBLE FOR ASSESSMENT Bill Barry	05 AGENCY VT AEC	06 ORGANIZATION Waste Mgmt. Div.
	07 TELEPHONE NUMBER 802 828-3395	08 DATE 12 / 31 / 85 MONTH DAY YEAR



☐ I. HIGHLY VOLATILE
☐ J. EXPLOSIVE
☐ K. REACTIVE
☐ L. INCOMPATIBLE
☐ M. NOT APPLICABLE

Planning Commission Agenda
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POTENTIAL HAZARDOUS WASTE SITE
PRELIMINARY ASSESSMENT

PART 3 - DESCRIPTION OF HAZARDOUS CONDITIONS AND INCIDENTS

I. IDENTIFICATION

01 STATE 02 SITE NUMBER
VTD 000649780

II. HAZARDOUS CONDITIONS AND INCIDENTS

01 ☐ A. GROUNDWATER CONTAMINATION
03 POPULATION POTENTIALLY AFFECTED: 262

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☒ POTENTIAL ☐ ALLEGED

G.E. acknowledged the disposal of 600 gallons of etching solution on site in a ditch at the northwesterly corner of the site. A municipal well owned by the S. Burlington fire district #1 is 1050 feet from this site.

01 ☒ B. SURFACE WATER CONTAMINATION
03 POPULATION POTENTIALLY AFFECTED: _____

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☒ POTENTIAL ☐ ALLEGED

Potash Brook, a tributary of Lake Champlain is located 800 feet east of the disposal site.

01 ☐ C. CONTAMINATION OF AIR
03 POPULATION POTENTIALLY AFFECTED: _____

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☐ POTENTIAL ☐ ALLEGED

01 ☐ D. FIRE EXPLOSIVE CONDITIONS
03 POPULATION POTENTIALLY AFFECTED: _____

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☐ POTENTIAL ☐ ALLEGED

01 ☐ E. DIRECT CONTACT
03 POPULATION POTENTIALLY AFFECTED: _____

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☐ POTENTIAL ☐ ALLEGED

01 ☒ F. CONTAMINATION OF SOIL
03 AREA POTENTIALLY AFFECTED: unknown

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☒ POTENTIAL ☐ ALLEGED

Etching solution was poured into a ditch 30 feet long, 3 feet wide and 5 feet deep.

01 ☒ G. DRINKING WATER CONTAMINATION
03 POPULATION POTENTIALLY AFFECTED: 262

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☒ POTENTIAL ☐ ALLEGED

G.E. acknowledged the disposal of 600 gallons of etching solution on site in a ditch at the northwesterly corner of the site. A municipal well owned by the S. Burlington Fire District #1 is 1050 feet from this site.

01 ☐ H. WORKER EXPOSURE/INJURY
03 WORKERS POTENTIALLY AFFECTED: _____

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☐ POTENTIAL ☐ ALLEGED

01 ☐ I. POPULATION EXPOSURE/INJURY
03 POPULATION POTENTIALLY AFFECTED: _____

02 ☐ OBSERVED (DATE _____)
04 NARRATIVE DESCRIPTION

☐ POTENTIAL ☐ ALLEGED



POTENTIAL HAZARDOUS WASTE SITE
PRELIMINARY ASSESSMENT
PART 3 - DESCRIPTION OF HAZARDOUS CONDITIONS AND INCIDENTS

I. IDENTIFICATION
01 STATE 02 SITE NUMBER
VTD 000649780

II. HAZARDOUS CONDITIONS AND INCIDENTS (Continued)

01 ☐ J. DAMAGE TO FLORA
04 NARRATIVE DESCRIPTION

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

01 ☐ K. DAMAGE TO FAUNA
04 NARRATIVE DESCRIPTION (include name(s) of species)

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

01 ☐ L. CONTAMINATION OF FOOD CHAIN
04 NARRATIVE DESCRIPTION

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

01 ☒ M. UNSTABLE CONTAINMENT OF WASTES
(Spills/runoff/standing liquids/leaking drums)
03 POPULATION POTENTIALLY AFFECTED: unknown

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

04 NARRATIVE DESCRIPTION

Waste etching solution were poured into a 30 ft. long by 5 ft. deep by 3 ft. wide ditch.

01 ☐ N. DAMAGE TO OFFSITE PROPERTY
04 NARRATIVE DESCRIPTION

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

01 ☐ O. CONTAMINATION OF SEWERS, STORM DRAINS, WWTPs
04 NARRATIVE DESCRIPTION

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

01 ☐ P. ILLEGAL/UNAUTHORIZED DUMPING
04 NARRATIVE DESCRIPTION

02 ☐ OBSERVED (DATE: _____) ☐ POTENTIAL ☐ ALLEGED

05 DESCRIPTION OF ANY OTHER KNOWN, POTENTIAL, OR ALLEGED HAZARDS

III. TOTAL POPULATION POTENTIALLY AFFECTED: 262

IV. COMMENTS

The direction and extent of contamination potentially transported by groundwater are unknown. A municipal well and Potash Brook are potentially nearby receptors.

V. SOURCES OF INFORMATION (Cite specific references, e.g., state files, sample analysis reports)

1. Notification of potential hazardous waste site EPA form 8900-1
2. State of VT AEC RCRA Files, GE Plating Shop
3. Interview with GE personnel 12/17/85

This initial notification information is required by Section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and must be mailed by June 9, 1981.

Please type or print in ink. If you need additional space, use separate sheets of paper. Indicate the letter of the item which applies.

VT S0000001007

810609

Person Required to Notify:

Enter the name and address of the person or organization required to notify:

Name General Electric Company - A&ESD
Street Lakeside Avenue
City Burlington State VT Zip Code 05402

Site Location:

Enter the common name (if known) and actual location of the site.

Name of Site General Electric Company - A&ESD
Street Industrial Parkway
City Burlington County Chittenden State VT Zip Code 05402

Person to Contact:

Enter the name, title (if applicable), and business telephone number of the person to contact regarding information submitted on this form.

Name (Last, First and Title) Aswad, W.N., Manager - Mfg. Engrg.
Phone (802) 657-6034

Dates of Waste Handling:

Enter the years that you estimate waste treatment, storage, or disposal began and ended at the site.

From (Year) 1970 To (Year) 1971

Waste Type: Choose the option you prefer to complete.

Option 1: Select general waste types and source categories. If you do not know the general waste types or sources, you are encouraged to describe the site in Item I--Description of Site.

General Type of Waste:

Place an X in the appropriate boxes. The categories listed overlap. Check each applicable category.

- 1. ☐ Organics
- 2. ☐ Inorganics
- 3. ☐ Solvents
- 4. ☐ Pesticides
- 5. ☐ Heavy metals
- 6. ☐ Acids
- 7. ☐ Bases
- 8. ☐ PCBs
- 9. ☐ Mixed Municipal Waste
- 10. ☐ Unknown
- 11. ☐ Other (Specify)

Source of Waste:

Place an X in the appropriate boxes.

- 1. ☐ Mining
- 2. ☐ Construction
- 3. ☐ Textiles
- 4. ☐ Fertilizer
- 5. ☐ Paper/Printing
- 6. ☐ Leather Tanning
- 7. ☐ Iron/Steel Foundry
- 8. ☐ Chemical, General
- 9. ☐ Plating/Polishing
- 10. ☐ Military/Ammunition
- 11. ☐ Electrical Conductors
- 12. ☐ Transformers
- 13. ☐ Utility Companies
- 14. ☐ Sanitary/Refuse
- 15. ☐ Photofinish
- 16. ☐ Lab/Hospital
- 17. ☐ Unknown
- 18. ☐ Other (Specify)

Option 2: This option is available to persons familiar with the Resource Conservation and Recovery Act (RCRA) Section 3001 regulations (40 CFR Part 261).

Specific Type of Waste:

EPA has assigned a four-digit number to each hazardous waste listed in the regulations under Section 3001 of RCRA. Enter the appropriate four-digit number in the boxes provided. A copy of the list of hazardous wastes and codes can be obtained by contacting the EPA Region serving the State in which the site is located.

F019		

RECEIVED
JUL 12 1981
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 12 1981

Waste Quantity:

Place an X in the appropriate boxes to indicate the facility types found at the site.

In the "total facility waste amount" space give the estimated combined quantity (volume) of hazardous wastes at the site using cubic feet or gallons.

In the "total facility area" space, give the estimated area size which the facilities occupy using square feet or acres.

Facility Type

- 1 ☐ Piles
- 2 ☐ Land Treatment
- 3 ☒ Landfill
- 4 ☐ Tanks
- 5 ☐ Impoundment
- 6 ☐ Underground Injection
- 7 ☐ Drums, Above Ground
- 8 ☐ Drums, Below Ground
- 9 ☐ Other (Specify) _____

Total Facility Waste Amount

cubic feet

gallons 1,200* *G***Total Facility Area**

square feet

acres

*Estimated amount, based on records or recollections of individuals available at this time.

G Known, Suspected or Likely Releases to the Environment:

Place an X in the appropriate boxes to indicate any known, suspected, or likely releases of wastes to the environment.

☐ Known ☐ Suspected ☐ Likely ☒ None
None based on information available at this time.

Note: Items H and I are optional. Completing these items will assist EPA and State and local governments in locating and assessing hazardous waste sites. Although completing the items is not required, you are encouraged to do so.

H Sketch Map of Site Location: (Optional)

Sketch a map showing streets, highways, routes or other prominent landmarks near the site. Place an X on the map to indicate the site location. Draw an arrow showing the direction north. You may substitute a publishing map showing the site location.

N

Description of Site: (Optional)

Describe the history and present conditions of the site. Give directions to the site and describe any nearby wells, springs, lakes, or housing. Include such information as how waste was disposed and where the waste came from. Provide any other information or comments which may help describe the site conditions.

N

I Signature and Title.

The person or authorized representative (such as plant managers, superintendents, trustees or attorneys) of persons required to notify must sign the form and provide a mailing address (if different than address in item A). For other persons providing notification, the signature is optional. Check the boxes which best describe the relationship to the site of the person required to notify. If you are not required to notify check "Other".

Name *M.N. Aswad*Company *General Electric Company - A&ESD*Street *Lakeside Avenue*City *Burlington*State *VT*Zip Code *05402*Signature *M.N. Aswad*Date *4/6/81*

- ☐ Owner, Present
☐ Owner, Past
☐ Transporter
☐ Operator, Present
☒ Operator, Past

Planning Commission Agenda

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FINAL LAB REPORT

DATE 03/11/86

LAB ID 18731 REPORT TO B/BARRY DUE DATE 03/25/86

SOURCE LOCATION S BURL QU CITY WELL COLLECTION DATE 02/25/86

PROGRAM 021-MULTI-SITE COOP AGREEMENT AMBIENT WATER SAMPLE Y

SUBMITTED BY B/BARRY PHONE 828-3395 SUBMIT DATE 02/25/86 LEGAL NO

SAMPLE NOTES:

TEST CODE	TEST NAME	RESULT	UNIT OF MEASURE	REMARKS CODE	PROCESS DATE
TCR	CHROMIUM TOTAL	< 1	UG/L		03/10/86

**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 CONSOLIDATED REPLY
MEMORANDUM REGARDING CONSIDERATION OF SOIL TESTING RESULTS**

Applicant, The Burton Corporation (“Burton”), submits this Reply Memorandum in further support of its February 10, 2020 Memorandum of Law Regarding Consideration of Soil Testing Results and in response to (1) the Memorandum in Response to Burton Memorandum on Soil Testing filed by Laurie Smith and a number of other potential interested parties on February 24, 2021 (the “Smith Filing”), and (2) the South Burlington Fire District #1’s (“SBFD #1”) Response to Burton Memorandum Regarding Consideration of Soil Test Results filed by the South Burlington Fire District #1 on February 25, 2021 (the “SBFD #1 Filing”).

Memorandum

It bears noting at the outset that neither Smith nor SBFD #1 have introduced *any* evidence the Project at issue here will *actually* “involve the injection of waste materials or any harmful or toxic substances into ground water or wells,” fail to meet “Environmental Conservation Department regulations regarding the disposal of wastes,” or interfere with the public’s use of a public investment.¹ 10 V.S.A. §§ 6086(a)(1)(B), (9)(K). Instead, they speculate that because of the Project site’s history of contamination (and cleanup), the Project

¹ See, e.g., SBFD #1 Filing at 2 (“[W]e don’t have results of the first round of sampling. We don’t know what will be required for or found from the anticipated second round. And we certainly don’t have any way to know what kind of remediation will be required.”).

could *theoretically* cause contamination issues, and for that reason Burton cannot satisfy its burden of proof on Criteria 1B and 9K until those potential issues are further investigated.

That is a remarkable position. The reality is that just about *any* development involving site work—and certainly any such development in an urban or industrial setting—could *potentially* disturb contaminated soils. That doesn’t mean, however, that it is necessary or appropriate for the District Commission to begin ordering every applicant seeking to redevelop some part of an urban or industrial property to complete the expensive and time-consuming process of testing, characterizing, and apparently remediating its entire property before receiving an Act 250 permit. But that is effectively what the Smith and SBFD #1 Filings are asking the Commission to require of Burton here.

Smith’s and SBFD #1’s positions improperly conflate the Commission’s jurisdiction to regulate “development” with the Department of Environmental Conservation’s broader jurisdiction to regulate hazardous waste. The Commission’s jurisdiction is, of course, limited to review of proposed “developments” and their impacts. 10 V.S.A. § 6081 (“No person shall . . . commence development without a permit.”); 10 V.S.A. § 6086(a) (“Before granting a permit, the District Commission shall find that the subdivision or development: [listing criteria]”).

In other words, the scope of the Commission’s authority over contaminated property is limited to the scope of the proposed development activity on that property. Unlike the Department of Environmental Conservation—which has plenary authority to order the investigation and remediation of any potential “release,” whether connected to a development or not²—the Commission’s mandate is simply to determine whether a particular *project* satisfies the Act 250 criteria. In the present context, that means even if the proposed development interacts

² See generally 10 V.S.A. Chapter 159.

with contaminated materials, the Commission’s review is limited to ensuring that the *Project* “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), or “unnecessarily or unreasonably endanger the public or quasi-public investment in” an adjacent public facility. 10 V.S.A. 6086(a)(9)(K).

The evidence in this matter is that the proposed development will either avoid any contamination identified or if avoidance is not feasible, the contaminated material will be addressed pursuant to the IRule, which is designed to prevent, among other things, the injection of hazardous materials into the surrounding environment. *See* Burton Mem. Ex. 1; Burton App. Ex. 1 at 13. Although the IRule does not require a “permit,” it does prohibit the injection of hazardous wastes and it is the “applicable regulation” to which Criterion 1B requires Burton to comply. 10 V.S.A. § 6086(a)(1)(B). Indeed, the SBFD #1 Filing acknowledges that the ongoing site study “under DEC’s application of the IRule could manage [its] concerns adequately.” SBFD #1 Filing at 2. Simply put, Burton has *at least* satisfied its burden of production under Criteria 1B and 9K.³

The opponents have not provided any evidence to the contrary, nor made any showing that the soil test data is necessary for the Commission’s review. The Smith Filing argues that Burton must show that “notwithstanding the known presence of contaminants on the site, the locations that will be disturbed during construction of this project do not contain those [contaminated] soils.” Smith Filing at 2. But again, that is not what the relevant Act 250 criteria require.⁴ There is undisputed evidence that contaminated soils can be handled safely and without

³ As Burton explains in its initial memo, Criterion 3 is not relevant to the issue here, as that criterion is concerned with the *quantity*, not *quality* of existing water supplies. *See In re Pion Sand and Gravel Pit*, No. 245-12-09, 2010 WL 2888342, slip op. at 11–12 (Vt. Super. Ct. Envtl. Div. July 2, 2010). Water quality is appropriately considered under Criteria 1B and 9K.

⁴ As Burton points out in its initial memo on this issue, if that were the standard for Criteria 1(B), the Commission would need to require soil testing and pre-characterization of soils for every project where

“injection” in soils or groundwater or endangering any water sources, *regardless* of whether the Project touches upon contaminated soils. See Burton Mem. Ex. 1. The criteria require Smith and SBFD #1 to muster evidence to the contrary demonstrating that the development *will*, notwithstanding the IRule, involve an “injection” of hazardous materials or interfere with or jeopardize public investments, otherwise there is no dispute under Criteria 1B and 9K. In other words, opponents need to produce evidence showing that the development activity—conducted according to the IRule—does not meet the applicable criteria regardless of whether contamination is present.⁵

Opponents have presented no evidence that the development will result in an injection of hazardous waste. On this issue, Smith relies only on the 1998 VTDEC Site Management Activity Completed (“SMAC”) letter notifying the previous property owner that all remediation and investigation activities were complete and that “the site does not pose any unacceptable risk to human health or the environment.” Burton App. Ex. 12. That is not evidence that “injection” of hazardous waste will occur. Nor is the documentation that the SBFD #1 relies on—a VTDEC preliminary site investigation from 1985, indeed the same investigation that was resolved in the SMAC letter—evidence of an “injection.”

contamination could be present, likely including just about every urban development project. Burton Mem. at 6–7.

⁵ See, e.g., *In re Hinesburg Hannaford, Act 250 Permit*, 2017 VT 106, ¶ 51–53. In *Hinesburg Hannaford*, relied on by the Smith Filing, appellants *did* produce evidence that the applicant’s stormwater design would, for specific reasons, not be able to satisfy the relevant stormwater regulations, and the Court held that the applicant was then required to counter that evidence beyond their initial assertion that the design would comply. *Id.* But that is not the case here. Here, at most, Smith and SBFD #1 have simply pointed out that the IRule *may* come into play during the development; unlike the *Hinesburg Hannaford* opponents, they have not suggested that the Project will not comply with it even if it does. Specifically, there is no evidence that (1) the Project will actually result in a release of contamination (or even that contamination is present) or (2) that the development will not be able to comply with the IRule if contamination is discovered.

Finally, Burton is not required to obtain approval of a Corrective Action Plan (“CAP”) prior to issuance of a permit, nor is Burton relying on approval of a CAP to satisfy its burden as Smith contends. Smith Filing at 2–3. A CAP is prepared when a site investigation finds that hazardous materials pose a risk to sensitive receptors (such as water supplies). IRule § 35-601. The current investigation is not concerned with soils involved in the development activity and has only just begun: there is no evidence to conclude that a CAP is even necessary or would relate to the Project. See Burton Mem. Ex. 1.

Conclusion

Burton has satisfied its burden under Criteria 1(B) and 9(K). The opponents have not articulated any evidence to the contrary.

Dated at Burlington, Vermont this 1st day of March, 2021.

DUNKIEL SAUNDERS ELLIOTT
RAUBVOGEL & HAND, PLLC

By: _____



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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)

CERTIFICATE OF SERVICE

I, Grace Grundhauser, certify that on March 1, 2021, I served copies of the *Consolidated Reply Memorandum Regarding Consideration of Soil Testing Results* on behalf of the Burton Corporation to the service list below by the delivery method noted:

By Email:

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NRB.Act250Essex@vermont.gov
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Attn: Sharon Behar & Stephen Caflisch
c/o Jed Lowy, SBFD #1 PC Chair
South Burlington Fire District #1
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Dated at Burlington, Vermont, this 1st day of March, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal

March 3rd, 2021

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

Re: Expanding the Downtown Mix Use District 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 recent extension of the downtown Mixed Use District FD5 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.

Not too long ago, the Commission voted to extend the Downtown Mixed Use District 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. Given that the Champlain Parkway project, slated to begin enhancements along this section of Pine Street in the near future, will make Pine Street a gateway to the city it seems appropriate that the extension of the Downtown Mixed Use District should include these buildings which flank Pine Street on this block. To further make our point, the buildings apposing our buildings on Pine Street are already designated Downtown Mixed Use. From the City Ordinance: "The Downtown Transition District (DT) is intended to provide a balance and continuity in the character and scale of development on both sides of Main St., Pearl St. and So. Winooski Ave., creating gateways into the urban core of Burlington, and a transition between the Downtown and the nearby residential district." We believe that this definition of the Downtown Transition District perfectly describes our buildings.

The green outlined area below encompasses the buildings we request added to the Downtown Mixed Use FD5 District:



Thank you for considering this amendment and for your dedication to ensuring Burlington grows in a thoughtful way.

Sincerely,

Steven Offenhartz

Amy Gonyaw

March 7, 2021

To: Joint Committee of the Planning Commission and City Council Ordinance Committee

Re: Important updates from the BTV-STR Host Coalition

We, a collective of Burlington's Short-Term Rental (STR) hosts, are writing to update you on important developments since the last meeting of The Burlington Planning Commission in which limits on Short Term Rentals were discussed on 2/9/21.

1. We have consulted a lawyer and are exploring filing a regulatory takings claim against the City of Burlington should the residency requirements being proposed move forward.
2. Over 4,500 people have signed our [petition](#) in support of STRs in Vermont. This petition was circulated in response to HB.200 in specific opposition to any residency requirement on short-term rentals. There is now a growing, state-wide awareness that this type of regulation is being considered and the wider public's voice is just now beginning to emerge. Because of this petition and the support of Vermont Realtors, SkiVermont and Vermont Lodging Association among others, this bill appears to be largely dead due to the residency requirement included in it.
3. The [Vermont Short Term Rental Alliance \(VTSTRA\)](#) has been established in response to HB.200, Burlington's continued momentum to impose residency-requirements, and other efforts to place limits on STRs in the state. VTSTRA is a coalition of current and prospective homeowners, property managers, and other individuals and businesses interested in advocating for the legal protection of short-term rentals in Vermont. Since starting less than a month ago, VTSTRA has gained the support of over 500 people who are interested in protecting the short-term rental industry in Vermont. This number continues to grow on a daily basis.

We also wanted to share with you the attached report, "*The Drivers of Housing Affordability: An Assessment of the role of Short-term rentals*". **This is the most significant analysis and report addressing the question of the role that STRs play in the issue of housing and rent affordability.** It includes a huge amount of data on the subject, something we have all been asking for and is sorely needed to inform the decisions being made by this committee. The study reviewed data from every county in the U.S. from 2014 to 2018 and was conducted by a

world-class economic forecasting group that is a commercial venture with Oxford University's business college. Please do not disregard it. The key findings are:

- The rapid US house price and rent increases of the past few years have not been substantially driven by STRs.
- The major sources of volatility in rental and house prices lie in **economic** and **labor market outcomes**.
- **Additional housing supply** and more **abundant building permits** are likely to have a **meaningful impact** on house prices.
- Adopting **strict regulations** on STRs is **unlikely** to solve the housing affordability crisis faced by many US households.

Please take the time to read at least the Executive Summary on pgs 3-8, Results/Discussion on pgs 25-29 and the study's Conclusions on pg 30. You will see that this study provides useful insights into the drivers of increased housing and rent costs in Burlington, an issue we are all concerned about, but now know that STRs are not responsible for nor will placing limits on them fix. This report supports what we have been trying to say since the beginning of this committee's work on STRs: **STRs have not been a contributing factor in Burlington's "housing crisis"**.

If this committee moves forward with a recommendation to limit STRs with a residency requirement, we believe a majority of existing STRs in the city would be shut down resulting in significant loss to the local economy and homeowners and small time landlords may not be able to recover from the loss of income they rely on from their STRs to make ends meet. **We urge you, please do not include a residency requirement in your recommendations to limit STRs in Burlington.**

Sincerely,

The BTV-STR Host Coalition



THE DRIVERS OF HOUSING AFFORDABILITY

An assessment of the role
of short-term rentals

NOVEMBER 2019

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EXECUTIVE SUMMARY

In the past year, **the US-wide affordable housing crisis has consistently made headlines**. Today, some 18 million US households spend more than half their gross income to pay basic accommodation costs.¹

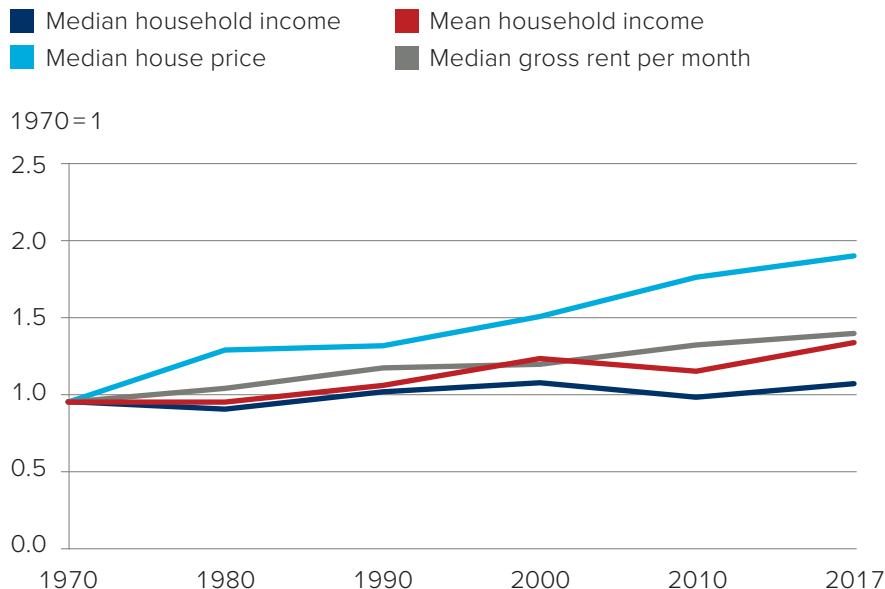
The root causes of the housing crisis can be traced back to changes that significantly pre-date the growth of the short-term rental (STR) market. The rising unaffordability of housing is a long-term trend reflecting four decades during which rental and house prices have grown consistently faster than incomes (Fig. 1). Indeed, Fig. 1 also provides a strong indication of the underlying causes of the problem. While the income of a typical (median) household stagnated between 1970 and 2010, average US household incomes grew strongly, supporting sustained growth in house prices. These trends were the manifestation of the significant increase in income inequality that occurred in the US during this period.

18.2 million

Number of US households who now spend more than half their income paying basic housing costs.



Fig. 1. Growth rate of median and mean household incomes, median house prices and median gross rent per month, 1970–2017²



Source: 1970–2000 Decennial Censuses, 2010 and 2017 ACS

¹ Joint Center for Housing Studies of Harvard University, “The State of the Nation’s Housing 2019”, 2019.

² It is important to note that rents have been growing faster than incomes over the past decades, as illustrated in Fig. 1. However, over the past few years, incomes have picked up and therefore, during our study period, the real growth in income was greater than that in rents.

“The shortfall in new homes is keeping the pressure on house prices and rents—eroding affordability, particularly for modest-income households in high-cost markets.”

—Joint Center for Housing Studies

Recently, public attention has increasingly focused on supply side issues in the market, which have been argued to have exacerbated the current crisis. For example, in a recent study, the Joint Center for Housing Studies concluded that the core of this crisis is a supply issue, with net new housing supply held back mainly by high building costs, zoning restrictions, and labor shortages in the construction sector. On the other hand, other commentators have focused on the role of STRs, as they allegedly reduce the supply of affordable housing by removing properties from the rental market, displacing long-term tenants, and raising the cost of living.

Given this context, Oxford Economics was commissioned by Vrbo to carry out a study to:

- 1) learn the key drivers of increasing house prices and rents; and
- 2) analyze the role played by STRs with regard to housing affordability.

The dynamics of housing markets have been the subject of academic literature for decades, with the general consensus concluding that:

- **rent** is mainly determined by the number of housing units, the number of households, and income levels; while
- **house prices** depend positively on disposable income and demographic growth, and negatively on housing stock and the “user cost of capital”.³

Our study borrows the backbone of its modeling framework from this literature. We also included STR density and a mix of other explanatory variables to answer our second research question.

MODEL FINDINGS

For this study we constructed a comprehensive dataset of all US counties over the period 2014–2018.⁴ The dataset included over 70 variables, ranging from average household income to the number of residential building permits in each county.⁵ We then used this database to build two econometric models, one aimed at determining the drivers of rents, and

³ The user cost of capital includes the mortgage interest payments that an owner has to make, but also annual property taxes, depreciation costs, and any expected capital gain.

⁴ 2014 was the first year covered in the AirDNA database, our data source for STR listings. Listing data were missing for some US counties, so we had to exclude those from our study.

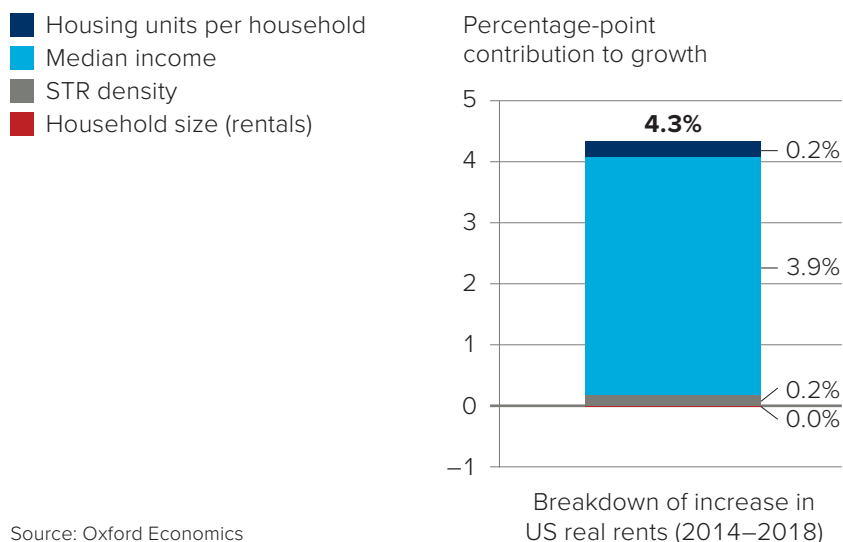
⁵ Building permits represent the number of new privately-owned housing units authorized by building permits in the United States. As shown later in this document, we derive our “permits per household” variable by dividing the number of building permits by the number of households.

the second focusing on house prices. In both models, all variables have the expected effect and are statistically significant—for example:

- Household income is found to have a *positive* impact on both rents and house prices—the greater purchasing power afforded by higher incomes enables households to increase expenditure on housing.
- On the other hand, housing supply is found to have a *negative* impact on rents and house prices—more abundant supply, as defined as a higher number of housing units per household, allows house buyers to shop around more, helping to keep a lid on price growth.⁶

The findings of our rental model, combined with changes in the explanatory variables over the study period, show that the **overwhelming driver of the observed increase in real rental prices during the 2014–18 period was household earnings**. Median income increased by 10.4% in real terms over our study period. We estimate that this growth alone was responsible for around 3.9 percentage points (or 91%) of the overall 4.3% increase in median real rents in this period (see Fig. 2).

Fig. 2. Drivers of the growth in real rents between 2014 and 2018



Source: Oxford Economics

⁶ Housing supply is measured as the number of housing units divided by the number of households in each county. As a result, our housing supply variable is independent of the STR density. For example, if one unit is subtracted from the STR market and added back to the long-term rental market, this will not have any impact on housing stock per household. In other words, the effect of this change would be fully captured by the impact of STR density and would not “double up” as a boost in housing stock.

3.9 percentage points

Estimated increase in real rents attributed to rising household earnings between 2014 and 2018.



The overall increase was 4.3%.

6.8 percentage points

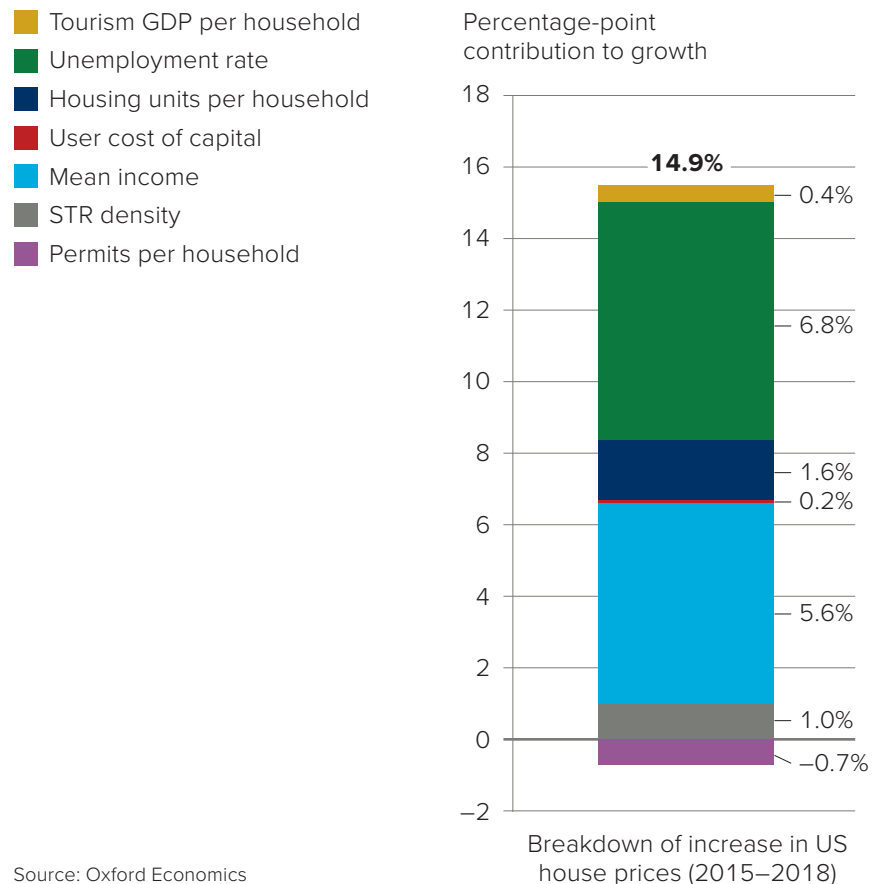
Estimated increase in real house prices attributed to dropping unemployment over the study period.



The overall increase was 14.9% between 2015 and 2018.

In our house price model, we found that **the biggest contribution to the growth in house prices came from labor market improvements**. Specifically, the drop in US unemployment over the study period is estimated to have added 6.8 percentage points to US house prices growth (see Fig. 3). Income was another major contributor, adding 5.6 percentage points to house price growth over the study period. We also find that housing supply and building permits had an impact on house prices growth during the period.

Fig. 3. Drivers of growth in US house prices between 2015 and 2018⁷



Source: Oxford Economics

⁷ The inclusion of lagged variables in the house price model implies that their growth between 2014 and 2015 starts affecting prices in 2015–16. For this reason, the contribution analysis for house prices only covers the period 2015–18 and not 2014–18.

THE IMPACT OF SHORT-TERM RENTALS

Our modeling indicates that **the presence of STRs has not substantially driven the US house price and rent increases over the past few years.**

For the period 2014–18, we find that, in the absence of any growth in the number of STRs, real rents would still have grown by 4.1%, as opposed to the actual growth rate of 4.3%. Put another way, **median monthly rents would have been only \$2 lower in 2018** if STRs had remained at their 2014 levels. In the homeowners' market, the impact attributable to the growth in STR density represents less than a one-percentage-point difference in house prices growth. In other words, we estimate the **average annual mortgage payment would have been \$105 cheaper** if STRs had remained at their 2014 levels.

What do these findings tell us about affordability? To answer this question, we estimated the 2018 median price of a property in the US in a counterfactual scenario where STRs did not grow over the study period. When considering these counterfactual house prices in relation to average household incomes, we found that **the price-to-income ratio would have increased to 2.39 in 2018 in a scenario with no STR growth, as opposed to the actual value of 2.41.**

Interestingly, an extension of our baseline models suggests that, in the long run, **the effect of STRs on both house prices and rents is weaker in highly seasonal areas.**⁸ One explanation for this is that, in vacation markets, homes are less likely to be rented on a long-term basis. In addition, home owners of properties in seasonal destinations have been renting out their properties long before the advent of internet platforms offering STRs (through agencies and brokers) and therefore the value from such rental revenue has long been priced in the value of homes in these localities.

Our findings suggest that adopting stricter regulations on STRs is unlikely to solve the housing affordability crisis faced by many American households, in both the rental and homeowners' market.

Moreover, it is important to weigh these potentially modest affordability benefits against the associated negative consequences for the local economy, e.g. lower levels of tourist expenditure and tax receipts.

⁸ Short-run effects look at the immediate impact of a variable X over Y. Over time, given the dynamic nature of the housing market, there will be several equilibrating adjustments to the short-run effects, as the economy and people readjust. As a result, the long-run effect of a given variable X over Y is different.

\$2

Estimated reduction in median monthly rent for 2018 if STR density remained at its 2014 level.

\$105

Estimated increase in average annual mortgage payment attributed to growing STR density over the study period.

“Adopting stricter regulations on STRs is unlikely to solve the housing affordability crisis faced by many American households.”

1. SCOPE AND STRUCTURE OF THIS REPORT

Oxford Economics was commissioned by Vrbo to carry out a study of housing affordability and short-term rentals. Specifically, our analysis sought to:

- learn the key drivers of house prices and rents;
- analyze the role played by short-term rentals on affordability; and
- establish whether relationships vary across housing market types.

The resulting report begins by introducing the US affordability

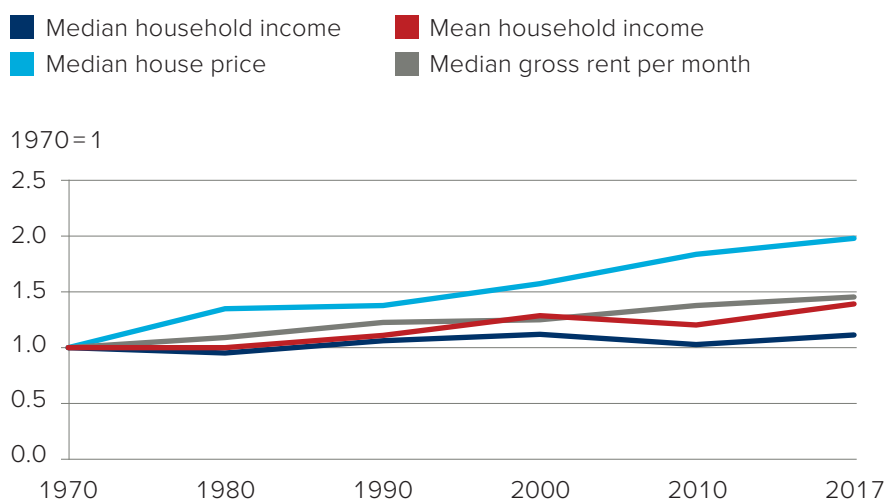
crisis (Chapter 2), before reviewing existing literature on housing and short-term rentals (Chapter 3). First and foremost, this study aims to contribute to the literature on housing market dynamics, as well as adding to the still limited literature studying the effect of short-term rentals on housing markets.

In Chapter 4, we set out a new approach to modeling house prices and rents, based on a panel dataset covering the period 2014–18, with the objective of identifying which variables are statistically significant drivers of prices and rents.

Our results from this approach, set out in Chapter 5, illustrate the sensitivity of house prices and rents to different macroeconomic drivers, including the supply of housing, cost of capital, and household earnings, as well as STR density. Armed with these results, we then calculated the contribution that each macroeconomic driver made to the housing market variable. We find that economic and labor market conditions explain the lion's share of housing market developments during our study period.

2. AMERICA'S AFFORDABLE HOUSING CRISIS

Fig. 4. Growth rate of median and mean household incomes, median house prices and median gross rent per month, 1970–2017⁹



Source: 1970–2000 Decennial Censuses, 2010 and 2017 ACS

Housing is increasingly an issue of public policy concern, as the US faces an affordable housing crisis. For decades, rents have been growing faster than incomes (Fig. 4), and nearly 200 US cities had a median home value of at least \$1 million as of June 2018.¹⁰ After a few years of decline, the

number of people experiencing homelessness has grown again over the past couple of years.¹¹

Theoretical models and the empirical literature on the housing market suggest that, over the long run, house prices depend positively on disposable income

and demographic needs, and negatively on user costs and the housing stock.¹² This last factor in particular has been thoroughly discussed in the policy debate.

Many experts have argued that, at its core, the US housing crisis is a supply issue.¹³ Between 2014 and 2018 (the period covered in our study), 5.1 million new households are estimated to have formed in the US, while net new housing supply was up only 4.1 million.¹⁴ This implies the ratio of housing units-to-households declined between 2014 and 2018.

In the remainder of this chapter, we present snapshots of the affordability issue for renters and homeowners in turn. We then introduce the short-term rental market, the growth of which has created debate among local governments, housing activists, and residents about its impact on the availability of affordable long-term housing.

⁹ It is important to note that rents have been growing faster than incomes over the past decades, as illustrated in Fig. 4. However, over the past few years, incomes have picked up and therefore, during our study period, the real growth in income was greater than that in rents.

¹⁰ Zillow, "List of \$1M (Home Value) Cities Could Grow by 23 in the Next Year", 9 August 2018.

¹¹ HUD Exchange, "2018 AHAR: Part 1 – PIT Estimates of Homelessness in the U.S.", December 2018.

¹² A variable X is said to have a positive impact on variable Y when an increase in X is associated with an increase in Y. A variable X is said to have a negative impact on variable Y when an increase in X is associated with a drop in Y. IMF, "Fundamental Drivers of House Prices in Advanced Economies", *IMF Working Paper*, July 2018.

¹³ Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019", 2019.

¹⁴ These numbers represent the net growth in the two variables. In other words, more than 5.1 million households may have formed over the study period, but at the same time some households may have dissolved. The net household formation was 5.1 million between 2014 and 2018.

WHY CAN'T THE US BUILD ENOUGH HOUSES TO MEET THE DEMAND?

Since 2011, residential housing construction has increased, but not enough to meet demand, according to Freddie Mac. There are various reasons for this.

First, the **housing boom in the early 2000s** produced an excess stock of houses, making builders and creditors more cautious of speculative construction projects that would inflate the housing stock too fast. Another contributing factor is **home building cost**, which encompasses the cost of land and raw materials. The price of raw materials has risen by over 20% since the recession, according to Bureau of Labor Statistics' data.

Laws and regulations such as local **zoning restrictions** on lot sizes, building height, and minimum number of parking spots also increase the cost of building a home, in turn reducing the supply of new houses. The National Association of Home Builders (NAHB) estimates that regulatory costs increased by 29% between 2011 and 2016.

Another reason for the lower level of housing production, relative to the population, is said to be the **shortage of skilled labor** currently faced by the construction industry. The NAHB reports that the number of unfilled jobs in the construction sector reached post-crisis highs in 2018.

2.1. THE RENTAL MARKET

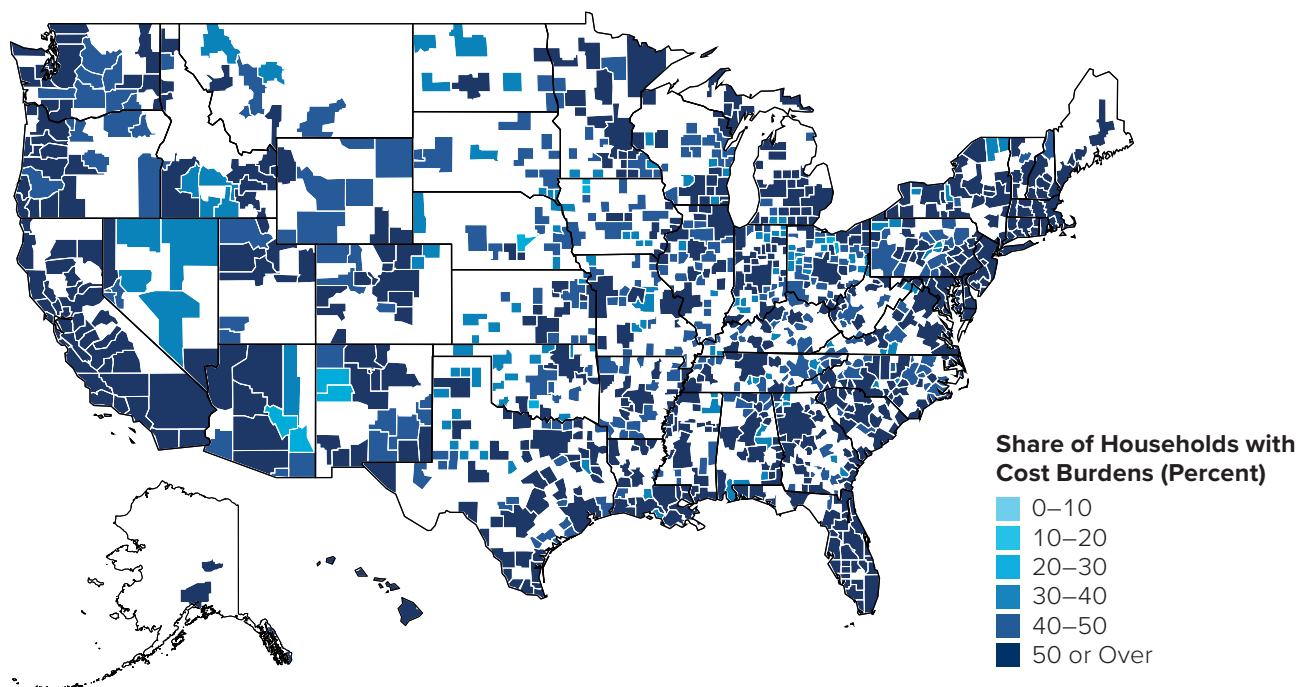
A study by the Joint Center for Housing Studies of Harvard University found that renters appear to be more burdened by housing costs than homeowners, with cost-burdened renters outnumbering cost-burdened homeowners by more than 3.0 million (where cost-burdened is a household paying more than 30% of its gross income for housing).¹⁵ In addition, renters

make up 10.8 million of the 18.2 million severely burdened households that pay more than half of their incomes for housing.

The spread of renter cost burdens is most evident in expensive metropolitan areas such as Los Angeles, New York, San Francisco, and Seattle (see Fig. 5). Not surprisingly, households with the lowest incomes have

the highest cost-burden rates, although such rates are rising rapidly among renters higher up the income scale. The cost-burdened share is highest among among African American and Latinx American renters, suggesting minorities are heavily hit by America's housing affordability crisis.

Fig. 5. Share of cost-burdened households, renters



Source: Joint Center for Housing Studies of Harvard University

¹⁵ Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019", 2019.

2.2. THE HOME-OWNER MARKET

In the owners' market, much lower proportions of households appear cost-burdened.¹⁶ After falling for over a decade, US homeownership rates edged up in both 2017 and 2018, reaching 64.4%. This rebound in homeownership comes amid worsening affordability, with house prices having climbed steadily since the recession. Nationwide, the ratio of median

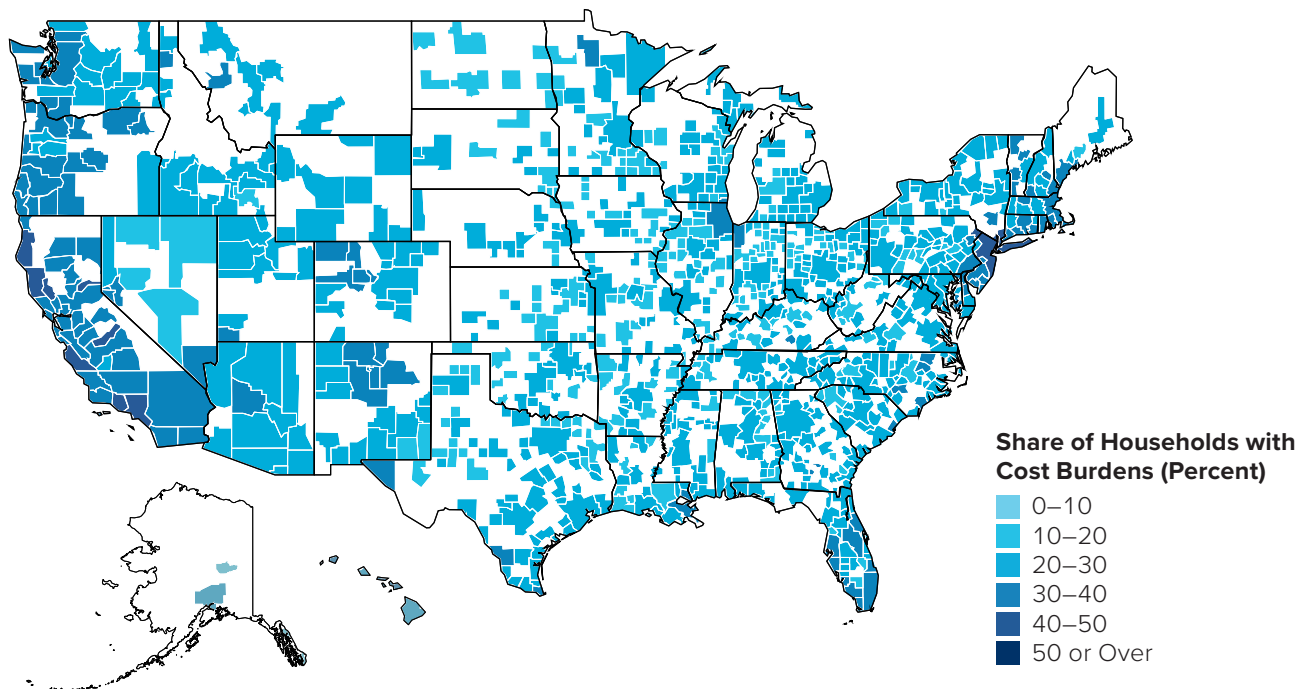
house price to median household income rose sharply from a low of 3.3 in 2011 to 4.1 in 2018, having reached its peak at 4.7 in 2005.

Interestingly, however, cost burdens are improving for homeowners, with the latest American Community Survey reporting the share of cost-burdened households inched down 0.5 percentage point. Much of this progress was among

homeowners, whose overall cost-burden rate declined by nearly 8.0 percentage points in 2010–2017. Its 2017 value was the lowest level since 2000. Among the metropolitan areas characterized by the highest cost-burden shares among owners are Los Angeles, New York, and Miami (Fig. 6).

Even if house prices have made homeownership less accessible

Fig. 6. Share of cost-burdened households, owners



Source: Joint Center for Housing Studies of Harvard University

¹⁶ For homeowners, housing costs include mortgage payments (including interest), taxes and insurance.

for the median US resident, those who are able to move up the housing ladder are less burdened than they used to be a decade ago.

2.3. THE SHORT-TERM RENTAL MARKET

Short-term rentals (STRs) are often cited as intensifiers of the affordability crisis. Increasingly, affordable housing advocates have argued that STRs are displacing long-term tenants and raising their cost of living. Therefore, in the name of protecting affordable long-term housing, several cities are reducing the number and type of housing units that can be offered as short-term rentals.¹⁷ These

include Washington, D.C., New York, Chicago, and San Francisco.

On the other hand, short-term rental advocates argue that the presence of STRs lowers travel costs by increasing the supply of travel accommodation. This in turn attracts a wider pool of visitors, whose spending benefits the local economy, supporting jobs and business creation in the area. In addition, the earnings from renting out their properties are likely to be spent locally, further contributing to the economy. Lastly, tax revenues raised on short-term rental income can be used to fund housing services, as demonstrated by the city of Seattle, which earmarked such revenues to support affordable housing.

¹⁷ The Pew Charitable Trusts, “Cities Tell Airbnb to Make Room for Affordable Housing”, 18 October 2018.

3. THE HOUSING MARKET: AN ANALYSIS OF EXISTING STUDIES

Our study contributes to two key research questions: (i) what are the key drivers of house prices and rents? and (ii) what is the impact of short-term rentals on these variables? Before we introduce our modeling, this chapter presents a review of some of the existing academic literature addressing these questions.

3.1. EXISTING LITERATURE ON HOUSING MARKET DYNAMICS

Housing market dynamics have been widely studied in academic literature for decades. Because this literature is well established, this section does not point to individual studies, but rather takes a meta-analysis approach by reviewing the key drivers of housing market dynamics.

Academic studies of the rental market show that rent is determined by the **number of housing units, the number of households, and income levels**.¹⁸ Similarly, theoretical models and empirical literature on house prices suggest that, over the

long run, house prices depend positively on **disposable income** and **demographic needs**, and negatively on the **housing stock** (undersupply conditions can contribute to housing price gains) and **user cost**.¹⁹

This last factor—user cost—requires further explanation, as it comprises many elements. These include not just the mortgage interest payments that an owner has to make, but also annual property taxes, depreciation costs, and any expected capital gain. Taken all together, and adjusted for expected inflation, these costs are referred to as the real user cost of capital. Multiplying this by the house price gives us the annual user cost of owning and can be understood as the rent equivalent for homeowners.

Housing market equilibrium is described in Fig. 7. When rents and annual user costs of owning are not aligned, markets automatically move toward equilibrium conditions through adjusting demand for housing investments.

Fig. 7. Housing market equilibrium conditions



¹⁸ For example, C. Swan, "Model of Rental and Owner-Occupied Housing", *Journal of Urban Economics*, 16(2) (1984): 297–316.

¹⁹ For example, IMF, "Fundamental Drivers of House Prices in Advanced Economies", *IMF Working Paper*, July 2018.

3.1.1. Applications for our study

We borrow the backbone of our modeling framework from the studies referenced above. In particular, we exploit the fact that rents are found to have an impact on house prices and, following the example of other studies, in our house price equation we replace real rent with its main determinants—real income, housing stock, and household numbers.

In addition, a recent Oxford Economics (2016) study of the UK housing market found rising employment was among the main drivers of the boom; we therefore also include labor market conditions as an additional driver.²⁰ Moreover, our price model takes into account the hedonic characteristics of the area, measured by tourism GDP, and supply constraints, measured by building permits per household.

3.2. EXISTING LITERATURE ON SHORT-TERM RENTALS

We are aware of only a handful of academic papers that directly study the effect of short-term rentals on housing costs. There are two main reasons for the dearth of literature. First, the STR phenomenon is relatively recent and therefore a limited amount of data exists. Second, the research question is methodologically challenging, since many cities have become increasingly popular among both locals and tourists in recent years, leading to higher housing prices and a higher number of STR listings. In other words, “popularity” affects both prices and listings positively, as locals and tourists have a preference for living and staying in neighborhoods with high-quality amenities. This “popularity” variable, however, is unobservable, and its omission in the model implies that the impact of STR on prices is biased upwards, as part of the popularity impact gets erroneously captured by STRs.

The study whose methodology most closely aligns with our approach is that of Barron et al. (2018), which assesses the impact of STRs on residential house prices and rents.²¹ The authors, however, fail to control for a number of explanatory variables included in our models. Using a dataset of Airbnb listings from the entire United States and an instrumental variables estimation strategy, they find that a 10% increase in the number of Airbnb listings leads to a 0.39% increase in rents and a 0.65% increase in home values. In Section 5.3.3, we show how our results compare to this study and conclude that our findings show a much smaller impact over our study period.

Most other studies, however, differ from ours (and Barron’s) in two key respects. First, they focus on specific housing markets, rather than looking at US-wide relationships. Secondly, they use sales-level data to determine whether the proximity to STR-intensive areas affects sale prices.

²⁰ Oxford Economics, “Forecasting UK house prices and home ownership”, November 2016.

²¹ Barron, Kyle and Kung, Edward and Proserpio, Davide, “The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb”, 29 March 2018. More detail on the instruments used can be found in Fig. 18.

Among these studies, Horn and Merante (2017) use Airbnb listings data from Boston in 2015 and 2016 to study the effect of Airbnb on rental rates.²² Similarly, Sheppard and Udell (2018) present an evaluation of the impacts of Airbnb on residential property values in New York City.²³ A third example is the article by Koster et al. (2019), which studies the effects of STRs in Los Angeles County using a quasi-experimental research design.²⁴ The main findings of these studies, and their main limitations, are summarized in the Appendix.

Another strand of literature provides descriptive analysis of STRs in specific markets. For example, Lee (2016) focuses on the Los Angeles housing market and makes recommendations

on how municipal policymakers can best regulate Airbnb.²⁵ Other articles simply apply coefficients from other authors' analyses to their specific markets to derive estimates of local STR impacts (for example, Wachsmuth et al., 2018).²⁶

3.2.1. Applications for our study

We build upon the studies referenced above to produce a nation-wide estimate of the impact of STRs on the housing market. In particular, this work presents the first econometric estimate that uses comprehensive data from across the US, as well as covering more STR platforms than only Airbnb. This means that we are able to include both owner-occupied home sharing and whole-property STRs. Our

study does not have the objective of challenging existing literature, but rather to provide context for the findings and contribute to the body of work on housing dynamics.

As discussed earlier, one of the challenges in determining the impact of STRs on prices (and rents) relates to the fact that neighborhoods (and cities) tend to become popular with residents and tourists at the same time. In order to try to control for the so-called hedonic features of an area, we have used tourism GDP as a proxy. As an area becomes more popular for residents, bars and restaurants will start to appear, and at the same time hotels will start attracting tourists. Astoria in New York City or Corktown in Detroit are great examples of these popularity bursts.

²² Keren Horn and Mark Merante, "Is home sharing driving up rents? Evidence from Airbnb in Boston", *Journal of Housing Economics*, 38 (2017): 14–24.

²³ Stephen Sheppard and Andrew Udell, "Do Airbnb properties affect house prices?", 1 January 2018.

²⁴ Hans R.A. Koster and Jos van Ommeren and Nicolas Volkhausen, "Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles", 8 March 2019.

²⁵ Dayne Lee, "How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations", 2 February 2016.

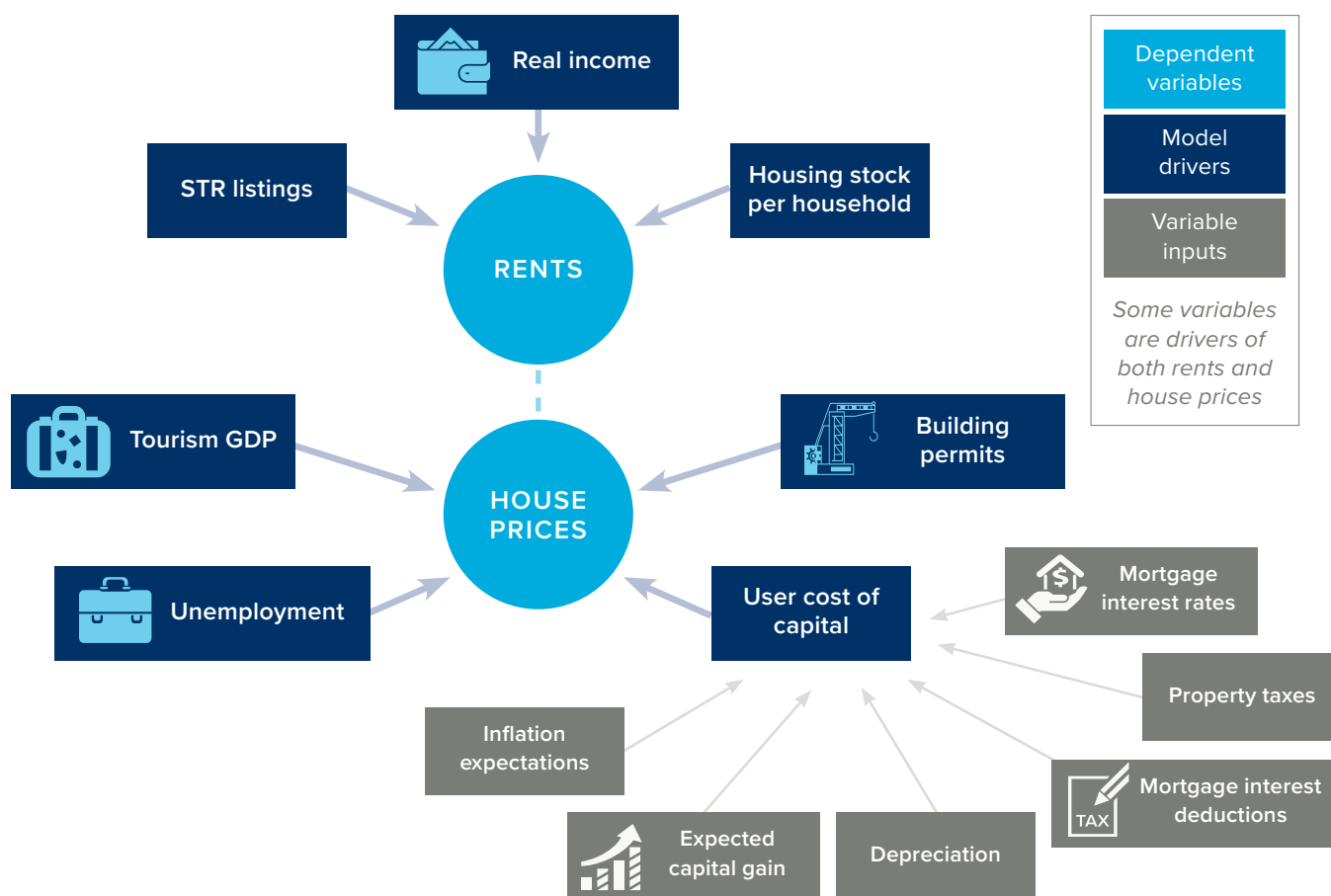
²⁶ Urban Politics and Governance research group - School of Urban Planning - McGill University, "The High Cost of Short-Term Rentals in New York City", 30 January 2018.

4. MODELING APPROACH AND DATA

This chapter sets out our approach to modeling rents and house prices, in the context of the housing market relationships explained in the previous chapter. For this study we constructed a comprehensive dataset of all US counties over the period 2014–2018. The dataset included

over 70 variables, ranging from average household income to the number of residential building permits in each county. This chapter begins by considering how best to model rents, and then moves on to house prices. All the relationships analyzed in this work are illustrated in Fig. 8.

Fig. 8. Drivers of rents and house prices



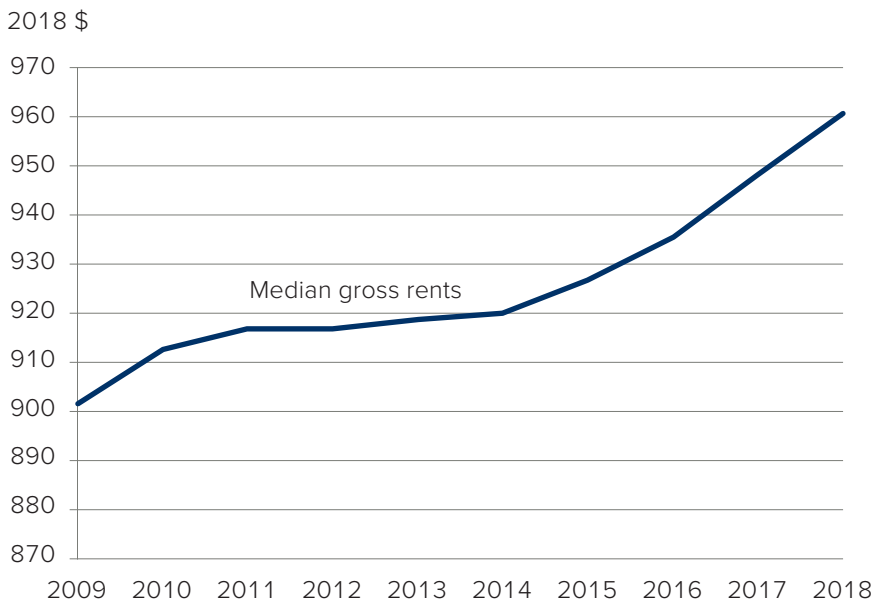
4.1. THE RENTAL MODEL

In this chapter, we argue that household income, housing stock, and the number of households are the main determinants of residential rent. We do so by analyzing rental prices, STRs and several socio-economic features of over 2,500 counties between 2014 and 2018.²⁷ Each variable is described below in turn.

4.1.1. Median rents

The dependent variable of this first model is real median rent (in logarithmic form, to be more specific). Real rents increased by just over 1% per year over the study period, but they had been flat in the years just before that (Fig. 9). The data were sourced from the American Community Survey (ACS), and the 2018 data point was estimated using historical growth rates.

Fig. 9. Median gross rents



Source: ACS

4.1.2. The STR density variable

The advent and fast growth of the sharing economy have impacted the accommodation sector. While vacation rentals have been a critical component of communities across the globe for well over a hundred years, the technology revolution in flexible accommodations brought about by platforms like Vrbo and Airbnb has not only opened up millions of unique rental options for travelers but also changed the foundation of the travel ecosystem.

Data provider AirDNA suggests there were over 1.3 million active listings across the US as of June 2019, rising from just over 70,000 five years earlier.²⁸ Back in 2014, for every 1,000 housing units there was just over one STR listing, while in 2018 this ratio grew to 8 listings per 1,000 housing units.²⁹

Fig. 10 shows the geographic distribution of STR density in 2014 and 2018. It shows there is significant geographic heterogeneity in STR density, with most listings occurring in states with large cities and along the coasts. Moreover, there exists significant geographic heterogeneity in the growth of STR density over time. The

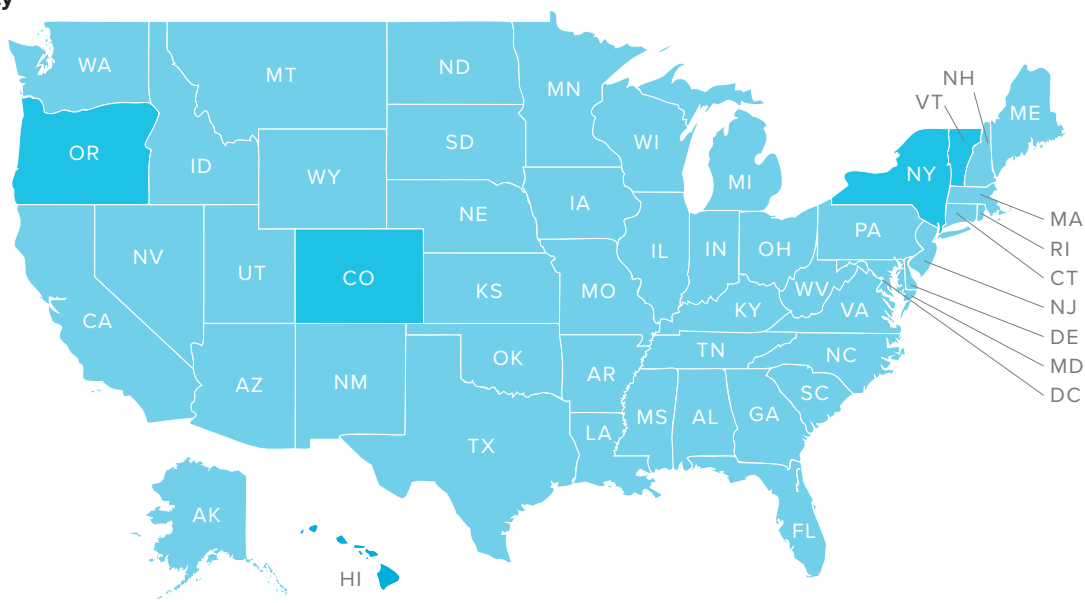
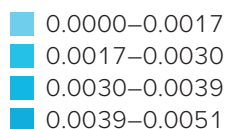
²⁷ Listing data were missing for some US counties, so we had to exclude those from our study.

²⁸ This study does not distinguish between whole-home rentals and owner-occupied units and includes both types of STRs.

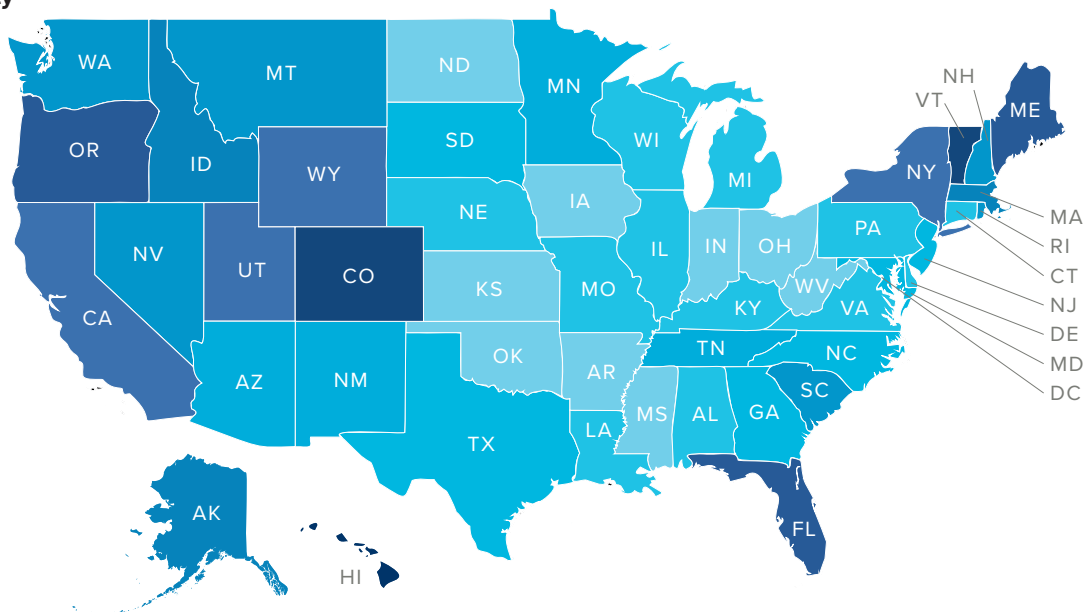
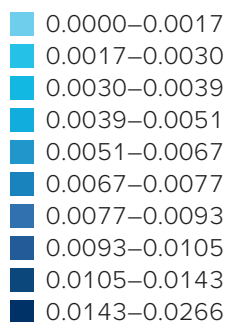
²⁹ This is how we define STR density, i.e. as the number of STR listings per 1,000 housing units.

Fig. 10. STR density in 2014 and 2018, by state

**Short term rental density
by US State 2014**



**Short term rental density
by US State 2018**



Source: AirDNA, ACS, Oxford Economics

number of listings per housing unit grew exponentially in some states, while in others there was no growth at all.

4.1.3. Real incomes

Real mean household income data from the Census Bureau show a marked slowdown in growth in 2018 relative to previous years (Fig. 11). Median household incomes also only rose slightly in 2018 and 2017, after registering more impressive gains in the two years prior: a 5.2% gain in 2015 and a 3.2% gain in 2016.

Income data by county and over time were obtained from the American Community Survey and complemented with Oxford Economics' North American Cities and Regions databank to fill the gaps left in 2018 by the ACS (the latest available edition was 2017).

4.1.4. Housing supply

Since reaching their lowest point in 2011 at just 633,000 new housing units that year, additions to the housing stock have grown at a fairly slow pace, partly in response to persistently weak growth in the number of households after

the recession. With the economy finally back on track, household growth picked up in 2016–2018, but new construction was still depressed relative to demand, with additions to supply barely keeping pace with the number of new households.

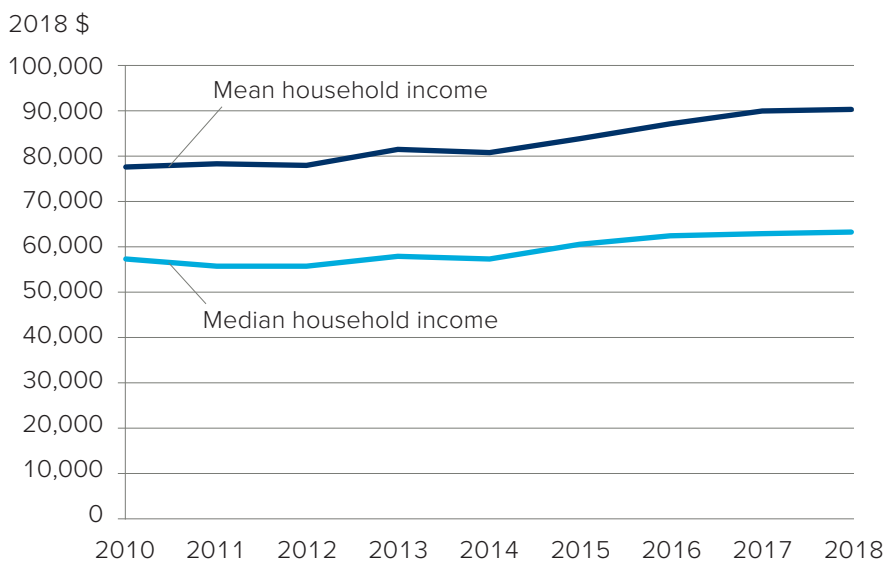
In our dataset, the number of housing units was drawn from the Census' Population Estimates, while the number of households was drawn from the ACS and carried forward to 2018 using Oxford Economics' North American Cities and Regions databank.

4.1.5. Household size

As one might expect, median rents are also related to the size of the average household (average number of people in one household). As this grows, households will require bigger properties, resulting in higher median rents. In particular, we restrict our analysis to households that occupy rented accommodations (i.e., in our rental model, we disregard the size of owner-occupier households as this should not affect rents; only the size of renter households is expected to impact rents).

Generally speaking, household size has been on a declining trend for centuries, with an

Fig. 11. Average and median household income, constant prices, 2010–18



Source: Oxford Economics

average of 5.79 people per household in 1790 to 2.58 in 2010.³⁰ However, Census Bureau data suggests this might be the decade when this long-term trend is reverted, with 2018 size ticking up to 2.63. Going forward, this might have impacts on housing demand, and therefore housing costs (provided it does not immediately translate into weaker residential construction).

4.2. THE HOUSE PRICE MODEL

As discussed in Section 3.1, rents are likely to affect home

buying decisions, and therefore most of the drivers of rents are also included in the house price model. Above and beyond these, we also included labor market outcomes, the user cost of capital, the availability of building permits, and the size of the tourism sector as additional explanatory variables. The rest of this chapter describes each variable in turn and provides a rationale for inclusion in the model.

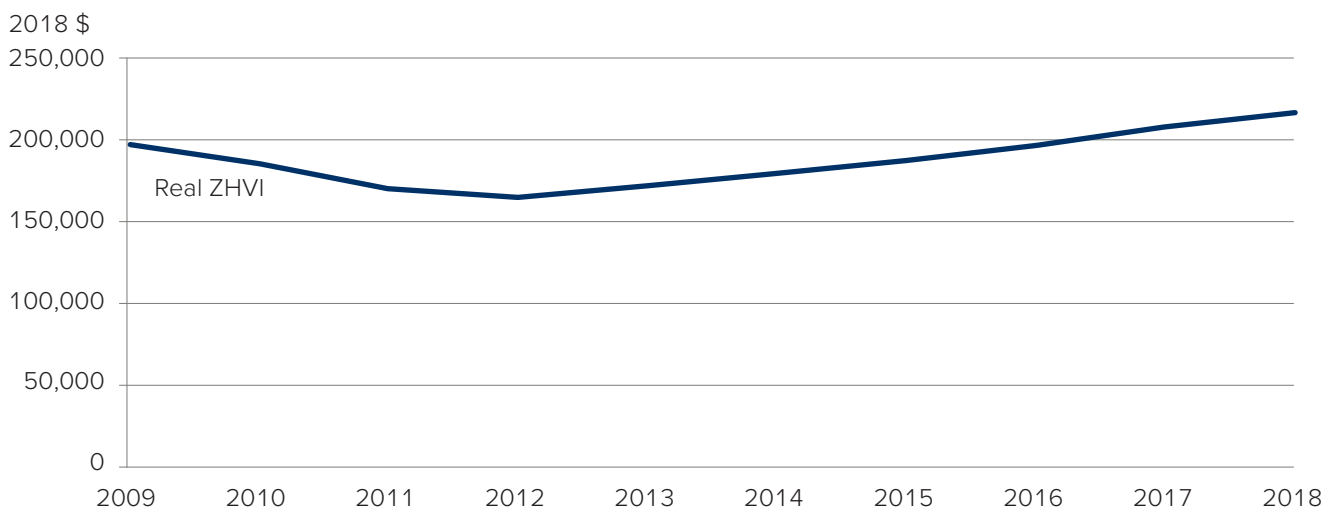
4.2.1. House price index

As a dependent variable for our second econometric model, we

used the Zillow Home Value Index (ZHVI), a smoothed measure of the median home value across all US counties. This is a dollar-denominated figure, which we then adjusted for inflation using the Consumer Price Index (CPI). This variable was available on a monthly basis for all counties in the US.

Since the recession, house prices have climbed steadily, boosted by low interest rates and the recovering economy (Fig. 12). This study aims at identifying the key drivers of house prices during the period between 2015 and 2018.

Fig. 12. Real US Zillow Home Value Index, 2008–2019



Source: Zillow, Oxford Economics

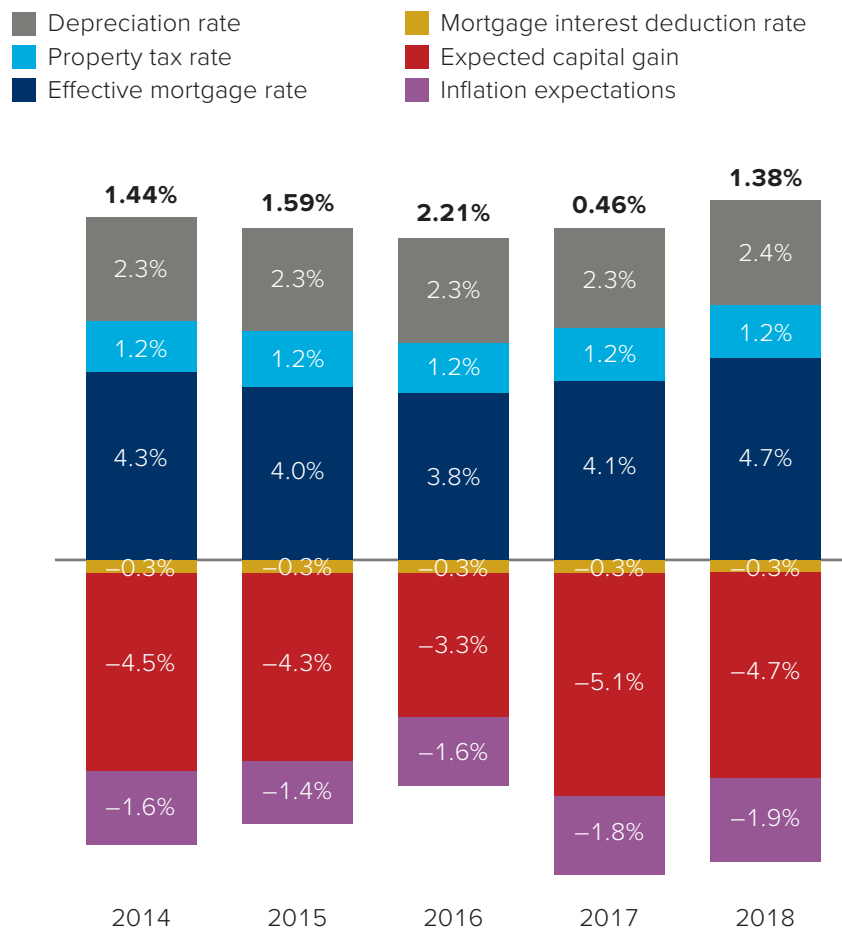
³⁰ Pew Research Center, "The number of people in the average U.S. household is going up for the first time in over 160 years" <<https://www.pewresearch.org/fact-tank/2019/10/01/the-number-of-people-in-the-average-u-s-household-is-going-up-for-the-first-time-in-over-160-years/>> [accessed 22 October 2019]

4.2.2. User cost of capital

As discussed in Chapter 3.1, the so-called “user cost of capital” is determined most obviously by the mortgage interest rate (Fig. 13); if this rises so does the cost of owning a property at any given price level. In addition to this, property taxes (minus mortgage interest deductions), expectations of inflation and capital gains, and depreciation rates all affect how costly it is to own a house of any given price.

Not all components of this variable could be gathered at the county level; for example, effective interest rates paid by mortgage holders were obtained from the Federal Housing Finance Agency by state. Expected inflation, capital gains, depreciation and mortgage interest deductions were estimated for the US as a whole. Average property tax rates, however, were estimated using ACS data at the county level, dividing the median tax value by the median property value.

Fig. 13. Estimated user cost of capital, 2014–18



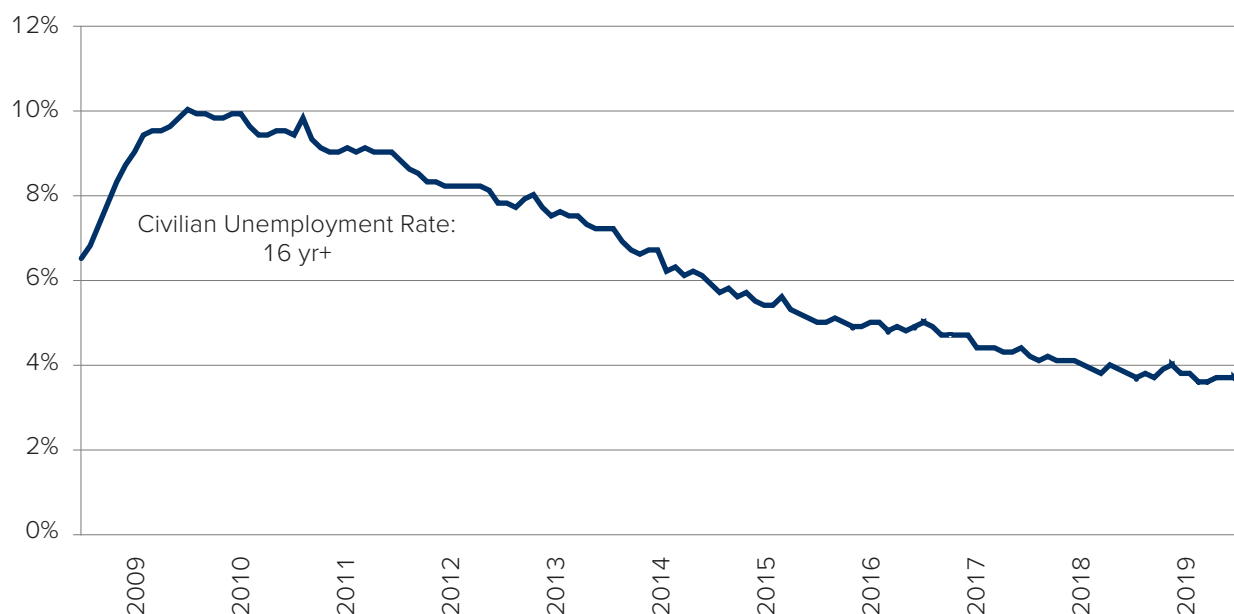
Source: Oxford Economics

4.2.3. Unemployment rate

Existing academic research provides an analysis of the extent to which unemployment influences housing market outcomes (see for example Gan and Zhang, 2018, among others).³¹ Intuitively, a stronger local labor market makes an area more desirable to potential migrants and increases willingness to pay for housing in the area, and vice versa.

This channel is particularly relevant in light of the recent positive developments of the US labor market. September's unemployment rate hit a 50-year low, reaching 3.5% (Fig. 14). These labor market improvements are found to have had an impact on house prices, as we will discuss in Chapter 5.

Fig. 14. US unemployment rate



Source: BLS

³¹ Li Gan and Qinghua Zhang, "Market Thickness and the Impact of Unemployment on Housing Market Outcomes", *Journal of Monetary Economics*, 98 (2018): 27–49.

4.2.4. Building permits

As described in Section 4.1.4, housing supply is a key determinant of housing market dynamics. However, the actual number of housing units is not the only supply-related factor that is likely to affect house prices. Projected housing supply is also potentially relevant for today's house prices. In our model, building permits are used as a proxy for this. This variable was obtained from the Building Permits Survey, produced by the Census Bureau.

The latest national level data released in September show that permits for future home construction rose to levels last seen in 2007. The recent surge in

both housing starts and permits relieved some of the pressure on house prices over our study period, as we will describe in Chapter 5.

4.2.5. Tourism

As discussed earlier, one of the challenges in determining the impact of STRs on prices (and rents) relates to the fact that neighborhoods (and cities) tend to become popular with residents and tourists at the same time. In order to try to control for the so-called hedonic features of an area, we propose using tourism GDP as a proxy.

This work controls for growth in the tourism sector (food and

beverage and accommodation services), as we believe **it is important to break down the impact of tourist attractiveness of a locality from the pure impact of STRs**. We measure tourism as the average GDP produced by the hospitality sector for each resident household. Therefore, areas where hospitality GDP has grown at a faster pace than household formation will see a growth in their tourism variable, and vice versa.

In the US as a whole, tourism GDP has grown at a slightly faster pace than households during our study period, thus exerting a slight positive pressure on house prices, as shown in Chapter 5.

5. RESULTS AND DISCUSSION

In this chapter, we set out the results of our models of rents and house prices and explain their interpretation. We also compare our results with those of past studies where comparable analysis has been carried out.

5.1. THE RENTAL MODEL

In the rental model, all variables have the expected impact and are statistically significant. The effect of income is positive and significant, while that of housing stock per household is negative and significant, as expected.

The long-run impact of STR listings is equivalent to 0.0007, or in other words, an increase of one listings per 1,000 housing units is associated with a 0.07% increase in median rents.³² In a hypothetical county with a \$1,000 median rent, if STR density increased by one listing per 1,000 units, the associated long-run increase in median rents is equivalent to \$0.7 per month.

The long run coefficients from the model for the other explanatory variables can be interpreted as follows:

- a 10% increase in real median income is associated with an 8.8% increase in median rents.
- a 10% fall in the housing units-to-household ratio is associated with a 4.9% increase in median rents.
- a 10% increase in the average household size is associated with a 2.6% increase in median rents.

How well does this model reflect the reality of how rent is determined? We can calculate a MAPE (Mean Absolute Percentage Error) to assess our model accuracy.³³ We calculated this to be 2%; in other words, considering the average rent across the counties used in our dataset, the margin of error in our model prediction will be around \$14.

5.2. THE HOUSE PRICE MODEL

In the house price model, all variables have the expected impact and are statistically significant. The effect of income is positive and significant, while that of housing stock per household

is negative and significant, as expected.

Focusing on some of the long-run effects, the coefficient for the variables can be interpreted as follows:

- an increase of one STR listing per 1,000 housing units is associated with a 0.13% increase in the real house price index. In other words, in a hypothetical county with a \$100,000 house price index, if STR density increased by one listing per 1,000 units, the associated long-run increase in the price index is equivalent to \$130.
- a 10% increase in mean income is associated with a 3.2% increase in the real house price index.
- a 10% fall in the housing units-to-household ratio is associated with approximately a 18.9% increase in the real house price index.
- a 1-percentage-point increase in the unemployment rate is associated with a 2.4% fall in the real house price index.

³² Short-run effects look at the immediate impact of a variable X over Y. Over time, given the dynamic nature of the housing market, there will be several equilibrating adjustments to the short-run effects, as the economy and people readjust. As a result, the long-run effect of a given variable X over Y is different. Our econometric methodology can distinguish between the long-run and short-run effects. The estimated coefficients presented in Fig. 19 represent the short-run effects, and the long-run effects are estimated using the Delta method, whereby the short-run effects are discounted by one minus the coefficient on the lagged dependent variable.

³³ The mean absolute percentage error (MAPE) is the mean or average of the absolute percentage errors of forecasts. Error is defined as actual or observed value minus the forecasted value (in our case, the model predicted value). This measure is easy to understand because it provides the error in percentage terms.

- a 1-unit increase in the number of building permits per household is associated with a 6.9% fall in the real house price index.

Here too, the house price model fits the actual data well, as illustrated by the MAPE. We calculated this to be 1.7%. In other words, considering the average house price across the counties used in our dataset, the margin of error in our model prediction will be around \$2,600.

5.3. CONTRIBUTION ANALYSIS

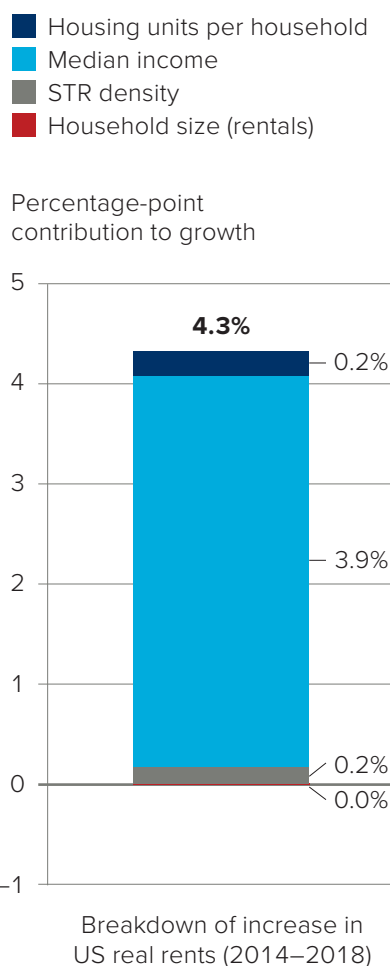
5.3.1. Rent growth between 2014 and 2018

In the four years between 2014 and 2018, US median rental prices rose by 4.3% in real terms. The findings of our rental model, combined with changes in the explanatory variables over the study period, show that the **overwhelming driver of the observed increase in real rental prices during the 2014–18 period was household earnings.**

Median income increased by 10.4% in real terms between 2014 and 2018 and we estimate that this growth alone was responsible

for around 3.9 percentage points of the 4.3% increase (Fig. 15).

Fig. 15. Drivers of the growth in real rents between 2014 and 2018³⁴



Source: Oxford Economics

Between 2014 and 2018, 5.1 million new households are estimated to have formed in the US, while net new supply was 4.1 million in the same period. This implies the ratio of housing units-to-households has declined between 2014 and 2018, pushing up rents. We estimate this drop contributed about 0.2 percentage point of the 4.3% increase in real rents.

The ratio of STR listings to housing units has grown by a factor of 6 during the study period. This increase, however, contributed to 0.2 percentage point of the increase in rents. Putting it all together, Fig. 15 reveals the contributions of various factors to the 4.3% increase in rents in the four years from 2014 to 2018.

5.3.2. House price growth between 2015 and 2018

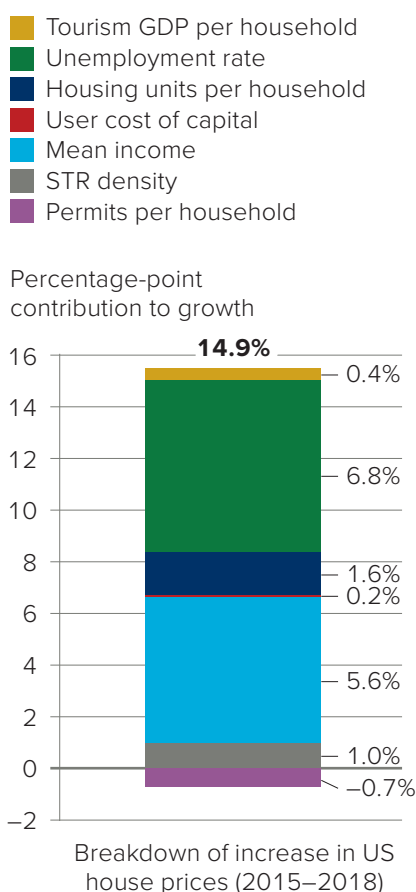
House prices have increased steadily during our study period, with real US median price index estimated to have increased by 14.9% during the period 2015–18.³⁵ Using the model to break down the causes of this rapid growth, we see that **the biggest contribution to the increase came from labor market improvements.**

³⁴ This section and chart assume that 100% of the growth in median rents can be explained through the model's explanatory variables. This is a simplifying assumption, and we are aware that our model's variables do not explain the totality of the change.

³⁵ As the house price model contains some lagged variables, the focus of this contribution analysis will be limited to the period 2015–18. The inclusion of lagged STR in the model implies that STR growth between 2014 and 2015 (the first available year-on-year growth rate) only starts affecting house prices in 2015–16. For this reason, the contribution analysis presented here only covers the period 2015–18 and not 2014–18.

More specifically, the drop in unemployment rate is estimated to have contributed 6.8 percentage points to US house price growth by the end of 2018 (Fig. 16).

Fig. 16. Drivers of the growth in house prices between 2015 and 2018³⁶



Source: Oxford Economics

The second-largest contributor to the house price growth was the increase in average incomes. Over the whole period, higher real incomes are estimated to have boosted house prices growth by 5.6 percentage points.

The drop in housing stock-per-household has also contributed to house price growth. This reduction contributed to an increase in house price growth over the period of around 1.6 percentage points. The ratio of STR listings to housing units has grown by a factor of 3 during 2015–18. This increase contributed 1.0 percentage point to the house price increase based on our econometric model. The number of building permits per household has grown over this period, which offset some of the increase driven by other factors. Lastly, tourism GDP growth and the drop in user cost of capital contributed around 0.4 and 0.2 percentage points to price growth, respectively.

5.3.3. Discussion

Summing up the findings presented in Fig. 15 and Fig. 16,

we estimate the growth in STR density only contributed to 0.2 percentage point of the 4.3% increase in rents (or 6%) and 1.0 percentage point of the 14.9% increase in house prices (or 5%) over our study period.³⁷

This result is more modest than the conclusions drawn by Barron et al., who found that the growth in Airbnb listings contributed to about one-fifth of the average annual increase in US rents and about one-seventh of the average annual increase in US housing prices. Our model includes a number of explanatory variables not considered by Barron et al., suggesting their results are likely to suffer from omitted variable bias.

5.3.4. What does this tell us about affordability?

When interpreting the house price model, it is important to note that, while house prices are interesting per se, housing affordability is a more relevant metric for policy makers. In this work, we measure affordability as the median house price divided by the mean household income.

³⁶ This section and chart assume that 100% of the growth in median house prices is explained through the model's explanatory variables. This is a simplifying assumption, and we are aware that our model's variables do not explain the totality of the change.

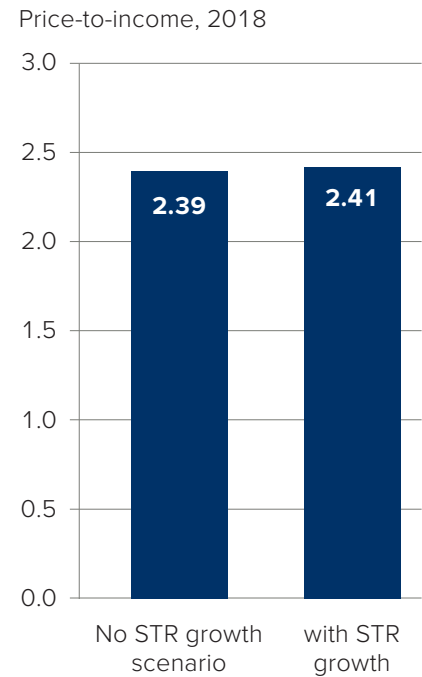
³⁷ Adding up all the individual explanatory variables' contributions (measured in percentage points) results in the total growth rate in the dependent variable (measured as a percent increase).

In this study, we found that house prices have increased by 14.9% during the period 2015–18, and that only 1.0 percentage point of this growth can be attributed to increased STRs. We are therefore able to estimate the 2018 median price of a property in the US in a counterfactual scenario where STR numbers did not grow. We do so by subtracting from the current house price value the amount that was due to STR growth. By dividing this estimated counterfactual house price by the average household income in

2018, we obtained the price-to-income ratio for the scenario where STR did not grow.³⁸

We find that the price-to-income ratio would have increased to 2.39 in 2018 (from 2.23 in 2015) in a scenario with no STR growth (Fig. 17). In the current baseline scenario (with STR growth), the price-to-income ratio was at 2.41 in 2018. This suggests that STRs are estimated to be responsible for a 0.02-point fall in affordability (or increase in the price-to-income ratio).

Fig. 17. Price-to-income ratio in 2018, with and without STR growth



Source: Oxford Economics

³⁸ The underlying assumption here is that the lack of STR growth would have no impact on average incomes.

MODEL EXTENSION 1: THE IMPACT OF STRS IN VACATION DESTINATIONS

Is the impact of STRs on prices and rents different in traditional vacation markets? In both the house prices and the rental model, we find that, in the long run, the effect of STRs on the dependent variable is weaker in these highly seasonal areas.

This result is in line with expectations. As far as the **rental market** is concerned, in vacation markets, homes are less likely to be rented on a long-term basis. That means that STRs have an even smaller effect on rents in these markets. For example, **Tillamook County, OR**, popular for its scenic coastline and rivers, has seen its STR density grow by a factor of 10 between 2014 and 2018, but its median rents have actually fallen in real terms. Some 88% of its vacant housing is for seasonal use in the area.

In the **homeowners' market**, by their very definition, vacation-destination housing markets

have higher vacancy rates that reflect more volatile seasonal housing demand. The impact of STRs on house prices is found to be weaker in these areas, as home owners have been renting out their properties long before the advent of internet platforms offering STRs (through agencies and brokers) and therefore the value from such rental revenue has long been priced in the value of homes in these localities. An example of this is **Barnstable County, MA**, home to popular New England beach destination Cape Cod. In this county, over 91% of vacant properties are for seasonal use, and STR density has increased by a factor of four between 2015 and 2018, which was faster than the national average. Real house prices, however, have increased by 11.2% over the same period, a slower pace than the US as a whole.

MODEL EXTENSION 2: THE IMPACT OF STRS IN URBAN AREAS

Does the impact of STRs on prices and rents vary across urban and rural counties? In both the house prices and the rental model, we find that the effect of STRs on the dependent variable does not depend on the level of urbanization. In other words, we do not see a significant difference in the long-run impact of STRs on prices and rents between urbanized and rural areas.

San Diego is an example of how the US-wide results apply to highly urbanized areas. Its house prices have grown by an estimated 15.0% between 2015 and 2018, and its STR density has grown by a factor of 3 within the same period. This compares to a very similar US-wide house price growth of 14.9% and an STR density growth of a factor of 3.

6. CONCLUSION

The aim of this study was to assess the contribution of STR growth on the growth in house price, rental price, and affordability. We have found that **the rapid US house price and rent increases of the past few years have not been substantially driven by STRs**. We estimate the growth in STR density only contributed to 0.2 percentage point of the 4.3% increase in rents and 1.0 percentage point of the 14.9% increase in house prices over our study period. This compares to a 3.9 percentage points impact of median incomes to rental growth and a 6.8 percentage points effect on house price growth stemming from the drop in US unemployment over the study period.

This has important implications for a policy debate that has focused heavily on short-term rentals as both the cause of the problem of high house prices and its solution. It suggests instead that **the major sources of volatility in rental and**

house prices lie in economic and labor market outcomes.

Second, this study has found that **additional housing supply and more abundant building permits are likely to have a meaningful impact on house prices**. It is estimated that in the long run, a 10% increase in the housing units-to-household ratio is associated with approximately a 18.9% fall in the house price index, and a one-unit increase in the number of building permits per household is associated with a 6.9% fall in the house price index.

Finally, our analysis has pointed to the fact that **adopting strict regulations on STRs is unlikely to solve the housing affordability crisis faced by many US households**. During the period 2014–18, in the absence of STR growth, real rent would have grown by 4.1%, rather than 4.3%. In other words, monthly rents would have been \$2 lower in 2018 if STRs had not increased from their 2014 levels.

Similarly, in the homeowners' market, prices would have been only \$1,800 lower in 2018 if STR density had not gone up from its 2014 level. Considering that most households do not pay the full price of a house upfront, but rather apply for long-term mortgages, the expected annual impact attributable to the STR sector is \$105.³⁹

Interestingly, a model extension suggests that the effect of STRs on both house prices and rents is weaker in vacation destinations. Possible explanations for this are that, in vacation markets, homes are less likely to be rented on a long-term basis and home owners in these destinations have been renting out their properties long before the advent of internet platforms offering STRs. On the other hand, the effect of STRs on both variables does not appear to depend on the level of urbanization.

³⁹ Mortgage maturity and effective interest rate are assumed to be as reported in the latest Federal Housing Finance Agency's Monthly Interest Rate Survey.

STR LITERATURE FINDINGS

Fig. 18 summarizes the main findings of the studies presented in Chapter 3.2, and their main limitations.

Fig. 18. Summary of existing STR literature

Author	City of interest	Main findings	Main limitation
Barron et al. (2017)	US-wide	A 10% increase in Airbnb listings leads to a 0.39% increase in rents and a 0.65% increase in home values.	The authors construct an instrument based on Google Trends searches for Airbnb. Unfortunately, these are not accurately available at the zip code level, so to obtain an instrument that varies at the zip code level they interact these searches with a measure based on the number of hospitality establishments in the zip code area. The validity of this instruments can therefore be disputed.
Horn and Merante (2017)	Boston	0.4% increase in asking rents associated with a one-standard-deviation increase in Airbnb listings	The authors rely on weekly rent data from September 2015 through January 2016 and Airbnb data from September 2014 to January 2016. Thus their time dimension is fairly limited. We believe this hinders their ability to establish meaningful relationships between the various variables.
Sheppard and Udell (2018)	New York	6.46% increase in NYC property values associated with a doubling in the number of total Airbnb accommodations	The authors do not convincingly account for the fact that neighborhoods tend to become more attractive to residents and tourists at the same time.
Koster et al. (2019)	Los Angeles	3% fall in house prices as a result of Home Sharing Ordinances in Los Angeles	The authors use Airbnb listings as a proxy for tourism demand, which means that they do not control for other tourism variables. That runs the risk of overestimating the impact of Airbnb and attributing the entire “touristic location” effect to the fact that STRs are present. In contrast, this work controls for tourism GDP unrelated to STR activity.

METHODOLOGICAL APPENDIX

INTRODUCTION TO DYNAMIC PANEL MODELS

House prices (or rents) in the current period might be affected by past trends in house prices (or rents), as well as housing supply and general economic conditions. In such cases, dynamic panel methods, such as the Arellano Bond estimator (also known as Difference GMM) and Blundell Bond estimator (System GMM), would allow us to account for the presence of such “dynamic effects.” Difference GMM estimation starts by transforming all regressors, usually by differencing, and uses the generalized method of moments (GMM). This work employs Difference GMM.

Dynamic panel models have become increasingly popular in

many areas of economic research, and their use has provided new insights. Using dynamic panel models allows us to find overall (long-run) coefficients for the explanatory variables as well as the contemporaneous (or short-run) ones.

The advantages of dynamic models include:

- controlling for the impact of past values of house prices (or rents) on current values;
- estimation of overall (long-run) and contemporaneous (short-run) effects; and
- use of past values of explanatory variables as instrumental variables to mitigate the bias due to: two-way causality between economic conditions

and the housing market, omitted variable bias and measurement error.

The need for a dynamic model: Wooldridge test for serial correlation

The Wooldridge test allows us to test whether the errors are serially correlated; if these are found to be autocorrelated, we may infer that there is a need for a dynamic model.⁴⁰ The disadvantage of a dynamic panel model, however, is that it can add considerable complexity to the modeling process. A simpler static model might therefore be a preferable approach if the Wooldridge test does not suggest a dynamic panel is necessary.

⁴⁰ Strictly speaking, the Wooldridge test is a test for autocorrelation and not a definitive test to choose between static and dynamic panel methods. However, it is commonly applied to inform choices between static and dynamic panels.

Use of instruments

Instruments are used to control for potential endogeneity in a regression. We have found median incomes (rent model), permits per household, housing supply per household and STR density (house prices model) to be endogenous variables, and therefore the instrumental variable method was used to estimate their impact.

MODEL RESULTS

As explained, our model specification is known as Difference GMM; such approach, by virtue of being a dynamic model, has both a short- and long-run impact. The short-run results from the rent and house price models are given in Fig. 19. To obtain the long-run impact, we used the Delta method and discounted the short-run impact by one minus the coefficient on the lagged dependent variable.

Contribution analysis

The modeling results shown in Fig. 19 tell us about the sensitivity of rents and prices to changes in their macroeconomic determinants. But these results can also be used to find out which of the determinants were responsible for past changes in the dependent variables. For instance, Fig. 19 shows that the user cost of capital has a significant negative effect on house prices. But while house prices may be sensitive to changes in the user cost of capital, if there was no (or little) change in the user cost over the study period, then this variable will not have influenced house prices during that period.

The “contribution” of a given variable in explaining changes in house prices or rents is therefore a combination of both the estimated sensitivities and the change in that variable over the period under analysis.

Fig. 19. Models results

Rental price model <i>Dep var: Log real median rents</i>	Short-run coefficients
Lagged log real median rents	0.706***
STR density	0.0002**
Log median income	0.259***
Log housing units per household	-0.144*
Log household size (rental)	0.076*

House price model <i>Dep var: Log real median house prices</i>	Short-run coefficients
Lagged log real median house prices	0.719***
Lagged STR density	0.0004*
Lagged log mean income	0.091***
Lagged user cost of capital	-0.161***
Log housing units per household	-0.531***
Lagged unemployment rate	-0.663***
Lagged tourism GDP per household	6.345**
Permits per household	-1.929***

legend: * p < 0.1; ** p < 0.05; *** p < 0.01

Models with interactions

Is the impact of STRs on prices and rents different in traditional vacation markets? The model coefficients described so far measure the average impact of STRs on the dependent variables (prices and rents). Our baseline model looks as follows (in the example of prices):

$$house\ prices_{it} = a \times STR_{it} + \beta X_{it} + \gamma house\ prices_{it-1}$$

However, in order to isolate vacation markets, we added an interaction term to our models, using the percentage of seasonal housing as a proxy to define these areas.⁴¹ The model is now specified as follows:

$$house\ prices_{it} = a1 \times STR_{it} + a2 \times STR_{it} \times vacation_i + \beta X_{it} + \gamma house\ prices_{it-1}$$

Without the interaction term, a would be interpreted as the total effect of STRs on prices. But the interaction means that the effect of STRs on prices is different for vacation markets and less touristic areas. The effect of STRs on prices in non-touristic counties is equal to $a1$. However, in vacation markets the effect is equal to $a1 + a2$.

In both the house prices and the rental model, the interaction term for vacation markets is negative and statistically significant, suggesting that the effect of STRs on the dependent variable is weaker in these highly seasonal areas.

We run a similar model replacing the vacation dummy variable with an urban dummy variable.⁴² In this case, however, the interaction term for urban centers is not statistically significant, suggesting that the long run effect of STRs on the dependent variable (either house prices or rents) does not depend on the level of urbanization.

⁴¹ The vacation variable is a dummy taking value 1 if the county's % of seasonal housing is above average, and 0 otherwise.

⁴² The urban variable is a dummy taking value 1 if the county's % of urban population is above average, and 0 otherwise.

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November 2019

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

CERTIFICATE OF SERVICE

I certify that I have today delivered Prefiled Testimony of Lawrence Smith, Laura Waters, Dana Walrath, Diane deTerra, Doug Goodman, Janice Ellis, Almy Landauer, Michael Turner, Stephanie Herrick, Wendy Bratt, Sharon O'Neill, and Luc Logan to all other parties to this case as follows:

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Dated: 3/3/2021

/s/ Caroline Engvall
Caroline Engvall
Assistant to Counsel,
James A. Dumont, Esq.
dumont@gmavt.net

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF DEBORAH ALMY LANDAUER

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF DEBORAH ALMY LANDAUER

1. Please state your name.

My name is Almy Landauer.

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 161 Austin Drive, Unit 139, Burlington VT. This is 1275 feet from the proposed project. See attached map.

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. The additional noise and dust and potential hazardous contamination releases (asbestos, lead or PCB contaminates) that will be created from the 12-month stormwater management and parking lot construction project will affect my health. I drive on Queen City Park Road normally several times a day both for commuting in the morning and evening, sometimes later in the evening if I have a work meeting that keeps me at work until 6 or 7 pm. I bicycle on Queen City Park road occasionally in the spring, summer and fall, at any time of day including in the evenings between 4 and 8 pm. I already have lung complications which are being treated by my primary care doctor.

There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for us to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the

existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing us to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise. Noise has numerous health effects including health effects related to sleep loss that will be produced by this development. The nighttime noise associated with the rock music, traffic, and crowds near my residential neighborhood in the evening and in the middle of the night will awaken me. I am a light sleeper and am particularly vulnerable because I am already under a doctor's care for sleep issues. The noise will impact my health, well-being, and performance. I sleep with a window(s) open almost year-round for fresh air and to lower my electricity bill by avoiding use of air conditioning. The nighttime noise from both the loud concerts and the traffic will keep me up. I am an early to bed and early to rise person.

The low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live farther from the site than I live from this site.

The 2,300 sq. foot outdoor lounge including in the proposal and the outdoor restaurants will increase the noise and the length of time before concerts where there will be noise that will disturb me. My home is uphill and to the west of the site, so prevailing winds will bring the noise to me.

This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. When 1,500 patrons exit a loud rock concert during the wee hours of the night, travel to and then start up their up to 680 vehicles cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue. These disturbances will have a negative impact on my sleep patterns and health.

The noise of the buses and tractor trailer trucks arriving and departing before and after concerts will also increase the amount and length of noise disturbance.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I like to swim and recreate. This contamination has the potential to make me sick and when detected has caused Oakledge Beach, and Red Rocks Beach to be closed. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. My property is located at 161 Austin Drive. The Parking Management Plan submitted by Burton Corp. does not provide adequate onsite parking for the anticipated number of cars, will create overflow parking on my local streets causing congestion and unsafe conditions. I live at 161 Austin Drive, around the corner from the site via a small city street. In order to exit my home and neighborhood, I travel close to the Burton site for shopping, work, entertainment, etc. I travel by bicycle and car, and occasionally by foot. I travel at all different times of the day and evening.

Burton’s traffic study is flawed and based on old data. I believe this project will cause undue congestion and unsafe conditions in a dense residential area that includes my home, and is accessible only by small residential streets, including a one lane bridge and a railroad track crossing. There is a narrow 90 degree curve to the west the one land bridge at which I have in the past narrowly missed accidents with other card and bicyclists. This project will cause unsafe conditions for me as a bicyclist on Queen City Park Road. It will also cause unreasonable congestion at particular intersections which will impact my ability to come and go safely from my property.

The Traffic Study did not address or provide mitigation measures to maintain safe and uncongested traffic conditions pre- and post-concert or provide multi-modal transportation plans. There is a new large vehicle access point (curb cut) proposed, just west of the one lane bridge and east of Central Ave on the south east side of the project which will increase the hazardous conditions that already exist when I travel this road. Queen City Park is a narrow

road with no dedicated bike lanes or crosswalks, no sidewalks (except a short section near the bus depot). On the other end, I must cross an active railroad crossing. The route from my home to grocery and other shopping is already hazardous with narrow streets, no bikes lanes, the RR crossing, trail entrances, few sidewalks and a one lane bridge. It is an area that at times feels unsafe to travel on.

I commute by car to and from work 5 days a week on Queen City Park (QCP) Rd. across a one lane bridge with no signal or signs, up to the 189 on ramp. Several times a week I come home in the evening at the time crowds would be incoming for concerts. My only alternate route is Home Ave. which will be severely impacted by concert traffic as well.

Three seasons a year I use a bicycle for both pleasure and transportation and must pass through or by the site or the intersections involved in this project. The current striping on QCP for car and bike traffic are confusing and inadequate both from my perspective as a driver and a rider.

If this project is developed, there will be hundreds of cars navigating this road in short bursts pre- and post-concert, and buses and trucks for the bands and their crews and equipment. This traffic will make this already marginally safe road unmanageable and dangerous for me. Queen City Park Road is the only road with direct access to this site and it is the main route that I rely on for my daily travel.

The Impact of Insufficient Parking on My Safety and Quality of Life. The Parking Management Plan submitted by Burton Corp. does not provide adequate onsite parking for the anticipated number of cars, will create overflow parking on my local streets causing congestion and unsafe conditions.

The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. If the FHWA is correct, up to 680 parking spaces are needed, on average, just for the performance events. 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, trucks and cars of the performers and their crews, and of the employees of Higher Ground, Burton, the Talent Skate Park and the Cafés. 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, no on-street parking on surrounding streets, and only quiet residential streets surrounding the proposed venue. My house is a few minutes’ walk from the event site. These parked vehicles will cause congestion and dangerous conditions for me as pedestrians and bicyclists, and, late at night,

when events are over, will bring late-night noise to my house as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting. If I have visitors coming to my home, they will be impeded anytime there is a concert.

6. Please describe the impacts of the project on Burlington's ability to provide municipal services to you as a resident and as a user of Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect Burlington's ability to provide safety and police services to me.

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of COVID-19). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: "The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV "bar closing". Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave". The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Redrock neighborhood under Criterion 8.

I chose to live here because of the quiet, access to parks, and neighborhood character. I moved here from Sheldon for this reason.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

Even if parking suffices for the volume of concertgoers, staff, bands and their retinue, the impacts will be severe. I live about 1,275 feet away from the parking lot where 1,500 people will pour out of the building late at night. As the crowd flies my home and neighborhood is quite close and situated ABOVE and downwind of this location which means noise rises to me. The noise of the proposed rock music venue and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property. This project will negatively impact how I enjoy my back porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. In the summer, I open doors and windows for cross-ventilation day and night. Their outdoor "lounge" and café area will generate a lot of noise.

Under Act 250, applying the "Quechee test," the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community

The Burlington Comprehensive Plan, 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, 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 this part of Burlington but adds this:

“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.”

The noise, traffic and parking impacts of the project will violate these standards and harm me.

My attorney’s review of the Burlington City noise standard leads me to conclude that this standard will also be violated. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in the Redrock neighborhood and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk frequently in Red Rocks Park, on all the different trails and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings. Red Rocks Park is my main and most frequent access to the outdoors. I enjoy the quiet of living adjacent to the Park. In fact, it was on the very top of my list when I purchased my home.

The loud disturbance of concert goers allowed to gather in the outdoor lounge will dramatically alter the soundscape of the park and make it much less a place of peace and solace for me.

Concert attendees will no doubt use the park and likely when inebriated. This fragile area will experience increased foot traffic by people who are in no condition to care for it responsibly. The safety issues and damage to the environment will negatively impact my ability to use this natural resource near my home.

I can provide personal testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

The **Burlington Comprehensive Plan**, 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, 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 this part of Burlington but adds this:

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.

The noise, traffic and parking impacts of the project will violate these standards and harm me.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and man-made hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along Home Avenue or QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. There is no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above..

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake

where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

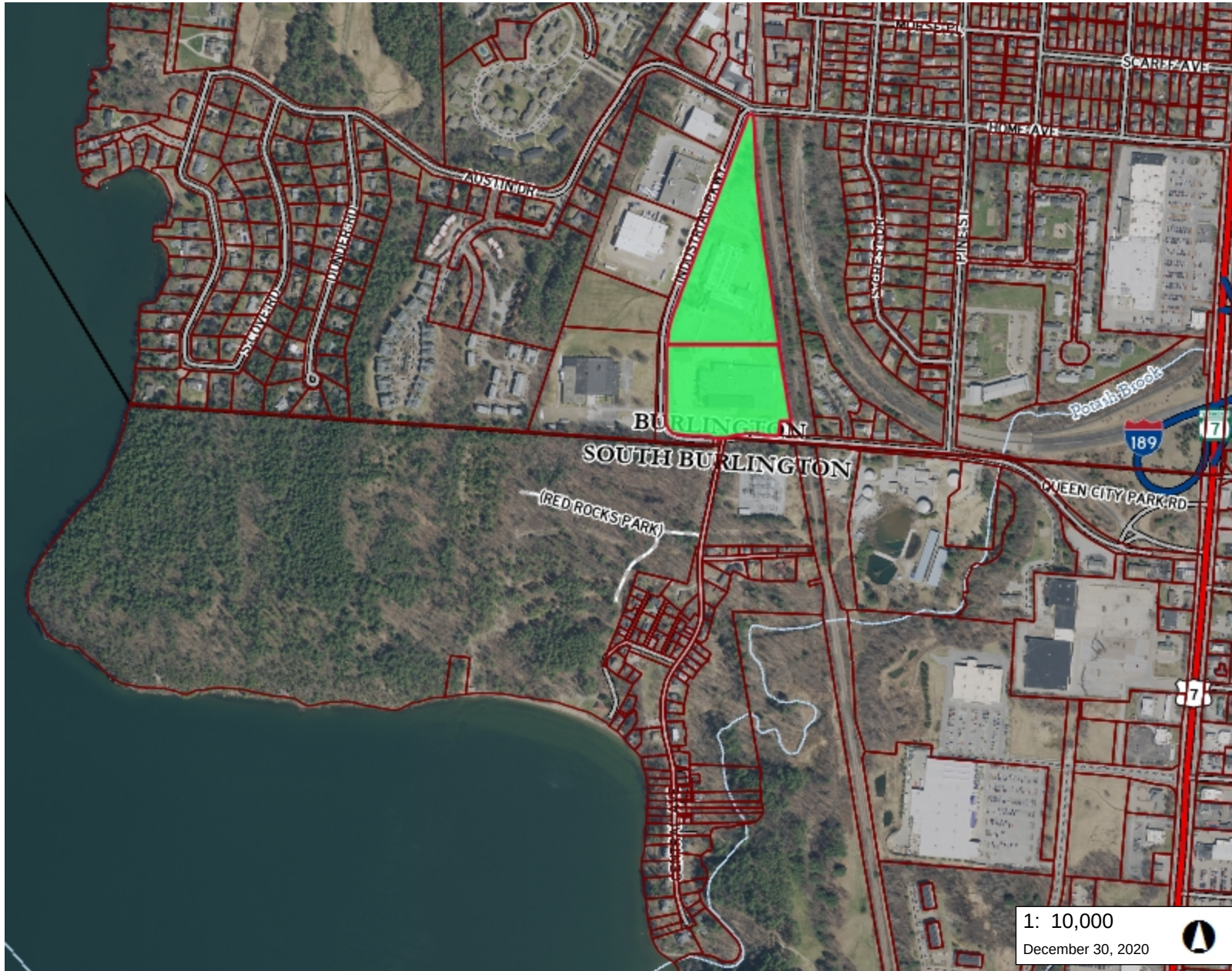
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF Dana Walrath

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF Dana Walrath

1. Please state your name.

My name is Dana Walrath.

2. Please summarize your testimony.

I submit this affidavit to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 42 Central Avenue. This is 965 feet from the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. I rely on walking, and bicycling for my primary means of transportation and for my mental and physical health. In order to leave our neighborhood by car, on foot or bicycle I have to travel past the Burton Campus. I travel past this campus many times a day at all hours of the day and well into the evening/night. There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise. This development will produce loud noises during the late night hours. On warm nights I sleep with windows open to provide fresh air and comfortable sleeping. The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live as far from the site as I do. This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. That outdoor lounge is directly across the street from Central Ave where I live. When 1,500 patrons exit a loud rock concert during the wee hours of the night, travel to and then start up their up to 680 vehicles cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue. These disturbances will have a negative impact on my sleep patterns and health.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

Water Pollution -- Drinking Water. I and my community rely on a well for our drinking water that is 780’ from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When disturbed, these contaminants, and any others which may exist on the property have the potential to travel towards our well and contaminate our drinking water which would have a direct negative impact on my health. Burton is now performing another study of the site. Until Burton’s studies are completed and submitted to the Commission, it would be premature to grant or deny party status on this issue.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. My property is located at 42 Central Avenue. Central Ave is a dead end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving my property, I must travel directly past the Burton Campus on Queen City Park Road. I take trips to and from my property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This road currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate. I do virtually all my shopping and other business outside my neighborhood by bike or on foot. Walking or bicycling north on QCP Road on the way to City Market, where I often shop in the evenings, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road and then navigate the intersection of QCP Road, Home Ave and Austin Drive, then cross VT Rail tracks. This route is hazardous with the current traffic levels. I can't imagine trying to travel this route with the proposed increase in traffic. Additionally, traveling east on QCP Road requires navigating over a one lane bridge that has a metal grate catwalk for pedestrian travel. If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts pre and post-concert. This traffic will make this already marginally safe road unmanageable and dangerous for me. Queen City Park Road is the only road with direct access to this site and it is the road that I rely on for all of my daily travel.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is my street. My house is a few minutes' walk from the event

site. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise in front of my house as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. Additionally, fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington's ability to provide municipal services to you as a resident and as a user of South Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect South Burlington's ability to provide park and recreational services and police services to me.

The main entrance to Red Rocks Park is on Central Ave just south of Queen City Park Road and the entrance to Burton and the Higher Ground site. I use it nearly daily. During Higher Ground events, with as many as 1,500 visitors, the Park will be flooded with visitors. It will be impossible for the City to continue to provide high-quality park and recreational services to me. In this context, Criterion 7 overlaps with Criterion 9(K).

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: “The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV “bar closing”. Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave”. The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on me as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own “Green”, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

I chose to live here because of this character and the ability to use a bicycle as primary means of transportation. I moved here from Underhill for this reason.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off – all of which will occur in front of my house, which lies very close to the street. This will happen on a regular basis at midnight or 1 am.

Even if parking suffices, the impacts will be severe. I live about __965__ feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am diagonally across from the Fire District #1 green and park that will certainly be used by pre and post-concert attendee. Further the slope, narrowness and curve of Central Avenue at my house is already tight for vehicles to pass. Parked cars along this stretch of road would introduce new hazards. This project will negatively impact how I enjoy my back deck and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that “extends beyond the boundary” of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development

Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is "plainly audible" 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington's written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorneys' review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a "plainly audible" standard, barring noise after 10 pm that is plainly audible at other properties or from the road. It exempts operations that obtain entertainment permits, as Burton's experts have argued. Burton's experts apparently are unaware that the ordinance governing entertainment permits does not apply to event sites such as Burton proposes.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this "gem of the lakeshore".

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk almost nightly (for sunset viewing) in Red Rocks Park, and often on the Double Dog Leg trail, and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings. Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds.

The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

As a South Burlington and Fire District #1 taxpayer and as a user of Red Rocks Park, I will be harmed by the impacts of Higher Ground events, with 1500 attendees, right next to RRP. Concert attendees will likely either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, at a Park such as this that is adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the Park. Adding one hundred or two hundred visitors on warm summer nights, before or after the Park has closed, is likely to overburden both Red Rocks Park and Fire District #1 and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance,

talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park once or twice nearly every single day and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to

Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike, and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for me to travel out of our neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, no dedicated bike lanes, no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

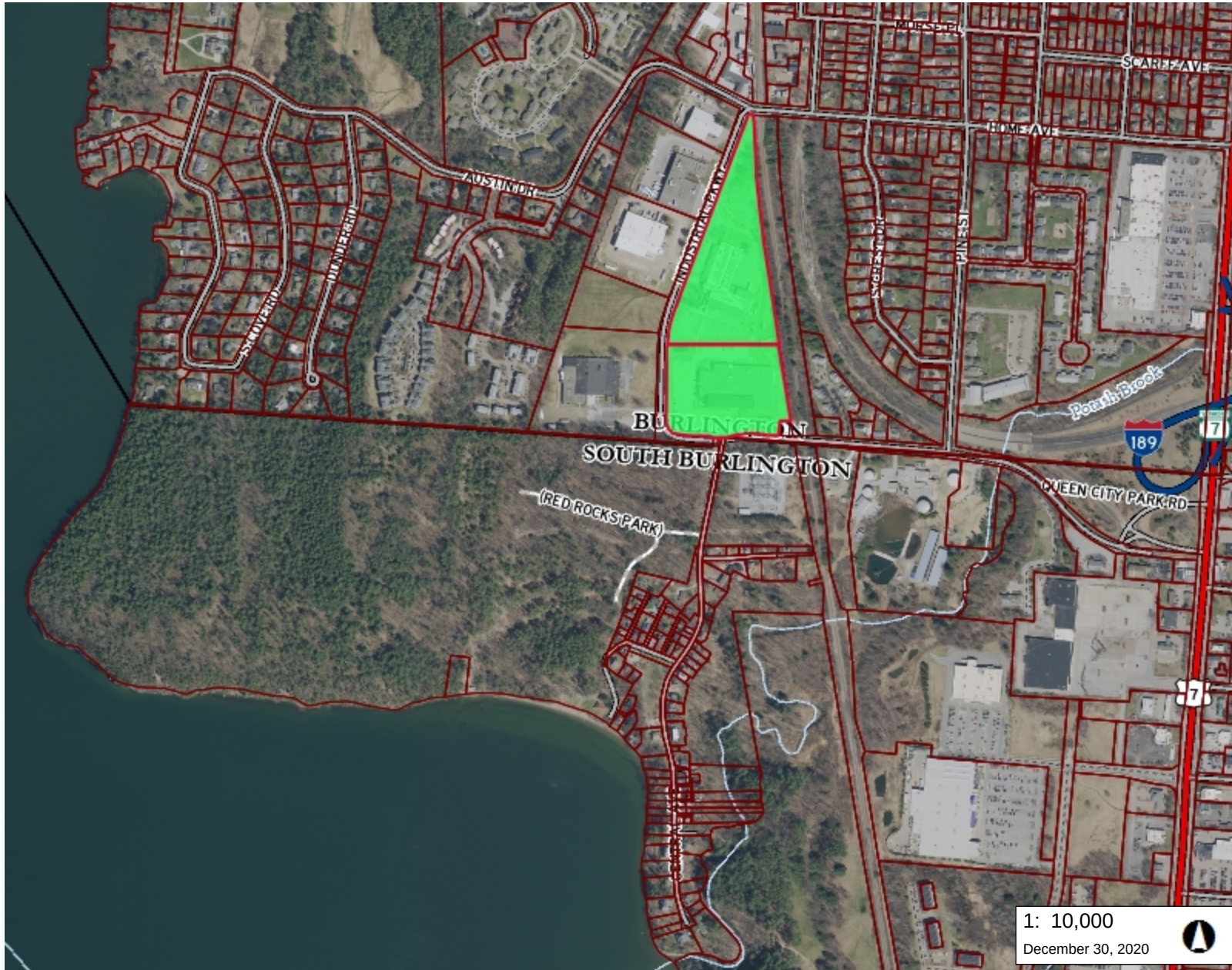
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF Diane de Terra

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF Diane de Terra

1. Please state your name.

My name is Diane de Terra.

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 39 Central Ave. This is fewer than 700 feet from the proposed project (map reads 840). See attached map.

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

1. Air pollution: For the past 35 years I have owned my home at 39 Central Ave, and it has been and still is essential to my physical and mental well-being to be able to safely walk, jog, and bike from my home to the bike path. In order to do so, I must travel past the Burton Campus. I travel past this campus frequently at all hours of the day and well into the evening. There are known contaminants on the property and during construction it is likely that those contaminants will become airborne creating the potential for me to inhale those contaminants when traveling past the site. Those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been potentially identified to be located on the site. The influx of 500 vehicles plus on a regular basis will compromise air quality.

2. Interruption of Sleep by Noise. This development will produce loud noises during the late-night hours, and potentially during the day. Previous events near that location, Burton's summer sale, caused issues that will occur on a regular basis moving forward. During Burton's summer event, even though parking was posted and parking attendants made sporadic efforts to control traffic, attendees filled the designated spots then filled Red Rocks Park parking, and then moved into Queen City Park. Sale goers illegally parked on Central Ave. and in my

driveway. The music played during the summer sale, further away from my home than the new Higher Ground location, could easily be heard from my home. Burton's summer sale was a daytime, one weekend a year, event. Traffic and noise disruptions, attendees crowding the beach, hanging out on our green were just tolerable for two days a year. Given Burton's failed attempts to control traffic during its annual sale, smaller crowds spread over two days, it is unlikely they will succeed at 2am with more people. At night, I sleep with my windows open to enjoy fresh air. The 2,300 sq ft outdoor lounge and bar which can accommodate in excess of 150 people is directly across the street from Central Ave, and fewer than 700 feet from where I sleep and have a home office. I can see it from my home. When 1,500 patrons exit a loud rock concert late at night (possibly till 2am for people still at their bar), walk to and then start up their 500+ vehicles (Loud trucks, Motorcycles, cars, etc.) as they leave the concert, bars, and restaurant there will be significant noise disturbance. Traffic, noise, air and light pollution and contamination associated with Burton/Higher Grounds events will be intolerable. These disturbances will have a negative impact on my mental and physical health due to deprivation of sleep over extended periods of time.

3. Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,000 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this "letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities." These overflow events contaminate the lake where we swim and recreate. This contamination has the potential to make us sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These closures directly impact my ability to enjoy the lake and get exercise swimming and kayaking, both of which impact my overall health and wellbeing.

4. Water Pollution -- Drinking Water. I rely on a well for drinking water that is 780' from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When exposed to the environment, these contaminants, and any others which may exist on the property have the potential to travel towards the well and contaminate my drinking water which would have a direct negative impact on my health.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

1. The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. My property is located at 39 Central Avenue. It has been my home for 35 years. Less than 700 feet away, Burton is visible from my house. Central Ave is a dead-end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to leave my home and neighborhood for any reason (food shopping, post office, social events, emergencies, etc.), I must travel directly past the Burton Campus on Queen City Park Road. This road is narrow with no shoulders, crosswalks, dedicated bike lanes, very limited sidewalks, a stop sign that is frequently not observed, and a single lane bridge. This road currently has a low traffic volume and even so at times feels unsafe to navigate. Walking or bicycling north on QCP road on the way to Oakledge and the bike path, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road. This route is hazardous with the current traffic levels, let alone with 1,500 concert attendees and people going to the bar/restaurant. Burton has consistently had the above-mentioned issues during their summer sale with far fewer people at one given time and for only two days. I fear that these issues will be exacerbated during regular events if those issues are not addressed and resolved. If this project is developed, there will be hundreds of cars navigating this road in surges pre- and post-concert. This drastic increase in traffic will make this already marginally safe road unmanageable and dangerous for myself, other residents of Queen City Park, Talent Skate Park attendees, and for concertgoers. Queen City Park Road is the only road with direct access to this site and it is the road that we rely on for all of our daily travel.

2. The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue that includes multiple bars will have a capacity of 1,500 patrons. There will be in excess of 500 cars bringing these patrons to performances. Additionally, there will be vehicles bringing patrons to the Burton Campus for the proposed bar/restaurant that can be open as late as 2am, as well as to the Talent Skate Park which will be operating until 11PM on weekends, food and beverage delivery trucks, and there will be vehicles for the employees of these businesses as well as the vehicles for the performers. The Burton site has 426 total parking spaces. This means that there will at times be well over 100 vehicles looking for parking spaces "off campus". As mentioned above, during previous events at Burton, attendees have used parking designated for Red Rocks Park, parking illegally along Queen City Park road, as well as blocking residents' driveways. There are no municipal parking lots, no on street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. These additional vehicles will cause further congestion on streets not designed for this, further endangering me when I am trying to navigate by foot, bike or car to and from my house.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington's ability to provide municipal services to you as a resident and as a user of South Burlington's recreational and public safety services under Act 250 Criterion 7.

South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019. There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue and is likely to have significantly more need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

This reduction of force, in conjunction with the increased size of this venue will create what may at times be uncontrolled hazards in direct eyesight of my home, less than 700 feet away. If this situation develops at a time with no police presence, I may find myself and my family in a dangerous situation resulting from behaviors and unsafe conditions as described in the SBPD incident reports.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on myself as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. This being the case, the safety of event attendees, residents of the surrounding neighborhood(s) and South Burlington's Red Rocks Park will largely be left in the

hands of Burton/Higher Ground personnel. This personnel has in the past stated that they have a good record dealing with intoxication, drug use, violence inside Higher Ground because they kick out those that violate rules. Now those same people will be intoxicated, upset at being kicked out, late at night, will be less than 700 feet from my home.

Burton/Higher Ground personnel and South Burlington Police records identify intoxication, drugs, sex offence, assault, trespassing, disturbance of the peace. Burton/Higher Ground fail to address or offer mitigation for these contaminations of social environment, security, and intrusions to our physical property.

Excerpt from BPD letter dated April 2020 to DRB: "The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV "bar closing". Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave". The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

"Bar closing" is at 2am which is when people will be leaving the bar/restaurant at the proposed venue. Considering that the owner(s) of Higher Ground describes their business as "a bar, but we focus on the music". I anticipate peak departures at two times: post-concert and bar closing.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own "Green", basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

This project as proposed threatens the character of my neighborhood and will have a severely harmful impact on my quality of life.

Even if the parking lot suffices and there are no cars parked on my streets and no attendees talking and singing to each other in front of my houses at midnight or 1:00 am as they walk to their cars, the impacts will be severe. I live about 700 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am within 700 feet, Burton is visible from my home. I can see it and hear it. The site of the 2,500 square foot outdoor lounge is visible from my home. Its location will cause maximum noise impact on my peaceful enjoyment of my home and property. Pre and post-concert attendees heading to the beach and green will pass under my windows. This project will negatively impact how I enjoy my back porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter, dog waste, and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the "Quechee test," the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that "extends beyond the boundary" of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is "plainly audible" 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington's written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to

entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorney's review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a "plainly audible" standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Increased use by non-residents concert goers of my community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

The noise from the proposed music venue/bar will change the character and soundscape of Red Rocks Park. Attendees to this venue will overburden Red Rocks Park, surrounding green spaces, and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

1. Red Rocks Park is directly adjacent to the proposed rock venue
1. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.
2. The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking and smoking will dramatically alter the soundscape of the park and will negatively impact the wildlife within.
3. Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural flora and fauna and potentially create safety issues and hazards, both of which will impact my ability to enjoy this natural resource.

4. Artificial lighting at night will disrupt the circadian rhythms of wildlife with consequent negative impact.

My neighbors, my family, and I will provide our personal and expert testimony concerning the soundscape of the neighborhood and the adverse changes caused by the venue.

The venue and related noise, often but not always evening and nighttime noise, is clearly adverse to my use and enjoyment of Fire District green spaces and Red Rocks Park. Moreover, it fails each of the three tests of the second part of the Quechee Analysis.

The noise will violate clear, written community standards, including but not limited to the Burlington Noise Ordinance and the South Burlington Noise Ordinance.

The late-night noise is shocking and offensive, out of character with, and significantly diminishes the character of, the residential neighborhood and park.

Finally, the applicant fails to take mitigating steps which a reasonable person would take to improve the harmony of the Project with its surrounding residential neighborhood such as limiting the size/scale of the venue and time of night that noise intrusions will occur.

Based partly on the applicant's own noise assessment, partly on expert evidence to be produced at the hearing, and other evidence, the project will have an undue adverse effect on aesthetics by reason of the production of excessive noise late at night. These impacts will all impact my quality of life and ability to get uninterrupted sleep.

I also will be harmed by the concert attendees who park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

1. My home, 39 Central Ave, is near the Fire District green, basketball court, and play structures.
2. The green is 1,100 feet from the proposed venue.
3. Pre and post-concert goers will find their way to these assets and create disturbances that will impact peace and quiet.
4. The proposed venue has 426 parking spaces for shows that will have 500+ patron vehicles, staff vehicles, and show crew vehicles.
5. Talent Skate Park which operates in the same building will also have patrons and staff parking during venue hours.
6. There is no on street parking on Queen City Park Road, Austin Drive, or Home Avenue to Pine St. All other roads adjacent to the venue are residential streets.

7. There are no accommodations in the project application for dealing with the 100++ vehicles that will need parking during shows and will filter down into our neighborhood, as they have during Burton events in the past.
8. These impacts will increase the costs of maintaining these assets and will cause our taxes to increase.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a regular basis and am very concerned that there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those who use the park are protected. With the approval of the "performing arts center", several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. Red Rocks Park has fragile ecosystems that are put at risk through heavy usage and off-trail use. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. We are also concerned that after-events could cause nighttime disturbances and present a

safety and security risk. Light Pollution from artificial lighting Burton/Higher Ground parking lots, outdoor patios for the bar/restaurant/music venue, and from vehicles will disturb the circadian rhythm of Red Rocks Park wildlife with harmful impact.

An influx of 500-1000 vehicles to Burton/Higher Ground on a regular basis will have a negative impact on air quality in the vicinity.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

I am concerned about safety for myself and family when we walk, ride bikes, and drive along Queen City Park Road and Central Ave during the pre- and post-concert periods when there will be up to 500 vehicles, if not more, entering or leaving the venue. The only way to travel out of my neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, bike lanes, or safe infrastructure to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will now be on my doorstep, less than 700 feet away.

Red Rocks cliffs entice thrill seekers to jump off them, despite signs indicating no trespassing and danger. Burton/Higher Ground attendees may be enticed to Red Rocks cliffs. Those that ignore these warnings have been severely injured or died. These tragic events happen every summer and fall, but during daylight hours when rescue crews and first responders can recover injured people/bodies. Should these accidents occur at night, emergency service response will be further complicated and put at increased risk.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no realistic way for attendees to access this venue other than by car which creates the impacts that I have noted above. There are currently no accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for attendees which impacts my ability to safely travel from our home.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the

dumping of over 9,000 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and kayak. This contamination has the potential to make me and my family sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These closures directly impact my ability to enjoy the lake and get exercise.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

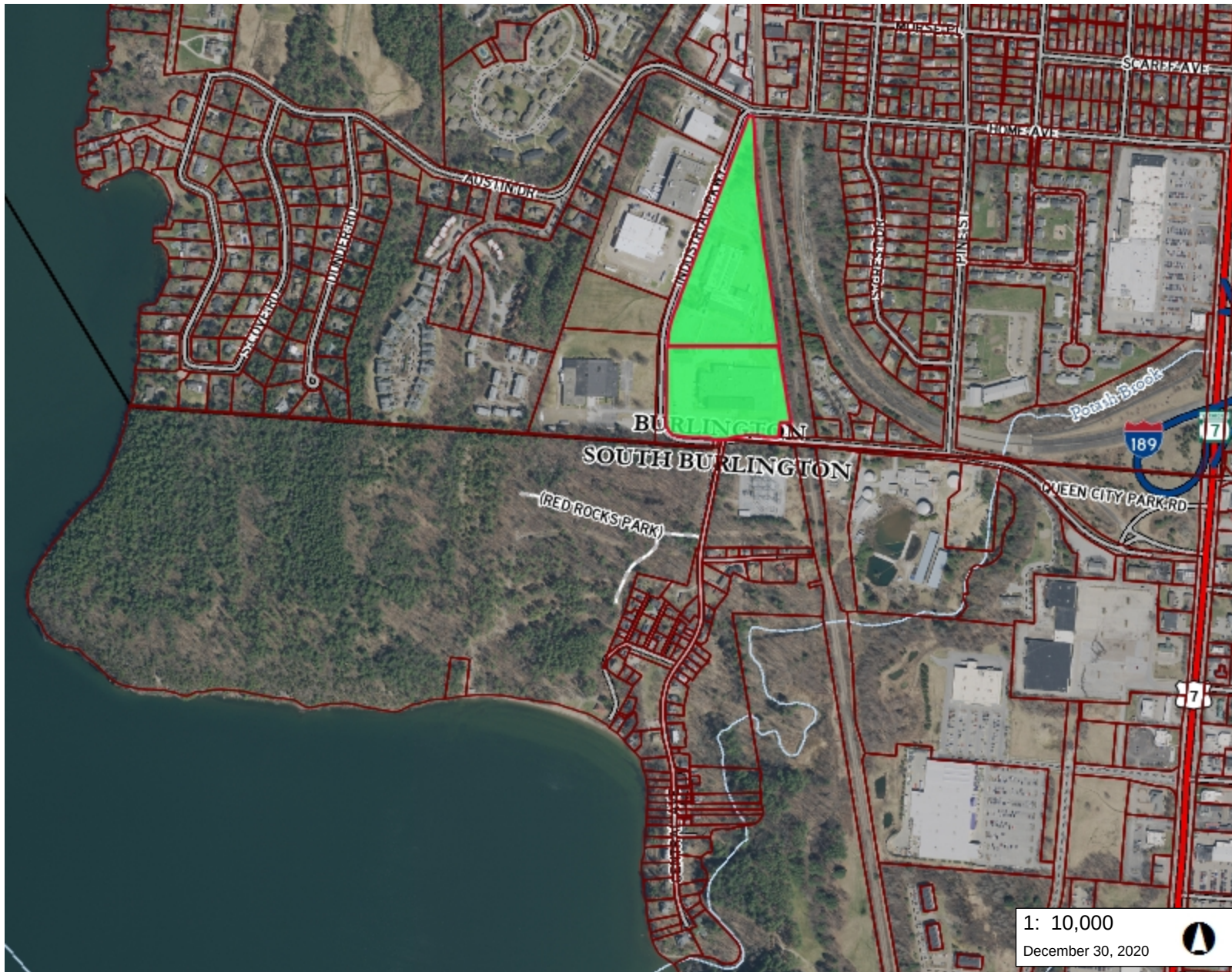
The fact that this venue can only be accessed by motor vehicle does not meet the greenhouse gas reduction goals of these plans.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF DOUG GOODMAN

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District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF DOUG GOODMAN

1. Please state your name.

My name is Doug Goodman.

2. Please summarize your testimony.

I submit this affidavit to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live and the property you own that abuts Burton.

I live at 66 Central Avenue, South Burlington, VT 05403. This is 1500 feet from the proposed project.

I also own residential property at 364 Queen City Park Road, Burlington, VT 05401. This property is immediately to the east of Burton's property; all that separates it from the Burton property is the rail line.

See attached map.

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution.

The residential property that I own on Queen City Park Road, and that I rent to tenants, abuts the Burton property and is 125 feet from the proposed project. It is immediately downwind from the site. I believe it is one of the closest residences to the project site, if not the closest. The principal bedroom is on the west side of the house, facing the Burton property. There are two bedroom windows which face the Burton property.

There are known contaminants on the Burton property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne and cross the line onto my property. This will affect both me as property owner and landlord, and my tenants. Anyone on the property may inhale them while sitting on the deck or sleeping in their bedroom -- which has windows facing upon the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop and at the east side of the property which is what my yard abuts. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne, exposing my property and my tenants to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose my property and my tenants to this hazard.

The release of these contaminants would not only affect the residential property I rent out and my ability to safely rent that property, it would also affect my daily life. I personally rely on walking, and bicycling for transportation and for my mental and physical health. In order to leave our neighborhood by car, on foot or bicycle I have to travel past the Burton Campus. I travel past this campus many times a day at all hours of the day and well into the evening/night.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim and paddle. This contamination has the potential to make me sick, and when detected has required the closure of Texaco Beach, Oakledge Beach, and Red Rocks Beach, which I otherwise would use. These potential exposures and closures impact my ability to enjoy the lake and get exercise swimming and paddling which is detrimental to our overall health.

Water Pollution -- Drinking Water. Our community in Queen City Park relies on a well for our drinking water; it is 780’ from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that

will be disturbed during construction. When disturbed, these contaminants, and any others which may exist on the property have the potential to travel towards our well and contaminate our drinking water which would have a direct negative impact on my health. Burton is now performing another study of the site. Until Burton's studies are completed and submitted to the Commission, it would be premature to grant or deny party status on this issue.

Noise as a Health Issue. While I can't speak for any particular tenant, as the owner of the property next to Burton's property, with its principal bedroom facing the Burton property, and knowing that Burton plans to have as many as 1500 people exiting the event site late at night, I am very concerned about the health issues and how they affect my property. What will happen to my tenants' health if they are woken up at midnight, 1 am or 2 am on a regular basis? Will this affect my ability to rent the property?

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic. My properties are located at 364 Queen City Park Road, Burlington, VT 05401 and 66 Central Avenue, South Burlington, VT 05403.

364 Queen City Park Road is the last property before the single lane bridge.

Central Ave is a dead end road that intersects with Queen City Park Road directly across from the Burton Campus.

In order for me and my tenants to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving our homes, we must enter or cross Queen City Park Road, and, to go east or south, navigate traffic approaching the single lane bridge.

I take trips to and from our property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This road currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate.

This Burton/Higher Ground traffic will make an already marginally safe road unmanageable and dangerous for us.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those quiet residential streets is Arthur Court, which my rental property driveway connects to. Arthur Court is a quiet cul-d-sac with about 12 homes. It is difficult to imagine how many of the cars looking for parking will turn across traffic onto Arthur Court looking for a spot and how many others will continue their quest onto Central Avenue. My house is a few minutes’ walk down Central Avenue from the event site. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise in front of my house as attendees walk to their cars while talking (or singing), and then the noise of car door locks chirping, doors closing and engines starting.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. I often swim and paddle on the lake in the summer and rely on the ability of rescue services in the event of accident or emergency. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on Burlington and South Burlington’s ability to provide municipal services to you and your tenants as residents and users of South Burlington’s recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government’s ability to provide municipal services. With regard to my standing, the question is whether this project will affect South Burlington’s ability to provide park and recreational services and police services to me.

The main entrance to Red Rocks Park is on Central Ave just south of Queen City Park Road and the entrance to Burton and the Higher Ground site. I use it nearly daily. During Higher Ground events, with as many as 1,500 visitors, the Park will be flooded with visitors. it will be

impossible for the City to continue to provide high-quality park and recreational services to me. In this context, Criterion 7 overlaps with Criterion 9(K).

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: “The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV “bar closing”. Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave”. The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect my tenants and myself as people who walk, bike and drive in our own neighborhoods and as we enjoy Red Rocks Park. We may find ourselves in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on me as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. The safety of my tenants on our streets, and on the adjoining public roads, and even in our homes will be diminished.

7. Please describe the impact on your rental property on Queen City Park Road and you as a resident of the Queen City Park neighborhood under Criterion 8

Arthur Court, the small cul-de-sac which my rental home driveway exits upon is a tiny quiet street with a development of 11 condominiums in addition to the home I own, which was owned by the family which originally owned the land where the condos are. All of the houses have back yard decks as well as front porches. During the summer neighbors are always out enjoying their yards. The location is very quiet as it is nestled between an area of light industrial facilities and the green bike path buffer zone next to the proposed southern connector. My tenants spend many pleasant hours daily on the deck and in the backyard. Their yard looks directly at the back of the proposed site

Queen City Park, where I live, is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own "Green", basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

I chose to live here because of this character.

This project as proposed threatens to destroy the character of both Arthur Court and Queen City Park, with a harmful impact on my quality of life and what I can offer to tenants.

If the project parking lot does not suffice and there are cars parked on my street as well as my tenant's, there will be attendees talking and singing to each other, chirping to unlock, entering their cars, slamming their car doors closed and driving off – all of which will occur in front of my house and my rental house, both of which are located very close to the street. This will happen on a regular basis at midnight or 2 am.

Even if parking suffices, the impacts will be severe. I live about 1500 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, chirping to unlock and entering their cars, closing their car doors, starting their engines and driving off at midnight or 2:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am directly across from the Fire District #1 south green parking lot which will certainly be used by pre and post-

concert attendees. This project will negatively impact how I enjoy my porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that “extends beyond the boundary” of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is “plainly audible” 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington’s written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

In terms of the impact on my rental house, which is 125 feet from the proposed project, my review of the Burlington City noise standard leads me to conclude that, it applies, and it too prohibits the proposed impacts. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road. It exempts operations that obtain entertainment permits, as Burton’s experts have argued. Burton’s experts apparently are

unaware that the ordinance governing entertainment permits does not apply to event sites such as Burton proposes, according to what our lawyer has found.

The Burlington Comprehensive Plan, 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, 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 this part of Burlington but adds this:

“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.”

The noise, traffic and parking impacts of the project will violate these standards and harm me.

My attorney’s review of the Burlington City noise standard leads me to conclude that this standard will also be violated. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

My tenants and I walk almost daily in Red Rocks Park, sometimes in the evenings, often on the Double Dog Leg trail, and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings. Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds.

The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will cause additional wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

As a South Burlington and Fire District #1 taxpayer and as a user of Red Rocks Park, I will be harmed by the impacts of Higher Ground events, with 1500 attendees, right next to RRP. Concert attendees will likely either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will

visit, hang out at, drink or smoke or worse, at a Park such as this immediately adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the Park. Adding one hundred or two hundred visitors on warm summer nights, before or after the Park has closed, is likely to overburden both Red Rocks Park and Fire District #1 and damage this natural area both before and after concerts. This will degrade the natural area that we rely upon for recreation and reflection:

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to my tenants and me from our bedrooms and living rooms, decks, yards, and our streets.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

The Burlington Comprehensive Plan, 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, 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.

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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.

The noise, traffic and parking impacts of the project will violate these standards and harm me.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area’s historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

My tenants and I walk in Red Rocks Park on a daily basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger the safety of my tenant's and myself as we walk, bicycle and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for us to travel out of our neighborhood is via QCP Road – for my tenants, entering QCP Road into heavy traffic jockeying for access to the one lane bridge which is a defacto unmarked intersection, or for me either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, no bike lanes, no safe infrastructure for us to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, these concerns will undoubtedly multiply with a much larger venue and spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above..

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where we swim and recreate. This contamination has the potential to make my tenant's and myself sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact our ability to enjoy the lake and get exercise swimming both of which impact our overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

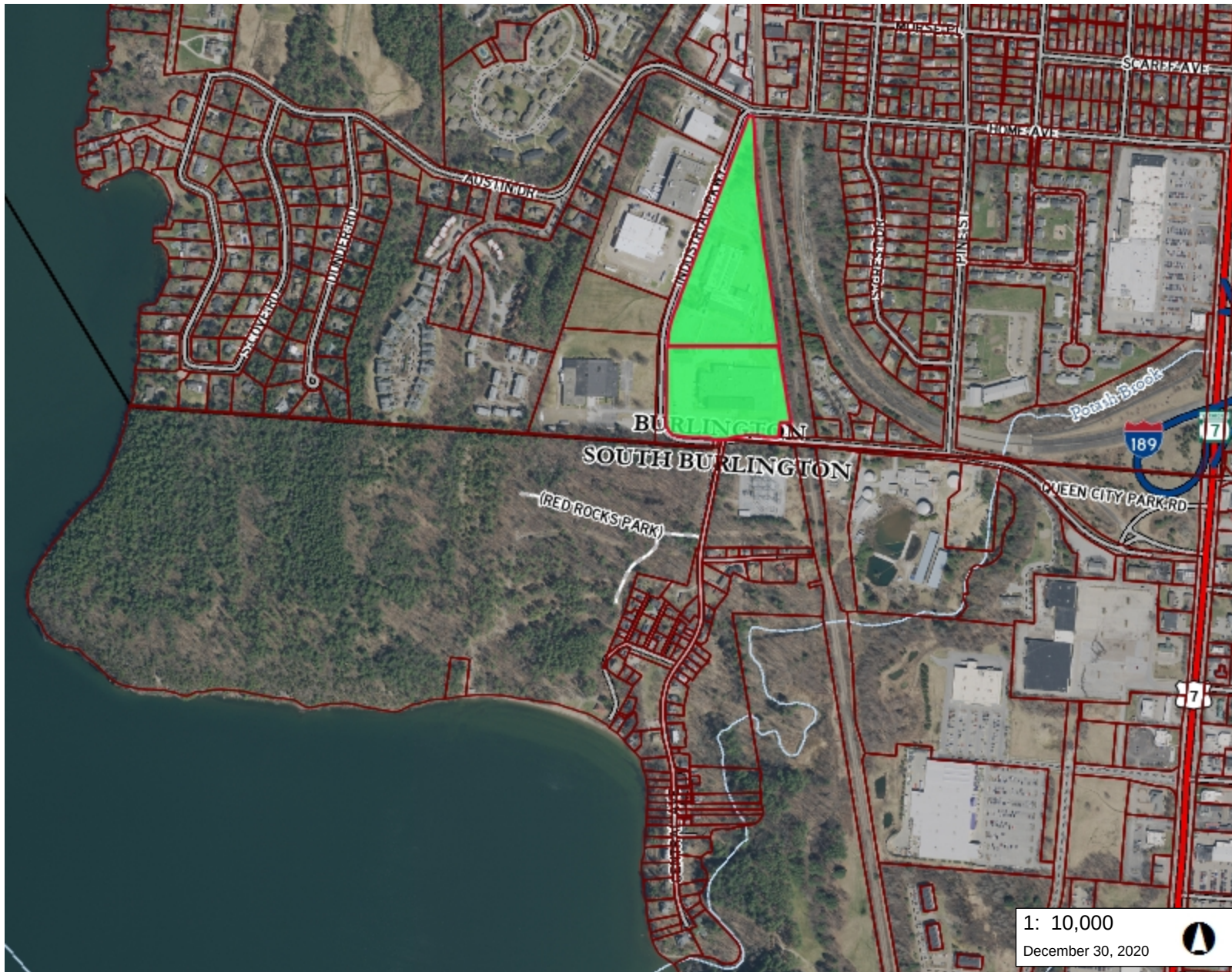
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service. It is also a perfect location to promote bike and pedestrian access. With very dangerous pinchpoints on the one lane bridge and the lack of sidewalk and crosswalk infrastructure on QCP Road, Home Avenue and Austin Drive for bicycle and pedestrian access to the proposed project, and no firm plan or funding for better access,

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF JANICE ELLIS

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6. Impacts on ability to provide municipal services under Act 250 Criterion 7	p. 5
7. Impacts on resident of Redrock Condominium neighborhood under Criterion 8	p. 6
8. Impacts on user of Red Rocks Park under Act 250 Criteria 8 and 9(k)	p. 8
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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF JANICE ELLIS

1. Please state your name.

My name is Janice Ellis.

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at Redrock Condominiums, 161 Austin Drive, Unit 83. This is 770 feet from the proposed project. See attached map.

**4. Please describe the Safety and Health Impacts of the Project on you under Act 250
Criteria 1 and 1B**

Air pollution.

When leaving the Redrock development by car, I frequently travel past the Burton campus on my way to and from work, and in order to access area businesses for routine & daily needs (grocery shopping, banking, appointments, etc.)

I rely on walking and bicycling for exercise and recreation to maintain my mental and physical health, traveling on Queen City Park Road and Austin Drive in order to access bike paths in both Burlington and South Burlington.

There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the

soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise.

This development will produce loud noises during the late-night hours. On warm nights I sleep with windows open to provide fresh air and comfortable sleeping. The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. That outdoor lounge is directly across the street from the Edlund building on QCP Road. The Edlund property shares a property line with my Redrock Condominium development. When 1,500 patrons exit a loud rock concert during the wee hours of the night, travel to and then start up their up to 680 vehicles cars, trucks, and motorcycles as they leave the event, there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue. These disturbances will have a negative impact on my sleep patterns and health.

Water Pollution – Combined Sewer and Stormwater Runoff.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These potential exposures and closures directly impact my ability to enjoy the lake and swimming, both of which impact my overall health.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist.

My property is located at 161 Austin Drive. In order for me to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving my property, I frequently travel directly past the Burton Campus on Queen City Park Road. I take trips to and from my property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. With current traffic levels, making a turn (in either direction) at the intersection of Austin Drive and QCP Road often requires a wait for several cars before turning. I can't imagine trying to negotiate this intersection with the proposed increase in traffic. If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts pre and post-concert. This traffic will make this already marginally safe road unmanageable and dangerous for me.

The Impact of Insufficient Parking On Our Safety and Quality of Life.

The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. Additionally, there will be: a) vehicles bringing patrons to the Burton Campus for the proposed Cafés, which will be open to all before and 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. 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 available to concert goers, no on-street parking on the quiet residential streets surrounding the proposed venue. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise close to the Redrock development as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting. If Austin Drive becomes congested with concert vehicles traveling to and from the proposed venue, the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood will be severely hampered and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on Burlington's ability to provide municipal services to you as a resident and as a user of Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect Burlington's ability to provide park and recreational services and police services to me.

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: "The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV "bar closing". Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave". The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South

Burlington Police Station. My safety on my street, and on the adjoining public roads, will be diminished.

7. Please describe the impact on you as a resident of the Redrock Condominium neighborhood under Criterion 8

The Redrock development is a quiet, compact residential neighborhood, uniquely located between Red Rocks Park and Oakledge Park. I chose to own property and live here because of its quiet and scenic character. I moved here from Winooski for this reason.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on QCP Road and Austin Drive, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off – all of which will occur near the Redrock Condominium development - which lies within 770 feet of the proposed venue. This will happen on a regular basis at midnight or 1 am.

Even if parking suffices, the impacts will be severe. I live 770 feet away from the parking lot where 1,500 people will pour out of the building late at night. Buildings in the Redrock Condominium development are visible from the Burton parking lot. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property due to the proximity of my building to the proposed music venue. Noise and disturbance by pre and post-concert attendees will negatively impact how I enjoy my deck where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for my neighborhood.

The Burlington Comprehensive Plan, 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, 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.”

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My attorney’s review of the Burlington City noise standard leads me to conclude that this standard will also be violated. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in my Redrock Condominium neighborhood, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces both Red Rocks Park and buildings in the Redrock Condominium development.

I gain deep enjoyment and relaxation from the quiet of nature and beauty of Red Rocks Park and the occasional wildlife sighting. Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds.

The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, at a Park such as this that is adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the Park. Adding one hundred or two hundred visitors on warm summer nights, before or after the Park has closed, is likely to overburden Red Rocks Park and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection.

I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me and my neighbors.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

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The noise, traffic and parking impacts of the project will violate these standards and harm me.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

The Redrock Condominium development shares a border with Red Rocks Park. My neighbors and I walk in Red Rocks Park on a regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along QCP Road and Austin Drive during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. There are no sidewalks, no bike lanes, no safe infrastructure on QCP Road for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into my neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

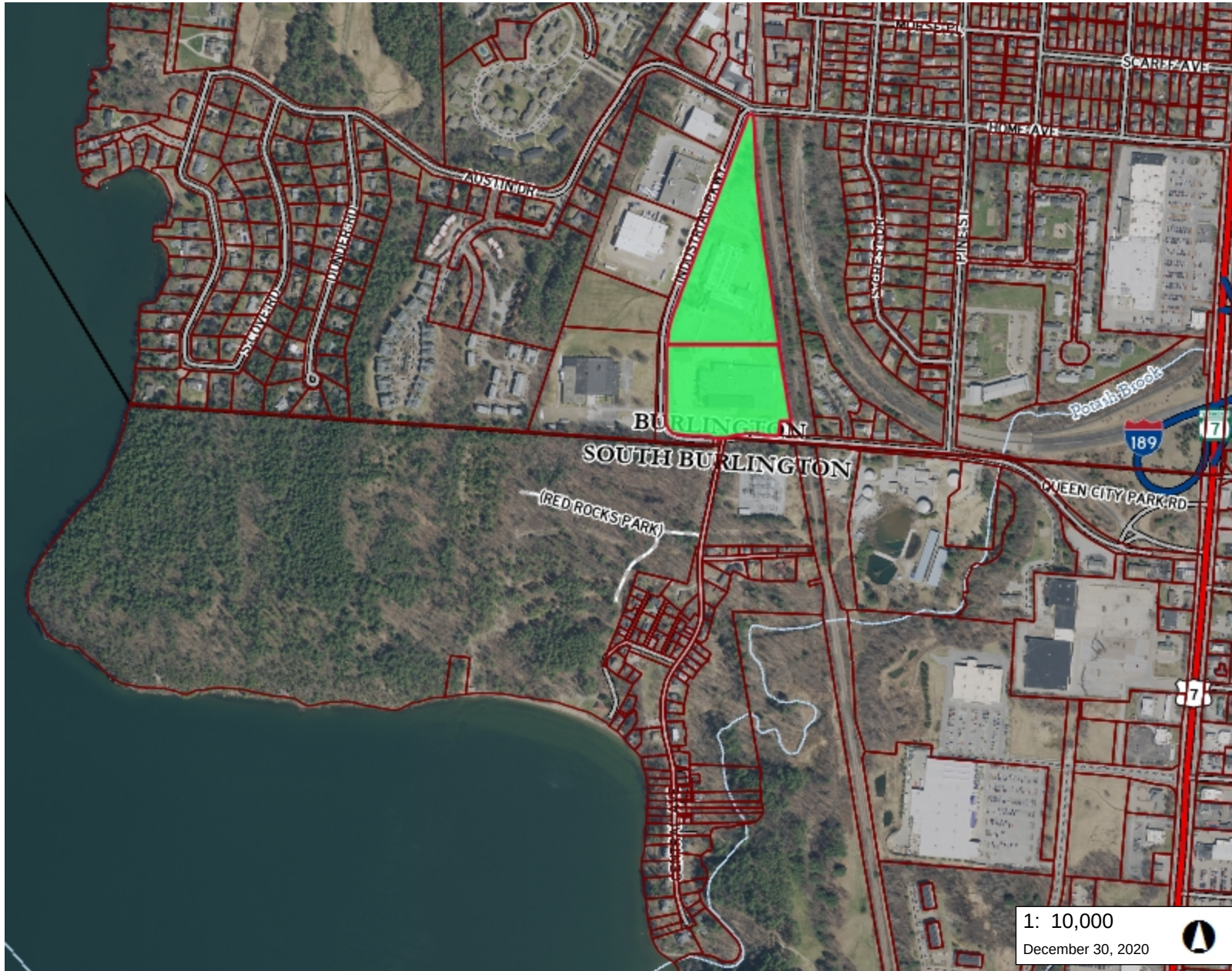
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
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 -  State Forest Trail
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December 30, 2020



508.0 0 254.00 508.0 Meters

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NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF LAURA WATERS

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF LAURA WATERS

1. Please state your name.

My name is Laura Waters.

2. Please summarize your testimony.

I submit this affidavit to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 50 Central Ave, South Burlington, VT 05403. This is 1,170 feet from the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. I rely on walking, and bicycling for transportation and for my mental and physical health. In order to leave our neighborhood by car, on foot or bicycle I have to travel past the Burton Campus. I travel past this campus many times a day at all hours of the day and well into the evening/night. There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise. This development will produce loud noises during the late night hours. On warm nights I sleep with windows open to provide fresh air and comfortable sleeping. The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live as far from the site as I do. This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. That outdoor lounge is directly across the street from Central Ave where I live. When 1,500 patrons exit a loud rock concert during the wee hours of the night, travel to and then start up their up to 680 vehicles cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue. These disturbances will have a negative impact on my sleep patterns and health as a breast cancer survivor. Studies have shown that women who slept 6 hours or fewer per night had higher cancer Recurrence Scores compared to women who slept more hours per night.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

Water Pollution -- Drinking Water. I and my community rely on a well for our drinking water that is 780’ from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When disturbed, these contaminants, and any others which may exist on the property have the potential to travel towards our well and contaminate our drinking water which would have a direct negative impact on my health. Burton is now performing another study of the site. Until Burton’s studies are completed and submitted to the Commission, it would be premature to grant or deny party status on this issue.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. Our property is located at 50 Central Avenue. Central Ave is a dead end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving our property, I must travel directly past the Burton Campus on Queen City Park Road. I take trips to and from our property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This road currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate. I have had several very scary experiences walking in the recently marked "Advisory bike lane" which narrows the road to essentially a one lane street. Trucks and buses coming from different directions drive into the Advisory Lane where as a pedestrian, there is no way to escape. In the experiences that I had, I just had to stand my ground as they figured out how to navigate around each other without hitting me. This route is hazardous with the current traffic levels. I can't imagine trying to travel this route with the proposed increase in traffic.

Walking or bicycling north on QCP Road on the way to City Market, where I often shop in the evenings, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road and then navigate the intersection of QCP Road, Home Ave and Austin Drive, then cross VT Rail tracks. Additionally, traveling east on QCP Road requires navigating over a one lane bridge that has a metal grate catwalk for pedestrian travel. I often walk this route with my dog and the catwalk is not suitable for dogs which require me to walk in the travel lane of the one lane bridge. If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts pre and post-concert. This traffic will make this already marginally safe road unmanageable and dangerous for me. Queen City Park Road is the only road with direct access to this site and it is the road that I rely on for all of my daily travel.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is my street. My house is a few minutes’ walk from the event site. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise in front of my house as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for Coast Guard water rescue operations in South Burlington, will be severely hampered. I often boat on the lake in the summer and rely on the ability of rescue services in the event of accident or emergency. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington’s ability to provide municipal services to you as a resident and as a user of South Burlington’s recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government’s ability to provide municipal services. With regard to my standing, the question is whether this project will affect South Burlington’s ability to provide park and recreational services and police services to me.

The main entrance to Red Rocks Park is on Central Ave just south of Queen City Park Road and the entrance to Burton and the Higher Ground site. I use it nearly daily. During Higher Ground events, with as many as 1,500 patrons, the Park will be flooded with visitors. It will be impossible for the City to continue to provide high-quality park and recreational services to me. In this context, Criterion 7 overlaps with Criterion 9(K).

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: “The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV “bar closing”. Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave”. The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on me as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own “green”, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

I chose to live here because of this character. I moved here from Atlanta, Georgia for this reason.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off – all of which will occur in front of my house, which lies very close to the street. This will happen on a regular basis at midnight or 1 am.

Even if parking suffices, the impacts will be severe. I live about 1,100 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am directly across from the Fire District #1 green and park that will certainly be used by pre and post-concert attendees. This project will negatively impact how I enjoy my back porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-resident concert goers of our QCP community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that “extends beyond the boundary” of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is “plainly audible” 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington’s written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorney’s review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk almost nightly in Red Rocks Park, and often on the Double Dog Leg trail, and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings. Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds.

The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

As a South Burlington and Fire District #1 taxpayer and as a user of Red Rocks Park, I will be harmed by the impacts of Higher Ground events, with 1,500 attendees, right next to RRP. Concert attendees will likely either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, at a park such as this that is adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the park as a source of parking. There is no way to prevent attendees to this venue from entering the park. Adding one hundred or two hundred visitors on warm summer nights, before or after the park has closed, is likely to overburden both Red Rocks Park and Fire District #1 and damage this

natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people existing a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for me to travel out of our neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, no bike lanes, no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer

and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

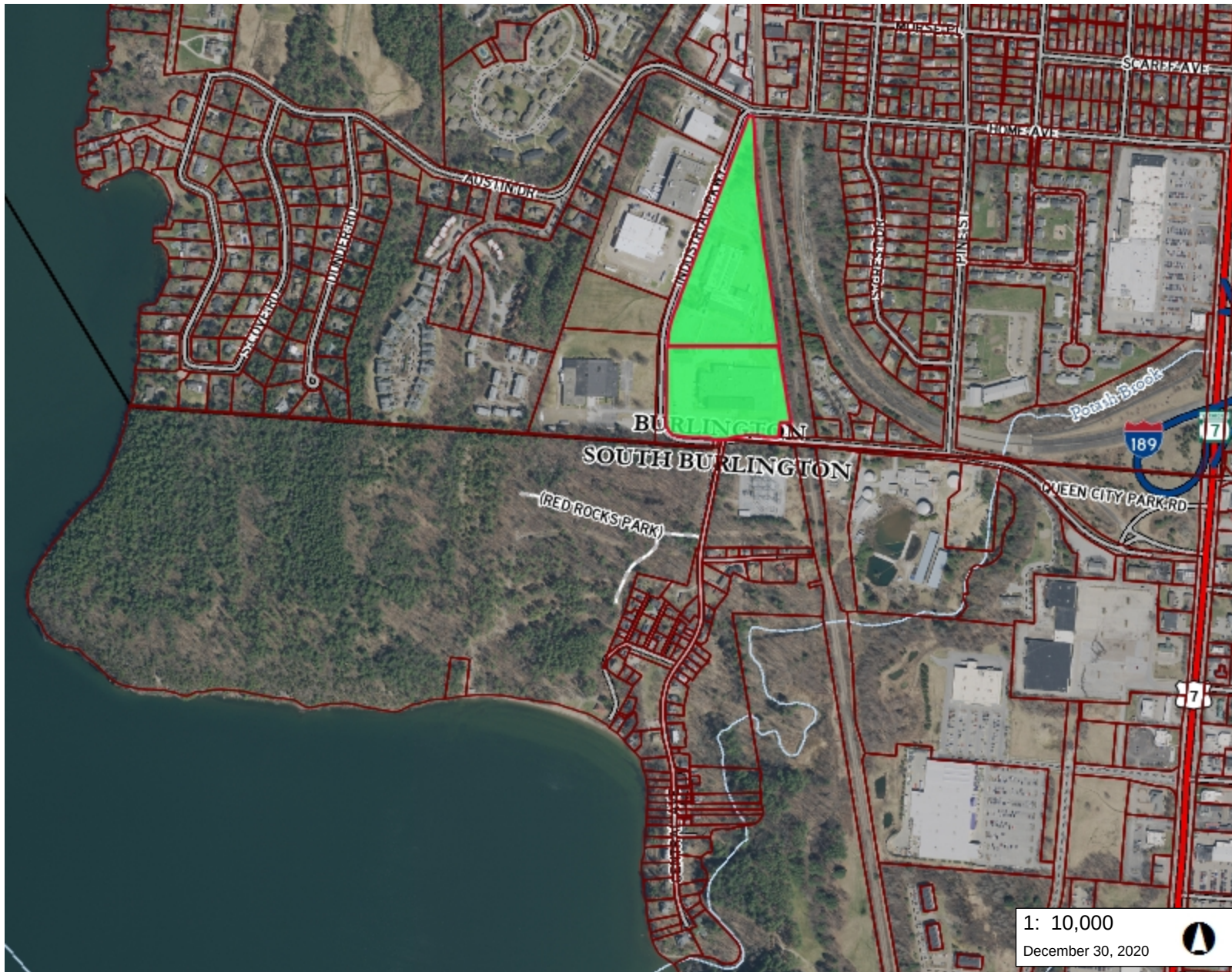
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



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NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF LAWRENCE SMITH

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF LAWRENCE SMITH

1. Please state your name.

My name is Lawrence Smith.

2. Please summarize your testimony.

I submit this affidavit to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 50 Central Ave, South Burlington, VT 05403. This is 1,170 feet from the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. I rely on walking, and bicycling for transportation and for my mental and physical health. In order to leave our neighborhood by car, on foot or bicycle I have to travel past the Burton Campus. I travel past this campus many times a day at all hours of the day and well into the evening/night. There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise. This development will produce loud noises during the late night hours. On warm nights I sleep with windows open to provide fresh air and comfortable sleeping. The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live as far from the site as I do. This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. That outdoor lounge is directly across the street from Central Ave where I live. When 1,500 patrons exit a loud rock concert during the wee hours of the night, travel to and then start up their up to 680 vehicles cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue. These disturbances will have a negative impact on my sleep patterns and health.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

Water Pollution -- Drinking Water. I and my community rely on a well for our drinking water that is 780’ from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When disturbed, these contaminants, and any others which may exist on the property have the potential to travel towards our well and contaminate our drinking water which would have a direct negative impact on my health. Burton is now performing another study of the site. Until Burton’s studies are completed and submitted to the Commission, it would be premature to grant or deny party status on this issue.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. Our property is located at 50 Central Avenue. Central Ave is a dead end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving our property, I must travel directly past the Burton Campus on Queen City Park Road. I take trips to and from our property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This road currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate. Walking or bicycling north on QCP Road on the way to City Market, where I often shop in the evenings, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road and then navigate the intersection of QCP Road, Home Ave and Austin Drive, then cross VT Rail tracks. This route is hazardous with the current traffic levels. I can't imagine trying to travel this route with the proposed increase in traffic. Additionally, traveling east on QCP Road requires navigating over a one lane bridge that has a metal grate catwalk for pedestrian travel. I often walk this route with my dog and the catwalk is not suitable for dogs which require me to walk in the travel lane of the one lane bridge. If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts pre and post-concert. This traffic will make this already marginally safe road unmanageable and dangerous for me. Queen City Park Road is the only road with direct access to this site and it is the road that I rely on for all of my daily travel.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is my street. My house is a few minutes' walk from the event

site. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise in front of my house as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. I often boat on the lake in the summer and rely on the ability of rescue services in the event of accident or emergency. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington's ability to provide municipal services to you as a resident and as a user of South Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect South Burlington's ability to provide park and recreational services and police services to me.

The main entrance to Red Rocks Park is on Central Ave just south of Queen City Park Road and the entrance to Burton and the Higher Ground site. I use it nearly daily. During Higher Ground events, with as many as 1500 visitors, the Park will be flooded with visitors. it will be impossible for the City to continue to provide high-quality park and recreational services to me. In this context, Criterion 7 overlaps with Criterion 9(K).

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: “The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV “bar closing”. Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave”. The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on me as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own “Green”, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close

together and close to the street creating a dense and closely connected residential neighborhood.

I chose to live here because of this character. I moved here from Shelburne for this reason.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off – all of which will occur in front of my house, which lies very close to the street. This will happen on a regular basis at midnight or 1 am.

Even if parking suffices, the impacts will be severe. I live about 1100 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am directly across from the Fire District #1 green and park that will certainly be used by pre and post-concert attendees. This project will negatively impact how I enjoy my back porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that “extends beyond the boundary” of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of

neighbors, is unlawful, and that noise that is "plainly audible" 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington's written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorney's review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a "plainly audible" standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this "gem of the lakeshore".

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk almost nightly in Red Rocks Park, and often on the Double Dog Leg trail, and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings.

Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds.

The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

As a South Burlington and Fire District #1 taxpayer and as a user of Red Rocks Park, I will be harmed by the impacts of Higher Ground events, with 1500 attendees, right next to RRP. Concert attendees will likely either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, at a Park such as this that is adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the Park. Adding one hundred or two hundred visitors on warm summer nights, before or after the Park has closed, is likely to overburden both Red Rocks Park and Fire District #1 and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people existing a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for me to travel out of our neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, no bike lanes, no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above..

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

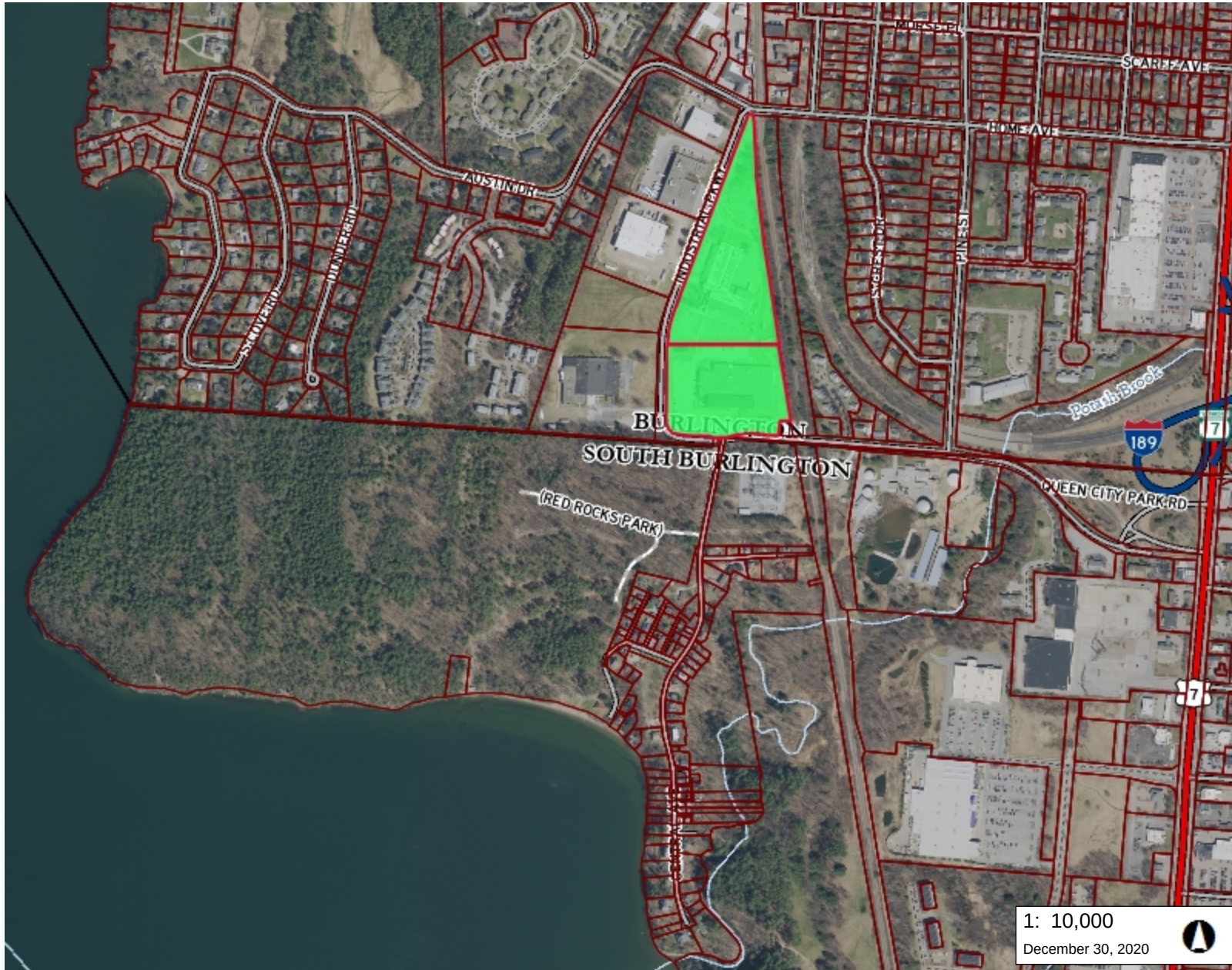
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF Luc Logan

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF Luc Logan

1. Please state your name.

My name is Luc Logan

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 39 Central Ave. This is fewer than 700 feet from the proposed project (map reads 840). See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. For the past 35 years I have owned my home at 39 Central Ave, it has been and still is essential to my physical and mental well-being to be able to safely walk, jog, and bike from my home to the bike path. In order to do so, I must travel past the Burton Campus. I travel past this campus frequently at all hours of the day and well into the evening. There are known contaminants on the property and during construction it is likely that those contaminants will become airborne creating the potential for me to inhale those contaminants when traveling past the site. Those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been potentially identified to be located on the site. The influx of 500 vehicles plus on a regular basis will compromise air quality.

Interruption of Sleep by Noise. This development will produce loud noises during the late-night hours, and potentially during the day. Previous events near that location, Burton's summer sale, caused issues that will occur on a regular basis moving forward. During Burton's summer event, even though parking was posted and parking attendants made sporadic efforts to control traffic, attendees filled the designated spots then filled Red Rocks Park parking, and then

moved into Queen City Park. Sale goes illegally parked on Central Ave. and in my driveway. The music played during the summer sale, further away from the new Higher Ground location, could easily be heard from my home. Burton's summer sale was a daytime, one weekend a year, event. Given Burton's failed attempts to control traffic during its annual sale, smaller crowds spread over two days, it is unlikely they will succeed at 2am with more people. At night, I sleep with my windows open to enjoy fresh air. The 2,300 sq ft outdoor lounge and bar which can accommodate in excess of 150 people is directly across the street from Central Ave, and fewer than 700 feet from where I sleep and have a home office. I can see it from my home. When 1,500 patrons exit a loud rock concert late at night (possibly till 2am for people still at their bar), walk to and then start up their 500+ vehicles (Loud trucks, Motorcycles, cars, etc.) as they leave the concert, bars, and restaurant there will be significant noise disturbance. These disturbances will have a negative impact on my mental and physical health due to deprivation of sleep over extended periods of time.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,000 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this "letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities." These overflow events contaminate the lake where we swim and recreate. This contamination has the potential to make us sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These closures directly impact my ability to enjoy the lake and get exercise swimming and kayaking, both of which impact my overall health and wellbeing.

Water Pollution -- Drinking Water. I rely on a well for drinking water that is 780' from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When exposed to the environment, these contaminants, and any others which may exist on the property have the potential to travel towards the well and contaminate my drinking water which would have a direct negative impact on my health.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. My property is located at 39 Central Avenue. I grew up here and it has been my home for 35 years. Less than 700 feet away, Burton is visible from house. Central Ave is a dead-end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to leave my home and neighborhood for any reason (food shopping, post office, social events, emergencies, etc.), I must travel directly past the Burton Campus on Queen City Park Road. This road is narrow with no shoulders, crosswalks, dedicated bike lanes, very limited sidewalks, a stop sign that is frequently not observed, and a single lane bridge. This road currently has a low traffic volume and even so at times feels unsafe to navigate. Walking or bicycling north on QCP road on the way to Oakledge and the bike path, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road. This route is hazardous with the current traffic levels, let alone with 1,500 concert attendees and people going to the bar/restaurant. Burton has consistently had the above-mentioned issues during their summer sale with far fewer people at one given time and for only two days. I fear that these issues will be exacerbated during regular events if those issues are not addressed and resolved. If this project is developed, there will be hundreds of cars navigating this road in surges pre- and post-concert. This drastic increase in traffic will make this already marginally safe road unmanageable and dangerous for myself, other residents of Queen City Park, Talent Skate Park attendees, and for concertgoers. Queen City Park Road is the only road with direct access to this site and it is the road that we rely on for all of our daily travel.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue that includes multiple bars will have a capacity of 1,500 patrons. There will be in excess of 500 cars bringing these patrons to performances. Additionally, there will be vehicles bringing patrons to the Burton Campus for the proposed bar/restaurant that can be open as late as 2am, as well as to the Talent Skate Park which will be operating until 11PM on weekends, food and beverage delivery trucks, and there will be vehicles for the employees of these businesses as well as the vehicles for the performers. The Burton site has 426 total parking spaces. This means that there will at times be well over 100 vehicles looking for parking spaces "off campus". As mentioned above, during previous events at Burton, attendees have used parking designated for Red Rocks Park, parking illegally along Queen City Park road, as well as blocking residents' driveways. There are no municipal parking lots, no on street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. These additional vehicles will cause further congestion on streets not designed for this, further endangering me when I am trying to navigate by foot, bike or car to and from my house.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington's ability to provide municipal services to you as a resident and as a user of South Burlington's recreational and public safety services under Act 250 Criterion 7.

South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019. There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue and is likely to have significantly more need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

This reduction of force, in conjunction with the increased size of this venue will create what may at times be uncontrolled hazards in direct eyesight of my home, less than 700 feet away. If this situation develops at a time with no police presence, I may find myself and my family in a dangerous situation resulting from behaviors and unsafe conditions as described in the SBPD incident reports.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on myself as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. This being the case, the safety of event attendees, residents of the surrounding neighborhood(s) and South Burlington's Red Rocks Park will largely be left in the

hands of Burton/Higher Ground personnel. This personnel has in the past stated that they have a good record dealing with intoxication, drug use, violence inside Higher Ground because they kick out those that violate rules. Now those same people will be intoxicated, upset at being kicked out, late at night, will be less than 700 feet from my home.

Burton/Higher Ground personnel and South Burlington Police records identify intoxication, drugs, sex offence, assault, trespassing, disturbance of the peace. Burton/Higher Ground fail to address or offer mitigation for these contaminations of social environment, security, and intrusions to our physical property.

The following is an excerpt from BPD letter dated April 2020 to DRB: “The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV “bar closing”. Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave”. The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

“Bar closing” is at 2am which is when people will be leaving the bar/restaurant at the proposed venue. Considering that the owner(s) of Higher Ground describes their business as “a bar, but we focus on the music”. I anticipate peak departures at two times: post-concert and bar closing.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own “Green”, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

This project as proposed threatens the character of my neighborhood and will have a severely harmful impact on my quality of life.

Even if the parking lot suffices and there are no cars parked on my streets and no attendees talking and singing to each other in front of my houses at midnight or 1:00 am as they walk to their cars, the impacts will be severe. I live about 700 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am within 700 feet, Burton is visible from my home. I can see it and hear it. The site of the 2,500 square foot outdoor lounge is visible from my home. Its location will cause maximum noise impact on my peaceful enjoyment of my home and property. Pre and post-concert attendees heading to the beach and green will pass under my windows. This project will negatively impact how I enjoy my back porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter, dog waste, and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the "Quechee test," the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that "extends beyond the boundary" of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is "plainly audible" 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington's written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to

entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorney's review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a "plainly audible" standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

The noise from proposed rock music venue and bar/restaurant will change the character and soundscape of our residential neighborhood.

1. Noise and disturbance will change how I enjoy our property since I live less than 700 feet from the proposed venue that will certainly increase foot and vehicle traffic by pre and post-concert attendees.
2. It will change how my family and I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedrooms, office, and living spaces.
3. Increased use by non-residents concert goers of my community green, parking areas, and beach access will result in increased litter, dog waste, wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

The noise from the proposed music venue/bar will change the character and soundscape of Red Rocks Park. I am concerned that attendees to this venue will overburden Red Rocks Park, surrounding green spaces, and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

1. Red Rocks Park is directly adjacent to the proposed rock venue

2. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.
3. The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking and smoking will dramatically alter the soundscape of the park and will negatively impact the wildlife within.
4. Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural flora and fauna and potentially create safety issues and hazards, both of which will impact my ability to enjoy this natural resource.

My neighbors, my family, and I will provide our personal and expert testimony concerning the soundscape of the neighborhood and the adverse changes caused by the venue.

The venue and related noise, often but not always evening and nighttime noise, is clearly adverse to my residential neighborhood and Red Rocks Park. Moreover, it fails each of the three tests of the second part of the Quechee Analysis.

1. The noise will violate clear, written community standards, including but not limited to the Burlington Noise Ordinance and the South Burlington Noise Ordinance.
2. The late-night noise is shocking and offensive, out of character with, and significantly diminishes the character of, the residential neighborhood and park.
3. Finally, the applicant fails to take mitigating steps which a reasonable person would take to improve the harmony of the Project with its surrounding residential neighborhood such as limiting the size/scale of the venue and time of night that noise intrusions will occur.

Based partly on the applicant's own noise assessment, partly on expert evidence to be produced at the hearing, and other evidence, the project will have an undue adverse effect on aesthetics by reason of the production of excessive noise late at night. These impacts will all impact my quality of life and ability to get uninterrupted sleep.

I am concerned that concert attendees will either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

1. My home, 39 Central Ave, is near the Fire District green, basketball court, and play structures.
2. The green is 1,100 feet from the proposed venue.
3. Pre- and post-concert goers will find their way to these assets and create disturbances that will impact peace and quiet.
4. The proposed venue has 426 parking spaces for shows that will have 500+ patron vehicles, staff vehicles, and show crew vehicles.

5. Talent Skate Park which operates in the same building will also have patrons and staff parking during venue hours.
6. There is no on street parking on Queen City Park Road, Austin Drive, or Home Avenue to Pine St. All other roads adjacent to the venue are residential streets.
7. There are no accommodations in the project application for dealing with the 100++ vehicles that will need parking during shows and will filter down into our neighborhood, as they have during Burton events in the past.

These impacts will increase the costs of maintaining these assets and will cause our taxes to increase.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities. I walk in Red Rocks Park on a regular basis and am very concerned that there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those who use the park are protected. With the approval of the "performing arts center", several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. Red Rocks Park has fragile ecosystems that are put at risk through heavy usage and off-trail use. The

park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. We are also concerned that after-events could cause nighttime disturbances and present a safety and security risk.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards. I am concerned about safety for myself and family when we walk, ride bikes, and drive along Queen City Park Road and Central Ave during the pre- and post-concert periods when there will be up to 500 vehicles, if not more, entering or leaving the venue. The only way to travel out of my neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, bike lanes, or safe infrastructure to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will now be on my doorstep, less that 700 feet away.

Red Rocks cliffs entice thrill seekers to jump off them, despite signs indicating no trespassing and danger. Burton/Higher Ground attendees may be enticed to Red Rocks cliffs. Those that ignore these warnings have been severely injured or died. These tragic events happen every summer and fall, but during daylight hours when rescue crews and first responders can recover injured people/bodies. Should these accidents occur at night, emergency service response will be further complicated and put at increased risk.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors. There is no realistic way for attendees to access this venue other than by car which creates the impacts that I have noted above. There are currently no accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for attendees which impacts my ability to safely travel from our home.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,000 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and kayak. This contamination has the potential to make me and my family sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These closures directly impact my ability to enjoy the lake and get exercise.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

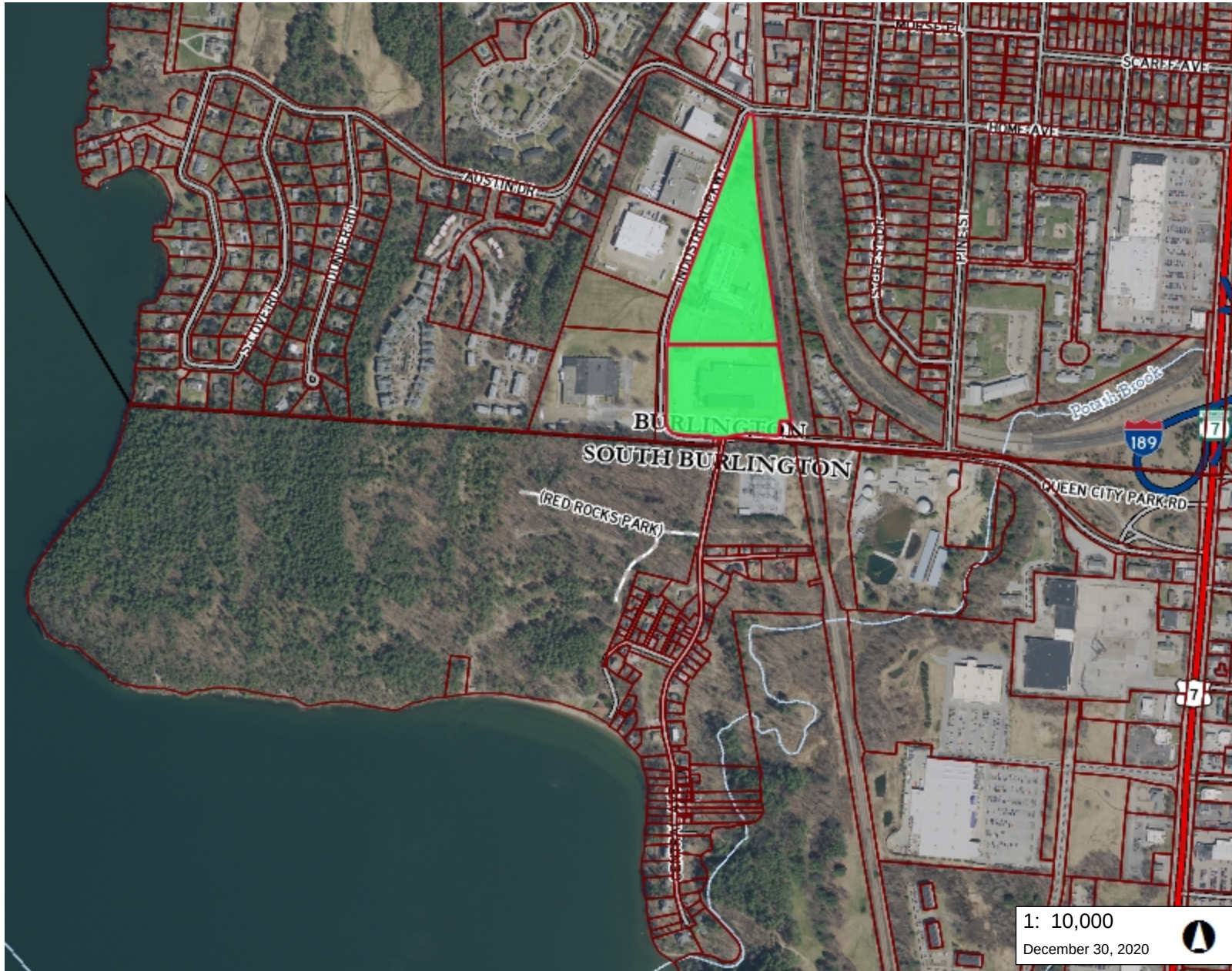
The fact that this venue can only be accessed by motor vehicle does not meet the greenhouse gas reduction goals of these plans.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

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NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF Michael Turner

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF Michael Turner

1. Please state your name.

My name is Michael Turner.

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 110 Central Ave, South Burlington, VT 05403. This is 2500 feet from the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. I rely on walking, and bicycling for transportation and for my mental and physical health. In order to leave our neighborhood by car, on foot or bicycle I have to travel past the Burton Campus. I travel past this campus many times a day at all hours of the day and well into the evening/night. There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise. This development will produce loud noises during the late night hours. On warm nights I sleep with windows open to provide fresh air and comfortable sleeping. I also have a screened sleeping porch where I often sleep in the summer. The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live as far from the site as I do. This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. That outdoor lounge is directly across the street from Central Ave where I live. When 1,500 patrons exit a loud rock concert during the late PM hours of the night and first few AM hours of the next day, travel to and then start up to 680 vehicles cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue and carrying that noise south within the Potash Brook valley corridor directly to my house. These disturbances will have a negative impact on my sleep patterns and health.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

Water Pollution -- Drinking Water. I and my community rely on a well for our drinking water that is 780’ from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When disturbed, these contaminants, and any others which may exist on the property have the potential to travel towards our well and contaminate our drinking water which would have a direct negative impact on my health. Burton is now performing another study of the site. Until Burton’s studies are completed and submitted to the Commission, it would be premature to grant or deny party status on this issue.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. My property is located at 110 Central Avenue. Central Ave is a dead end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving my property, I must travel directly past the Burton Campus on Queen City Park Road. I take trips to and from our property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This road currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate. Walking or bicycling north on QCP Road on the way to City Market, where I often shop in the evenings, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road and then navigate the intersection of QCP Road, Home Ave and Austin Drive, then cross VT Rail tracks. This route is hazardous with the current traffic levels. I can't imagine trying to travel this route with the proposed increase in traffic. Additionally, traveling east on QCP Road requires navigating over a one lane bridge that has a metal grate catwalk for pedestrian travel. If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts prior to and post-concert. This traffic will make this already marginally safe road unmanageable and dangerous for me. Queen City Park Road is the only road with direct access to this site and it is the road that I rely on for all of my daily travel.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is my street. My house is a few minutes' walk from the event

site. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise in front of my house as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. I often use my motor boats, sail boat, and kayaks on the lake in the summer and rely on the ability of rescue services in the event of accident or emergency. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington's ability to provide municipal services to you as a resident and as a user of South Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect South Burlington's ability to provide park and recreational services and police services to me.

The main entrance to Red Rocks Park is on Central Ave just south of Queen City Park Road and the entrance to Burton and the Higher Ground site. I use it nearly daily. During Higher Ground events, with as many as 1,500 visitors, the Park will be flooded with visitors. it will be impossible for the City to continue to provide high-quality park and recreational services to me. In this context, Criterion 7 overlaps with Criterion 9(K).

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: “The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV “bar closing”. Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow one-lane one-way bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave”. The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as a person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from venue attendee’s behaviors and unsafe conditions, without a timely law enforcement response.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on me as a South Burlington resident due to increased tax generated revenue required to fund additional South Burlington law enforcement services to the venue region.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with

no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own “Park Green”, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

I chose to live here because of this character. I moved here from upstate New York in 1992 for this reason.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off – all of which will occur in front of my house, which lies very close to the street. This will happen on a regular basis at midnight or 1 am. My home is at the very southern end of Central Ave where concert attendee vehicles who are parked or looking for parking, lost or just curious must reverse direction to exit north on Central Ave. This will create a negative impact on my residential quality of life and create potentially hazardous high volume vehicular maneuvering by likely impaired drivers.

Even if parking suffices, the impacts will be severe. I live about 2500 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I live in the Potash Brook stream corridor which funnels sound from the north and south to my house from both Queen City Park Road and Shelburne Road. This project will negatively impact how I enjoy my front porch and front yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that “extends beyond the boundary” of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is “plainly audible” 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington’s written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorney’s review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access

in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

My wife and I frequently walk to and then through RR Park in the evenings to unwind after busy days. The experience of walking in nature has a profoundly positive effect on my wellbeing and is something I cherish. The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

As a South Burlington and Fire District #1 taxpayer and as a user of Red Rocks Park, I will be harmed by the impacts of Higher Ground events, with 1500 attendees, right next to RRP. Concert attendees will likely either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke at a Park such as this that is adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the Park. Adding one hundred or two hundred visitors on warm summer nights, before or after the Park has closed, is likely to overburden both Red Rocks Park and Fire District #1 and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be audible to me (and others) from my bedroom and living room, from my front yard, and on my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is

important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances. The Laker Champlain private neighborhood access across the street from my house will attract concert goers wishing to observe sunsets and use the beaches which are private on either side of the QCP Right of Way access. This will create a negative impact on my use of and access to my property.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for me to travel out of our neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, no bike lanes, no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into my neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These

exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

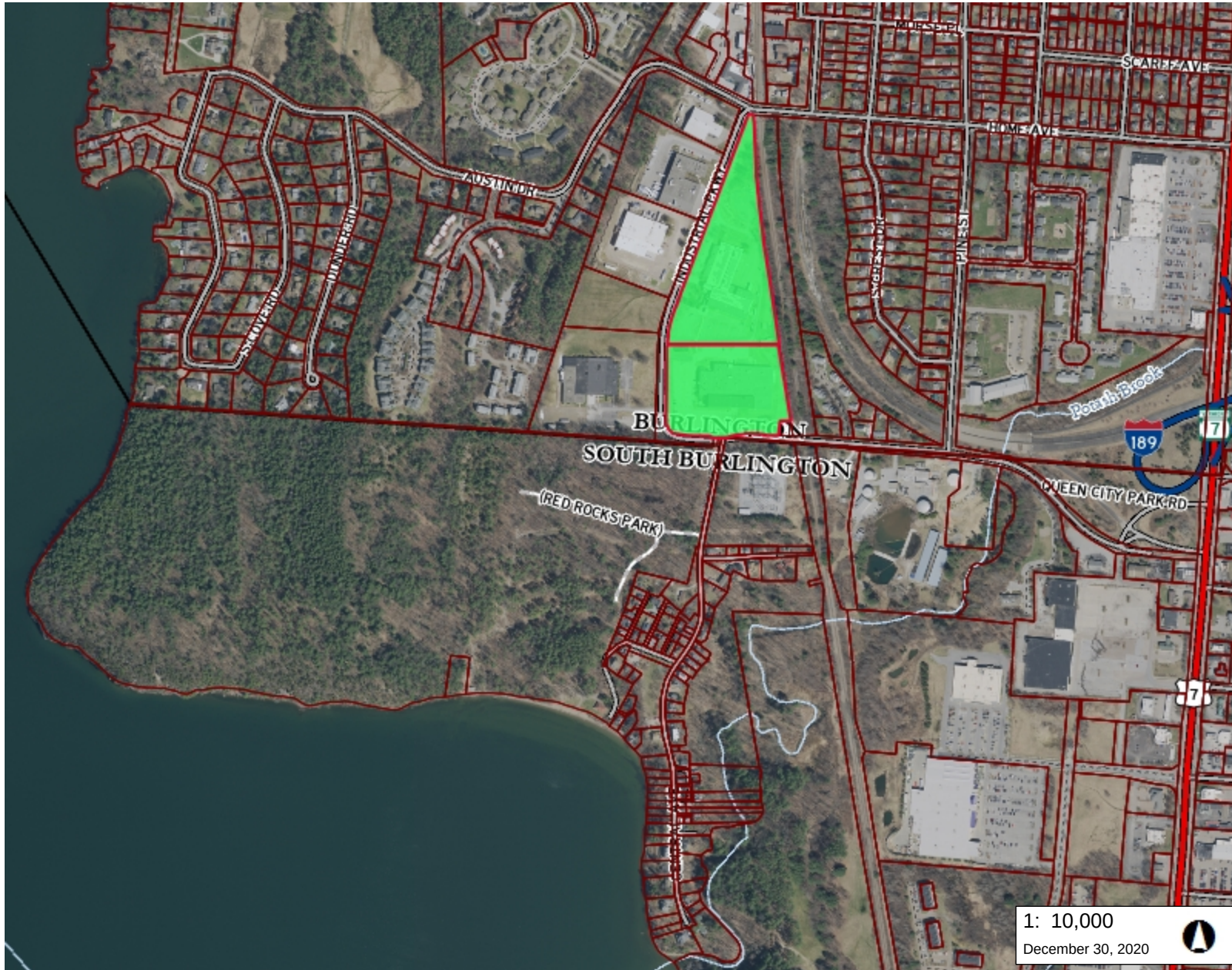
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF SHARON O'NEILL

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF SHARON O'NEILL

1. Please state your name.

My name is Sharon O'Neill.

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 20 Arthur Court in Burlington. This is 150' feet from the proposed project. I am a direct abutter to the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution.

I am a direct abutter to the proposed project site (only the railroad tracks separate Burton from my property). I live 150 feet away from the site.

There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me and my dog to inhale them while enjoying time in my yard year-round or in my home when my windows are open in the warmer months. I could also be affected when walking past the site. Those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this hazard. Additionally, asbestos is present in the interior of the

building which will be renovated. There is currently no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard. While these contaminants are dangerous for all people and animals, I also have asthma which leaves me more susceptible to airborne irritants.

Heath Effect of Noise on Me

I live on Arthur Court, which is a quiet cul-de-sac neighborhood with 11 households. On warm nights I go to bed with windows open to provide fresh air and comfortable sleeping.

This development will produce loud noises during the evening and late-night hours. Noise will come from the music and then from the up to 1,500 people and potentially 680 cars multiple times during each week at midnight, 1 in the morning or 2 in the morning – 150 feet away from where I sleep. Even if I close my windows, living that close means the noise will affect me.

The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live as close to the site as I do. This site, unlike the existing Higher Ground, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. When up to 1,500 patrons exit a loud rock concert late at night and during the wee hours of the morning, travel to and then start up their cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance. As described under #6 below, sirens related to police and emergency response to the Higher Ground venue will also cause noise disturbance in an otherwise quiet area of Burlington. Each of these disturbances will have a negative impact on the enjoyment of my home, my sleep patterns and health.

I cannot imagine how I will be able to sleep. Lack of sleep, on a regular basis, week after week, will affect my health.

Water Pollution – Combined Sewer and Stormwater Runoff.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim, kayak and hike, often with my dog and my grandson. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Blanchard Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. The resultant blue green

algae blooms would be fatal to my dog. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist.

My property is located at 20 Arthur Court, off of Queen City Park Road just before the one lane bridge. This is a quiet cul-de-sac neighborhood that has one entrance/exit. In order for me to travel by foot, bicycle, or car requires that I use this entrance/exit. Currently, this is already a challenge because Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This area currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate, with the proposed increase in traffic safety will be compromised. Using the one lane bridge is challenging because it has a metal grate walk for pedestrian travel. I often walk this route with my dog and this grated walk is not suitable for dogs which require me to walk in the travel lane of the one lane bridge. If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts pre and post-concert. This traffic will make this already marginally safe road unmanageable and dangerous for me and my dog. Queen City Park Road is one of only two roads with direct access to this site and it is the road that I rely on for all of my daily travel.

The Impact of Insufficient Parking On Our Safety and Quality of Life.

The proposed Higher Ground Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document "Managing Traffic for Planned Special Events." If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is Arthur Court which is a narrow road. When people park on the side of our road, they potentially limit access of larger emergency

vehicles. I live at the end of the cul-de-sac so this is a particular safety concern for me. Additionally, this will bring late-night noise as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting.

6. Please describe the impacts of the project on South Burlington and Burlington's ability to provide municipal services to you as a resident and as a user of Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect Burlington's ability to provide park and recreational services and police services to me.

The Arthur Court neighborhood is where Burlington and South Burlington meet. So even though I am a Burlington resident, the responsiveness of both Burlington and South Burlington impacts me.

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement. This is police activity that is currently almost non-existent in this area where I live.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: "The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV "bar closing". Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave". The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters less relevant to the current situation.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. Additionally, a rail road track crosses one of the only two roads providing access to the proposed venue. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Arthur Court neighborhood under Criterion 8

Arthur Court is a quiet, cul-de-sac neighborhood of 11 households. Residents are frequently outside enjoying gardening, decks and porches and time with their dogs. The neighborhood is on the bike path, close to services and near two recreational parks making it a very desirable neighborhood.

I chose to live here because of this character. I moved to Arthur Court 6 years ago from Fairfax, Vermont. This property have me the quiet and privacy that I enjoyed at my previous home and is much closer to where I work and where I like to spend my free time. I feel very fortunate to have found this neighborhood.

This project as proposed threatens to destroy the character of my neighborhood, the enjoyment that I have at my home and will have a severely harmful impact on my quality of life.

The noise related to traffic, parking lot and ambient noise surrounding this large music venue, associated outdoor lounge and food cafes would certainly change the quiet environment that I currently enjoy. Burton and Higher Ground have said that there would be no live music outdoors, but did not say whether there would be pre-recorded music playing from speakers. Again, I will reiterate that I am a direct abutter to this project. I can see the venue clearly from my property and my property is clearly visible to the venue.

Impacts will be severe, consistent and long lived. I live about 150 feet away from the parking lot where up to 1,500 people will leave the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning. This will be happening multiple times per week, week after week and

through all seasons. This will certainly degrade my life and the character of my residential neighborhood.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off. This will happen on a regular basis at midnight or 1 am.

Noise and disturbance will negatively impact how I enjoy my property since I am often outdoors gardening, visiting with neighbors or relaxing on my back deck. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces.

I also like to enjoy the local parks which are in very close proximity to my home. There will be increased traffic at the parks leading to higher environmental impacts than the parks would typically see.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community

The Burlington Comprehensive Plan, 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, 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 this part of Burlington but adds this:

“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.”

The noise, traffic and parking impacts of the project will violate these standards and harm me.

My attorney’s review of the Burlington City noise standard leads me to conclude that this standard will also be violated. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Arthur Court, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk almost daily with my dog in Red Rocks Park. As noted earlier, the beauty and proximity of this park drew me to want to live in the area. I gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings.

The noise of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre- and post-concert because of the proximity to the venue. This increased use will prompt wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource. The noise of the proposed music venue will change the character and soundscape of Red Rocks Park.

The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the park. Adding one hundred or two hundred visitors on warm summer nights, before or after the park has closed, is likely to overburden both Red Rocks Park and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and well-being.

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

The Burlington Comprehensive Plan, 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, 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 this part of Burlington but adds this:

“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.”

The noise, traffic and parking impacts of the project will violate these standards and harm me.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-

trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic in the park either before or after events. After-events also will cause nighttime disturbances if concert goes head into the park.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for me to travel out of our neighborhood is via Queen City Park Road. There are little or no sidewalks, no bike lanes, no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood. This is all activity that currently does not exist in the Arthur Court neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above in this document.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health and well-being.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

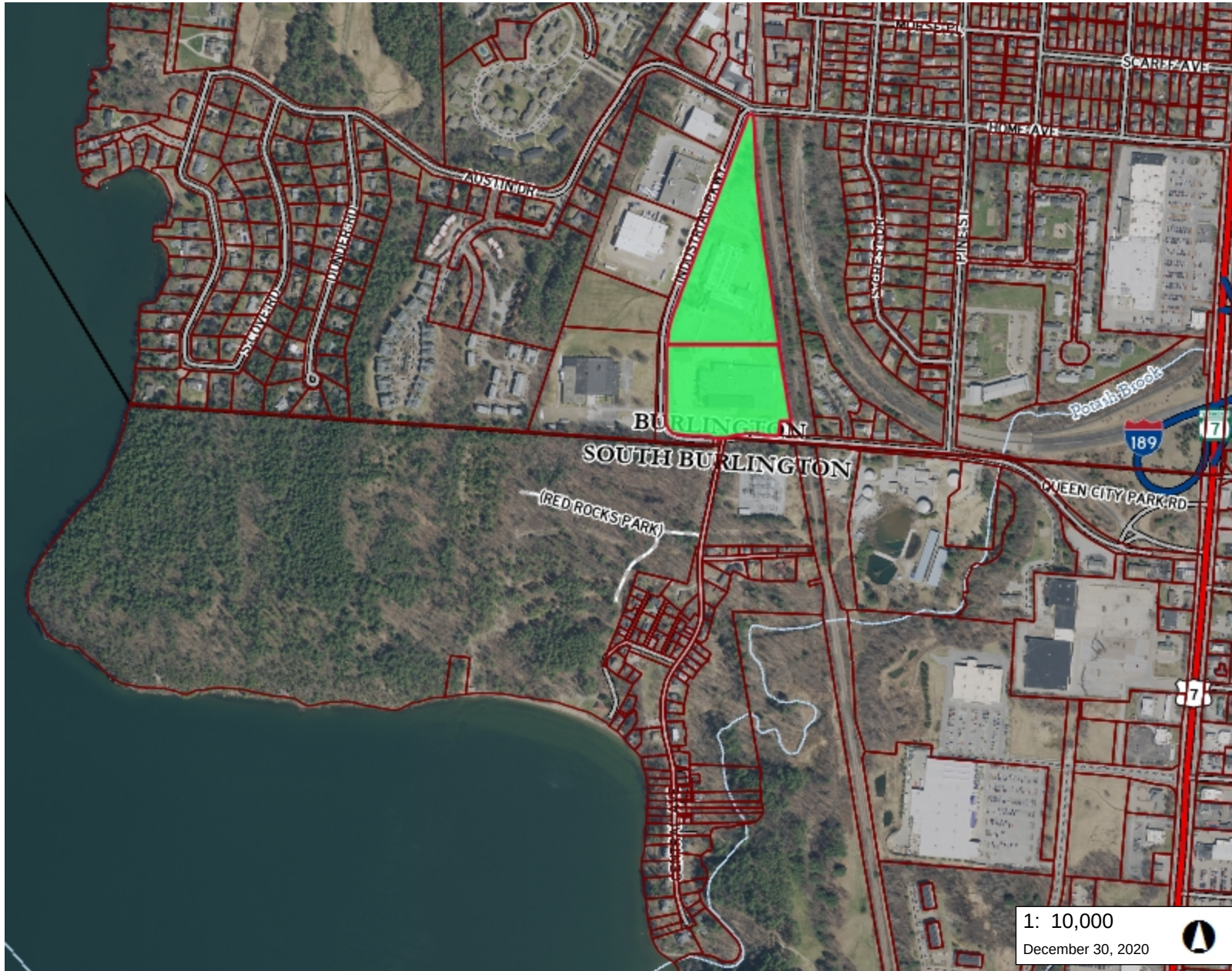
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

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1" = 833 Ft. 1cm = 100 Meters

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NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF STEPHANIE HERRICK

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District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

PREFILED TESTIMONY OF STEPHANIE HERRICK

1. Please state your name.

My name is Stephanie Herrick.

2. Please summarize your testimony.

I submit this testimony to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 161 AUSTIN DRIVE, UNIT 151. This is 1,225 feet from the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Interruption of Sleep by Noise. In the summer, my windows are open and my bedroom faces the Burton facility. I am 1,225 ft. from it (Please see accompanying map.) The Burton plan is to have an outdoor patio where guests can smoke, talk, and perhaps eat and drink. There will be plenty of noise coming from this patio. Supposedly there will be a double door to prevent noise from inside escaping when persons exit and enter. I doubt that this will be an effective method for keeping the music from being heard outside. Loud bass sounds pass through walls and floor and send reverberations for long distances. The permit would allow for several concerts a week. There is practically no down time. It seems to me the Burlington Ordinance Sec. 21-13 (b) (2) requires noise not to be plainly audible after 10 p. m. This obviously contrary use will harm my ability to sleep.

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather

collection system capacities.” These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected has caused Blanchard Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. The site is approached either down Home Avenue across the railroad tracks or down Queen City Park Road over the one lane bridge. These are the same routes I take to approach or leave my home. I take trips to and from my property daily and often multiple times a day. I travel this route at all hours of the day and night. Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. These are also the routes an emergency vehicle would need to take to come to my home if needed. They are residential roads, not designed for heavy traffic that would be created when concerts begin and end and would make traveling during these times dangerous for me.

The Impact of Insufficient Parking On Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document “Managing Traffic for Planned Special Events.” If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue.

6. Please describe the impacts of the project on Burlington’s ability to provide municipal services to you as a resident and as a user of Burlington’s recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government’s ability to provide municipal services. With regard to my standing, the question is whether this project will affect Burlington’s ability to provide police services to me.

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication,

disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: "The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV "bar closing". Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave". The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

The proposed location is neither on a main thoroughfare nor in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Redrock neighborhood under Criterion 8

Redrocks is a quiet, compact residential neighborhood of 156 condominiums. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street. The units are close together and close to the street creating a dense and closely connected residential neighborhood.

I chose to live here because of this character. I moved here from Greensboro for this reason. This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car

doors and driving off – all of which will occur in front of my house, which lies very close to the street. This will happen on a regular basis at midnight or 1 a.m.

Even if parking suffices, the impacts will be severe. I live about 1,225 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property. This project will negatively impact how I enjoy my deck where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces.

Under Act 250, applying the “Quechee test,” the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community-

The Burlington Comprehensive Plan, 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, 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 this part of Burlington but adds this:

“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.”

The noise, traffic and parking impacts of the project will violate these standards and harm me.

My attorney’s review of the Burlington City noise standard leads me to conclude that this standard will also be violated. It sets a “plainly audible” standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Redrock/Burlington, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this “gem of the lakeshore”.

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk almost daily in Red Rocks Park and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings. Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds. The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment

and potentially create safety issues, both of which will impact my ability to enjoy this natural area. The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. There are paths to the park from our Redrock condominiums, and these are the routes that I walk almost daily. Some of our Redrock property is indistinguishable from the Park property.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above.. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

The **Burlington Comprehensive Plan**, 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, 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.

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The noise, traffic and parking impacts of the project will violate these standards and harm me.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and man-made hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along Home Avenue or QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. There is no safe infrastructure for me to travel safely while these vehicles are entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Blanchard Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

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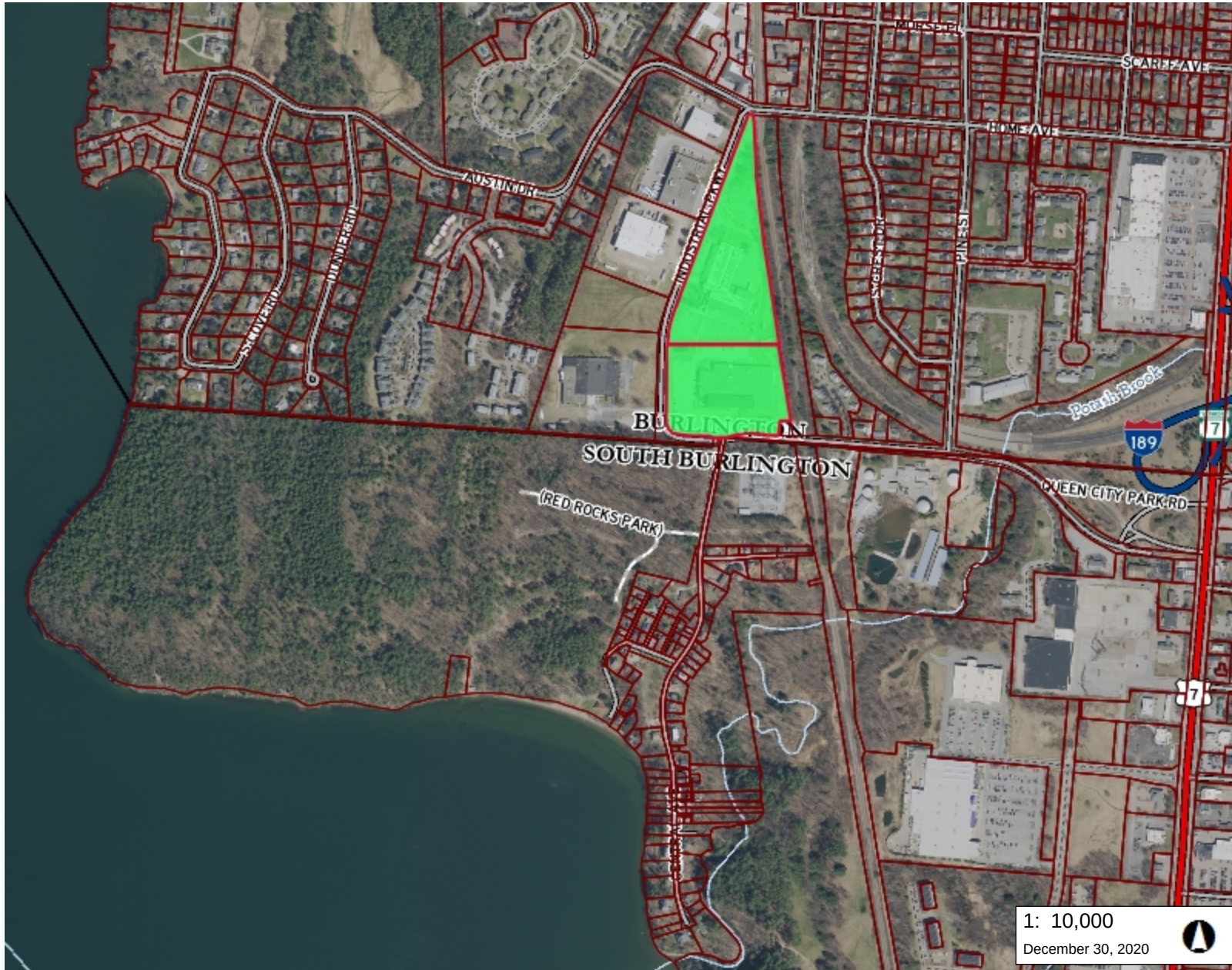
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
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 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
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NOTES

District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF Wendy Bratt

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District 4 Environmental Commission

Re: Burton Corporation Applications 4Co174-6; 4Co358-3

PREFILED TESTIMONY OF Wendy Bratt

1. Please state your name.

My name is Wendy Bratt.

2. Please summarize your testimony.

I submit this affidavit to support my Petition for Party Status. My purpose is to show that I will suffer injury from the proposed project, that there is a causal connection between the injuries I will suffer and the proposed project, and that the injury I would suffer would not occur if the permits were to be denied or conditioned to prevent the injuries.

I have read all or almost all the application documents that were filed in relation to this project.

3. Please describe where you live.

I live at 52 Central Avenue, South Burlington, VT. This is 1200 feet from the proposed project. See attached map

4. Please describe the safety and Health Impacts of the Project on you under Act 250 Criteria 1 and 1B

Air pollution. I rely on walking, and bicycling for transportation and for my mental and physical health. In order to leave our neighborhood by car, on foot or bicycle I have to travel past the Burton Campus. I travel past this campus many times a day at all hours of the day and well into the evening/night. There are known contaminants on the property, as identified in the ENSR Phase 1 Environmental Site Assessment dated January 2001, and during construction it is reasonably likely that those contaminants will become airborne creating the potential for me to inhale them when traveling past the site. This is reasonably likely because those contaminations include Asbestos, Lead, Chromates, PFAS, Arsenic and other contaminants that have been identified to be located on the site. It is known that some of these contaminants exist in the soils under the existing blacktop. The blacktop will be removed during construction and the soils will be disturbed during regrading and excavation. This disturbance will expose the contaminants to the elements and has the potential to cause the contaminants to become airborne exposing me to this contamination. Additionally, asbestos is present in the interior of the building which will be renovated. There is currently

no mitigation plan in place and without proper handling asbestos fibers may become airborne and expose me to this hazard.

Interruption of Sleep by Noise. This development will produce loud noises during the late night hours. Our family sleeps with windows as we do not have the benefit of air conditioning and prefer not to have it. The sounds of loud music as well as the low frequency noise bursts created by many music performances will penetrate the night air and be disruptive. I know that Higher Ground, in its present location, has created enough noise to generate noise complaints from residents who live as far from the site as I do. This site, unlike the existing one, will feature a 2,300 sq ft outdoor lounge which can accommodate in excess of 150 people. That outdoor lounge is directly across the street from Central Ave where I live. When 1,500 patrons exit a loud rock concert during the wee hours of the night, travel to and then start up their up to 680 vehicles cars, trucks, and motorcycles as they leave the event there will be significant noise disturbance, particularly when the wind is blowing from the direction of the venue. These disturbances will have a negative impact on my sleep patterns, health, *and the quality of my work day on the following day.*

Water Pollution – Combined Sewer and Stormwater Runoff. As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. The Burlington DPW states in their approval letter that this “letter only addresses dry weather treatment plant and not organic loading or wet weather collection system capacities.” These overflow events contaminate the lake where I swim at our beach and often canoe from up to Red Rocks point for a swim. This contamination has the potential to make me sick, and when detected has caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed where I swim. These potential exposures and closures directly impact my ability to enjoy the lake and get exercise swimming and paddling, I moved here for these opportunities to easily recreate on the water with my neighbors, and water pollution would significantly impact my health.

Water Pollution -- Drinking Water. I and my community rely on a well for our drinking water that is 780’ from the proposed development. It is known that Chromates are in a trench that is under the parking lot which will be exposed to the weather during construction. It is known that Lead is in the soils outside the building that will be disturbed during construction. There is a high likelihood that PFAS are in the soils surrounding the building that will be disturbed during construction. When disturbed, these contaminants, and any others which may exist on the property, have the potential to travel towards our well and contaminate our drinking

water which would have a direct negative impact on my health. Burton is now performing another study of the site. Until Burton's studies are completed and submitted to the Commission, it would be premature to grant or deny party status on this issue.

5. Please describe the traffic Impacts of the Project on you under Act 250 Criteria 5.5(A) & 5(B)

The Impact of Increased Traffic On My Safety and Quality of Life as Pedestrian, Bicyclist and Motorist. My property is located at 52 Central Avenue. Central Ave is a dead end road that intersects with Queen City Park Road directly across from the Burton Campus. In order for me to travel by foot, bicycle, or car to go shopping, or for any reason that requires leaving our property, I must travel directly past the Burton Campus on Queen City Park Road.

I am an avid bicyclist, riding to and from work, errands, and for pleasure. I take trips to and from our property daily and often multiple times a day. I travel this route at all hours of the day and night, including arriving home at 7 PM two nights per week.

Queen City Park Road is a narrow road with no shoulders, crosswalks, dedicated bike lanes, and very limited sidewalks. This road currently has a low traffic volume and even so at times feels uncomfortable/unsafe to navigate. Walking or bicycling north on QCP Road on the way to City Market, where I often shop in the evenings, I must cross QCP Road several times to avoid walking or biking in the travel lane of the road and then navigate the intersection of QCP Road, Home Ave and Austin Drive, then cross VT Rail tracks. This route is hazardous with the current traffic levels. I can't imagine trying to travel this route with the proposed increase in traffic.

Trying to get home after one of my late work nights when concert traffic is coming in would force me to share the road with literally hundreds of cars after a long day.

Additionally, traveling east on QCP Road requires navigating over a one lane bridge that has a metal grate catwalk for pedestrian travel. I walk this route with my dog and the catwalk is not suitable for dogs which require me to walk in the travel lane of the one lane bridge.

In my experience, in the winter the bridge sidewalk can be unreachable by foot. Pedestrians have to walk in the traveled portion of the bridge.

If this project is developed, there will be hundreds of cars navigating this road in concentrated bursts pre and post-concert. This traffic will make this already marginally safe road

unmanageable and dangerous for me. Queen City Park Road is the only road with direct access to this site and it is the road that I rely on for all of my daily travel.

The Impact of Insufficient Parking on Our Safety and Quality of Life. The proposed Rock Concert Venue will have a capacity of 1,500 patrons. 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. See the attached FHWA document “Managing Traffic for Planned Special Events.” If the FHWA is correct, up to 680 parking spaces are needed, on average, just for full capacity performance events. 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. 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 available to concert goers, no on-street parking on Queen City Park Road, and only quiet residential streets surrounding the proposed venue. One of those residential streets is my street. My house is a few minutes’ walk from the event site. These parked vehicles will cause congestion and dangerous conditions for me and my neighbors as pedestrians and bicyclists, and, late at night, when events are over, will bring late-night noise in front of my house as attendees walk to their cars while talking (or singing), and then the noise of doors closing and engines starting.

Central Avenue is a very narrow dead end residential street and the only road to access Queen City Park and Red Rocks Beach. If this road becomes congested with concert vehicles the ability of safety vehicles (fire, ambulance, rescue, law enforcement) to access my neighborhood and the beach, which is the access point for water rescue operations in South Burlington, will be severely hampered. I enjoy both canoe and motor boating on this portion of the lake in the spring, summer and fall, and rely on the ability of rescue services in the event of accident or emergency. Lake related emergency events often happen in the late afternoon/evening during the summer months and involve up to a dozen or more rescue vehicles. Additionally fire and rescue vehicles often enter Central Ave. in the evenings to aid the residents of Queen City Park. This timing coincides with the proposed performing arts schedule and there is a real risk that my health or life could be put in jeopardy because of the congestion caused by this proposed development.

6. Please describe the impacts of the project on South Burlington's ability to provide municipal services to you as a resident and as a user of South Burlington's recreational and public safety services under Act 250 Criterion 7.

Criterion 7 focuses on a local government's ability to provide municipal services. With regard to my standing, the question is whether this project will affect South Burlington's ability to provide park and recreational services and police services to me.

The main entrance to Red Rocks Park is on Central Ave just south of Queen City Park Road and the entrance to Burton and the Higher Ground site. I use it nearly daily. During Higher Ground events, with as many as 1,500 visitors, the Park will be flooded with visitors. It will be impossible for the City to continue to provide high-quality park and recreational services to me. In this context, Criterion 7 overlaps with Criterion 9(K).

The South Burlington Police Department has provided incident reports for the existing Higher Ground venue for the period June 1, 2018 – May 31, 2019 (no data for 2020 because of Covid). There were 137 calls for service where the police had to respond to that venue (intoxication, disturbance, trespass, accident, drugs, suspicious event, sex offense, assault). The proposed venue is almost 100% larger than the existing venue for a sold out concert; it is likely to have twice the need for police involvement.

The City of Burlington has passed a resolution to reduce its police force by 30%. The Burlington Police Department has recently stated that it will likely have to eliminate police patrols from the hours of 3am to 7am and that their patrols will be limited at other nighttime hours.

The following is an excerpt from BPD letter dated April 2020 to DRB: "The challenge will be that some large events at the new HG/Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown BTV "bar closing". Specific concerns include: managing traffic flow in either direction on QCP Road, particularly at the narrow bridge over the railroad tracks..., but also north to the intersection with Home Ave, ...potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements, and for the SBPD, after-hours activity potentially leaking into Red Rocks Park and down Central Ave". The BPD letters were written prior to the announcement of BPD force reduction of 30%. This force reduction which has already started makes these letters stale.

The reduction of force, in conjunction with the increased size of this venue, will create what may at times be uncontrolled hazards that will affect me as person who walks, bikes and drives in my own neighborhood and as I enjoy Red Rocks Park. I may find myself in a dangerous situation resulting from behaviors and unsafe conditions, without a timely law enforcement response.

Because the proposed development is directly on the border of South Burlington, if the City of Burlington is unable to respond to an incidence, the SB Police will have to respond. Given the shortage within the Burlington police force this will likely be a recurring condition which will place a financial burden on me as a South Burlington resident.

The proposed location is neither on a main thoroughfare or in an area customarily patrolled by police. Further, the location is far away from both the Burlington Police Station and the South Burlington Police Station. My safety on my street, and on the adjoining public roads, and even in my home will be diminished.

7. Please describe the impact on you as a resident of the Queen City Park neighborhood under Criterion 8

Queen City Park is a quiet, compact residential neighborhood nestled between Lake Champlain, Red Rocks Park, and the Potash Brook corridor. Central Ave is a narrow residential street with no shoulder or sidewalk. This neighborhood is a sub-municipality of South Burlington and has its own “Green”, basketball court, playground, parking lots, and beach access points. Neighbors, (individuals, groups, parents with strollers, and elderly community members) are constantly walking, biking, and socializing in the street and on the Green. The houses are close together and close to the street creating a dense and closely connected residential neighborhood.

Two years ago, we chose to move to Queen City Park from our home on 32 acres of land in Charlotte, VT because of the quiet, neighborly character of this close knit neighborhood.

This project as proposed threatens to destroy the character of my neighborhood and will have a severely harmful impact on my quality of life.

If the project parking lot does not suffice and there are cars parked on my street, there will be attendees talking and singing to each other, then entering their cars, slamming closed their car doors and driving off – all of which will occur in front of my house, which lies 20 feet to the street. This will happen on a regular basis at midnight or 1 am.

Even if parking suffices, the impacts will be severe. I live about 1,200 feet away from the parking lot where 1,500 people will pour out of the building late at night. The noise of the proposed rock music venue, and the noise of 1,500 attendees leaving the building, talking, singing, entering their cars, closing their car doors, starting their engines and driving off at midnight or 1:00 in the morning, week after week, winter and summer, will degrade my life and the character of my residential neighborhood.

Noise and disturbance will negatively impact how I enjoy my property since I am directly across from the Fire District #1 green and park that will certainly be used by pre and post-concert attendees. This project will negatively impact how I enjoy my back porch and yard where I often relax late into the evening. It will negatively impact how I enjoy the inside of my home, as the noise will pass through the walls and windows to invade my bedroom and living spaces. Additionally, increased use by non-residents concert goers of our QCP: community green, parking areas, and beach access will result in increased litter and wear and tear, which will dramatically degrade the aesthetics of these areas which I use on a daily basis and pay to maintain. This increased use will also cause congestion which will impact my use and enjoyment of these assets.

Under Act 250, applying the "Quechee test," the harm to the area and to me will be adverse and severe. It will violate clear written community standards for our community. One such standard is the South Burlington Noise Ordinance, which bars publicly audible noise after 10 pm at our property line unless the City of South Burlington has granted an entertainment permit for that noise source. Another source is the South Burlington Entertainment License Ordinance, section 5 of which contains similar standards for entertainment events that are permitted. A permitted event cannot create noise that "extends beyond the boundary" of the permitted activity and interferes with neighboring uses – such as sleeping at night. A third clear written community standard is the performance standards of the South Burlington Land Development Regulations, Appendix A. These state that noise that disturbs peace and quiet, or comfort of neighbors, is unlawful, and that noise that is "plainly audible" 50 feet from the building from which it emanates is presumptively unlawful.

While some Burlington residents will be harmed by the project, the clear written community standards that apply to me, and the rest of Queen City Park, are South Burlington's written standards. Those standards bar publicly audible noise after 10 pm unless and until the South Burlington City Manager has granted an entertainment permit, and all activities subject to entertainment permits are prohibited from creating noise that extends beyond the boundary of the emitting parcel and interfering with neighboring uses.

Another clear written community standard is the purpose statement for the Queen City Park zoning district in the zoning ordinance and the planned future of Queen City Park in the South

Burlington Comprehensive Plan. The principal uses are intended to be residential and open space.

Our attorney's review of the Burlington City noise standard leads me to conclude that, even if it applies, it too prohibits the proposed impacts. It sets a "plainly audible" standard, barring noise after 10 pm that is plainly audible at other properties or from the road.

These expected impacts on the aesthetics of life in Queen City Park, and my own life, would be shocking to a reasonable person.

These changes also will result from the failure to consider and adopt reasonable mitigation measures.

8. Please describe the impacts on you as a user of Red Rocks Park and Fire District #1 green spaces and beach under Act 250 Criteria 8 and 9(k)

Red Rocks Park is a beautiful 100-acre park on the bank of Lake Champlain that is open year round. It is the product of enormous investment of time and money by the people of South Burlington. The park has 3.3 miles of wooded trails, and is home to the only public beach access in South Burlington. The park has the potential to remain a haven of natural beauty in the fast-growing urban area for generations to come provided it is properly protected. Local residents as well as conservationists from groups, such as the South Burlington Land Trust, and the South Burlington Recreation and Parks Department, are concerned about conserving and preserving this "gem of the lakeshore".

Red Rocks Park is directly adjacent to the proposed performance venue. The 2,300 sq ft outdoor lounge is directly across the street from and faces Red Rocks Park.

I walk in Red Rocks Park a few nights per week and gain deep enjoyment and relaxation from the quiet of nature and beauty of the natural surroundings. Many nights the predominant sounds are of the wind in the trees and the peepers and other wildlife sounds.

The loud and rowdy ruckus of concert goers congregating in the outdoor lounge while drinking, smoking, and reveling about the music will dramatically alter the soundscape of the park and deprive me of the use and enjoyment of a valuable municipal asset.

Undoubtedly, concert goers will filter into the park pre and post-concert for licit and illicit purposes. This increased use will increase wear and tear on the fragile natural environment and potentially create safety issues, both of which will impact my ability to enjoy this natural resource.

As a South Burlington and Fire District #1 taxpayer and as a user of Red Rocks Park, I will be harmed by the impacts of Higher Ground events, with 1500 attendees, right next to RRP. Concert attendees will likely either park in Fire District parking lots or use the Fire District #1 green spaces, equipment and beach access before, during or after the concerts.

The noise of the proposed rock music venue will change the character and soundscape of Red Rocks Park. It is reasonable to expect that attendees to events, before or after the events, will visit, hang out at, drink or smoke or worse, at a Park such as this that is adjacent to the venue. The limited parking available at the venue also is likely to send attendees to the Park as a source of parking. There is no way to prevent attendees to this venue from entering the Park. Adding one hundred or two hundred visitors on warm summer nights, before or after the Park has closed, is likely to overburden both Red Rocks Park and Fire District #1 and damage this natural area both before and after concerts. This will degrade the natural area that I rely upon for recreation and reflection:

My neighbors, my family, and I will provide personal and expert testimony concerning the soundscape of Red Rocks Park and the adverse changes caused by the venue.

This impacts the three tests of the second part of the Quechee Analysis.

The noise at the Park will violate clear, written community standards, including but not limited to the South Burlington Noise Ordinance and the South Burlington Entertainment Permit Ordinance. See the discussion above. Every night that a large event is held, there will be a violation of the ordinances because the noises of hundreds of people exiting a performance, talking, yelling, singing, slamming car doors, etc. will be plainly audible to me (and others) from my bedroom and living room, from my front yard, and my street.

The late night noise is shocking and offensive, out of character with, and significantly diminishes the character of Red Rocks Park.

Finally, the applicant fails to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with the Park, such as limiting the size/scale of the venue and time of night that noise intrusions will occur, providing adequate parking to accommodate all of the vehicles coming to the venue, and providing adequate measures to prevent concert patrons from parking in and disturbing the surrounding neighborhoods.

9. Please describe the applicable municipal and regional plan sections, and how noncompliance will affect you, under Act 250 Criterion 10.

South Burlington's Comprehensive Plan, at page 3-27, states that in the Queen City Park area, "residential and open space uses should continue to predominate."

Noncompliance with this plan will affect me by allowing non-residential and non-open space uses to predominate on a regular basis during some of the currently and historically, quietest times of each week – when I and my neighbors sit on our porches, walk around our narrow streets, walk through our parks, and then get our sleep.

4.08 QUEEN CITY PARK DISTRICT QCP

A. Purpose. A Queen City Park District (QCP) is hereby formed in order to encourage residential use at densities and setbacks that are compatible with the existing character of the Queen City Park neighborhood. It is designed to promote the area's historic development pattern of smaller lots and reduced setbacks. This district also encourages the conversion of seasonal homes to year round residences.

Applicable CCRPC ECOS Plan Goals

2. Scenic and Recreational Resources - Conserve, protect and improve valued scenic, recreational, and historic resources and opportunities.

I walk in Red Rocks Park on a very regular basis and there are simply no enforceable components of Burton/Higher Ground's plan that ensure the protection of Red Rocks Park. It is important to see every effort be made by Burton/Higher Ground to ensure that the park and those of us who use the park are protected. With the approval of the performing arts center, several hundred event attendees will regularly be introduced to the currently not-heavily-trafficked area. This will potentially result in an increase of park users attributable to Higher Ground events. The park could quickly be overwhelmed by event patrons who elect to picnic and/or tailgate in the park either before or after events. After-events also will cause nighttime disturbances.

6. Public Safety and Criminal Justice - Improve the safety of the public including the loss of life and property from natural and manmade hazards.

The proposed project will endanger my safety as I walk, ride a bike and drive along QCP Road during the pre- and post-concert periods when there will be up to 680 vehicles entering or leaving the venue. The only way for me to travel out of our neighborhood is via QCP Road – either over the one lane railroad bridge or to the north toward Home Ave. There are no sidewalks, no bike lanes, no safe infrastructure for me to travel safely while these vehicles are

entering or leaving. In addition, there are already documented public safety concerns from this venue in its current location in South Burlington such as intoxication, disturbance, trespass, accidents, drugs, suspicious events, sex offense, and assault, which will undoubtedly spill into our neighborhood.

15. Transportation - Provide accessible, safe, efficient, interconnected, secure, equitable and sustainable mobility choices for our region's businesses, residents and visitors.

There is no plan for attendees to access this venue other than by car which creates the impacts that I have noted above.

16. Infrastructure - Ensure adequate infrastructure and facilities (i.e. water supply, wastewater treatment, stormwater treatment, broadband coverage and solid waste recovery and recycling) to support areas planned for growth while conserving resources.

As stated in the letter from the Burlington Public Works Department dated October 30th 2020, during wet weather there is a likelihood that this project will be responsible for the dumping of over 9,600 gallons of wastewater directly into Lake Champlain because of the combined sewer and storm water system that serves this property. These overflow events contaminate the lake where I swim and recreate. This contamination has the potential to make me sick, and when detected have caused Texaco Beach, Oakledge Beach, and Red Rocks Beach to be closed. These exposures and closures directly impact my ability to enjoy the lake and get exercise swimming both of which impact my overall health.

17. Energy - Move Chittenden County's energy system toward a cleaner more efficient and renewable system that benefits health, economic development, and the local/global climate by working towards the State's Comprehensive Energy Plan goals which include:

Reduce greenhouse gas emissions, consistent with the state's emission-reduction goals, by reducing fossil fuel use and efficiently using renewable energy sources;

Encourage active lifestyles and reduced energy use through compact development and by providing safe opportunities for walking, biking, and using public transit;

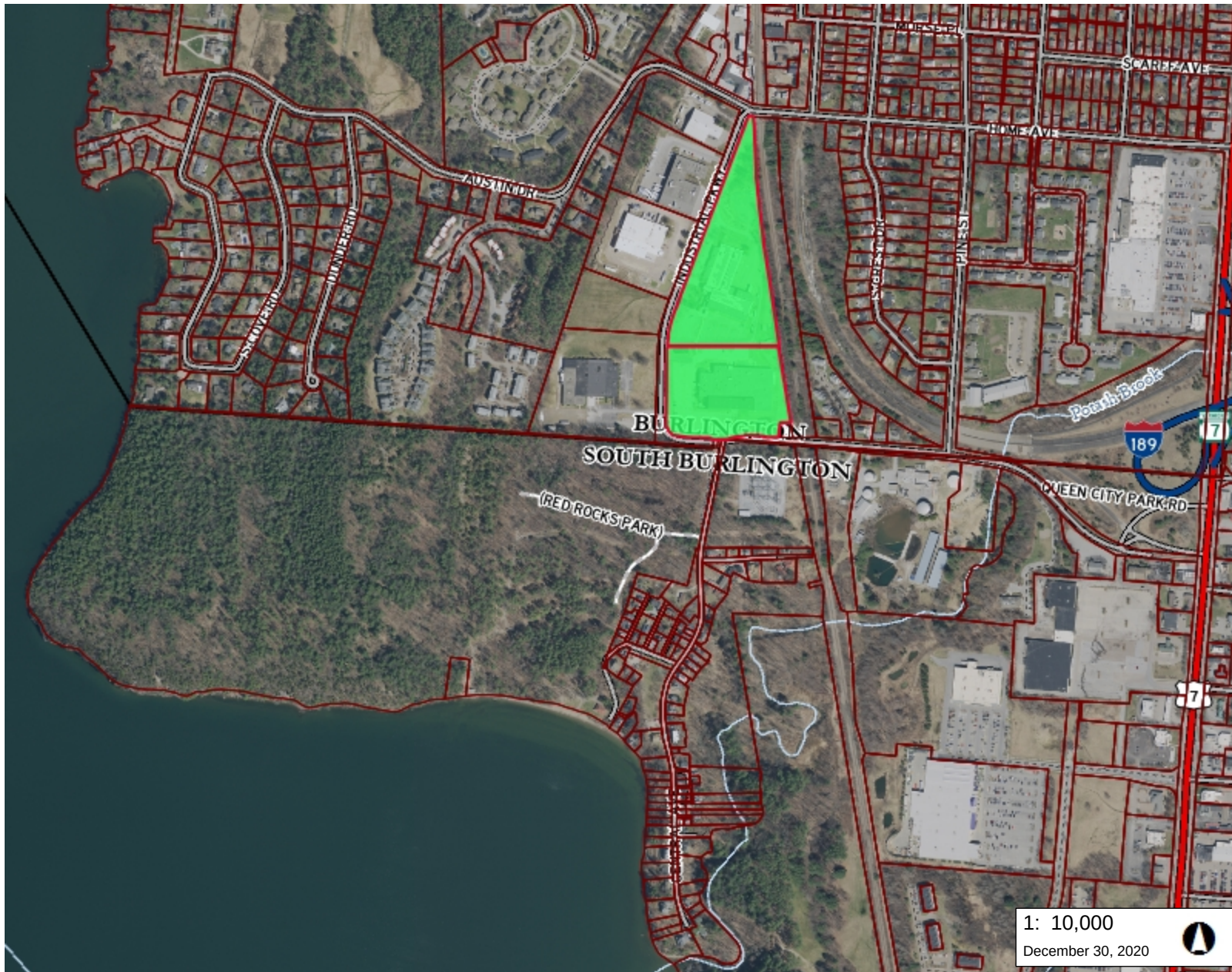
This project cries out for public transit access because of the limited parking, the certain overflow of parking into neighborhood streets, and the availability of downtown parking garages and shuttle service.

This concludes my testimony.



LEGEND

-  Parcels (standardized)
- Roads**
 -  Interstate
 -  US Highway; 1
 -  State Highway
 -  Town Highway (Class 1)
 -  Town Highway (Class 2,3)
 -  Town Highway (Class 4)
 -  State Forest Trail
 -  National Forest Trail
 -  Legal Trail
 -  Private Road/Driveway
 -  Proposed Roads
- Stream/River**
 -  Stream
 -  Intermittent Stream
-  Town Boundary



1: 10,000

December 30, 2020



508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

NOTES

**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 March 5, 2021, I served copies of supplemental exhibits for the March 10 hearing in the above-referenced proceeding on behalf of the Burton Corporation to the service list below by the delivery method noted:

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Dated at Burlington, Vermont, this 5th day of March, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal



BURTON

Burton Hub – Performing Arts Center (PAC) Operational Management Plan

April 23, 2020

Revised: September 1, 2020

This Operational Management Plan (OMP) dated 4/23/20 was developed by Burton and presented to the Burlington Development Review Board (DRB) which imposed additional conditions to the OMP as part of its Conditional Use approval dated 9/1/20 (DRB Permit 20-0854CA/CU).

Initial Six Months of PAC Operation

- Within the first 6 months of operation, the Applicant shall perform a noise assessment (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 3):
 1. Within this timeframe, the applicant shall coordinate a schedule with their noise consultant to conduct monitoring for three (3) events that are expected to be at full capacity;
 2. Sound monitoring shall be conducted within the same geographic area covered by the *Project Noise Assessment* prepared by RSG dated 4/20/20; and,
 3. If monitored sound levels from the performing arts center exceed 45dBA Leq (1-hour) at night (10:00 PM – 7:00 AM) at residential areas, additional sound mitigation measures will be required to bring noise levels into compliance (at or below 45dBA Leq).
- Within the first 6 months of operation, the Applicant shall perform a traffic assessment of how the OMP is addressing traffic impacts. The Applicant will summarize its findings in a presentation to the DRB, including the opportunity for public comment, to determine if traffic conditions require modification (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 5)

Pre-event Management:

- No tailgating is permitted.
- Organized queueing in advance of doors opening will occur indoors in the shared Hub lobby, as supervised by HG security staff. This indoor lobby space is significantly larger than the indoor queue space at Higher Ground's current Williston Road venue, and based on experience the significantly larger indoor lobby area is expected to accommodate guests for most shows. Based on experience, a few shows per year are expected to overflow to the exterior of the building, with security staff supervision. Any outdoor queue will clear as soon as doors open, typically by/before 7 pm.
- Security will coordinate with Cities of Burlington and South Burlington to ensure applicable on-street parking rules are followed.
- Event staff in the lots will direct traffic, ensure orderly parking, direct pedestrians into the Hub lobby, and oversee the arrival of bicyclists and rideshares.

- Prior to large events, Higher Ground will coordinate with BPD and SBPD as needed.
- Contact information for on-duty Higher Ground event management staff will be made available to any interested business and residential neighbors to facilitate contact before, during or after any concert event with questions or concerns.
- 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).

Event Management:

- Daytime use of the PAC shall be limited to 300 attendees. Doors shall not open for daytime uses of the PAC before 9:00 AM, and exiting times shall not occur between 4:00 PM and 6:00 PM. Evening use of the performing arts center shall be limited to 1,500 attendees. Doors shall not open for weekday evening uses of the PAC before 6:30 PM (6:00 PM for weekends and holidays). In no case shall any use of the PAC have an exiting time past 2:00 AM (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 6).
- Doors shall remain closed during events (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 11).
- No tailgating is permitted (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 12).
- No music or amplified sound is permitted outdoors, including the patio area (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 13).
- Ingress security screening policies will be followed based on industry standards followed at HG's Williston Road venue and other comparable venues (State Theater in Portland, ME).
- Higher Ground will comply with all applicable Vermont Liquor Control laws and licenses. HG will coordinate with the Vermont Department of Liquor Control (DLC) and local law enforcement regarding enforcement of state laws and regulations, as well as expected use of the facility for DLC agent training (DLC currently uses the HG Williston Road location as a staff training site, due to a strong track record of HG meeting DLC requirements).
- Once admitted, customers will not be allowed to exit and reenter the PAC venue for any reason.
- A minimum of three security guards will monitor the lobby and parking areas during the show.
- Inside the PAC venue, security staff will monitor customer behavior continuously and intervene as necessary following long-established security policies and procedures. Key HG staff have completed ALICE training and certification.

Post-event Management:

- No tailgating is permitted (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 12).
- Traffic control measures shall be used to empty the parking lots within 30 minutes of the end of any event (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 14).

The post-event management objectives are to:

1. Prevent any alcoholic beverages, or cups of any kind (water included) from leaving the licensed premise;
2. Supervise the crowd to deter any visibly intoxicated individuals from attempting to operate a motor vehicle; and
3. Ensure all guests exit the site as efficiently, rapidly, and quietly as possible, minimizing any disruption to residential neighbors.

At the conclusion of the show, available 'float' security guards will re-deploy to the primary egress route from the building. The doors to the lobby are opened, lights come on, and all ingress staff along with floats form a two-tiered ring to supervise guests as they exit - one group (lobby staff) inside the PAC lobby, and one group (patio egress staff) covering the shared Hub lobby and outdoor patio. Depending on the size of the crowd, there should be more staff focused on the external perimeter ring outside – see deployment details below. All egress happens through the lobby to ensure that all exiting guests must pass through this heavily supervised area. Here are specific staffing protocols based on the size of the show:

Capacity	Protocol
Up to 750	Lobby staff (3-4 guards - IDer, Ticketing, Pat Down staff) will greet guests as they exit through the lobby, scanning for drinks, handing out fliers (if applicable) and thanking guests for coming to the show. Staff inside the lobby should be scanning for drinks and scanning for visibly intoxicated guests. Any guests that clearly should not drive should be described (via radio) to patio egress staff for deterrence techniques to be applied. Patio egress staff (3-4 guards - Floats, Patio, Parking/Lot Patrol) will form a ring around the parking lot side of the front patio in the fire line, doing a second wave of checks for drinks and intoxicated guests, and supervising any groups of people waiting for taxis or rideshares.
750 to 1,000	Same as above. And add additional floats, security lead(s), and Managers on Duty (MOD). Lobby staff can include the back of house MOD, and patio egress staff can include the front of house MOD, bringing headcounts for each team to 5+ (10-12 total). Second ring staff will place a temporary bollard with a sign at the end of Central Avenue indicating <i>Dead End No Event Parking</i> . This will be taken down once the majority of guests have exited the site.
1,000 +	Same as above. And add additional staff to form a third, wider perimeter ring extending out into the parking lots to ensure complete and thorough coverage. All available floats, plus production staff (with security training/background), and MODs to support - bringing total headcount for large scale event egress to 14-15. Third ring staff will direct/assist with any issues (e.g. excessive intoxication, excessive noise, etc.) in the parking lots as the site is emptied. This staffing would include a dedicated position that would be posted near the parking lot exit in the southwest corner of the 266 QCPR property, to monitor and direct vehicle and pedestrian traffic to exit the area smoothly, including discouraging pedestrians from leaving the venue to go into Red Rocks Park. Provide event traffic control at the following locations: 1. Intersection of Home Avenue & Pine Street; 2. Intersection of Central Avenue & Queen City Park Road; 3. Nearby “one-way” bridge on Queen City Park Road (BTV DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 7):

Additional Traffic Flow and Safety Considerations:

- Bike and pedestrian traffic to and from the site will be encouraged/directed to come/go from the north on Queen City Park Road to avoid use of the one-way bridge.
- Signage will be developed and installed on site to support the egress process. Specific sign wording and locations to be determined based on identifying any issues by venue operators and/or cities of Burlington and South Burlington, pinch points experienced during the egress process, feedback from guests/neighbors, etc. This may include signage to clearly mark drop off/pick up locations for rideshare and taxi services, directly in front of the 266 building.

- Pending discussions with the City of South Burlington, assist in the installation of MUTCD W14-1a or W14-2a signage (Dead End, No Outlet) on Central Ave. if desired/required by South Burlington.
 - The approved OMP may otherwise be altered only upon review and approval by the DRB following a public hearing (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 7).
-



BURTON

Burton Hub – Performing Arts Center (PAC) Operational Management Plan

April 23, 2020

Revised: September 1, 2020

This Operational Management Plan (OMP) dated 4/23/20 was developed by Burton and presented to the Burlington Development Review Board (DRB) which imposed additional conditions to the OMP as part of its Conditional Use approval dated 9/1/20 (DRB Permit 20-0854CA/CU).

Initial Six Months of PAC Operation

- Within the first 6 months of operation, the Applicant shall perform a noise assessment (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 3):
 1. Within this timeframe, the applicant shall coordinate a schedule with their noise consultant to conduct monitoring for three (3) events that are expected to be at full capacity;
 2. Sound monitoring shall be conducted within the same geographic area covered by the *Project Noise Assessment* prepared by RSG dated 4/20/20; and,
 3. If monitored sound levels from the performing arts center exceed 45dBA Leq (1-hour) at night (10:00 PM – 7:00 AM) at residential areas, additional sound mitigation measures will be required to bring noise levels into compliance (at or below 45dBA Leq).
- Within the first 6 months of operation, the Applicant shall perform a traffic assessment of how the OMP is addressing traffic impacts. The Applicant will summarize its findings in a presentation to the DRB, including the opportunity for public comment, to determine if traffic conditions require modification (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 5)

Pre-event Management:

- No tailgating is permitted.
- Organized queueing in advance of doors opening will occur indoors in the shared Hub lobby, as supervised by HG security staff. This indoor lobby space is significantly larger than the indoor queue space at Higher Ground's current Williston Road venue, and based on experience the significantly larger indoor lobby area is expected to accommodate guests for most shows. Based on experience, a few shows per year are expected to overflow to the exterior of the building, with security staff supervision. Any outdoor queue will clear as soon as doors open, typically by/before 7 pm.
- Security will coordinate with Cities of Burlington and South Burlington to ensure applicable on-street parking rules are followed.
- Event staff in the lots will direct traffic, ensure orderly parking, direct pedestrians into the Hub lobby, and oversee the arrival of bicyclists and rideshares.

- Prior to large events, Higher Ground will coordinate with BPD and SBPD as needed.
- Contact information for on-duty Higher Ground event management staff will be made available to any interested business and residential neighbors to facilitate contact before, during or after any concert event with questions or concerns.
- 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).

Event Management:

- Daytime use of the PAC shall be limited to 300 attendees. Doors shall not open for daytime uses of the PAC before 9:00 AM, and exiting times shall not occur between 4:00 PM and 6:00 PM. Evening use of the performing arts center shall be limited to 1,500 attendees. Doors shall not open for weekday evening uses of the PAC before 6:30 PM (6:00 PM for weekends and holidays). In no case shall any use of the PAC have an exiting time past 2:00 AM (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 6).
- Doors shall remain closed during events (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 11).
- No tailgating is permitted (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 12).
- No music or amplified sound is permitted outdoors, including the patio area (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 13).
- Ingress security screening policies will be followed based on industry standards followed at HG's Williston Road venue and other comparable venues (State Theater in Portland, ME).
- Higher Ground will comply with all applicable Vermont Liquor Control laws and licenses. HG will coordinate with the Vermont Department of Liquor Control (DLC) and local law enforcement regarding enforcement of state laws and regulations, as well as expected use of the facility for DLC agent training (DLC currently uses the HG Williston Road location as a staff training site, due to a strong track record of HG meeting DLC requirements).
- Once admitted, customers will not be allowed to exit and reenter the PAC venue for any reason.
- A minimum of three security guards will monitor the lobby and parking areas during the show.
- Inside the PAC venue, security staff will monitor customer behavior continuously and intervene as necessary following long-established security policies and procedures. Key HG staff have completed ALICE training and certification.

Post-event Management:

- No tailgating is permitted (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 12).
- Traffic control measures shall be used to empty the parking lots within 30 minutes of the end of any event (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 14).

The post-event management objectives are to:

1. Prevent any alcoholic beverages, or cups of any kind (water included) from leaving the licensed premise;
2. Supervise the crowd to deter any visibly intoxicated individuals from attempting to operate a motor vehicle; and
3. Ensure all guests exit the site as efficiently, rapidly, and quietly as possible, minimizing any disruption to residential neighbors.

At the conclusion of the show, available 'float' security guards will re-deploy to the primary egress route from the building. The doors to the lobby are opened, lights come on, and all ingress staff along with floats form a two-tiered ring to supervise guests as they exit - one group (lobby staff) inside the PAC lobby, and one group (patio egress staff) covering the shared Hub lobby and outdoor patio. Depending on the size of the crowd, there should be more staff focused on the external perimeter ring outside – see deployment details below. All egress happens through the lobby to ensure that all exiting guests must pass through this heavily supervised area. Here are specific staffing protocols based on the size of the show:

Capacity	Protocol
Up to 750	Lobby staff (3-4 guards - IDer, Ticketing, Pat Down staff) will greet guests as they exit through the lobby, scanning for drinks, handing out fliers (if applicable) and thanking guests for coming to the show. Staff inside the lobby should be scanning for drinks and scanning for visibly intoxicated guests. Any guests that clearly should not drive should be described (via radio) to patio egress staff for deterrence techniques to be applied. Patio egress staff (3-4 guards - Floats, Patio, Parking/Lot Patrol) will form a ring around the parking lot side of the front patio in the fire line, doing a second wave of checks for drinks and intoxicated guests, and supervising any groups of people waiting for taxis or rideshares.
750 to 1,000	Same as above. And add additional floats, security lead(s), and Managers on Duty (MOD). Lobby staff can include the back of house MOD, and patio egress staff can include the front of house MOD, bringing headcounts for each team to 5+ (10-12 total). Second ring staff will place a temporary bollard with a sign at the end of Central Avenue indicating <i>Dead End No Event Parking</i> . This will be taken down once the majority of guests have exited the site.
1,000 +	Same as above. And add additional staff to form a third, wider perimeter ring extending out into the parking lots to ensure complete and thorough coverage. All available floats, plus production staff (with security training/background), and MODs to support - bringing total headcount for large scale event egress to 14-15. Third ring staff will direct/assist with any issues (e.g. excessive intoxication, excessive noise, etc.) in the parking lots as the site is emptied. This staffing would include a dedicated position that would be posted near the parking lot exit in the southwest corner of the 266 QCPR property, to monitor and direct vehicle and pedestrian traffic to exit the area smoothly, including discouraging pedestrians from leaving the venue to go into Red Rocks Park. Provide event traffic control at the following locations: 1. Intersection of Home Avenue & Pine Street; 2. Intersection of Central Avenue & Queen City Park Road; 3. Nearby “one-way” bridge on Queen City Park Road (BTV DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 7):

Additional Traffic Flow and Safety Considerations:

- Bike and pedestrian traffic to and from the site will be encouraged/directed to come/go from the north on Queen City Park Road to avoid use of the one-way bridge.
- Signage will be developed and installed on site to support the egress process. Specific sign wording and locations to be determined based on identifying any issues by venue operators and/or cities of Burlington and South Burlington, pinch points experienced during the egress process, feedback from guests/neighbors, etc. This may include signage to clearly mark drop off/pick up locations for rideshare and taxi services, directly in front of the 266 building.

- Pending discussions with the City of South Burlington, assist in the installation of MUTCD W14-1a or W14-2a signage (Dead End, No Outlet) on Central Ave. if desired/required by South Burlington.
 - The approved OMP may otherwise be altered only upon review and approval by the DRB following a public hearing (DRB Permit 20-0854CA/CU dated 9/1/20; Section III-Condition 7).
-

Vermont Agency of Natural Resources, Waste Management and Prevention Division

Construction Site Waste Reduction Plan

Revised May 2017

We have found through experience that planning for waste reduction is crucial to its success. A written, well thought out, job-specific plan, particularly if supplemented by contract specifications, will reduce the amount of waste that needs to be disposed of, and can save money. A valid waste reduction plan should list each waste material of consequence and the estimated quantity, and outline what is to become of that waste material once it is generated. In keeping with the priorities set out in Vermont law, our expectation is that the applicant will make a good faith attempt to avoid generation of waste in the first place, as wastes that are not generated do not need to be managed. For wastes that are unavoidably generated, the applicant should make a reasonable attempt to reuse, salvage, or recycle - in that order of preference. And if none of those options are feasible, the material will need to be disposed of responsibly. As the marketability of a material is dependent on a number of factors, such as quantity, condition, and location of the project, acceptable waste reduction efforts will vary somewhat by application.

Note: As of January 1, 2015, Vermont law requires “architectural waste” to be recycled in certain circumstances, depending on the quantity generated and distance to a recycling facility. Before submitting a plan or contract specifications, applicants are urged to review information regarding the law at:

<http://dec.vermont.gov/waste-management/solid/materials-mgmt/construction-waste>

Please call the Solid Waste Management Program at 828-1138 for planning and waste reduction assistance. We would be happy to help.

Company Name	Burton Corporation – Hub Project
Contact Person	Mike Fialko-Casey
Contact Address	180 Queen City Park Road
Contact Telephone Number	(802)881-2632
Contact Email Address	MikeF@burton.com
Project Location	266 Queen City Park Road, 180 Queen City Park Road
Act 250 Application Project Number	4C0174, 4C0368

Waste Reduction Plans and/or Contract Specifications in support of an Act 250 application should be submitted to: james.surwilo@vermont.gov

Project Description:

(Demolition/renovation/new construction, square footage, commercial/residential/industrial, timeframe, etc.)

The Hub project includes two distinct components as outlined below:

1. Reconfiguration and reconstruction of existing parking lots to improve surface conditions and allow construction of modern stormwater treatment systems.
2. Re-purpose existing 83K SF manufacturing building at 266 QCPR into a Mixed-Use Facility ("Hub") to include the following:
 - a. Burton Flagship Retail Store
 - b. Chill Foundation, a nonprofit that inspires youth to overcome challenges through boardsports.
 - c. Burton Museum and tour
 - d. Prototype/R&D/Manufacturing (existing)
 - e. Other "back of the house" Burton uses such as storage, warranty/repair shop, and photographic studios
 - f. Skatepark (existing)
 - g. Food Court: One or more cafes are proposed to be operated by local eateries providing on-campus food for Burton employees, guests and the general public.
 - h. Performing Arts Center (11,560 sf)

Proposed work includes full depth reconstruction of the parking lots with new curbing and stormwater improvements, along with demolition of interior walls, along with window replacement, entry vestibule construction, and interior renovations to convert warehouse space into a dynamic multi-use activity hub. Construction work is expected to be completed over a 12-month period.

Job-site Planning Worksheet

Attach any extra sheets as needed

Waste Prevention Planning - What steps have been taken to prevent waste from being generated during the project? This could include using designs that favor standard sizes or specifying building techniques that incorporate fewer materials. It could also include asking suppliers to take back excess materials. It could include contacting deconstruction firms to remove salvageable materials before renovation or demolition. **Note: 2012 Vermont Law (10 VSA 6602 et al) will mandate the collection of recyclables, food waste, and yard waste over the next several years. New construction should account for these requirements, e.g., providing additional dumpster areas, ample recycling space, food waste storage areas, and the like.**

Education Plan - Describe how the Construction Site Waste Reduction Plan will be communicated to the general contractor, subcontractors, and all those working on the project. Describe any incentives or disincentives.

Waste reduction requirements will be part of all construction contracts.

Contract specifications –ANR strongly encourages the inclusion of waste management specifications in contract documents. In this way, contractors and subcontractors are obligated to manage jobsite waste appropriately. Will contract specifications include waste management? If yes, please attach.

YES, copy attached.

Reuse & Recycling Worksheet

Material	Estimated Quantity	Management - For markets assistance, contact the ANR at 828-1138, or your local Solid Waste District. When researching recycling options, ask the hauler what will be done with the materials.	Handling Procedure - How materials are to be removed, separated, stored, and hauled for reuse or recycling.
<i>Sample listing:</i> <i>Cardboard</i>	<i>one 3 cy dumpster</i>	<i>Recycled thru ABC Hauling.</i>	<i>Cardboard dumpster will be placed as located on plan sheet. Will call hauler when full.</i>
Asphalt roofing shingles	NA	None anticipated	
Asphalt		Asphalt pavement to be recycled at Pike, Whitcomb, Myers, or Ranger Asphalt Recycling to the maximum practical extent	Materials to be peeled up and either placed in temporary stockpiles or direct loaded into trucks for delivery
Brick	NA	None anticipated	
Cardboard		Cardboard construction waste to be managed by General Contractor	Separated and stored in covered dumpsters for recycling. The contractor is responsible for keeping this material dry
"Clean" Wood		Any untreated, unpainted wood will be brought to the McNeil Wood Depot or Myers Recycling Center	Collected in 30-yard dumpsters for recycling
OSB and Plywood		Collected and brought to a certified facility	Collected in a 20-yard dumpster for recycling if needed
Concrete		Collected and brought to a certified facility. Concrete that cannot be accepted there will go to landfill	Collected in 30-yard dumpsters for recycling

Reuse & Recycling Worksheet page 2

Material	Estimated Quantity	Management - For markets assistance, contact the ANR at 828-1138, or your local Solid Waste District. When researching recycling options, ask the hauler what will be done with the materials.	Handling Procedure - How materials are to be removed, separated, stored and hauled for reuse or recycling.
Metal		Structural steel, steam piping, air ducts, etc. collected and brought to a metal recycling facility to the maximum extent practical	A metal recycling dumpster will be on site during any significant demolition work. Metal waste generated at other times will go to Burton's metal recycling dumpster
Plaster/Drywall		Collected and brought to a certified Recycling Center to the maximum extent practical	Collected in a covered 20-30 cubic yard dumpster (depending on volumes) without mixing with other waste materials and kept dry
"Treated/Painted" Wood		Collected and brought to a certified Recycling Center to the maximum extent practical	Collected in 30-yard dumpsters for recycling
Other (e.g., "blue bin" recyclables)		Collected for recycling at the CSWD Materials Recovery Facility	Collected in 30-yard dumpsters for recycling along with totes and/or bins at locations convenient for use by construction workers
Salvageable Items/Used Building Materials such as windows, doors, moldings, fixtures, bathroom fixtures, etc. (Please list items separately)		HVAC units – reused where possible Showroom lighting – offered for sale Overhead crane – offered for sale if removed Kitchen fixtures and appliances – offered for sale Office furniture – offered for sale or reused Televisions, electronics – sold or donated Windows, doors, glazing sections – sold or donated Other salvageable materials will be offered or sold by Burton to employees and the public or offered to ReStore and/or Habitat for Humanity.	Collected and stored under cover for loading and delivery or for pick up.
Materials banned from landfills		Batteries (lead-acid and rechargeable), paints & stains, gasoline, propane cylinders, tires, electronics, products containing mercury, appliances, explosives, chemicals, liquid waste	Collected by contractor and disposed of at an approved facility



LEGEND

Private Wells

- Incorrectly Located
- GPS Located
- Screen Digitized
- E911 Address Matched
- Welldriller/Clarion
- Unknown Location Method

Public Water Sources

- Active
- Proposed
- Inactive

Ground Water SPA

- Active
- Proposed
- Inactive

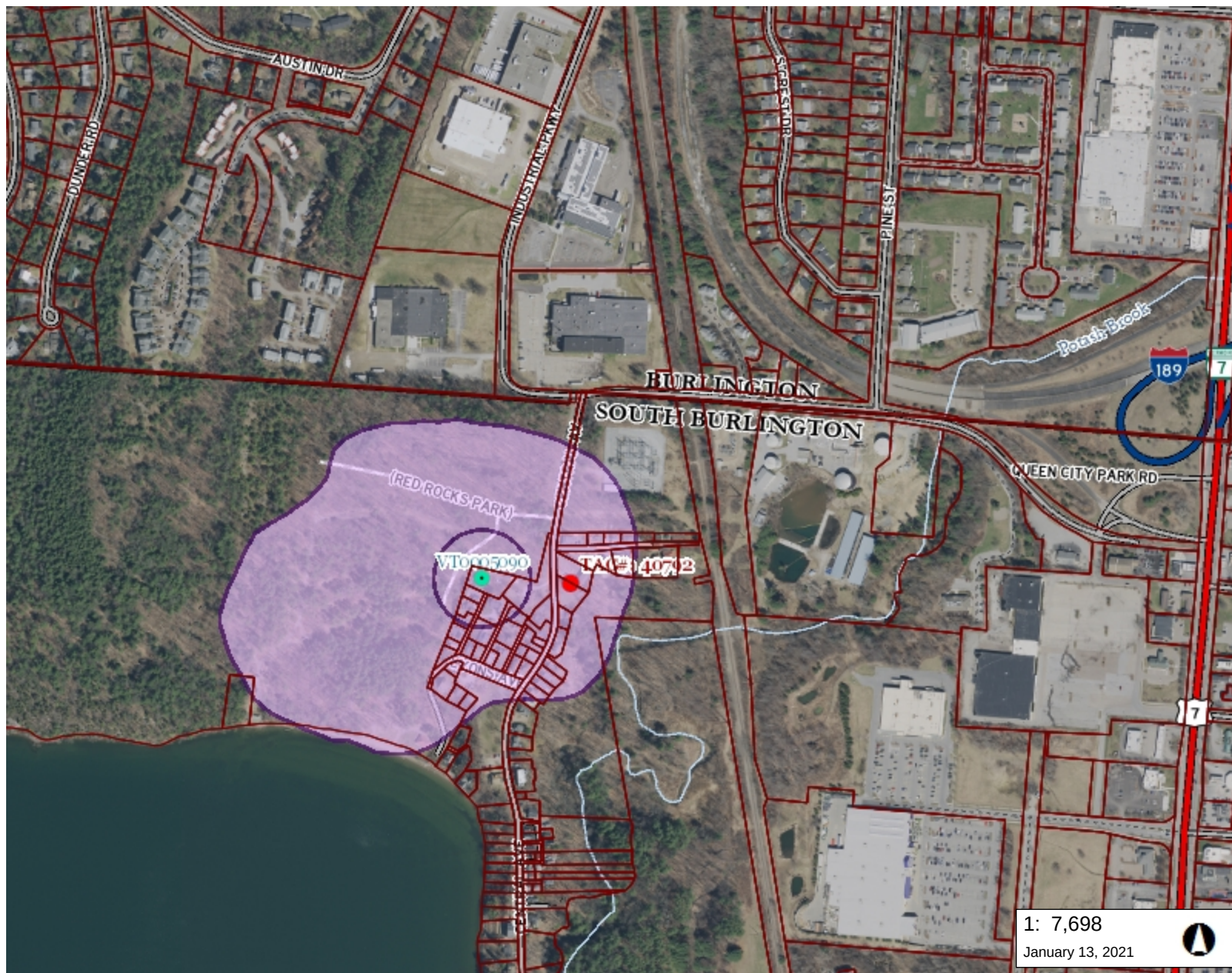
Parcels (standardized)

Roads

- Interstate
- US Highway; 1
- State Highway
- Town Highway (Class 1)
- Town Highway (Class 2,3)
- Town Highway (Class 4)
- State Forest Trail
- National Forest Trail
- Legal Trail
- Private Road/Driveway
- Proposed Roads

NOTES

Map created using ANR's Natural Resources Atlas



391.0 0 196.00 391.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 642 Ft. 1cm = 77 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

CERTIFICATE OF SERVICE

I hereby certify on this 5th day of March, 2021, a copy of the foregoing letters from Susan Molzon and David White of the City of Burlington concerning Act 250 Land Use Permit Application 4C0174-6,4C0368-3, 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.

The Burton Corporation
c/o Justin Worthley, Mike Fialko-Casey, Eric Bergstrom
180 Queen City Park Road
Burlington, VT 05401
justinw@burton.com; MikeF@burton.com; erich@burton.com

John Caulo
LandPlan Development Services, LLC
61 Central Avenue
Burlington, VT 05401
John.caulo@gmail.com

Tyler Barnard
Engineering Ventures
208 Flynn Ave, Suite 2A
Burlington, VT 05401
tylerb@engineeringventures.com

Brian Dunkiel, Jonathan Rose, Malachi Brennan
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
bdunkiel@dunkielsaunders.com; jrose@dunkielsaunders.com;
mbrennan@dunkielsaunders.com

Katherine Schad, Town Clerk
Chair, Selectboard/Chair, Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov; lolberg@burlingtonvt.gov;
jshannon@burlingtonvt.gov

Susan Molzon, Senior Engineer
Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
smolzon@burlingtonvt.gov

Colin McNeil
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
cmcneil@mcneilvt.com

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Chair, Selectboard/Chair, Planning Commission
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575 Dorset Street
South Burlington, VT 05403
dkinville@sburl.com; abolduc@sburl.com; pconner@sburl.com;
memery@sburl.com

Stephen Crowley, Asst. Water Operator
South Burlington Fire District #1
12 Pleasant Ave
South Burlington, VT 05403
steve.crowley1@gmail.com

Taylor Newton
Chittenden County Regional Planning Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpevt.org; TNewton@ccrpevt.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
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District 4 Environmental Commission
Thomas Little, Chair,
Monique Gilbert, Pam Loranger
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nrb.act250essex@vermont.gov

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Mark Furnari
mark.furnari@gmail.com

Dated at Hinesburg, Vermont, this 5th day of March, 2021.

By: /s/ Kimberlee J. Sturtevant
Kimberlee J. Sturtevant, Esq.
Assistant City Attorney
Office of City Attorney & Corporation Counsel
149 Church St., Room 11
Burlington, VT 05401
(802) 865-7121

ksturtevant@burlingtonvt.gov



City of Burlington, VT
149 Church Street, 3rd Floor
Burlington, VT 05401
802.865.7194

www.burlingtonvt.gov/plan

Friday, March 05, 2021

District 4 Environmental Commission
c/o Aaron Brondyke, State Coordinator
111 West Street
Essex Junction, VT 05452

RE: The Burton Corporation; Burlington; #4C0174-6,4C0368-3

Members of the Commission:

On behalf of the City of Burlington, I would like to offer the following comments for the Commission's consideration with regard to the above referenced application from Burton Snowboards, and specifically in response to Criterion 10 comments offered by representatives for the City of South Burlington.

The City of Burlington has spent considerable time and effort in the development of a district master plan for the city's south end ([planBTV: South End Master Plan](#)) which has since been adopted by reference into our duly adopted municipal development plan [planBTV: 2019 Comprehensive Plan](#). The City has also undertaken the creation and adoption of a recent amendment to the [Burlington Comprehensive Development Ordinance \(BCDO\)](#) to reflect several key policy goals found in this plan. As such, we feel the City is best-suited to comment on the conformance of our zoning regulations to our adopted plans, and to interpret the applicability of these plans and regulations to the project currently under review.

Last September Burlington's Development Review Board considered a question similar to Criterion 10 in their Conditional Use Review of this project. In their decision, the DRB made an Affirmative finding under this criterion, unanimously voted to approve this project, and noted the following:

In June 2019, the City Council adopted a zoning amendment (ZA-19-07) to allow additional non-traditional commercial uses in the E-LM zone. The intent of the amendment was three-fold: 1) to prioritize industrial and art production uses in the southern portion of the E-LM zone; 2) to leverage market-rate commercial uses to support more traditional industrial uses; and 3) to expand the allowable area of performing arts centers within the district. The proposed performing arts center is consistent with this intent. It is a newly allowable use of an acceptable size and serves to make Burton's primary industrial use more viable.

(Affirmative finding) (ZP #: 20-0854CA/CU Findings of Fact issued Sept. 4, 2020, p. 2&3)

For additional context, it may be helpful to understand how the City's plans and regulation come together in this instance. Burlington's [planBTV: South End](#) identified 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, this plan recognized the challenge of preserving industrial uses given the market realities and cost of space across the South End, and the need to come up with creative solutions to support these uses. This tension is one that the City frequently grapples with, and has been the catalyst for a number of amendments to the Burlington Comprehensive Development Ordinance (BCDO) in the last several years.

Accordingly, in 2019 the City Council approved a zoning amendment (ZA-19-06, effective 7/24/2019) to leverage various non-industrial commercial uses to help subsidize the cost of space for uses related to industrial and arts purposes. This is accomplished by allowing specified non-industrial commercial uses - including a Performing Arts Center or Studio - only when on the same lot as one or more specified industrial/arts uses. Further, non-industrial commercial uses are limited to no more than 49% of the gross floor area on a lot in order to ensure that industrial and arts uses remain dominant on the site. Such is the case with what is being proposed by Burton in this application.

As part of the statutory process for amending a zoning bylaw, a municipality's Planning Commission is required to prepare a report (24 V.S.A. §4441(c)) which, among other requirements, includes a statement on the proposed amendment's conformance with the adopted municipal development plan. Following is an excerpt of the Commission's approved report for ZA-19-06:

Proposed Future Land Use & Density

The 2014 Municipal Development Plan (planBTV) identified the E-LM zone for encouraging light industry, creative arts/industries, manufacturing, and incubator space for new and emerging businesses in appropriate locations. The plan further called for an evaluation of the district's future—as one that is commercial-industrial in nature, or one that is more mixed-use. The 2019 planBTV update adopted planBTV: South End Master Plan by reference, which is specific to the E-LM zone. This plan provides this evaluation, with the recommendation that the future land use for the southernmost portion of the E-LM is focused on supporting the needs of light industrial, R&D, and industrial arts/maker businesses.

As such, a critical element of the proposed amendment is the new provision which places an emphasis on and creates a protection for these types of uses. This creates a mechanism by which a variety of general commercial uses are permitted in this area only when they are on a lot with an industrial use. planBTV: South End does not identify an exhaustive list of commercial uses which should be permitted or not, but rather indicates that commercial uses not related to Industrial and maker enterprises should be limited, and not be stand-alone uses. Therefore, the proposed amendment is consistent with planBTV: South End Master Plan.

The proposed amendment does not impact the permitted density or intensity of land uses. While some new commercial uses are permitted by this amendment in the southernmost part of the E-LM zone, they are limited in size and subject to conditional use review. Other uses which may have similar parking and/or build out requirements that have been permitted with little restriction are now limited in their overall size relative to the area of a lot and other buildings on the lot.

As such, the City of Burlington stands behind the Findings of the Burlington Development Review Board with regard to this project's conformance with the City's municipal development plan, and their decision to unanimously approve this project

Thank you for your consideration. Should the Commission have any questions, please don't hesitate to contact us.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'D. White', with a stylized, flowing script.

David E. White, FAICP
Director of Planning



City of Burlington
Department of Public Works

Technical Services Engineering Division
645 Pine Street, Suite A
Burlington, VT 05402
P 802-863-9094 / F 802-863-0466 / TTY 802-863-0450
www.burlingtonvt.gov/DPW

Memo

Date: March 5, 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: Burton Corporation Act 250 Application #4C0174-6, 4C0368-3

This communication is being submitted in regards to Section III. Issues, Item #7 of the Pre-Hearing Conference Report & Order for the above referenced project. The existing street markings on Queen City Park Road include Advisory Shoulders to provide a prioritized space for bicyclists and pedestrians. In the Fall of 2020, the City of Burlington repaved the portion of Queen City Park Road between Austin Drive and Central Ave. This work presented the opportunity for a different line striping and pavement marking plan. The planBTV Walk Bike Master Plan recommended Advisory Bicycle Lanes on Queen City Park Road as part of the City of Burlington's long-term bikeway network.

The Department of Public Works reviewed available traffic data on Queen City Park Road, anticipated traffic volumes after construction of the Champlain Parkway project, and the anticipated traffic volumes after the proposed Burton redevelopment. Based on available traffic data from 2018, the average annual daily traffic volume is 1,390 vehicles.¹ Construction of the Champlain Parkway project is not anticipated to impact traffic volumes on Queen City Park Road. The traffic impact study submitted by the Applicant identifies the net trip generation anticipated at the site will be 6 trips during the AM peak hour and 222 trips during the PM peak hour. Based on available traffic data from 2018, the 85th percentile speed on Queen City Park Road is 23 MPH.¹

We consulted Federal Highway Administration's "Small Town and Rural Multimodal Networks" document for guidance on installation of advisory shoulders to determine the appropriateness of this traffic control device on Queen City Park Road. Per FHWA guidance, advisory shoulders are most appropriate on streets with low to moderate volumes and moderate speed motor vehicles. The preferred range is further defined as motor vehicle

¹ Vermont Agency of Transportation. (n.d.). Transportation Data Management System: Traffic Count Data System. Location ID 433. Retrieved from <https://vtrans.ms2soft.com/tcds/tsearch.asp?loc=Vtrans&mod>

volume less than 3,000 average daily total and motor vehicle operating speed less than 25 MPH.²

In conclusion, based on the available traffic data, anticipated traffic volumes and operating speed, the use of advisory shoulders on Queen City Park Road will remain an acceptable application in accordance with FHWA guidance both before and after the proposed Burton Corporation redevelopment.

² U.S. Department of Transportation Federal Highway Administration. (2016). Small Town and Rural Multimodal Networks. Retrieved from https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/small_towns/

Act 250 Land Use Permit Application)
#4C0174-6 & 4C0368-3)
The Burton Corporation, Burlington)

NOW COMES Kimberlee J. Sturtevant of the Office of the City Attorney & Corporation Counsel and hereby enters her appearance as counsel on behalf of the City of Burlington, Party by Right in the above-captioned proceeding. Notices and filings related to these proceedings can be sent to counsel for the City at the address provided below.

CITY OF BURLINGTON

ksturtevant@burlingtonvt.gov

Meagan Tuttle

From: Amy Bovee
Sent: Friday, March 05, 2021 3:29 PM
To: Meagan Tuttle; Layne Darfler
Subject: FW: Burton Corporation Applications 4C0174-6; 4C0358-3 - Opponents' Exhibits

Amy Bovee
Assistant City Clerk
Clerk/Treasurer's Office
City of Burlington
(802) 865-7019

From: Caroline Engvall <caroline@dumontlawvt.com>
Sent: Friday, March 5, 2021 3:23 PM
To: nrb act250essex <nrb.act250essex@vermont.gov>; aaron brondyke <aaron.brondyke@vermont.gov>
Cc: ACCD ProjectReview <ACCD.ProjectReview@vermont.gov>; AGR Act250 <AGR.Act250@vermont.gov>; ANR.Act250 <ANR.Act250@vermont.gov>; AOT Act250 <AOT.Act250@vermont.gov>; John caulo <John.caulo@gmail.com>; MikeF <MikeF@burton.com>; PSD VTDPs <PSD.VTDPs@vermont.gov>; TNewton <TNewton@ccrpcvt.org>; abolduc <abolduc@sburl.com>; barry murphy <barry.murphy@vermont.gov>; bdunkiel@dunkielsaunders.com; burlingtontownclerk <burlingtontownclerk@burlingtonvt.gov>; cmcneil@mcneilvt.com; dkinville <dkinville@sburl.com>; erich <erich@burton.com>; James Duggan <james.duggan@vermont.gov>; Jonathan Rose <jrose@dunkielsaunders.com>; Joan Shannon <jshannon@burlingtonvt.gov>; James Dumont <dumont@gmavt.net>; justinw <justinw@burton.com>; Lori Olberg <lolberg@burlingtonvt.gov>; mbrennan <mbrennan@dunkielsaunders.com>; memery <memery@sburl.com>; paulb <paulb@engineeringventures.com>; pconner <pconner@sburl.com>; permitting <permitting@ccrpcvt.org>; Scott Dillon <scott.dillon@vermont.gov>; Susan Molzon <smolzon@burlingtonvt.gov>; Steve Crowley <steve.crowley1@gmail.com>; tylerb <tylerb@engineeringventures.com>
Subject: Burton Corporation Applications 4C0174-6; 4C0358-3 - Opponents' Exhibits

[WARNING]: This email was sent from someone outside of the City of Burlington.

Good afternoon,

Attached is a Dropbox link to the Opponents' Exhibits A-O with a Exhibit List, a letter to the Commission, and a Certificate of Service. The same has been uploaded to the ftp site.

Thank you and let us know if you have any trouble accessing.

<https://www.dropbox.com/sh/stca19mekv4qhi1/AADmxvPqqOBAVhsoHQC40pgga?dl=0>

~ *Caroline (she/her)*

Caroline Engvall, Legal Assistant
Law Office of James A. Dumont, Esq.
15 Main Street
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Bristol, VT 05443

Ph) 802-453-7011
Fax)802-505-6290

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

To: District 4 Environmental Commission
From: South Burlington Fire District #1 (SBFD#1), by Stephen Crowley, Asst. Water Operator, with Sharon Behar and Steve Cafilisch
Re: Act 250 Land Use Permit Application Nos. 4C0174-6, 4C0368-3 – The Burton Corporation, Burlington
Date: March 5, 2021

SBFD#1 SUPPORTING DOCUMENTS FOR MARCH 10 HEARING

SBFD#1 is submitting the attached documents with regard to the Burton application.

1. A map derived from the VT ANR Natural Resources Atlas, showing the location of SBFD#1 property and the SBFD#1 Source Protection Area relative to the proposed project site.

The following documents are submitted to demonstrate the nature of the legacy toxics situation on the site, along with recent communications about an update of the site assessment now in process under the IRule, under the auspices of the Department of Environmental Conservation. We hesitate to inundate the Commission with all of these, some of which are voluminous, and we do not seek to dive into any details. Our purpose in submitting them is to demonstrate that there is, in fact, a serious contamination issue. It is our hope that the ongoing process will enable the applicant to satisfy their burden under Criterion 1.

2. December 31, 1985 EPA Site Visit, G.E. Building 41 Plating Shop
3. January 24, 2001, Environmental Assessment Final Report, General Dynamics Armament Systems, Building 41
4. October 23, 2020 communication from Lynda Provencher of the Department of Environmental Conservation to the Burton Corporation requesting a careful updated site analysis.
5. Dec. 15, 2020 study proposal by VHB on behalf of Burton.
6. Dec 22, 2021 memo from Dan Voisin of Stone Environmental to DEC, on behalf of SBFD#1, in response to the study proposal.
7. January 12, 2021 memo from Lynda Provencher approving revisions to the study plan.

In brief, the history shows a number of identified areas of concern, along with numerous specific examples over time. The key concerns area disposal trench at the NW corner of the site, a number of above surface piles of soil undergoing gradual decontamination, and various locations under the floor of the building.

In November, 2020, concerned citizens identified several historic records showing the existence of legacy contamination at the site. Lynda Provencher of DEC sent Burton Corporation a memo requesting an update of the site evaluation to account for gaps in the previous work.

On December 15, Burton's contractor, VHB, responded with a site review proposal. SBFD#1 engaged Dan Voisin of Stone Environmental to evaluate the plan, and his reply comments were sent to DEC on December 22. Lynda Provencher then shared that with VHB, requesting that the study plan be revised. By mid-January, VHB responded with a minor revision.

The VHB study is formulated to involve a first round of assessment, to be followed by a second round based on the findings of the first and any gaps in the study. The current status is that the first round is under way, so the second round has not been clearly defined at this point.

SBFD#1 has identified a number of important gaps in the first round, including clarifying the status of the etching waste disposal trench, including PFAS assessment, and drilling sample points at the southern boundary to confirm the absence of any migration of toxics toward the SBFD#1 well.

It is clear that, given the legacy of toxic contamination, there are activities within the scope of the proposed project that could cause harm for the SBFD#1 water supply. It is the position of the Fire District that these concerns and others could be addressed by the process underway with the DEC, and thus satisfy the applicant's burden of proof under Criterion 1 of Act 250. However, that is not yet the case, and with the VHB iterative approach to the study, it may take time.

State of Vermont
Department of Environmental Conservation
Waste Management & Prevention Division
1 National Life Drive – Davis 1
Montpelier, VT 05620-3704
(802) 249-5562
lynda.provencher@vermont.gov

October 23, 2020

Burton Snowboards
Attn: Justin Worthley (via email)
80 Industrial Ave.
Burlington, VT 05401

RE: Former General Dynamics facility; 152 Industrial Ave., Burlington; SMS Site #2020-4979;
Request for Site Investigation

Dear Mr. Worthley:

The Agency of Natural Resources (ANR), Department of Environmental Conservation (DEC), Waste Management and Prevention Division (WMPD), Sites Management Section (SMS), was recently contacted regarding concerns surrounding historical contamination at the former General Dynamics facility located on 152 Industrial Avenue in Burlington, currently the Burton Snowboards – Craig's Protoshop facility. The SMS subsequently reviewed the data and information in the site file, which was given a Site Management Activity Completed (SMAC) designation in 1998. We have a number of 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. Review of the site file indicates that additional work is required to determine if contamination from historic releases or threatened releases is present which may pose a risk to human health and the environment.

Information included in the site file indicates that several releases of hazardous materials were identified and addressed at the General Dynamics site in the 1980s and 1990s. Previous investigations mainly focused on releases from former underground storage tanks (USTs), onsite treatment of contaminated soil, and soil samples collected from near sumps underneath the building slab. Soil and groundwater samples were collected from limited areas on the site and did not contain evidence of contamination above existing standards. The site was closed in 1998 under the assumption that it was continuing to be used as an industrial property.

During our recent review of the site file, it became apparent that the historic site investigations do not meet current requirements outlined in the VTDEC's Investigation and Remediation of Contaminated Properties Rule (IRule). VTDEC concerns include the following:

1. Investigations conducted historically (most recently in 2000) were not comprehensive and do not address all areas where releases may have occurred during the production operations while owned by General Dynamics, both within the building and outside of the building. Soil sampling beneath the building footprint took place near former sumps in the plating room, but not at other locations throughout the building where releases may have occurred during the various onsite operations.
2. Soil gas samples were not collected beneath the slab. Soil gas could contain various contaminants and could be migrating to indoor air.



3. Our site files indicate the current building was constructed in 1962. This falls within the timeframe when there was widespread use of PCBs in building materials including caulking, paint, flooring, etc. If present, PCBs could be impacting indoor air at concentrations in excess of screening values, and also may be present in exterior surface soil.
4. Historical manufacturing processes conducted by General Dynamics may have used hazardous chemicals containing Perfluoroalkyl Substances (PFAS), which subsequently may have been released to the environment. These compounds may be present in groundwater and soil.

The VTDEC's IRule allows for reopening of previously closed sites in specific circumstances. The relevant sections in the IRule include the following:

§35-1001(f). Reopening of SMAC designation. The Secretary may require additional investigation or remediation of a designated site upon finding any of the following:

- (1) Previous remediation activities were inadequate;
- (3) New information is discovered regarding the migration of the hazardous materials, health effects of the hazardous materials, or site conditions;
- (5) A new hazardous material is listed or identified that requires a response by the PRP;
- (9) Any other condition that presents a threat of unreasonable exposure to humans or the environment from a hazardous material that was released from the site.

As current owner of the property where a release may have occurred, Burton Snowboards must retain the services of a qualified environmental consultant to conduct the following:

- A. Develop a site investigation work plan for approval in accordance with §35-304 of the IRule (https://dec.vermont.gov/sites/dec/files/wmp/Sites/0706.IRULE_.pdf). The work plan must be submitted to the SMS by November 20, 2020, and must meet the objectives of a site investigation, per IRule §35-302, and include all work plan requirements listed in IRule §35-304(b).
- B. The site investigation report must be submitted within 90 days of receiving of receiving final laboratory data.

Failure to conduct the necessary site work is a violation of Vermont Statutes and may result in State Enforcement Action. Enforcement Action may be a Civil Complaint and penalty pursuant to 10 V.S.A §8019 or an Administrative Order pursuant to 10 V.S.A §8008 including compliance order, penalties, corrective action, and any other measures deemed appropriate.

SMS Site #2020-4979 has been assigned to the property for tracking purposes. This number must be referenced on all submitted documentation pertaining to the site.

Feel free to contact me with any questions.

Sincerely,



Lynda Provencher Project Manager
Sites Management Section

Additional Information:

A list of environmental consultants that perform this type of work in Vermont can be found at https://dec.vermont.gov/sites/dec/files/wmp/Consult.lst_.pdf.

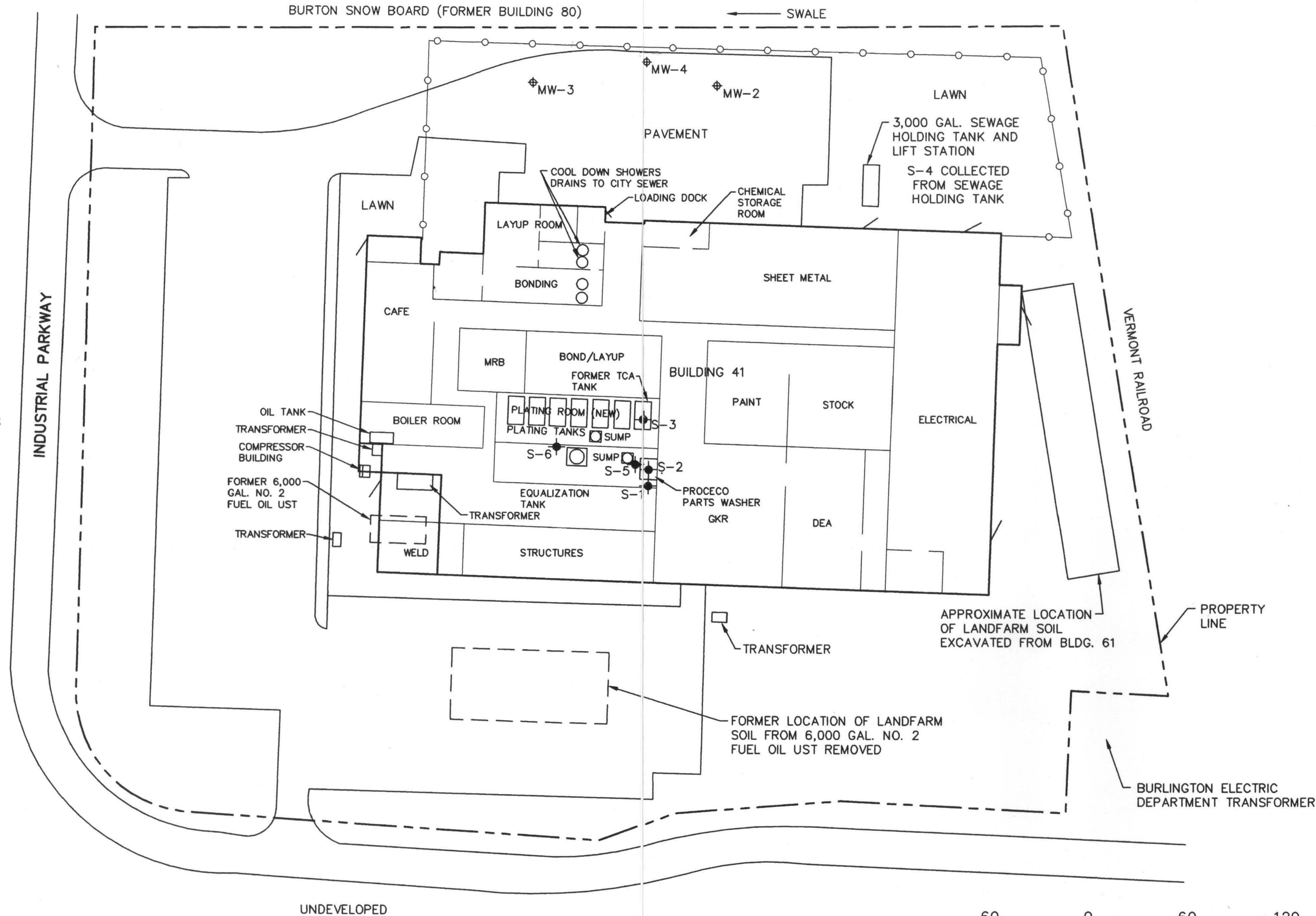
Lead-based paint and asbestos containing building materials are regulated by the Vermont Department of Health (VDH). If asbestos containing materials and/or lead are discovered on the property in the future, or if asbestos or lead-based paint contaminants are detected in soil, Please contact the Asbestos and Lead Regulatory Program at <http://healthvermont.gov/enviro/asbestos/asbestos.aspx>.

In the event that information regarding the use of PCBs on the property becomes available, or if evidence of PCB contamination is discovered, the SMS recommends that you contact the EPA Region 1 PCB Coordinator, Kim Tisa, at (617) 918-1527, or via email at tisa.kimberly@epa.gov.

FILENAME: 300002B.DWG

LEGEND

S-1 • DECEMBER 2000 SOIL BORING LOCATION



60 0 60 120

SCALE IN FEET
1" = 60'-0"

REVISIONS		NO.	DESCRIPTION	DATE	BY
DESIGNED BY:	X				
DRAWN BY:	K.P.B.				
CHECKED BY:	X				
APPROVED BY:	X				

ENSR[®]
INTERNATIONAL
2 TECHNOLOGY PARK DRIVE
WESTFORD, MASSACHUSETTS 01886
PHONE: (978) 589-3000
FAX: (978) 589-3100
WEB: HTTP://WWW.ENSUR.COM

SITE PLAN / FACILITY LAYOUT LOCKHEED MARTIN BUILDING 41 INDUSTRIAL PARKWAY BURLINGTON, VERMONT			
SCALE: 1" = 60'	DATE: 1/01	PROJECT NUMBER: 3000-012-100	

FIGURE NUMBER:
3
SHEET NUMBER:
1

266 Queen City Park Road (Formerly 152 Industrial Parkway) Former General Dynamics Facility

Site Investigation Work Plan

PREPARED FOR

The Burton Corporation
180 Queen City Park Road
Burlington, Vermont 05401

PREPARED BY



40 IDX Drive, Building 100, Suite 200
South Burlington, VT 05403

December 15, 2020

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Figure 2 – Site Vicinity Map

Figure 3 – Proposed Sample Locations-Former Building Layout

Figure 4 – Proposed Sample Locations-Orthophotograph

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Appendix A – Standard Operating Procedure for Installation and Extraction of the VaporPin

Appendix B - Operating Procedure for Sub-Slab Soil Vapor Sampling

Appendix C - South Burlington Fire District Supply Well PFAS Analytical Results

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List of Acronyms

1,2-DCE	1,2-dichloroethane
AST	Aboveground Storage Tank
CERCLIS	Comprehensive Environmental Response, Compensation, And Liability Information System
COC	Chain of Custody
DEC	Vermont Department of Environmental Conservation
EAI	Eastern Analytical, Inc.
EPA	United States Environmental Protection Agency
ESA	Environmental Site Assessment
fbgs	Feet Below Ground Surface
GBIC	Greater Burlington Industrial Corporation
GC/MS	Gas Chromatography Mass Spectrometry
GDAS	General Dynamics Armament Systems
GE	General Electric
GPS	Global Positioning System
IDW	Investigation Derived Waste
IRule	DEC Investigation and Remediation of Contaminated Properties Rule (July 2019)
JCO	The Johnson Company
NFRAP	No Further Remedial Action Planned
NRSS	Non-residential Vermont Soil Standard
PAH	Polycyclic Aromatic Hydrocarbons
PCB	Polychlorinated Biphenyl
PFAS	Per- and Polyfluoroalkyl Substances
PID	Photoionization Detector
ppm	parts per million
PRG	Preliminary Remediation Goal
QA/QC	Quality Assurance / Quality Control
QAPP	Quality Assurance Project Plan

RBC	Risk-Based Concentrations
RCRA 8 metals	Resource Conservation and Recovery Act list of eight metals
RSL	Regional Screening Level
SIM	Selective Ion Monitoring
SMAC	Sites Management Activities Completed
SMS	Sites Management Section
SOP	Standard Operating Procedure
SSG-VIS	Sub-slab Soil Gas – Vapor Intrusion Standards
SVOC	Semi-Volatile Organic Compound
TCA	1,1,1-trichloroethane
TCE	Trichloroethene
TO-15	Toxic Organics – 15
TPH	Total Petroleum Hydrocarbons
TSCA	Toxic Substances Control Act
UST	Underground Storage Tank
VHB	Vanasse Hangen Brustlin, Inc.
VOC	Volatile Organic Compound
VT-MCL	Vermont Maximum Contaminant Level

Certification

This Site Investigation Work Plan was prepared under my direction and outlines sub-slab soil gas, concrete, and soil investigation activities proposed for the former General Dynamics facility located at 266 Queen City Park Road (Formerly 152 Industrial Parkway; Parcel ID: 114-035-20463) in Burlington, Vermont.

I certify under penalty of perjury that I am an environmental professional and that all content contained within this deliverable is to the best of my knowledge true and correct.

By:  Date: 12-15-2020

*Kurt Muller, Vermont P.E. #74407
Vermont Director of Site Investigation & Remediation
VHB*

1

Introduction and Background

1.1 Introduction

Vanasse Hangen Brustlin, Inc. ("VHB") was retained by the Burton Corporation ("Burton") to perform a site investigation at the former General Dynamics facility known as Building 41 located at 266 Queen City Park Road (Formerly 152 Industrial Parkway) in Burlington, Vermont (the "Site"; see **Figure 1**). The site investigation is being performed in response to an October 23, 2020 letter from the Vermont Department of Environmental Conservation ("DEC"), stating "additional work is required to determine if contamination from historic releases or threatened releases is present which may pose a risk to human health and the environment" (see Section 1.4). DEC Sites Management Section ("SMS") assigned the Site SMS# 2020-4979 to track subsequent environmental investigations at the Site. The purpose of the site investigation proposed herein is to address DEC's concerns regarding the potential risk to human health and the environment. Specifically, VHB understands that DEC is concerned about potential historic contamination that may not have been investigated to the extent the current standard demands, as well as potential threats of releases from historic operations that may also be present at the Site (see Section 1.4).

1.2 Site Description and History

The Site consists of a 6.9-acre parcel located on the north and east side of Queen City Park Road in Burlington, Vermont as shown on **Figure 2**. The Site is owned by Burton and contains an approximately 85,000 square foot commercial building that is currently used for a number of commercial purposes including storage, offices, manufacturing, product showroom, and a photograph studio. A skate park is also located in the building. Parking areas and greenspace comprise the majority of the exterior portions of the Site. The latitude and longitude of the center of the Site is [44.447251°, -73.219229°]. The Site is bounded by Queen City Park Road to the south and west, a railroad corridor to the east, and commercial buildings to the north.

Information for Current and Past Property Owners

The following information is VHB's and Burton's current understanding of the property history, and may be subject to revision in the future based upon the review of additional information.

<i>Date</i>	<i>Owner</i>	<i>Operator/tenant (if any)</i>
2007–present	The Burton Corporation Justin Worthley Senior Vice President 180 Queen City Park Road Burlington, VT 05401 802-651-0499 JustinW@burton.com	GDAS leased a portion of the building until 2014.
2005–2007	Stag II Burlington, LLC c/o STAG Capital Partners	General Dynamics Armament and Technical Products, Inc.
Dec. 2001–2005	GP Vermont Industrial I, LLC	General Dynamics Armament and Technical Products, Inc.
Jun. 2001–Dec. 2001	GP Burlington Industrial, LLC c/o Gilbane Properties, Inc.	General Dynamics Armament and Technical Products, Inc.
1997–Jun. 2001 (owned)	General Dynamics Armament Systems, Inc. (f/k/a/ Lockheed Martin and General Electric Co.)	
1991 - 1997	Martin Marietta Corporation (merged to form Lockheed Martin Corp. in 1994)	
1985–1991	General Electric	G.E. – constructed a 20,000 square foot addition to house a wiring and electrical assembly operation.
1962–1985	GBID	G.E. leased Building #41 (Plating Shop)

The property was reportedly undeveloped land until 1961 when a 65,000 square foot building was constructed by the Greater Burlington Industrial Corporation ("GBIC") as a speculation building that was subsequently acquired by Cynosure, Inc. General Electric ("GE"), the first tenant, leased the building from Cynosure from 1962 to 1985. In 1985, GE purchased the building. In 1979, GE constructed a 20,000 square foot addition to house a wiring and electrical assembly operation. Martin Marietta (which merged to form Lockheed

Martin in 1994) purchased the property in 1991 from GE. General Dynamics Armament Systems ("GDAS") purchased the property from Lockheed Martin in 1997. Burton purchased the property from GDAS in 2007 and leased approximately 1/3 of the building to GDAS until 2014 when GDAS left Burlington. Burton continues to own the property and utilizes it as described above.

Former production operations inside the building over the period from 1962 to 1997 included the manufacture of ammunition helixes and wiring harnesses for weapons systems, the assembly of printed circuit boards, sheet metal forming and assembly, painting operations, a phosphate anodizing electroplating line, and various assembly areas. General maintenance, office, storage, cafeteria and locker room areas were also located in the building.

1.3 Hydrogeology

Results from previous groundwater investigations indicate that depth to groundwater at the Site is quite shallow (approximately 2 feet below ground surface, "fbgs") and groundwater flow direction is to the northwest (Wehran, 1989). Soil boring logs prepared by Wehran Engineering Corporation (1989) identified a 2 to 6-foot-thick layer of sand and gravel fill overlying a thin silt layer. Clay was encountered beneath the silt layer at depths ranging from 6 to 10 fbgs. Due to the shallow silt and clay confining layer it is anticipated that groundwater elevation at the Site experiences exaggerated fluctuations as a result of spring snowmelt and heavy rain events and drought conditions. A rail corridor abutting the Site to the east is cut into a deep ditch (~15-20 feet deep) which is likely to hydrogeologically separate the shallow groundwater aquifer at the Site from properties east of the rail corridor.

1.4 Previous Environmental Investigations and Remediation

Based on the documents available for review by VHB, numerous investigative and remedial activities have occurred at the Site from 1970 through 2005. These activities are summarized in the following paragraphs. Details on these activities are presented in the references cited.

In 1970, approximately 600 gallons of etching solution (sodium dichromate, sulfuric acid, chromium, and aluminum) from the phosphate plating area was released to drainage ditch located along the northwestern corner of Building #41. The etching solution was mixed with ferrous aluminum sulfate, covered with lime, and the ditch was filled in with soil. The ferrous aluminum sulfate would likely have been used to reduce the hexavalent chromium in the sodium dichromate to trivalent chromium. Lime would have been added to raise the pH to precipitate the trivalent chromium as chromium hydroxide. An assessment was conducted in 1985 and DEC designated the spill as a "low priority" given the small volume and one-time event. Sampling of Potash Brook and a nearby municipal drinking water supply well in 1986 showed non-detect for chromium (EPA, 1985; EBI, 2005). Furthermore, the South Burlington Fire District Supply Well was sampled seven times for metals (including chromium) between 1993 to 2014. Chromium was not detected at concentrations exceeding laboratory reporting limits in all seven of the sampling events with the following exception. Chromium was

detected during one sample event at a low-level concentration above the method detection limit, but less than the laboratory reporting limit (Vermont Agency of Natural Resources, 2020).

In 1988, three underground storage tanks ("USTs") were removed from Building #41: a 6,000-gallon fuel oil tank (Tank #23); a 3,000-gallon fuel oil tank (Tank #24); and a 550-gallon solvent tank (Tank #25). Petroleum-impacted soil associated with all three tanks was discovered but because of the low headspace photoionization detector ("PID") readings, the soils for all three tanks were returned to the excavations. Groundwater in the vicinity of Tank #25 had low levels of ethylbenzene, xylenes and 2-butanone. Monitoring of five groundwater wells was conducted quarterly from 1989 until 1991 when levels dropped below DEC groundwater standards (Wehran, 1989; DEC, 1998).

In 1990, approximately 450 cubic yards of soil impacted with water soluble coolants, cutting oils and #2 fuel oil were removed from GDAS' Building #61 and land farmed in an area east of Building #41. With approval from DEC, GDAS placed soils on a double plastic liner with a 6-inch layer of sand in between. Sampling and analysis of the land farmed soil was conducted in 1990, 1995, and 1997. Samples were analyzed for total petroleum hydrocarbons ("TPH"); volatile organic compounds ("VOCs") including chlorinated VOCs; and semi-volatile organic compounds ("SVOCs"). Landfarming of the soils was successfully completed in 1997 (GE, 1990; Sprague, 1996; Sprague, 1997; DEC, 1998; EBI, 2005).

In 1990, 80 to 100 gallons of 1,1,1-trichloroethane ("TCA") was spilled from an above ground storage tank ("AST") to a secondary containment area in the vicinity of the phosphate plating line in Building #41. Approximately 98 gallons of TCA were recovered, however, a small amount of TCA may have entered the municipal sewer system. The recovered TCA was properly disposed of off-site. No further action was taken by either the DEC or the City of Burlington until 2000 when sub-slab soil sampling (described below) was conducted under the containment structure (ENSR, 2001; EBI, 2005).

In 1992, lead dust from the ventilation system of a wave flux unit located in the southeast corner of the Building #41 was deposited on exterior surface soils immediately adjacent to the ventilation hood. Approximately two cubic yards of surface soil were removed directly below the vent area. Subsequent sampling of surface soils indicated elevated levels of lead did not exist (EBI, 2005).

In 1992, approximately 500 cubic yards of oil-stained soil was excavated from the former location of the 6,000-gallon fuel oil UST Tank #23 and land farmed on a portion of the asphalt parking lot of Building #41. Soil samples were analyzed for Total Hydrocarbons. The soil was remediated to below the DEC cleanup goal of 300 ppm in September 1992 and used for daily cover at the Burlington Landfill (GE, 1992; VTANR, 1992; DEC, 1998; ENSR, 2001).

In 1993, approximately 47 gallons of hydraulic oil were released to the Burlington sanitary sewer system. The spill was identified as #93-127 but no further action was requested by the DEC (EBI, 2005).

Based on information in the site investigation and remedial reports for the 1970 etching solution spill, the 1988 removal of USTs #23, #24, #25, and the 1990 land farmed soil from

Building #61, DEC issued GDAS a Sites Management Activities Completed ("SMAC") letter on August 7, 1998. This letter stated that the Site did not pose any unacceptable risk to human health or the environment and that no additional work was required at that time.

In 2000, General Dynamics conducted sub-slab soil sampling from five locations under Building #41. Samples were collected from near two existing sumps in the new and old plating rooms, a former degreaser where floor staining was visible, in the vicinity of the former chromic acid process tank, and the former TCA AST secondary containment structure where the reported release occurred in 1990. All samples were analyzed for VOCs, SVOCs, and the Resource Conservation and Recovery Act list of 8 metals ("RCRA 8 metals"; arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver). Samples collected under the TCA AST containment structure (discussed above) indicated no evidence of a release of TCA to the environment. The only organic compounds detected were trichloroethene ("TCE") and 1,2-dichloroethane ("1,2-DCE"). Concentration levels of TCE and 1,2-DCE detected in two sub-slab sampling locations were below the U.S. Environmental Protection Agency ("EPA") Region 3 Risk-Based Concentrations ("RBCs") and the Region 9 Preliminary Remediation Goals ("PRGs") for industrial soil. Soil samples from the other three sub-slab locations did not have detectable concentrations of TCE or 1,2-DCE or any other organic compounds. Levels of arsenic at all five of the sub-slab soil sampling locations exceeded the RBCs and PRGs for industrial soil but were in the background concentration range for this metal in the northeast. DEC concluded the levels of contaminants found in the soil beneath Building #41 did not pose any unacceptable risks to human health or the environment and, therefore, no additional response actions were required (DEC, 2000; ENSR, 2001; EBI, 2005).

An Environmental Site Assessment ("ESA"), conducted by EBI in 2005, noted the presence of one additional UST and three additional ASTs at the Site: a 3,000-gallon buried septic for wastewater; a 550-gallon AST for #2 heating oil; a 300-gallon AST for diesel fuel; and four 75-gallon ASTs for hot water and compressed air. EBI noted that all tanks appeared to be in good condition with no significant staining (EBI, 2005). A site walkover conducted by VHB on November 12, 2020 verified that these ASTs are no longer present at the Site, but the septic tank remains and is still in use.

EBI's 2005 ESA also noted the existence of three pad-mounted transformers at the Site. One transformer, owned by Burlington Electric and located on the south side of the Building #41, showed no indications of leaks or staining on or below the transformer casing. The other two transformers were located on the southwestern corner of Building #41. Both transformers were property owned. The smaller of the two transformers showed no indications of leaking or staining. This transformer also had a non-polychlorinated biphenyl ("PCB") label. The larger of the two transformers showed evidence of leaking with oil staining on the concrete pad, asphalt and dirt beneath the unit. No label was on the transformer. EBI cited a 2005 letter from Clean Harbors indicating the fluid from this transformer had been drained, soil samples were found to be PCB-free, and the stained area of the concrete pad had been chemically cleaned. A subsequent wipe sample indicated it was PCB-free (EBI, 2005).

Finally, EBI noted in their 2005 Phase I ESA that they had contacted EPA and the DEC who confirmed that the case had been closed based on the findings of previous assessments and

that the Comprehensive Environmental Response, Compensation, And Liability Information System ("CERCLIS") listing was in the process of being changed to "No Further Remedial Action Planned" ("NFRAP"). EBI further noted that the DEC had issued a SMAC designation in August 1998 for the historical environmental issues, including three USTs that have been removed from the Subject Property.

1.5 Request for Site Investigation

In an October 23, 2020 letter from DEC SMS to Burton, DEC SMS stated that it was contacted regarding concerns surrounding historical contamination at the 266 Queen City Park Road former General Dynamics facility, currently owned by Burton. As a result, DEC reviewed environmental reports and documents pertaining to previous environmental investigations and outlined a number of potential environmental concerns they had in a *Request for Site Investigation* letter to Burton (the current property owner) dated October 23, 2020. DEC's specific concerns include the following:

1. *Investigations conducted historically (most recently in 2000) were not comprehensive and do not address all areas where releases may have occurred during the production operations while owned by General Dynamics, both within the building and outside of the building. Soil sampling beneath the building footprint took place near former sumps in the plating room, but not at other locations throughout the building where releases may have occurred during the various onsite operations.*
2. *Soil gas samples were not collected beneath the slab. Soil gas could contain various contaminants and could be migrating to indoor air.*
3. *Our site files indicate the current building was constructed in 1962. This falls within the timeframe when there was widespread use of polychlorinated biphenyls ("PCBs") in building materials including caulking, paint, flooring, etc. If present, PCBs could be impacting indoor air at concentrations in excess of screening values, and also may be present in exterior surface soil.*
4. *Historical manufacturing processes conducted by General Dynamics may have used hazardous chemicals containing Perfluoroalkyl Substances ("PFAS"), which subsequently may have been released to the environment. These compounds may be present in groundwater and soil.*

1.6 Site Investigation Objectives

The purpose of the proposed site investigation is to address DEC's concerns regarding environmental data gaps at the Site listed in the October 23, 2020 *Request for Site Investigation* letter and summarized in Section 1.4.

1.7 Regulatory Requirements

This Work Plan meets the requirements of a Site Investigation Work Plan and was prepared in accordance with DEC's 2019 Investigation and Remediation of Contaminated Properties Rule ("IRule"). The proposed work will be conducted in accordance with Section 3 of the IRule.

1.8 Performance Standards

The building and property are currently used for commercial/non-residential purposes. Also, this area of Burlington is zoned as Enterprise – Light Manufacturing, designating the property as non-residential per the IRule. Therefore, analytical results will be compared against non-residential or industrial standards as described in the following sections.

1.8.1 Soil Gas Standards

The analytical results of the sub-slab soil gas samples will be compared to the Non-resident Sub-slab Soil Gas – Vapor Intrusion Standards ("SSG-VIS") in the IRule.

1.8.2 Soil Standards

The analytical results of the soil samples will be compared to the Non-residential Vermont Soil Standards ("NRSS") in the IRule or the current EPA Regional Screening Levels ("RSL") for industrial sites.

1.8.3 Concrete Standards

The analytical results of the concrete samples will be compared to the Toxic Substances Control Act ("TSCA") guidance thresholds defined in the *Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA)* dated November 2005. The November 2005 guidance document states that TSCA does not restrict use of porous surfaces such as stained concrete, containing a concentration of PCBs less than or equal to 1 mg/kg total PCBs. At concentrations greater than 1 mg/kg total PCBs, action must be taken to address a potential exposure risk if the material will be reused.

2

Conceptual Site Model

Several releases of hazardous materials were identified and appropriately addressed at the Site in the 1980s and 1990s. Previous investigations mainly focused on releases from former USTs, onsite treatment of contaminated soil, and soil samples collected from near sumps underneath the building slab. Soil and groundwater samples were collected and did not contain evidence of contamination above existing standards at that time (DEC, 2020). The Site was issued SMAC designation in 1998 by DEC under the assumption that it was continuing to be used as an industrial property.

After DEC's recent review of Site environmental investigation reports and documents, DEC suggested that the historic site investigations do not meet current requirements outlined in the IRule. Subsequently, DEC identified four items of concern in a *Request for Site Investigation* letter dated October 23, 2020 (see Section 1.4).

The site investigation presented herein will address DEC concerns 1 and 2 through sub-slab soil gas sampling to identify if potential contamination of soil and groundwater beneath the building slab are impacting soil-gas. Soil sampling of landfarmed soil located east of the building will also be performed. DEC concern 3 will be evaluated through bulk concrete sampling of stained concrete to determine if a PCB release has occurred in areas where staining was identified. Due to the lack of evidence that PFAS-containing substances were used during manufacturing processes at the Site and the lack of PFAS impacts to the nearby South Burlington Fire District supply well (see Section 3.3), PFAS sampling is not warranted.

3

Investigation Strategy

The proposed site investigation will consist of a multi-day field effort involving the installation and leak testing of sub-slab soil gas points, sub-slab soil gas sampling, advancement of soil borings to collect soil samples of the landfarmed soil, and concrete sampling. Details specific to the proposed site investigation are provided in the following sections.

3.1 Utility Clearance

Prior to conducting intrusive activities on outdoor portions of the Site, VHB will pre-mark the Site using marking paint and/or stakes and flagging. As required by law, these areas will then be cleared for subsurface utilities by Dig Safe®. In addition, VHB will contact non-member utilities to clear the Site for the presence of utilities that are not marked out by Dig Safe®. VHB will also mark the proposed locations of the sub-slab soil gas sample points on the floor of the building. It is assumed that Burton will clear the sub-slab soil gas sample locations in the building. Should the location or presence of sub-slab utilities be unknown, VHB will request the services of a private utility locator to clear the proposed sub-slab soil gas sample locations of utilities.

3.2 Site-Specific Investigation Procedures

Details specific to the methodology proposed to sample sub-slab soil gas and concrete are discussed in the Sections below. Proposed sample locations are shown in **Figure 3** and **Figure 4**.

3.2.1 Sub-slab Soil Gas Sampling

Sampling of soil and groundwater beneath the building to evaluate for the presence of subsurface impacts is not appropriate at this time given the lack of evidence of specific areas where a release may have occurred. However, in order to more broadly understand if a significant release of VOCs occurred below the building, building-wide sub-slab soil gas samples will be collected. The characterization of soil gas on a broad level throughout the footprint of the building will preliminarily evaluate the potential for impacted sub-slab vapor to present a possible indoor air risk to occupants of the on-site building. These data will be used to determine if a significant release has possibly occurred beneath the building. If such a release is identified, additional assessment of soil gas, soil, and groundwater in that area may then be warranted. Sub-slab soil gas samples will be located in manner that provides spatially representative data from beneath the building slab with a focus on locations near the former plating rooms ("new" and "old") and sumps. Additional proposed sub-slab soil

gas sample points relative to the former building layout and use under GDAS are shown in **Figure 3**. A total of eight permanent soil vapor monitoring points will be installed, and samples will be collected using flow-regulated, batch-certified Summa® canisters.

Sub-slab soil gas sampling points will be installed using the VaporPin™ system distributed by Cox-Colvin and Associates, Inc. The VaporPin™ assembly consists of a stainless-steel device with barb fittings on each end, installed into a 5/8-inch diameter hole drilled through the concrete floor slab. The lower barbed end of the device is fitted with a silicone sheath and the device is driven into place using tools provided by the manufacturer. The silicone sheath seals the device tightly against the walls of the drilled hole. The upper barbed end of the VaporPin™ is connected to Teflon tubing for seal integrity (leak) testing, purging, and collecting sub-slab soil gas samples. The VaporPin™ will be installed with the upper barbed end located below the top of the concrete slab. A flush-mount metal covering will be installed over the VaporPin™ in order to protect the sample point and to avoid obstructing normal building operations. The installation procedure is described in the *VaporPin™ Standard Operating Procedure; Installation and Extraction of the VaporPin™* document provided in **Appendix A**.

An air-tight seal between the VaporPin™ and the concrete floor slab prevents introduction of indoor air into sub-slab soil gas samples. A seal integrity ("leak") test will be performed for each installed VaporPin™ prior to the collection of sub-slab soil gas samples. This testing procedure utilizes helium as a tracer gas to verify the integrity of the seal created between the sub-slab sampling point and the indoor air. A shroud will be placed over the VaporPin™ and a helium detector attached to the VaporPin™. Helium will be injected into the shroud while the helium detector reads the concentration of helium pulled into the sample tubing over a 5 minute test interval. If elevated concentrations of helium are detected during the leak test the VaporPin™ will be reset and re-tested. The leak testing procedure is described in the Project-Specific Operating Procedure for Sub-Slab Soil Vapor and Indoor Air Sampling provided in **Appendix B**.

Leak testing of the sampling train will be assessed at each location prior to collection of each sample by completing a "shut-in" test. A shut-in test consists of assembling the above-ground sampling apparatus (valves, lines, and fittings downstream of the top of the VaporPin™), and evacuating the lines to a measured vacuum of approximately 100 inches of water (approximately 7.3 inches of mercury), then shutting the vacuum in with the closed valves on opposite ends of the sample train. The vacuum gauge is observed for at least 1 min, and if there is any observable loss of vacuum, the fittings should be adjusted as needed until the vacuum in the aboveground portion of the sample train does not noticeably dissipate.

Sub-slab soil vapor samples will be collected from the VaporPin™ locations into batch-certified 6-liter evacuated stainless steel canisters equipped with 2-hour flow controllers. Prior to purging the sample tubing and sampling, sub-slab soil gas sampling devices will be sealed closed for a minimum of 8 hours to allow the sub-slab environment to re-equilibrate after installation and leak testing of the VaporPin™ are successfully completed.

The sub-slab soil gas samples will be transported under chain of custody ("COC") protocol for analysis by ALS laboratory in Simi Valley, California which is accredited by the National Environmental Laboratory Accreditation Program ("NELAP") and the US Department of Defense ("DoD"). The samples will be analyzed by gas chromatography mass spectrometry ("GC/MS") selective ion monitoring ("SIM") EPA Method Toxic Organics-15 ("TO-15") for low-level VOCs.

3.2.2 Sampling of Landfarmed Soils

Approximately 450 cubic yards of soil impacted with water soluble coolants, cutting oils and #2 fuel oil was reportedly placed on a double plastic liner with a six-inch layer of sand in-between on the east side of the building for landfarming (see **Figure 3** and **Figure 4**). The landfarmed soil has been previously sampled for VOCs, polycyclic aromatic hydrocarbons ("PAHs") and TPH by others; however, no sampling has been performed for metals, PCBs or the full list of SVOCs.

In order to evaluate the quality of the landfarmed soil a total of three soil borings will be advanced into the pile of material to the depth interval associated with the double plastic liner (approximately 6 fbg). An electric jackhammer equipped with a split-spoon sampler will be used to extract continuous soil cores from each boring. Each soil core will be extracted from the boring in 2-foot runs to the termination depth of the soil boring and screened with a calibrated PID. Geologic characteristics, visual/olfactory observations, tactile features, and PID screening results will be recorded on soil boring logs. Analytical samples will be collected from the borings as described below. Once analytical sampling is complete, the remaining soils will be returned to the approximate depth in each boring from which they were extracted. Based on experience with similar boring projects, it is anticipated that all excess soils will be returned to the borings. The remaining portion of the borehole will be backfilled with bagged sand.

To limit the loss of volatiles during sampling, inspection and PID screening of the soil cores will be conducted immediately after opening the cores. If elevated PID screening values or visual/olfactory/tactile evidence of impacts are identified, a "contingency" sample for volatile compound analyses will be collected from the depth interval associated with the observed impacts as soon as possible after completing the PID screening effort. Once soil has been placed into the sample vial for volatile compound analyses (if applicable), representative material will be collected from the depth interval associated with the landfarmed soil (i.e.: above the double plastic liner), placed into a zip-lock bag, homogenized, and the sample containers for the other analyses will be filled.

All soil samples will be transported to the laboratory in ice-filled coolers under chain-of-custody protocol to EAI and analyzed for SVOCs via EPA method 8270D, PCBs via EPA method 8082 with Soxhlet extraction, and RCRA 8 metals via EPA Method 6020. Contingency samples will be analyzed for VOCs via EPA method 8260C.

3.2.3 Building Materials; Bulk Concrete Sampling for PCBs

Site files indicate the current building was constructed in 1962. Burton understands that this falls within the timeframe when PCBs may have been used in building materials including caulking, paint, flooring mastic, etc. Concrete staining was observed at two locations during VHB's Site walkover on November 12, 2020 in an electrical room and at the former location of an exterior transformer that formerly used PCB-containing oil.

3.2.3.1 Building Materials

Burton understands that PCB-containing building materials may be present at the Property. However, these building materials are currently in use and Burton does not anticipate disturbing them. Furthermore, Burton understands that there is no regulatory requirement to test products that are in use to determine their PCB concentration. As such, Burton requests further discussion with DEC to better understand the regulatory obligations it has to test in-use building materials, particularly in light of the numerous buildings throughout Vermont that also have building materials, in use, that may contain PCBs. To that end, Burton would also like to better understand if DEC is requiring indoor air to be sampled in all buildings that were built or renovated between approximately 1950 and 1979 when PCBs were historically used in certain building materials.

3.2.3.2 Bulk Concrete Sampling and Analysis for PCBs

Stained concrete was identified at two locations during VHB's site walkover on November 12, 2020. Staining was observed on the concrete floor and wall of the former "electrical" room located at the central east portion of the building and slight staining was observed on the concrete pad associated with an "old" transformer located south of the southwest exterior corner of the building that had been decommissioned and removed from the Site by Burton in 2014 (see **Figure 3**). During decommissioning of the old transformer residual oil within the unit was sampled for PCBs. Dexsil Corporation (2005) provided Burlington Electric with a Transmittal Cover Sheet stating that PCB Aroclor 1260 was detected in the sample of residual oil at a concentration of 260 parts per million ("ppm"; equivalent to mg/kg). Due to the presence of PCBs in the transformer oil and the slight staining observed on the pad, PCB concrete sampling is warranted.

One bulk concrete sample will be collected for PCB analysis from each of the two locations where staining was observed (see **Figure 3** and **Figure 4**). A hammer drill equipped with a decontaminated drill bit will be used to advance a series of shallow drill holes (approximately 2 inches deep) into the stained surface in order to collect enough sample volume for laboratory analysis. PCB-concrete samples will be transported in an ice-filled cooler under COC protocol to Eastern Analytical, Inc. of Concord, New Hampshire ("EAI") for analysis for PCBs via EPA method 8082 with Soxhlet extraction.

Following sample collection, the shallow drill holes made during sampling will be filled with hydraulic cement.

3.2.4 Decontamination

All reusable tools that will come into contact with samples will be decontaminated prior to use and between samples. A paper towel will be used to remove any residual solids if necessary and the tool will be washed with a solution of Alconox and potable water. The tool will then be rinsed with distilled water. Any equipment used to collect PCB samples will also be wiped with a hexane wetted clean paper towel.

3.2.5 Survey

Following completion of exterior soil and concrete sampling, coordinates for each soil boring and concrete sample location will be collected using a sub-meter Trimble Global Positioning System ("GPS") unit. Sub-slab soil gas and concrete sample locations inside the building will be measured relative to fixed, known locations such as room corners, utilities, or other features easily identifiable on an existing building layout map.

3.2.6 Quality Assurance / Quality Control

The quality assurance and quality control ("QA/QC") sampling will include collection of one duplicate sample for every 20 parent samples of each analytical suite in each sample matrix. Therefore, one soil, one soil gas, and one concrete floor material duplicate will be collected for analysis of all analytical suites associated with each matrix.

One equipment blank will be collected by running laboratory-supplied deionized water over decontaminated equipment used for soil sample collection and analyzed for the same analyses to determine the effectiveness of decontamination procedures. The equipment blank sample container for PCB analysis will be filled with laboratory-supplied deionized water run over equipment used to collect both soil and concrete samples.

Dedicated, new equipment (e.g.: tubing, fittings, and VaporPins®) will be used to collect sub-slab soil gas samples instead of decontaminating re-usable equipment; therefore, no equipment blank will be collected during sub-slab soil gas sampling. It is unlikely that potential contamination in dedicated tubing or fittings used to construct the sampling apparatus contain levels of VOCs that would contribute to exceedances of the applicable screening levels.

Additionally, all coolers containing soil and concrete samples will be shipped with a laboratory-prepared temperature blank and all soil and concrete samples will be packed in an ice-chilled cooler for delivery to EAI under chain of custody protocol. A laboratory-prepared trip blank will accompany sample containers and soil samples to/from the laboratory and will be analyzed for VOC only if soil samples are collected for VOC analysis.

No trip blanks will be analyzed during the sub-slab soil gas investigation. Summa cannisters used to collect air samples are sealed with a valve and a threaded cap before and after sample collection; therefore, trip blanks for air samples typically only provide information regarding the cleanliness of that particular cannister and not information regarding potential cross-contamination during transport.

3.2.7 Investigation Derived Waste

No Investigation Derived Waste ("IDW") will be generated during the site investigation. Any soil extracted from the soil borings advanced into the landfarm soils will be collected for laboratory analysis or returned to borehole from the approximate depth interval it was extracted.

3.3 Use of PFAS During Manufacturing at the Site

In its October 2020 letter, DEC expressed concern that historical manufacturing processes at the Site may have used materials containing PFAS, which subsequently may have been released to the environment. Based on VHB's review of available documents, we did not identify evidence that PFAS-containing materials were manufactured at the Site by either GDAS or GE during historical manufacturing processes. VHB followed up with DEC staff on November 16, 2020 to better understand specifically what processes they believe may have caused a release of PFAS and learned that their concern was related to the manufacturing of wire harnesses. VHB concurs that coated wires did historically utilize PFAS containing materials; however, there is no record of coated wires having historically been manufactured at this Site. Wiring harnesses were reportedly assembled at this Site using wiring that was manufactured offsite.

VHB interviewed a former GE employee, Mike St. Onge, via email on November 19, 2020. Mr. St. Onge worked for GE from 1982 to 1991 in maintenance and indicated that no wire manufacturing occurred in "Building 41". He also indicated that wire that was used in the wire harnesses was transported to the building in rolls that were stored on wire roll holders in the building. Excess wire was placed in containers and routinely transported off-site for disposal. Finally, Mr. St. Onge indicated that he was unaware of any illegal dumping of any kind on-site.

PFAS were not detected at concentrations exceeding laboratory reporting limits in groundwater samples collected in 2016 and 2020 by others from the South Burlington Fire District supply well, located approximately 900 feet south of the Site (see **Figure 2**). These analytical results are provided in **Appendix D**. Furthermore, no metals, VOCs, pesticides, or herbicide exceedances of the 2020 Vermont Maximum Contaminant Levels ("VT-MCLs") drinking water standards were identified in groundwater samples collected from the South Burlington Fire District supply well. Due to the lack of evidence that PFAS-containing substances were manufactured at the Site and the lack of PFAS impacts to the nearby South Burlington Fire District supply well, VHB is not proposing PFAS sampling at this time.

3.4 Standard Environmental Investigation Procedures

The following standard operating procedures ("SOPs"), applicable to the site investigation, will be followed by VHB (formerly The Johnson Company, "JCO") unless modified by the Site-specific groundwater and drinking water investigation procedures above. The following SOPs

are presented in VHB 's Generic Quality Assurance Project Plan ("QAPP"; RFA 19105) and are available upon request.

- SOP-JCO-007 Standard Operating Procedure for Chain-of-Custody Records
- SOP-JCO-027 Standard Operating Procedure for Decontamination of Field Equipment
- SOP-JCO-034 Standard Operating Procedure for Use of Field Log Books
- SOP-JCO-044 Standard Operating Procedure for Calibration and Operation of the MiniRAE 3000 Portable Handheld VOC Photo-Ionization Detector
- SOP-JCO-065 Standard Operating Procedures for the Collection of Bulk Concrete Samples
- Project-Specific Operating Procedure for Soil Vapor, Sub-Slab Soil Vapor and Indoor Air Sampling (see **Appendix B**)

4

Implementation Schedule

The proposed investigation activities will be conducted within 3-5 weeks following approval of this Work Plan by DEC. Laboratory analytical data will be available within 14 business days. An IRule-compliant Site Investigation Report summarizing the information obtained during the site investigation will be submitted to DEC within 90 days of receipt of final laboratory analytical data, the time period required by the IRule. Although we will endeavor to adhere to this timeline, delays may be beyond our control due to weather, regulator review, evolving COVID-19 protocols etc.

5

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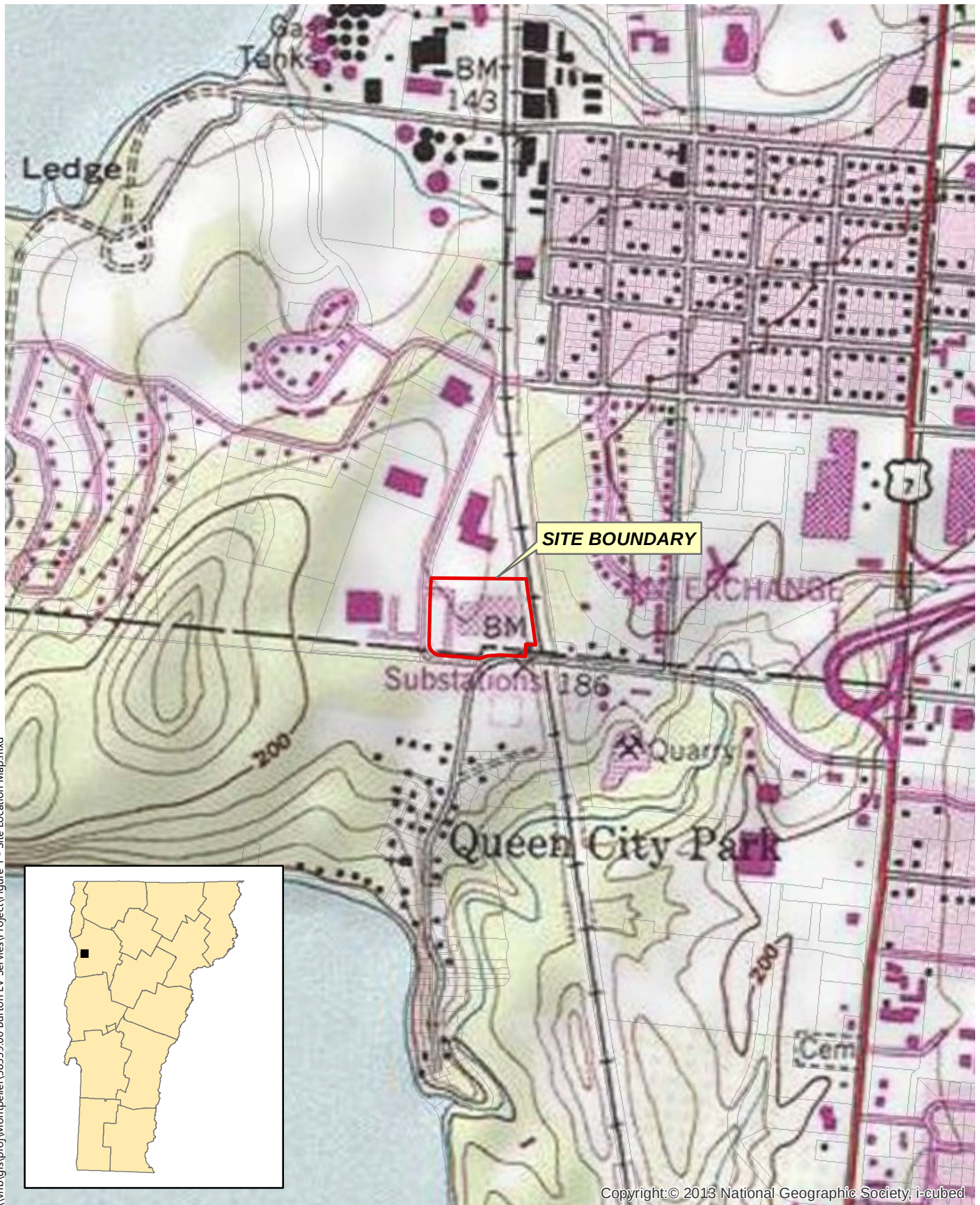
Figures

Figure 1 – Site Location Map

Figure 2 – Site Vicinity Map

Figure 3 – Proposed Sample Locations – Former Building Layout

Figure 4 – Proposed Sample Locations – Orthophotograph



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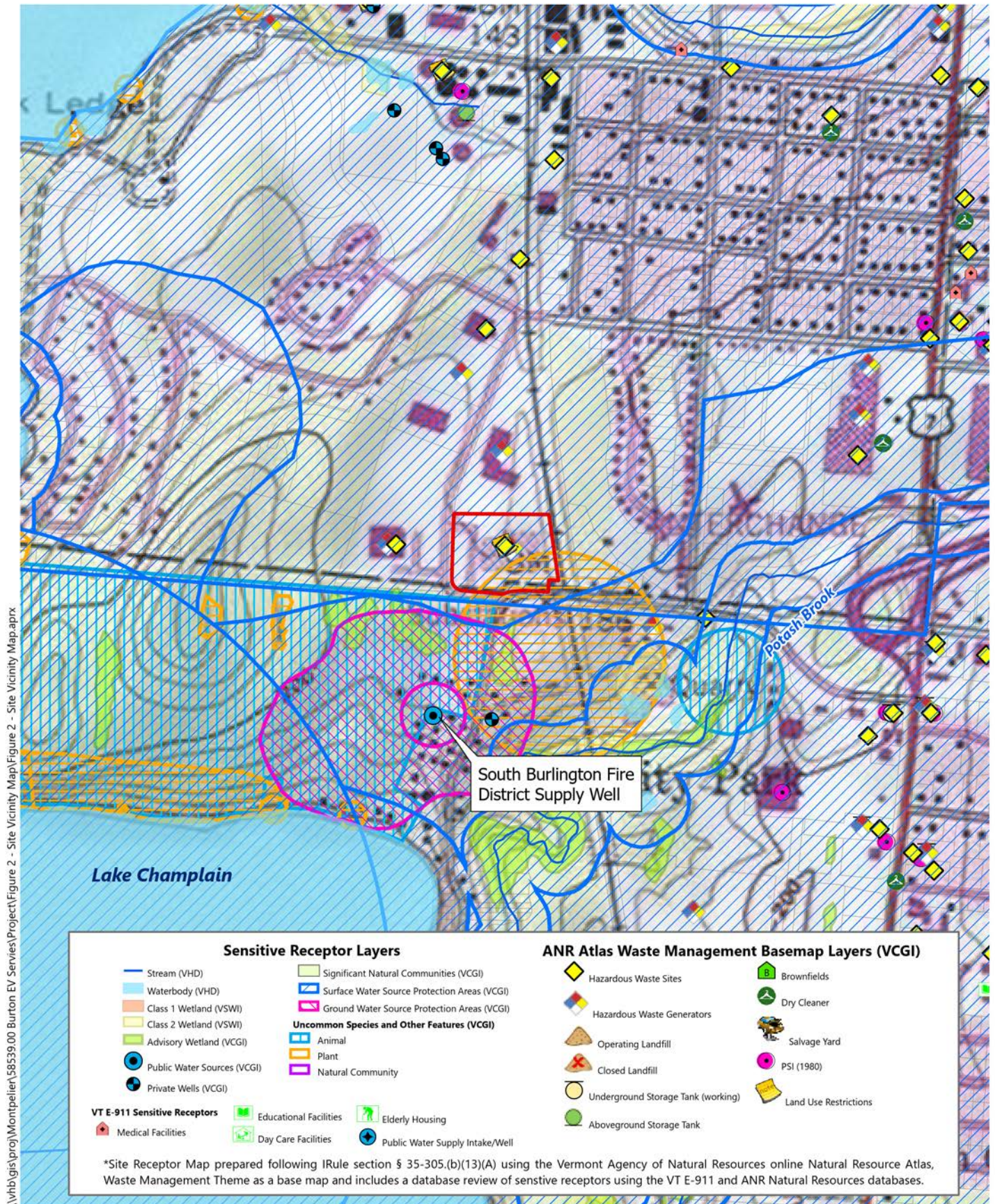
0 200 400 800 Feet

266 Queen City Park Road (Formerly 180 Industrial Parkway) Former General Dynamics Facility

Burlington, Vermont

Source Info:
- Basemap from ESRI/USGS Topo Map

Site Location Map



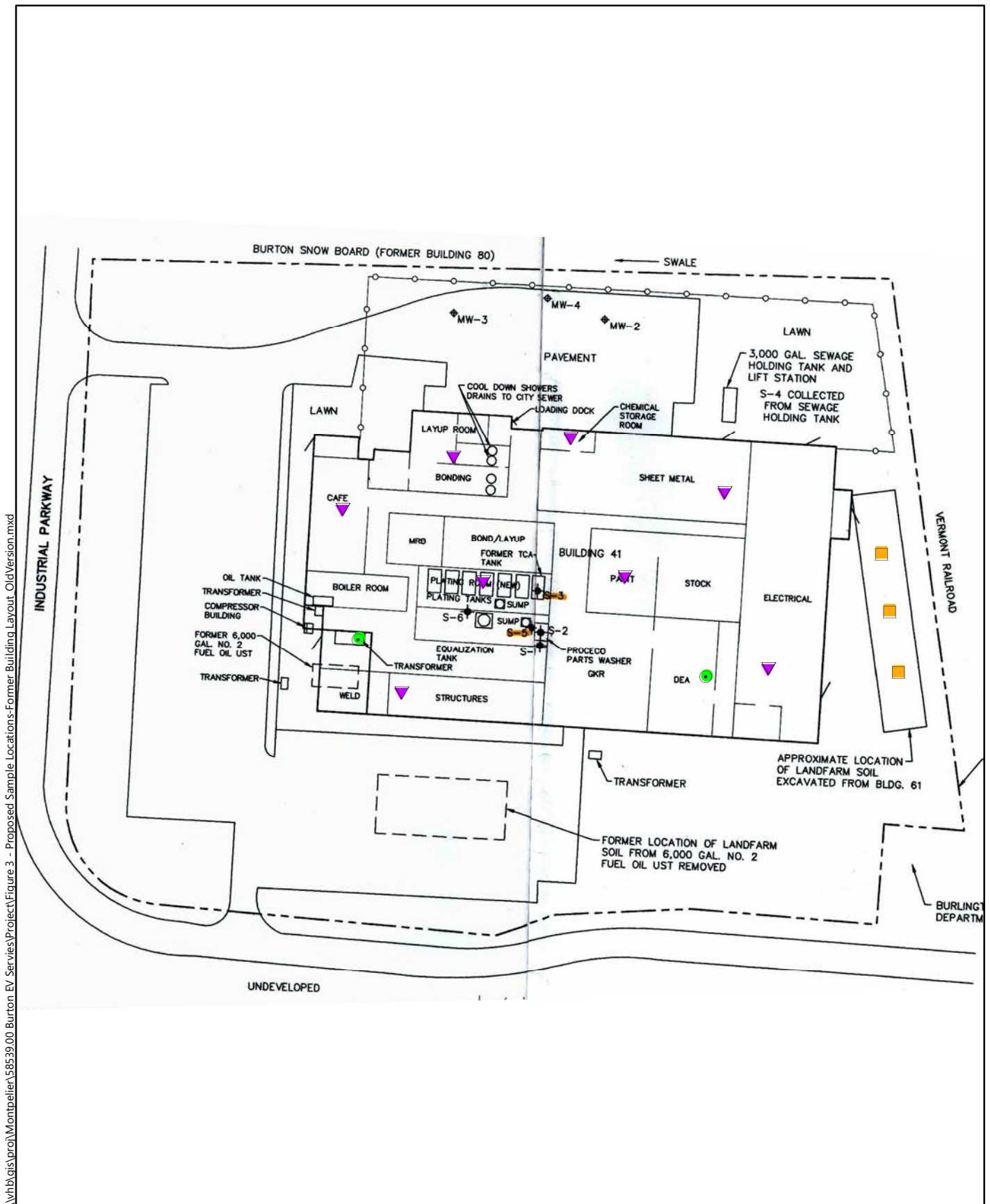
0 200 400 800 Feet

266 Queen City Park Road (Formerly 180 Industrial Parkway) Former General Dynamics Facility

Burlington, Vermont

Source Info:
- Basemap from ESRI/USGS Topo Map

Site Vicinity Map



0 20 40 80 Feet

Proposed Sample Location

- Concrete
- Soil
- ▼ Subslab Soil Gas

Burlington, Vermont



\\vhb\gis\proj\Montpelier\58539.00 Burton EV Services\Project\Figure 4 - Proposed Sample Locations_OldVersion.mxd

↑
0 20 40 80 Feet
Proposed Sample Location

- Concrete
- Soil
- ▼ Subslab Soil Gas

266 Queen City Park Road (Formerly 180 Industrial Parkway) Former General Dynamics Facility

Burlington, Vermont

Source Info:
- Basemap from ESRI/USGS Topo Map

**Proposed Sample Locations-
Orthophotograph**

Appendices

Appendix A

Standard Operating Procedure for Installation and Extraction of the VaporPin



Standard Operating Procedure Installation and Extraction of the Vapor Pin™

Updated April 3, 2015

Scope:

This standard operating procedure describes the installation and extraction of the Vapor Pin™ for use in sub-slab soil-gas sampling.

Purpose:

The purpose of this procedure is to assure good quality control in field operations and uniformity between field personnel in the use of the Vapor Pin™ for the collection of sub-slab soil-gas samples or pressure readings.

Equipment Needed:

- Assembled Vapor Pin™ [Vapor Pin™ and silicone sleeve(Figure 1)]; Because of sharp edges, gloves are recommended for sleeve installation;
- Hammer drill;
- 5/8-inch (16mm) diameter hammer bit (hole **must** be 5/8-inch (16mm) diameter to ensure seal. It is recommended that you use the drill guide). (Hilti™ TE-YX 5/8" x 22" (400 mm) #00206514 or equivalent);
- 1½-inch (38mm) diameter hammer bit (Hilti™ TE-YX 1½" x 23" #00293032 or equivalent) for flush mount applications;
- ¾-inch (19mm) diameter bottle brush;
- Wet/Dry vacuum with HEPA filter (optional);
- Vapor Pin™ installation/extraction tool;
- Dead blow hammer;
- Vapor Pin™ flush mount cover, if desired;
- Vapor Pin™ drilling guide, if desired;
- Vapor Pin™ protective cap; and

- VOC-free hole patching material (hydraulic cement) and putty knife or trowel for repairing the hole following the extraction of the Vapor Pin™.



Figure 1. Assembled Vapor Pin™

Installation Procedure:

- 1) Check for buried obstacles (pipes, electrical lines, etc.) prior to proceeding.
- 2) Set up wet/dry vacuum to collect drill cuttings.
- 3) If a flush mount installation is required, drill a 1½-inch (38mm) diameter hole at least 1¾-inches (45mm) into the slab. Use of a Vapor Pin™ drilling guide is recommended.
- 4) Drill a 5/8-inch (16mm) diameter hole through the slab and approximately 1-inch (25mm) into the underlying soil to form a void. Hole **must** be 5/8-inch (16mm) in diameter to ensure seal. It is recommended that you use the drill guide.

Vapor Pin™ protected under US Patent # 8,220,347 B2

- 5) Remove the drill bit, brush the hole with the bottle brush, and remove the loose cuttings with the vacuum.
- 6) Place the lower end of Vapor Pin™ assembly into the drilled hole. Place the small hole located in the handle of the installation/extraction tool over the Vapor Pin™ to protect the barb fitting, and tap the Vapor Pin™ into place using a dead blow hammer (Figure 2). Make sure the installation/extraction tool is aligned parallel to the Vapor Pin™ to avoid damaging the barb fitting.



Figure 2. Installing the Vapor Pin™.

During installation, the silicone sleeve will form a slight bulge between the slab and the Vapor Pin™ shoulder. Place the protective cap on Vapor Pin™ to prevent vapor loss prior to sampling (Figure 3).



Figure 3. Installed Vapor Pin™

- 7) For flush mount installations, cover the Vapor Pin™ with a flush mount cover, using either the plastic cover or the optional stainless-steel Secure Cover (Figure 4).



Figure 4. Secure Cover Installed

- 8) Allow 20 minutes or more (consult applicable guidance for your situation) for the sub-slab soil-gas conditions to re-equilibrate prior to sampling.
- 9) Remove protective cap and connect sample tubing to the barb fitting of the Vapor Pin™. This connection can be made using a short piece of Tygon™ tubing to join the Vapor Pin™ with the Nylaflow

tubing (Figure 5). Put the Nylaflow tubing as close to the Vapor Pin as possible to minimize contact between soil gas and Tygon™ tubing.



Figure 5. Vapor Pin™ sample connection.

10) Conduct leak tests in accordance with applicable guidance. If the method of leak testing is not specified, an alternative can be the use of a water dam and vacuum pump, as described in SOP Leak Testing the Vapor Pin™ via Mechanical Means (Figure 6). For flush-mount installations, distilled water can be poured directly into the 1 1/2 inch (38mm) hole.



Figure 6. Water dam used for leak detection

11) Collect sub-slab soil gas sample or pressure reading. When finished, replace the protective cap and flush mount cover until the next event. If the sampling is complete, extract the Vapor Pin™.

Extraction Procedure:

- 1) Remove the protective cap, and thread the installation/extraction tool onto the barrel of the Vapor Pin™ (Figure 7). Continue turning the tool clockwise to pull the Vapor Pin™ from the hole into the installation/extraction tool.
- 2) Fill the void with hydraulic cement and smooth with a trowel or putty knife.



Figure 7. Removing the Vapor Pin™.

- 3) Prior to reuse, remove the silicone sleeve and protective cap and discard. Decontaminate the Vapor Pin™ in a hot water and Alconox® wash, then heat in an oven to a temperature of 265° F (130° C) for 15 to 30 minutes.

The Vapor Pin™ is designed to be used repeatedly, however, replacement parts and supplies will be required periodically. These parts are available on-line at VaporPin.CoxColvin.com.

Appendix B

Operating Procedure for Sub-Slab Soil Vapor Sampling

***Operating Procedure
for
Soil Vapor and Sub-Slab Soil Vapor Sampling***

INTRODUCTION

This procedure describes the activities to be undertaken prior to or during the collection of soil vapor and sub-slab soil vapor samples. This procedure addresses the performance of gas tracer tests to verify the integrity of hardware installed for the collection of soil vapor samples and sub-slab soil vapor samples using evacuated (e.g., SUMMA®) canisters.

EQUIPMENT AND SUPPLIES

A. Soil Vapor Probe and Sub-Slab Soil Vapor Pin Leak Testing

- High Purity (HP) or Ultra High Purity (UHP) grade helium cylinder
- Helium cylinder regulator with nominal ¼-inch male compression fitting
- Helium detector (e.g., Radiodetection model MGD 2002)
- Leak testing apparatus
- In-line vacuum gauge

B. Soil Vapor and Sub-Slab Soil Vapor Sample Collection

- 0.25-inch (¼-inch) outer-diameter (OD) Teflon® tubing
- Swagelok™ nut and ferrules for 0.25-inch OD tubing
- Flexible tubing to connect sampling assembly to soil vapor pin (for VaporPin® applications)
- Swagelok quick-connect fitting to connect sampling assembly to soil vapor probe (for permanent soil vapor probe applications)
- Passivated stainless-steel canister(s) as described in ASTM Method D5466-01
- Laboratory calibrated flow control valve(s) for passivated canister(s)
- Certified calibrated digital pressure gauge that can measure negative pressure
- One manifold for each field duplicate sample collected (laboratory supplied or assembled in the field)
- T-connector (e.g. Swagelok™ B-400-3) with Teflon® tubing
- In-line valve (e.g. Swagelok™ B-4P4)
- Calibrated vacuum pump

PROCEDURES**A. Soil Vapor Probe and Sub-Slab Soil Vapor Pin Leak Testing**

This section describes a helium gas tracer test used to assess the integrity of sub-slab soil vapor pin and soil vapor probe installations and a “shut-in” test. The helium tracer test is designed to detect leaks around or through soil vapor probe construction materials under pressure gradient conditions that are equal to or greater than pressure gradients induced during soil vapor sample collection. The shut-in test is specified for identifying potential leakage in the sampling train.

Helium Tracer Test

1. Connect the leak testing apparatus to the sub-slab soil vapor pin/probe being tested, as shown in Figure 1. The tracer testing apparatus should consist of an enclosure with an open bottom (such as an inverted bucket), and two ports - one port for injecting helium tracer gas into the enclosure, and a second port that allows a single piece of 0.25-inch OD tubing to pass through the enclosure. The end of the 0.25-inch OD tubing inside the enclosure is connected to the soil vapor probe using the appropriate air-tight fitting and the opposite end of the tubing is connected to a portable helium detector (such as a Radiodetection model MGD-2002 Multi-Gas Leak Locator) outside of the enclosure. The connection with the portable helium detector should be sealed to prevent ambient air from entering the helium detector during operation. The tracer injection port is connected to a cylinder containing high purity (HP) or ultra high purity (UHP) helium. The bottom edge of the enclosure should be equipped with foam padding or soft weather stripping to limit leakage of tracer gas out of the enclosure during the test. Fittings, ports, or holes in the enclosure should be sealed or plugged to limit leaking of helium from the enclosure during the test.
3. Begin operation of the portable helium detector, and record the vacuum pump rate specified in the operation manual for the helium detector (e.g., 0.5 liters per minute). This pumping rate should be greater than or equal to the anticipated rate of soil vapor extraction from the probe during sample collection. Wait for the reported helium concentration to stabilize; the stabilized helium concentration represents the baseline value for the leak test.
4. Inject helium tracer gas into the enclosure by opening the valve on the helium regulator slightly. During the initial introduction of helium gas, allow ambient air to escape from the bottom of the enclosure until the relatively low-temperature helium gas can be felt escaping, then rest the enclosure flat on the ground surface and apply downward pressure to limit helium escape from the enclosure. Maintain helium gas pressure inside the enclosure by setting the helium regulator at a slightly open position for the duration of the leak test (allowing a continuous flow of helium into

the enclosure), or by adding 5 to 10 second bursts of tracer gas to the enclosure at 1-minute intervals throughout the duration of the leak test.

5. Allow the test to continue for a period of 5 minutes. During the test, helium detector readings should be recorded at 1-minute intervals. Peak helium concentrations measured in soil vapor should also be recorded. The soil vapor probe seal is deemed acceptable if helium concentrations detected in soil vapor do not exceed 1% by volume (10,000 ppmv) above the baseline helium concentration at any point during the test.
6. At the conclusion of the test, disconnect the leak testing apparatus from the soil vapor pin/probe. Install a cap on the vapor pin. Soil vapor probes are equipped with quick-connect fittings that close automatically when disconnected. Close the protective roadbox cover over the soil vapor probe or install the protective metal cap over the vapor pin.

Shut-in Test

Leak testing of the sampling train will be assessed at each location prior to collection of each sample by completing a “shut-in” test. A shut-in test consists of assembling the above-ground sampling apparatus (valves, lines, and fittings downstream of the top of the probe/pin), and evacuating the lines to a measured vacuum of approximately 100 inches of water (approximately 7.3 inches of mercury), then shutting the vacuum in with the closed valves on opposite ends of the sample train. The vacuum gauge is observed for at least 1 min, and if there is any observable loss of vacuum, the fittings should be adjusted as needed until the vacuum in the aboveground portion of the sample train does not noticeably dissipate.”

B. Soil Vapor and Sub-Slab Soil Vapor Sample Collection

Soil vapor and sub-slab soil vapor samples will be collected into evacuated canisters (sample canisters) at final pressures below atmospheric pressure. Sample canisters described in this procedure consist of leak-free stainless-steel pressure vessels with passivated interior surfaces and a valve, such as SUMMA® or SilcoCan® canisters (ASTM, 2007). The practice of using evacuated canisters to collect gas samples with final pressures below atmospheric pressure is referred to as “sub-atmospheric sampling” in the USEPA Region 1 Canister Sampling Standard Operating Procedure, Revision #4 (USEPA, 2007) and ASTM Method D5466-01 (ASTM, 2007). Sub-atmospheric sampling involves the use of a flow controller that limits the rate of gas entry into the canister.

1. **Equilibration:** Allow soil vapor probes and sub-slab soil vapor pins to equilibrate to subsurface conditions for a period of time after installation and leak tests are completed. Allow Summa canisters and flow controllers an appropriate equilibration period so that the canister and flow controller surfaces are at ambient temperature.

-
2. **Sample Containers and Flow Controllers:** Six-liter Summa canisters will be used for sample collection. Flow controllers will be calibrated such that samples are collected over a period of 2 hours. For a 6-liter canister, this equates to a flow rate of approximately 50 milliliters per minute (ml/min).
 3. **Pressure Check:** Use the certified calibrated digital pressure gauge to check the canister pressure prior to and just after sample collection as a check on the flow-controller pressure gauge and to assess for potential pressure changes that may occur during canister shipment. Pressure checks should be conducted in outdoor air or away from the sampling area.

A low initial canister vacuum reading may be indicated by a faulty vacuum gauge on the flow controller or caused by canister leakage during transportation from the laboratory to the Site. The canister vacuum before sampling should be within 3 inches of mercury (in Hg) of the laboratory-recorded initial pressure. For example, if the laboratory initial pressure in a 6-L Summa® canister is reported as -27 in Hg; for use, the field measured pressure should be between -24 and -30 in Hg, or between 24 and 30 in Hg vacuum). If the initial canister vacuum reading is more than 3 in Hg less than the vacuum applied to the canister at the laboratory (as measured by a calibrated pressure gauge), do not use the canister for sample collection.

4. **Purging:** Connect the sample canister to the sub-slab soil vapor probe/pin as shown in Figures 2A and 2B. Assemble the sample tubing, flow controller, valves (in closed position) and fittings prior to connecting the sample tubing to the soil vapor sampling points.

Connect a vacuum pump to the in-line valve (see Figures 2A and 2B) using air-tight fittings. Open the in-line valve and turn on the vacuum pump to begin purging. Total purge volume should be equal to 3 to 5 times the internal volume of the soil vapor probe/pin assembly and the 0.25-inch OD sample tubing and fittings. The purge rate should not exceed 0.2 liters per minute. Total duration of purging may be calculated by dividing the desired total purge volume by the flow rate of the calibrated vacuum pump.

If field replicate soil vapor or sub-slab soil vapor samples are being collected, an in-line T-connection will be used as shown on Figure 2B. After purging, open the valve on both canisters simultaneously; the replicate samples will be collected simultaneously.

When purging is complete, shut off the in-line valve while the pump is running to prevent backflow, then turn off the vacuum pump. Disconnect the vacuum pump.

5. **Start Sample Collection:** Begin sample collection by opening the valve on the sample canister. Record the sample start time, the initial vacuum reading from the gauge on the flow controller (after opening the canister valve), and canister

identification number on the sampling form provided in Attachment JCO-SOP-062-002. If field duplicate soil vapor samples are being collected from a sub-slab soil vapor probe, attach the duplicate sampling manifold prior to purging. After purging, open the valve on both canisters simultaneously; the duplicate samples will be collected simultaneously.

6. **Stop Sample Collection:** Check the canister gauge at the approximate half-way point during sampling to confirm that the flow rate is correct. For a 6-L Summa® canister evacuated to a pressure of -30 in Hg, a target stop pressure is between -3 in Hg and -9 in Hg. At the conclusion of the planned sample collection period, record the final vacuum reading from the gauge on the flow controller and close the canister valve. Use the calibrated digital vacuum gauge to measure the final vacuum in the canister. Ensure that the canister valve is not over-tightened because this is a frequent cause of leaks.

Although flow controllers are calibrated to fill sample canisters to desired final vacuum levels within the specified time period, such calibrations are not exact, and subsurface conditions may restrict the flow of soil vapor into a probe. Thus, it is sometimes beneficial to extend the sample collection period to obtain a sample volume sufficient to achieve the required detection limits. Discuss with the project manager before extending the sample period beyond the 2-hour target. After closing the valve on the canister, disconnect the sample tubing from the soil vapor probe/pin, disassemble the sampling apparatus and remove the vapor pin. Plug the vapor pin hole with hydraulic cement.

7. **Chain of Custody and Shipping:** Package and ship the sample canisters to the analytical laboratory for next-day delivery (or courier pickup) under chain-of-custody protocol. Record sample collection start and end times, initial vacuum, and final vacuum for each sample canister on the chain-of-custody form.

REFERENCES

ASTM International (ASTM, 2007). Standard Test Method for Determination of Volatile Organic Chemicals in Atmospheres (Canister Sampling Methodology) Designation D- 5466-01 (Reapproved 2007).

United States Environmental Protection Agency Region 1 (USEPA, 2007). Canister Sampling Standard Operating Procedure, Revision #4. Office of Environmental Measurement and Evaluation. Ecosystems Assessment Team. 11 Technology Drive, North Chelmsford, Massachusetts. August 31, 2007.

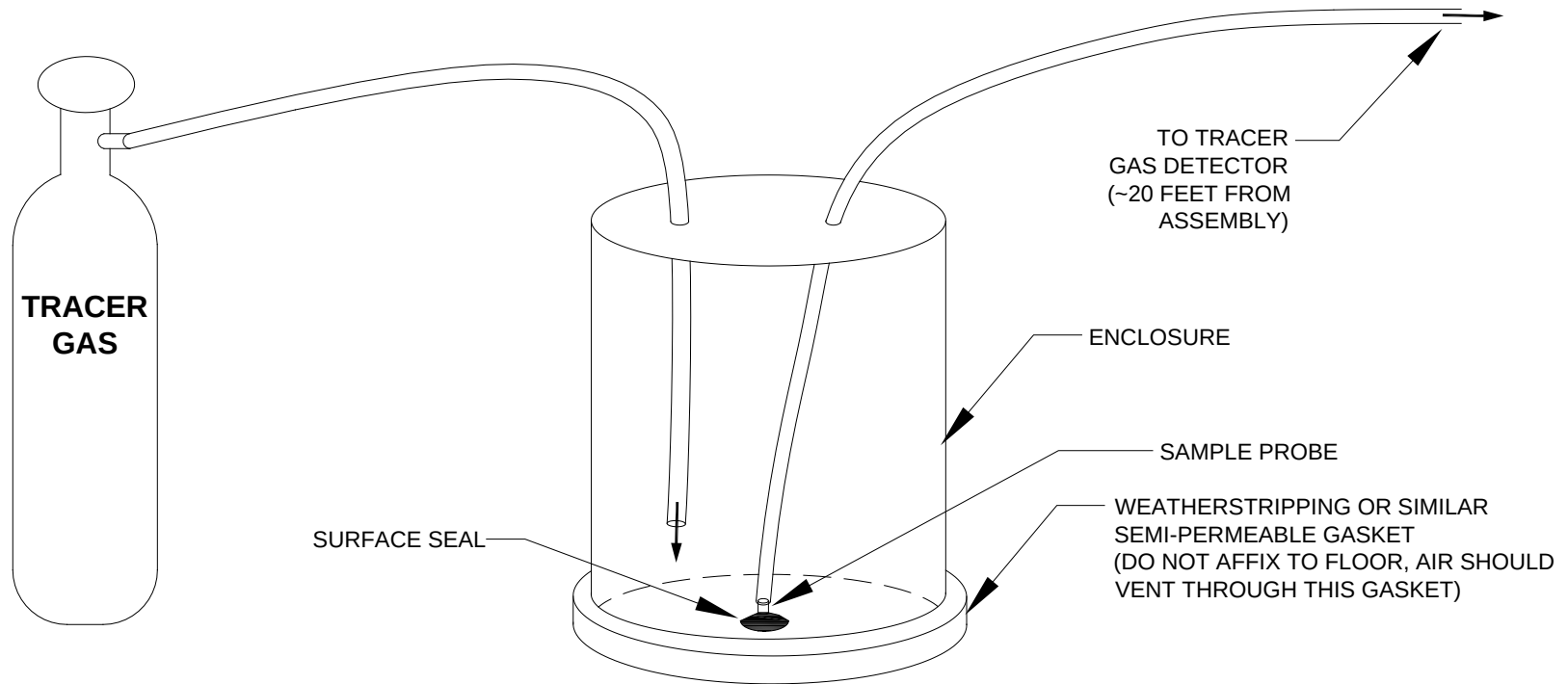


Figure 1. Tracer gas assembly.

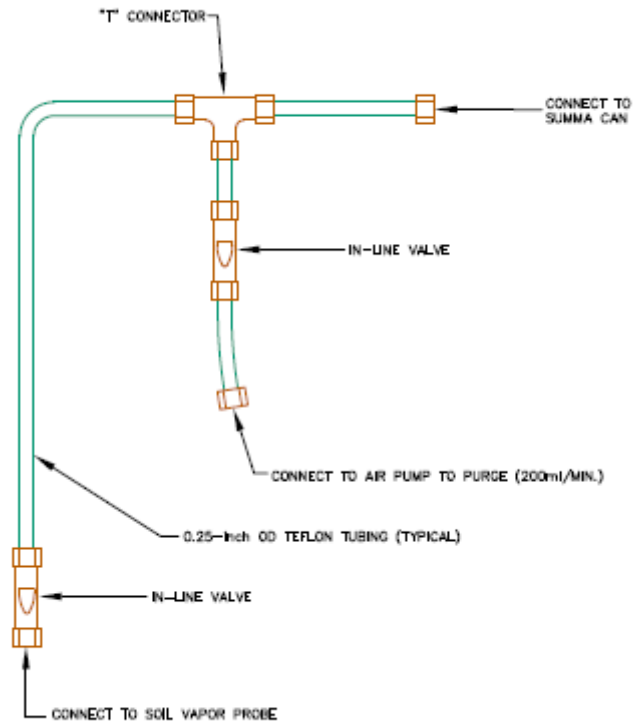


Figure 2A. Soil vapor sampling assembly.

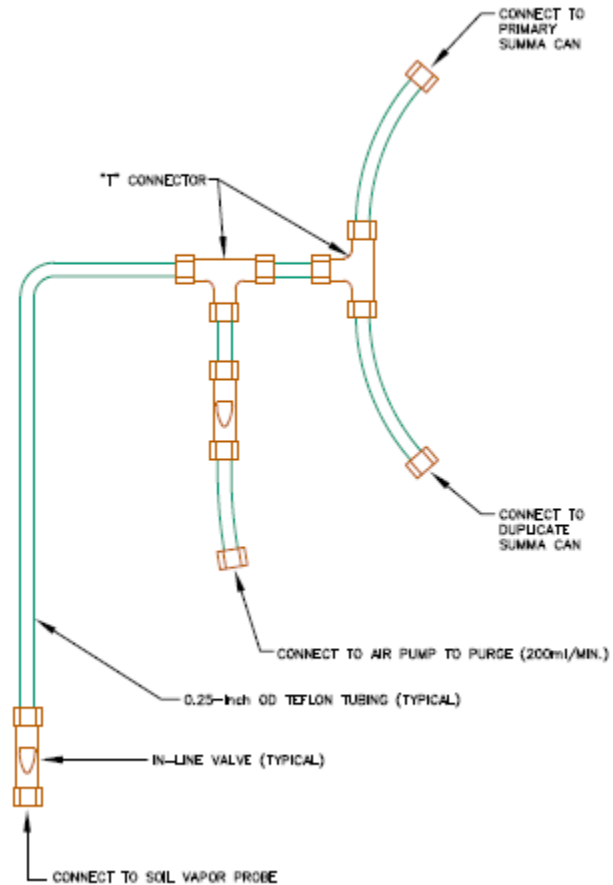


Figure 2B. Duplicate soil vapor sampling assembly.

Attachment 001

Ambient Air and Soil Vapor Field Sampling Form

Soil Vapor Sampling Form

Site Name: _____ Personnel: _____ VHB #: _____

Canister Size: _____ Barometer/Thermometer Source/ID: _____

Pressure Check: Summa Canister ID #: _____ Pressure Gauge Make/Model: _____

Gauge Calibration Date: _____ *Pre-Sampling* Pressure Check: Location: _____ Pressure Gauge Reading: _____

Post-Sampling Pressure Check: Location: _____ Pressure Gauge Reading: _____

Sample ID							
Summa Canister ID (not barcode)							
Flow Controller #							
Sampling Height (ft)							
Date	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Time	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Flow Controller Vacuum (in Hg)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Digital Pressure Gauge (in Hg)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Ambient Temperature (°C)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Barometric Pressure (in Hg)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Controller Flow Rate (mL/min)							
COC Number							

Replicate Information: Original Sample Name: _____ Replicate Name: _____

Replicate Collection Method (Circle one): T-Connection or Side-by Side or Consecutive or Other(specify): _____

Sample ID							
Summa Canister ID (not barcode)							
Flow Controller #							
Sampling Height (ft)							
Date	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Time	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Flow Controller Vacuum (in Hg)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Digital Pressure Gauge (in Hg)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Ambient Temperature (°C)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Barometric Pressure (in Hg)	Start:	Start:	Start:	Start:	Start:	Start:	Start:
	End:	End:	End:	End:	End:	End:	End:
Controller Flow Rate (mL/min)							
COC Number							

Background Sample Information: Sample Name: _____ Location: _____

Other weather conditions: _____ Wind Speed/Direction (Start): _____

Wind Speed/Direction (specify interval): _____ / _____

Shipping Information: Shipping Method: _____ Date Shipped: _____

Notes: _____

Appendix C

South Burlington Fire District Supply Well PFAS Analytical Results

PFAS Data

11/16/2020

ND = Non-detect, result was below the level that can be confidently reported by the analytic laboratory.

Interim drinking water standard is the 5 PFAS compounds currently regulated in Vermont. These compounds are identified in red and with an asterisk below.

WSID	System	Town	Lab Number	Date	Type	Sample Point	Facility ID	Compound	Concentration (ppt)
VT0005090	SOUTH BURLINGTON FIRE DISTRICT	SOUTH BURLINGTON	L2001380-01	1/8/2020	RT	EP001	TP001	Interim Drinking Water Standard sum of 5 PFAS compounds	ND
								(*PFHPA) PERFLUOROHEPTANOIC ACID	ND
								(*PFHXS) PERFLUOROHEXANESULFONIC ACID	ND
								(*PFNA) PERFLUORONONANOIC ACID	ND
								(*PFOS) PERFLUOROOCTANESULFONIC ACID	ND
								(*PFOA) PERFLUOROOCTANOIC ACID	ND
								(PFBS) PERFLUOROBUTANESULFONIC ACID	ND
								(PFDA) PERFLUORODECANOIC ACID	ND
								(PFDOA) PERFLUORODODECANOIC ACID	ND
								(PFHXA) PERFLUOROHEXANOIC ACID	ND
								(PFTA) PERFLUOROTETRADECANOIC ACID	ND
								(PFTRDA) PERFLUOROTRIDECANOIC ACID	ND
								(PFUNA) PERFLUOROUNDECANOIC ACID	ND
								11CHLOROEICOSAFLUORO3OXAUNDECANE1 SULFONI	ND
								9CHLOROHEXADECAFLUORO3OXANONE1SU LFONICAC	ND
								(ADONA)4,8-DIOXA-3HPERFLUORONONANOICACID	ND
								(HFPODA)HEXAFLUOROPROPYLENEOXIDE DIMER A	ND
								(NETFOSAA) N-ETHYL PERFLUOROOCTANESULFON	ND
								(NMEFOSAA) N-METHYL PERFLUOROOCTANESULFO	ND
VT0005090	SOUTH BURLINGTON FIRE DISTRICT	SOUTH BURLINGTON	200437614	4/18/2016	SP	EP001	TP001	Interim Drinking Water Standard sum of 5 PFAS compounds	ND
								(*PFHPA) PERFLUOROHEPTANOIC ACID	ND
								(*PFHXS) PERFLUOROHEXANESULFONIC ACID	ND
								(*PFNA) PERFLUORONONANOIC ACID	ND
								(*PFOS) PERFLUOROOCTANESULFONIC ACID	ND
								(*PFOA) PERFLUOROOCTANOIC ACID	ND
								(PFBS) PERFLUOROBUTANESULFONIC ACID	ND

General Electric
Armament and Electrical Systems Department

EPA ID # VTD 000649780

Potential Hazardous Waste Site
Preliminary Assessment

December 3, 1985

Waste Management Division

Department of Water Resources

Vermont Agency of Environmental Conservation

The General Electric Armaments and Electrical Systems Department (G.E.) Plating Shop is located on Industrial Parkway, Burlington, Vermont. The building is located in an industrial park, developed by the Greater Burlington Industrial Corporation in 1961. The building known as G.E. Building #41 or the Plating Shop, was leased by G.E. from 1962 until 1985, when G.E. purchased it from GBID.

The plating shop site is bounded by the Vermont Railroad right of way, a 35 foot deep ravine directly to the east; by the former Hayward Taylor building, recently purchased by G.E. to the north; by the Edlund Company to the west, across Industrial Parkway; and by a wooded area across Central Avenue, South Burlington to the south.

The plating shop site is situated on an area of unconsolidated lacustrine deposits. The soils in the area are classified sandy and permeable by the USDA. The underlying bedrock, known as the Monkton Quartzite, is predominantly red quartzite and dolomite. Approximately 1/4 mile to the southwest is Red Rock Park, so named for extensive outcropping of the Monkton Quartzite.

The site is located approximately 1/4 mile from the north shore of the Shelburne Bay area of Lake Champlain. Surface water

drains into Potash Brook to the east, which flows south westward into Lake Champlain at Shelburne Bay.

Interviews with employees were conducted during a site visit and perimeter survey on December 17, 1985 by Tom Moye and Bill Barry of the Vermont Agency of Environmental Conservation. The plating shop began operations in 1962 as a sheet metal and plastics assembly shop, where re-entry pods for missiles were assembled.

Industrial processes at the Plating Shop were originally sheet metal forming, compression molding of plastics, metal finishing and painting. The original building occupied some 65,000 square feet, and a 20,000 square foot addition was completed in 1979 to house a wiring and electrical assembly operation. The facility now assembles and finishes pods for armament systems, and does heat treating and fusion welding of aluminum as well as assembly and spray painting.

The present processes at the plating shop generate acidic, caustic, and chromate wastes. This waste is transported in drums, to the main plant on Lakeside Avenue. Occasionally it is held temporarily in a 1,000 gallon holding tank on site. Aside from this holding tank, no waste is stored at the facility. Spray painting operations utilize a continuous spraywash for

emission control. This water is continuously recycled and changed at 6 month intervals, with water skimmings and sludges transported to Lakeside Avenue in drums for storage.

Trichloroethylene (TCE), freon TMS, and alcohols are used for degreasing and are sent in drums to Lakeside Avenue for storage. On an annual basis RCRA files show the following wastes generated at the plating shop facility:

Solvents	3,000 kg/yr
Corrosive Liquid	870 kg/yr
Caustic Solids	900 kg/yr
Paint Sludges	500 kg/yr
Waste Oils	600 kg/yr

In 1981 General Electric submitted a CERCLA 103c notification to EPA reporting the onsite disposal of 1,200 gallons of etching solution during 1970. A 600 gallon tank used in etching aluminum was emptied into a 30' X 5' X 3' ditch at the north side of the property. The solution was spread over ferrous ammonium sulfate, then covered with lime, and the ditch filled with soil. This was done according to recommendations made by the G.E. laboratory, because the waste treatment tank at Lakeside Avenue was being repaired. When questioned during the site visit in December 1985, plant personnel stated that the tank

was emptied only once and the figure reported should have been 600 gallons rather than 1,200 gallons.

General Electric laboratory records indicate that the etching solution included 30 grams/litre of sodium dichromate and 3 grams/litre of sulfuric acid, but did not give a complete analysis of the material poured into the ditch. The location of this ditch is now under the asphalt drive into the shipping and receiving yard at the northwest corner of the plant at the fence line surrounding the facility.

Homes near the site north of the Burlington City boundary are served by the Champlain Water District. A 210 foot deep bedrock well that serves 75 homes in the Queen City Park area of South Burlington is located 1050 feet to the southwest of the plating shop. Red Rocks Park, a picnic and recreational area owned by the City of South Burlington, is also located within 1/4 mile to the southwest.

Based on the information collected for the preliminary assessment, it is recommended that a site inspection be conducted at the General Electric Plating Shop based on the following:

- *Notification of hazardous waste disposal (form 8900-1).
- *Unknown composition of etching solutions dumped on site.
- *Potential groundwater contamination.

*Proximity of bedrock well serving as a municipal water supply for 75 homes.

*No sampling of nearby well for chromium

Site inspection should include water sampling of the well, and surface water of Potash Brook. Although this site inspection has been given low priority due to the small quantity of hazardous waste disposed of on only one occasion, the nearby municipal well serving as a drinking water supply must be considered.

BB/11

G.E. Plating Shop References

VT AEC Air and Solid Waste Industry Files

VT AEC Ground Water Management
APA Files, South Burlington

USGS Topographic Map 15 minute series
Burlington Quadrangle revised 1972

VT AEC Waste Management RCRA Files
Report of Inspection - Brian Fitzgerald 12/4/84

EPA Form 8900-1 Initial Notification
of Hazardous Waste Disposal

Perimeter Survey and Facility Inspection 12/17/85 Bill Barry
Tom Moye, VT AEC; Fred Lugano and Don Stewart, G.E. A & ESD

VT aerial photos 62 H 14 227
62 H 14 228

POTENTIAL HAZARDOUS WASTE SITE PRELIMINARY ASSESSMENT PART 1 - SITE INFORMATION AND ASSESSMENT				I. IDENTIFICATION 01 STATE 02 SITE NUMBER VTD 000649780	
II. SITE NAME AND LOCATION					
01 SITE NAME (Legal, common, or descriptive name of site) General Electric Plating Shop			02 STREET, ROUTE NO., OR SPECIFIC LOCATION IDENTIFIER Industrial Parkway		
03 CITY Burlington			04 STATE VT	05 ZIP CODE 05402	06 COUNTY Chittenden
09 COORDINATES LATITUDE 44 26 58 LONGITUDE 73 12 56			07 COUNTY CODE 007 08 CONG DIST 01		
10 DIRECTIONS TO SITE (Starting from nearest public road) North on U.S. 7, left onto Home Avenue, Cross railroad tracks - left turn onto Industrial Parkway. Plating shop is last building on left.					
III. RESPONSIBLE PARTIES					
01 OWNER (if known) General Electric A & ESD			02 STREET (Business, mailing, residential) Lakeside Avenue		
03 CITY Burlington			04 STATE VT	05 ZIP CODE 05402	06 TELEPHONE NUMBER 802 657-6876
07 OPERATOR (if known and different from owner)			08 STREET (Business, mailing, residential)		
09 CITY			10 STATE	11 ZIP CODE	12 TELEPHONE NUMBER
13 TYPE OF OWNERSHIP (Check one) ☒ A. PRIVATE ☐ B. FEDERAL ☐ C. STATE ☐ D. COUNTY ☐ E. MUNICIPAL ☐ F. OTHER: _____ ☐ G. UNKNOWN					
14 OWNER OPERATOR NOTIFICATION ON FILE (Check all that apply) ☐ A. RCRA 3001 DATE RECEIVED _____ ☒ B. UNCONTROLLED WASTE SITE (CERCLA 103 G) DATE RECEIVED 6/12/81 ☐ C. NONE					
IV. CHARACTERIZATION OF POTENTIAL HAZARD					
01 ON SITE INSPECTION ☒ YES DATE 12/17/85 ☐ NO BY (Check all that apply) ☐ A. EPA ☐ B. EPA CONTRACTOR ☒ C. STATE ☐ D. OTHER CONTRACTOR ☐ E. LOCAL HEALTH OFFICIAL ☐ F. OTHER: _____ CONTRACTOR NAME(S): _____					
02 SITE STATUS (Check one) ☒ A. ACTIVE ☐ B. INACTIVE ☐ C. UNKNOWN			03 YEARS OF OPERATION 1962 Present BEGINNING YEAR ENDING YEAR		
04 DESCRIPTION OF SUBSTANCES POSSIBLY PRESENT, KNOWN, OR ALLEGED Solution which included sodium dichromate and sulfuric Acid used in etching aluminum, was poured over Ferrous Ammonium sulfate.					
05 DESCRIPTION OF POTENTIAL HAZARD TO ENVIRONMENT AND/OR POPULATION Potential groundwater contamination could migrate to a municipal well. Contamination could impact surface water in Potash Brook.					
V. PRIORITY ASSESSMENT					
01 PRIORITY FOR INSPECTION (Check one if high or medium is checked, complete Part 2 - Waste Information and Part 3 - Description of Hazardous Conditions and Incidents) ☐ A. HIGH ☐ B. MEDIUM ☒ C. LOW ☐ D. NONE (Inspection required; reply) (Inspection required) (Inspection time available basis) (No further action needed; complete current disposition form)					
VI. INFORMATION AVAILABLE FROM					
01 CONTACT Tom Moye		02 OF (Agency, Organization) VT AEC Waste Management Division		03 TELEPHONE NUMBER 802 828-3395	
04 PERSON RESPONSIBLE FOR ASSESSMENT Bill Barry		05 AGENCY VT AEC	06 ORGANIZATION Waste Mgmt. Div.	07 TELEPHONE NUMBER 802 828-3395	08 DATE 12/31/85 MONTH DAY YEAR



**POTENTIAL HAZARDOUS WASTE SITE
PRELIMINARY ASSESSMENT
PART 2 - WASTE INFORMATION**

1. IDENTIFICATION

01 STATE	02 SITE NUMBER
VTD	000649780

II. WASTE STATES, QUANTITIES, AND CHARACTERISTICS

01 PHYSICAL STATES <i>(Check all that apply)</i> ☒ A. SOLID ☐ B. POWDER/FINES ☐ C. SLUDGE ☐ D. OTHER _____ <i>(Specify)</i>	02 WASTE QUANTITY AT SITE <i>(Measure of waste quantity must be indicated)</i> TONS _____ 600 CUBIC YARDS _____ 1200 NO. OF DRUMS _____	03 WASTE CHARACTERISTICS <i>(Check all that apply)</i> ☒ A. TOXIC ☒ B. CORROSIVE ☐ C. RADIOACTIVE ☐ D. PERSISTENT ☒ E. SOLUBLE ☐ F. INFECTIOUS ☐ G. FLAMMABLE ☐ H. IGNITABLE ☐ I. HIGHLY VOLATILE ☐ J. EXPLOSIVE ☐ K. REACTIVE ☐ L. INCOMPATIBLE ☐ M. NOT APPLICABLE
--	--	--

IN WASTE TYPE

CATEGORY	SUBSTANCE NAME	01 GROSS AMOUNT	02 UNIT OF MEASURE	03 COMMENTS
SLU	SLUDGE			
OLW	ONLY WASTE			
SOL	SOLVENTS			
PSD	PESTICIDES			
OCC	OTHER ORGANIC CHEMICALS			
X IOC	INORGANIC CHEMICALS			
X ACD	ACIDS		600 gal	Etching Solution
BAS	BASES			
MES	HEAVY METALS			

IV. HAZARDOUS SUBSTANCES (See Appendix for most frequently cited CAS Numbers)

[illegible]

V. FEEDSTOCKS (See Appendix for CAS Numbers)

CATEGORY	01 FEEDSTOCK NAME	02 CAS NUMBER	CATEGORY	01 FEEDSTOCK NAME	02 CAS NUMBER
FDS			FDS		
FDS			FDS		
FDS			FDS		
FDS			FDS		

VI. SOURCES OF INFORMATION (Cite specific references, e.g., state files, sample analysis, reports)

1. Notification of Potential Hazardous Waste Site Form 8900-1
2. State of Vermont A.E.C. RCRA Files (G.E. Plating shop)
3. Interview with G.E. Personnel 12-17-85

 POTENTIAL HAZARDOUS WASTE SITE PRELIMINARY ASSESSMENT PART 3 - DESCRIPTION OF HAZARDOUS CONDITIONS AND INCIDENTS		I. IDENTIFICATION 01 STATE 02 SITE NUMBER VTD 000649780	
II. HAZARDOUS CONDITIONS AND INCIDENTS			
01 ☐ A GROUNDWATER CONTAMINATION 03 POPULATION POTENTIALLY AFFECTED: <u>262</u>	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☒ POTENTIAL ☐ ALLEGED	G.E. acknowledged the disposal of 600 gallons of etching solution on site in a ditch at the northwesterly corner of the site. A municipal well owned by the S. Burlington fire district #1 is 1050 feet from this site.
01 ☒ B SURFACE WATER CONTAMINATION 03 POPULATION POTENTIALLY AFFECTED: _____	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☒ POTENTIAL ☐ ALLEGED	Potash Brook, a tributary of Lake Champlain is located 800 feet east of the disposal site.
01 ☐ C CONTAMINATION OF AIR 03 POPULATION POTENTIALLY AFFECTED: _____	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☐ POTENTIAL ☐ ALLEGED	
01 ☐ D FIRE/EXPLOSIVE CONDITIONS 03 POPULATION POTENTIALLY AFFECTED: _____	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☐ POTENTIAL ☐ ALLEGED	
01 ☐ E DIRECT CONTACT 03 POPULATION POTENTIALLY AFFECTED: _____	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☐ POTENTIAL ☐ ALLEGED	
01 ☒ F CONTAMINATION OF SOIL 03 AREA POTENTIALLY AFFECTED: <u>unknown</u>	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☒ POTENTIAL ☐ ALLEGED	Etching solution was poured into a ditch <u>30</u> feet long, 3 feet wide and 5 feet deep.
01 ☒ G DRINKING WATER CONTAMINATION 03 POPULATION POTENTIALLY AFFECTED: <u>262</u>	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☒ POTENTIAL ☐ ALLEGED	G.E. acknowledged the disposal of 600 gallons of etching solution on site in a ditch at the northwesterly corner of the site. A municipal well owned by the S. Burlington Fire District #1 is 1050 feet from this site.
01 ☐ H WORKER EXPOSURE/INJURY 03 WORKERS POTENTIALLY AFFECTED: _____	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☐ POTENTIAL ☐ ALLEGED	
01 ☐ I POPULATION EXPOSURE/INJURY 03 POPULATION POTENTIALLY AFFECTED: _____	02 ☐ OBSERVED (DATE _____) 04 NARRATIVE DESCRIPTION:	☐ POTENTIAL ☐ ALLEGED	

POTENTIAL HAZARDOUS WASTE SITE PRELIMINARY ASSESSMENT		I. IDENTIFICATION 01 STATE 02 SITE NUMBER VTD 000649780	
PART 3 - DESCRIPTION OF HAZARDOUS CONDITIONS AND INCIDENTS			
II. HAZARDOUS CONDITIONS AND INCIDENTS (Continued)			
01 ☐ J. DAMAGE TO FLORA 04 NARRATIVE DESCRIPTION	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
01 ☐ K. DAMAGE TO FAUNA 04 NARRATIVE DESCRIPTION (Include name(s) of species)	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
01 ☐ L. CONTAMINATION OF FOOD CHAIN 04 NARRATIVE DESCRIPTION	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
01 ☒ M. UNSTABLE CONTAINMENT OF WASTES (Spills/runoff, standing liquids, leaking drums) 03 POPULATION POTENTIALLY AFFECTED: <u>unknown</u> 04 NARRATIVE DESCRIPTION Waste etching solution were poured into a 30 ft. long by 5 ft. deep by 3 ft. wide ditch.	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
01 ☐ N. DAMAGE TO OFFSITE PROPERTY 04 NARRATIVE DESCRIPTION	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
01 ☐ O. CONTAMINATION OF SEWERS, STORM DRAINS, WWTPs 04 NARRATIVE DESCRIPTION	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
01 ☐ P. ILLEGAL/UNAUTHORIZED DUMPING 04 NARRATIVE DESCRIPTION	02 ☐ OBSERVED (DATE: _____)	☐ POTENTIAL	☐ ALLEGED
05 DESCRIPTION OF ANY OTHER KNOWN, POTENTIAL, OR ALLEGED HAZARDS			
III. TOTAL POPULATION POTENTIALLY AFFECTED: <u>262</u>			
IV. COMMENTS The direction and extent of contamination potentially transported by groundwater are unknown. A municipal well and Potash Brook are potentially nearby receptors.			
V. SOURCES OF INFORMATION (Cite specific references, e.g., state files, sample analysis reports) 1. Notification of potential hazardous waste site EPA form 8900-1 2. State of VT AEC RCRA Files, GE Plating Shop 3. Interview with GE personnel 12/17/85			

U.S.G.S

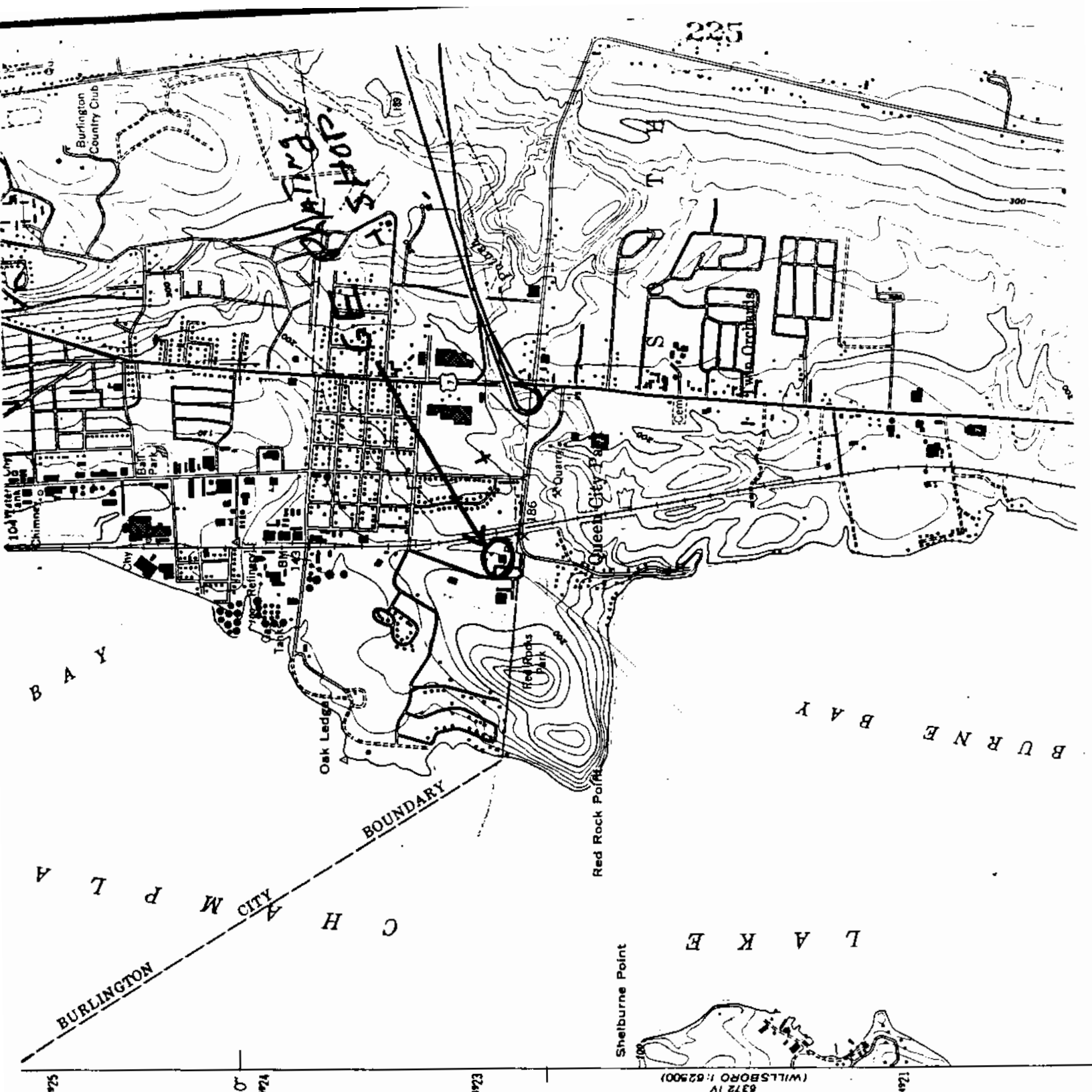
Topographic Map

Burlington VT.

15' Quadrangle

1948

Photorevised 1972



From: Provencher, Lynda
Sent: Tuesday, January 12, 2021 2:59 PM
To: Muller, Kurt
Cc: Justin Worthley (he/him); Eric Bergstrom; Mojo, Jennifer
Subject: RE: [External] VHB Workplan for 266 Queen City Park Rd (152 Industrial Parkway) - Former GD facility

Hi Kurt – I have reviewed the revised work plan and approve of the proposed work. Please keep me updated as to when work is scheduled to occur at the site.

In addition, I understand that there is stormwater system improvement work planned for the 266 and 180 Queen City Road properties, and that this work will entail excavation of some soils. Burton should be aware that if contamination is suspected to be present in soils to be excavated, the SMS recommends that pre-characterization samples be collected to insure the soil is handled in accordance with State Rules and Regulations. If deemed necessary, the pre-characterization sampling plan should be submitted for review by the SMS.

Feel free to contact me with any questions.
-Lynda



Due to the coronavirus (COVID-19), the Agency of Natural Resources is taking additional safety measures to protect our employees, partners and customers. We are now working remotely and focused on keeping our normal business processes fully functional. We encourage you to communicate electronically or via phone to the greatest extent possible. Thank you for your patience and understanding that responses may occasionally be delayed.

Lynda Provencher | Environmental Analyst (she/her)
Vermont Department of Environmental Conservation
Waste Management and Prevention Division | Sites Management Section
Davis 1, 1 National Life Drive | Montpelier, VT 05620-3704
(802)249-5562
<https://dec.vermont.gov/waste-management/contaminated-sites>

From: Muller, Kurt <kmuller@vhb.com>
Sent: Friday, January 8, 2021 3:28 PM
To: Provencher, Lynda <Lynda.Provencher@vermont.gov>
Cc: Justin Worthley (he/him) <JustinW@burton.com>; Eric Bergstrom <ericb@burton.com>
Subject: RE: [External] VHB Workplan for 266 Queen City Park Rd (152 Industrial Parkway) - Former GD facility

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Lynda,

Thank you for providing comments (by e-mail dated December 23, 2020) on VHB's December 15, 2020, Site Investigation Work Plan for 266 Queen City Park Road (formerly 152 Industrial Parkway), Former General Dynamics Facility SMS# 2020-4979 (the "Work Plan"), submitted on behalf of the Burton Corporation.

First, in response to your comment requesting clarification regarding the number of land-farmed soil samples we have revised the Work Plan as follows :

- one soil sample will be collected from each of the three soil borings advanced into the land-farmed soil for a total of three soil samples. Based on our review of prior reports we anticipate the thickness of the land-farmed soil to be approximately 1.5 feet; therefore, each soil sample will represent the entire depth interval of the land-farmed soil at each soil boring location. Given that this soil was reportedly tilled periodically, we anticipate that the land-farmed soil is homogenous; therefore, soil samples representing the entire depth interval of the material are representative. See revisions in Section 3.2.2 of the Work Plan.

Second, turning to the broader goals of the Work Plan, as you are aware the investigation of potential historical contamination at the Site is intended to be an iterative process, as is typically done for the investigation of contaminated sites. Thus, should the results of this phase of the investigation suggest that supplemental sampling is required, it would need to be addressed in a supplemental plan. At this time there is no direct evidence of releases of hazardous substances having occurred within the building; as such, the

Work Plan focuses on the investigation of soil vapor in a broader manner beneath the building; results of this proposed investigation will be used to guide supplemental investigation should impacts be identified.

Third, at your suggestion we have also reviewed the comments/recommendation that were furnished to VTDEC by Stone Environmental, on behalf of the South Burlington Fire District #1, dated December 22, 2020. Given the iterative nature of the investigation, we expect that several of Stone's comments should be resolved through the generation of data and information from the proposed investigation and any potential supplemental assessment, if warranted. For example, if the results of this investigation suggest the need for additional sub-surface assessment (i.e. groundwater and soil quality evaluation), a supplemental investigation could include logging geology, groundwater elevation measurements, potentiometric mapping, and a more refined determination of groundwater flow direction. The Conceptual Site Model (CSM) was developed based on the information that is currently available, and as more data and information is collected the CSM will be expanded upon. [It is important to note that if further investigations or other responses actions are needed based upon the results of this investigation, Burton feels that it will be critical for VTDEC to notify the prior owners and operators of the Site – General Electric and General Dynamics in particular – and require those responsible parties to participate in the performance of such work.] Where possible, we have addressed several of Stone's comments in the revised redline version of the Work Plan (attached), including the following:

- We have resolved the acronym discrepancy involving 1,2-DEC / 1,2-DCE / 1,2-DCA (see Section 1.4). The text has been modified to define 1,2-DCE as "cis-1,2-dichloroethene" and 1,2-DEC and 1,2-DCA have been revised to 1,2-DCE.
- We have also modified Figure 1 through Figure 4 to appropriately reflect the address of the Site as "Formerly 152 Industrial Parkway" instead of "Formerly 180 Industrial Parkway".
- One of the two landfarming events that occurred at the Site consisted of approximately 500 cubic yards of soil impacted with #2 fuel oil. The impacted soil was identified in 1992 at the former location of a 6,000-gallon #2 fuel oil underground storage tank ("UST") that was located along the southwest corner of Building #41 (DEC, 1998; ENSR, 2001). In May and June 1992, General Electric excavated approximately 500 cubic yards of the impacted soil for landfarming on part of the asphalt parking lot located to the south of Building #41 (DEC, 1998; ENSR, 2001). Soil-jar headspace photoionization detector ("PID") screening values of the impacted soil ranged from 0 to 400 ppm (ENSR, 2001). Seven soil samples were collected from the land-farmed soil in August 1992 for analysis of total hydrocarbons (GE, 1992). Analytical results ranged from 21 to 120 mg/kg. In a letter to General Electric dated September 23, 1992, DEC approved of completion of the landfarming project and approved the land-farmed soil as daily cover at an offsite landfill (DEC, 1992). Due to the former location of this soil on asphalt, the relatively low levels of total hydrocarbons, and the offsite disposal of this material, assessment of this area is not warranted. The other land-farmed soil described in the Work Plan remains on-site and will be sampled during the proposed investigation.

Fourth, per our conversation on Tuesday (1/5/2020), we acknowledge DEC's interest in better understanding whether PFAS-containing products may have been used at or transported to the Site by General Dynamics (and GE before it). Since our conversation we have performed additional research to better understand the potential for PFAS to be present in the land-farmed soil, as well as the potential use of PFAS-containing products in the plating process.

1. PFAS in Landfarming Area: Stone indicated that "Lubrizol" may have been present in the soil that was transported from a release at what was formerly known by GED/GD as Building #61 to the east side of Building #41 (the Site) for landfarming. Note: Building #61 is located on the west side of Queen City Park Road (#179), which is northwest of the Site and not on property owned by Burton. The Material Safety Data Sheet (MSDS) for "Lubrizol 5345" was provided in GE Armament Systems Department's *Status Report for the Building 61 Oil Cleanup and Landfarm Project* report dated August 1990. PFAS are not listed in the MSDS sheet for Lubrizol 5345. MOCAYCO®, a distributor for Lubrizol, describes Lubrizol 5345 as an "extreme pressure additive based on active sulfur and chlorine to be formulated in direct-cut oils, semi-synthetic and mineral-type soluble cutting oils." Based on this information, it cannot be established that PFAS were used in Building #61 and thereafter disposed of in the land-farmed soil; however, VHB understands that MSDSs are often proprietary and as a result the constituent information is limited. As such, in an exercise of conservatism Burton has agreed for PFAS analysis to be added to the soil sampling assessment proposed in the landfarmed soil east of the building.
2. PFAS from plating operations. PFAS, specifically PFOS, was commonly used in chrome-based plating operations as a chrome fume suppressant to reduce hexavalent chromium vapors, until it was phased out between 2012 to 2015 (NASF, 2019). This type of plating included hard and decorative chromium plating, chromic acid anodizing, and chromium etch for plating on plastic processes (NASF, 2019).

Based on our review of prior environmental reports and a 1985 EPA site visit, there was no mention of hard and decorative chromium plating, chromic acid anodizing, and chromium etch occurring at the Site (EPA, 1985; ENSR, 2001; EBI, 2005). Rather, a phosphate anodizing line was reportedly used at the Site (ENSR, 2001; EBI, 2005). Phosphating (the term for phosphate plating) is a non-chromated conversion process containing metal phosphates used mainly for some ferrous substrates and is generally used for subsequent painting, oiling or lubrication films (ECHA, 2021). The industry standard for phosphating can include the addition of iron, manganese, nickel, and/or zinc to the solution to bond with the metal phosphate (EPA, 1998). Hydrogen gas is a byproduct of phosphating (EPA, 1998; Duszczek et al., 2018), rather than hexavalent chromium vapors as is the case in chromium plating processes. The phosphate plating line at the Site did not produce hexavalent chromium vapors. Hydrogen, a non-toxic gas, is produced during phosphating and would not have required mitigation. The available information thus suggests that PFAS were not used in the plating conducted at the Site.

Finally, it is our understanding that PFAS have not been detected in the nearby South Burlington Fire District #1's supply well, based upon the recurring testing that is required by the State for public water supplies. Combined with the information described above concerning the nature of the past plating operations, PFAS-related groundwater sampling is not warranted at this time. Please see attached our revised workplan, which I have left redlined using tracked changes for your convenience. With your approval of the revised Workplan (attached – redline and pdf), we are prepared to implement the currently proposed scope in the coming weeks.

Please do not hesitate to contact me should you have any questions.

Thanks,
Kurt

Kurt Muller, P.E.
Vermont Director of Site Investigation & Remediation

P 802.778.1278 M 802.343.0384
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From: Provencher, Lynda <Lynda.Provencher@vermont.gov>
Sent: Wednesday, December 23, 2020 11:12 AM
To: Muller, Kurt <kmuller@vhb.com>
Cc: Justin Worthley (he/him) <JustinW@burton.com>; Daniel Voisin (<dvoisin@stone-env.com> <dvoisin@stone-env.com>); Coppelino, Patricia <Patricia.Coppelino@vermont.gov>
Subject: [External] VHB Workplan for 266 Queen City Park Rd (152 Industrial Parkway) - Former GD facility

Good morning – I have reviewed VHB's *Site Investigation Work Plan* dated December 15, 2020 for the Former General Dynamics facility located at 266 Queen City Park Road in Burlington and am providing the following comments:

- Additional detail must be provided regarding the number of soil samples to be collected in the area of the landfarmed soils. The work plan states that three soil borings will be advanced but it is not clear how many soil samples will be lab analyzed from these borings.
- The VTDEC's October 23, 2020 letter stated that due to the age of the current building, it is possible that PCBs are present in building materials which, if present, could pose a risk to human health and the environment. The DEC does not regulate PCBs; therefore, we can only recommend that sampling occur to determine if a risk is present, but we can not require sampling occur. There is no current requirement by the VTDEC that indoor air be sampled in all buildings built between 1950 and 1979.

I am also attaching comments received by Stone Environmental, who has been contracted by a local citizen's group.

Please address all comments received by January 7, 2021. Feel free to contact me with any questions.

-Lynda



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Lynda Provencher | Environmental Analyst (she/her)
Vermont Department of Environmental Conservation
Waste Management and Prevention Division | Sites Management Section
Davis 1, 1 National Life Drive | Montpelier, VT 05620-3704
(802)249-5562

<https://dec.vermont.gov/waste-management/contaminated-sites>

From: Muller, Kurt <kmuller@vhb.com>

Sent: Tuesday, December 15, 2020 10:35 AM

To: Provencher, Lynda <Lynda.Provencher@vermont.gov>

Subject: FOR YOUR REVIEW - Workplan for 266 Queen City Park Rd (152 Industrial Parkway) - Former GD facility

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Lynda,

In response to the supplemental assessment of the above referenced site that was requested in the Oct. 23, 2020 letter from DEC to Burton, VHB has prepared the attached Work Plan.

On behalf of Burton, VHB is prepared to implement this plan as soon as possible. Should you have any questions or comments, please do not hesitate to contact me.

Thanks,
Kurt

Kurt Muller, P.E.

Vermont Director of Site Investigation & Remediation



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Vanasse Hangen Brustlin, Inc. | info@vhb.com

December 22, 2020

Lynda Provencher
Environmental Analyst
Waste Management and Prevention Division
Vermont Department of Environmental Conservation
1 National Life Drive, Davis West
Montpelier, Vermont 05602
Electronic delivery

Stone Project No. 20-124
Subject: Comments on Site Investigation Work Plan, Burton Property, 266 Queen City Park Road, Burlington, Vermont

Dear Lynda,

On behalf of South Burlington Fire District #1 (SBFD₁), Stone Environmental presents for your consideration the following review of the Work Plan for Site Investigation of the former General Dynamics Facility located at 266 Queen City Park Road in Burlington, Vermont (the Site). The Work Plan was prepared by Vanasse Hangen Brustlin, Inc. (VHB) and dated December 15, 2020 for immediate implementation. As you are aware, SBFD₁ is a community water system located approximately 1,050 feet south of the Site and should be considered a nearby sensitive receptor and is an interested party with respect to effective and appropriate environmental management of the Site.

Our review of the Work Plan has revealed several shortcomings with the approach to the Site Investigation that we feel require further explanation and revision to the document.

Site Investigation Approach

Under Subchapter 3 of the IRule, the Site Investigation shall include a preliminary conceptual site model (CSM). The CSM should consider all existing Site data, geology and hydrogeology, historical land use practices, contaminants of concern, points of release, sources of contamination, media of interest, fate and transport mechanisms of contaminants in the environment, and sensitive receptors. It is a dynamic construct that is continually updated as more information are available. Essentially, the CSM is comprised of hypotheses on how contaminants were released, where they reside, and their migration pathways; it is the basis of the Site Investigation, remediation, and management of the Site. The Work Plan, as presented, does not present the required elements pursuant the I-Rule (§35-303) and, subsequently, the basis of the Site Investigation lacks comprehensive understanding of the Site. Specific elements that are not adequately addressed include:

- 1) The understanding of groundwater hydrogeology of the Site is based on a) Site-specific data from five wells (Wehran, 1989) installed to assess release(s) of former underground storage tank in the northern end of the property and b) anecdotal observations of local features (e.g., the nearby railroad right-of-way ditch). Despite this limited understanding of Site hydrogeology and potential threat to nearby sensitive receptors, there is no groundwater assessment proposed as part of the upcoming Site Investigation. While the design of the investigation may be such that an iterative approach is intended, such as starting with soil gas and transition to groundwater, this approach is not detailed within the Work Plan. We feel the omission of groundwater assessment at this stage is a critical error. Assumptions of hydraulic head distribution and groundwater quality should be demonstrated through collection of data. To begin, the groundwater assessment should both confirm or establish site-wide hydraulic head distribution and groundwater concentrations of Site contaminants of concern along the southern property boundary.
- 2) Description of geologic conditions at the Site are based on nine soil borings in the northern end of the Site (Wehran, 1989) and few locations performed to assess releases from sumps within the building. The Work Plan notes that clay is present beneath overlying fill and silt and that the clay unit is an aquitard thereby dismissing downward migration of contaminants. To date, no data are provided for unconsolidated deposits in the southern half of the Site, however, if trends observed in the north are true in the south, the contact between fill and lacustrine deposits may dip to the south¹. With the known use of chlorinated solvents on site including a documented release of 1,1,1-trichloroethane (1,1,1-TCA), subsurface stratigraphy and the geometry of bedding planes and contacts between units can result in migration of contaminants in directions that vary greatly from hydraulic gradients. Furthermore, subsurface utilities including water and sewer lines could serve as a preferential pathway for Site contaminants. Further characterization of Site geology is necessary to evaluate mechanisms of transport in the subsurface.
- 3) Past land use of the Site has included over 40 years of manufacturing to support armament production including plastic molding, plating, and assembly along with ancillary Site activities.
 - a. Contaminants of concern include metals, solvents, paints, petroleum, polychlorinated biphenyls, and various inorganics that, if released, have the potential to impact soil, soil gas, groundwater, and surface water. The proposed

¹ Geologic descriptions provided within the Wehran report indicate that the fill unit thins to the north.

Site Investigation focusses on VOCs in soil gas beneath the Site building, SVOCs, PCBs, and metals in shallow soil within one of the two land farm areas, and PCBs in concrete within the building. Using this limited approach as a basis to focus future investigation has the potential to miss impacted areas of the Site.

- b. According to accounts of past employees, as mentioned in the Work Plan, manufacturing of wire was not performed on Site. However, according to the December 4, 1984 trip report by VT DEC, 4,4-methylene bis [2-chloroaniline] – a resin used in cable manufacturing – was produced by General Electric at that time. It is uncertain whether this material was produced or used at the Site.
- c. While the Work Plan notes that electrical wire was not manufactured on Site, per and poly fluoroalkyl substances (PFAS) were commonly used within the plating industry dating to 1954. In addition, the Site was used for landfarming soils contaminated during a spill at the nearby Building #61 facility (formerly 80 Industrial Avenue, 180 Queen City Park Road). Chemicals used within Building #61, may or may not have been in use at the Site but were deposited on the Site during the land farm; these chemicals may have included those that contain PFAS². Based on the current Site understanding and the lack evidence to the contrary, we believe that PFAS should remain a contaminant of concern for the Site and warrants assessment.
- d. Potential and known points of entry for contaminants at the Site are numerous and likely changed over the time that the plant operated.
 - i. According to historical reports reviewed, it was common practice that industrial wastewater was periodically discharged to the municipal sewer. Breaks within the sewer service main or holding tanks may serve as a point of entry to the subsurface at the Site and may transmit contaminants that are removed from proposed investigation areas.
 - ii. Intentional disposal of wastes at the Site and two land farms of contaminated soils
 - iii. Subsurface obstructions, such as legacy footers remaining from the construction of an addition to the Site building in 1979 and other

² Material safety data sheets provided within the August 1990 *Status Report for Building 61 Oil Cleanup and Landfarm Project* include “Lubrizol”. Initial review of available information on this product indicates Lubrizol is trade name for a wide array of products used for coatings some of which contain PFAS.

foundations, may inhibit contamination movement in soil gas below the slab.

The Work Plan approach to the soil gas assessment should be robust enough to account for the variability of site conditions. In addition, the status of the land farm area to the south of the Site building should be assessed for the presence of contaminants of concern at concentrations above relevant regulatory criteria.

- 4) Recent manufacturing processes, specifically those performed at the Site while under Burton's ownership are not presented. The use and generation of wastes from these processes should be included within the Work Plan.
- 5) While the Site is currently zoned for commercial use, residential neighborhoods are present nearby and institutional controls have not been placed within the land record. At a minimum, we ask that reporting limits should allow for the comparison of concentration data to residential standards.

Clarity is also warranted on a few errors within the report, specifically:

- On page 5, first full paragraph, the report includes a statement that 1,2-dichloroethane was detected in sub slab soils in 2000 by General Dynamics but is abbreviated as 1,2-DCE and later as 1,2-DEC. 1,2-Dichloroethane is typically abbreviated as 1,2-DCA due to the presence of a single bond within the ethane molecule. Dichloroethene (DCE) includes a double bond and has three isomers – cis-1,2-DCE, trans-1,2-DCE, and 1,1-DCE. Prior reports mention DCE without distinguishing between isomers. As toxicity, breakdown pathways, and regulatory criteria for these compounds vary, further clarity is needed as to which specific compound or compounds are present at the Site.
- Figures 1 through 4 refer to the Site as formerly 180 Industrial Parkway however the Work Plan text refers to the site as formerly having an address of 152 Industrial Parkway.

Based on our review of available documents and our understanding of the Site, we present the following recommendations:

1. Groundwater assessment should be performed Site-wide and include an evaluation to the potential for off-Site migration to the south and east.
 - a. Hydraulic head determination should be performed Site-wide.
 - b. Groundwater quality assessment should be performed along the southern property boundary to evaluate potential migration toward nearby potable water sources including the SBFD #1 well protection area and VELCO substation well.

2. Geologic assessment should be performed contemporaneously with the groundwater assessment to evaluate the geometry of the silt-clay contact.
3. An assessment of the various Site contaminants of concern should be performed of all potential release mechanisms and source areas. Samples should be collected that are representative of potentially impacted media and analyzed for relevant Site contaminants of concern.
4. Samples of groundwater and soil should be collected to specifically assess for the presence/absence and degree, nature, and extent of PFAS in the environment.

Thank you for taking the time to consider our thoughts on this matter. We appreciate the opportunity to work with you to ensure the SBFD #1 source protection area can remain a reliable source of drinking water for this community.

Please feel free to reach out with any questions.

Sincerely,

Daniel T. Voisin

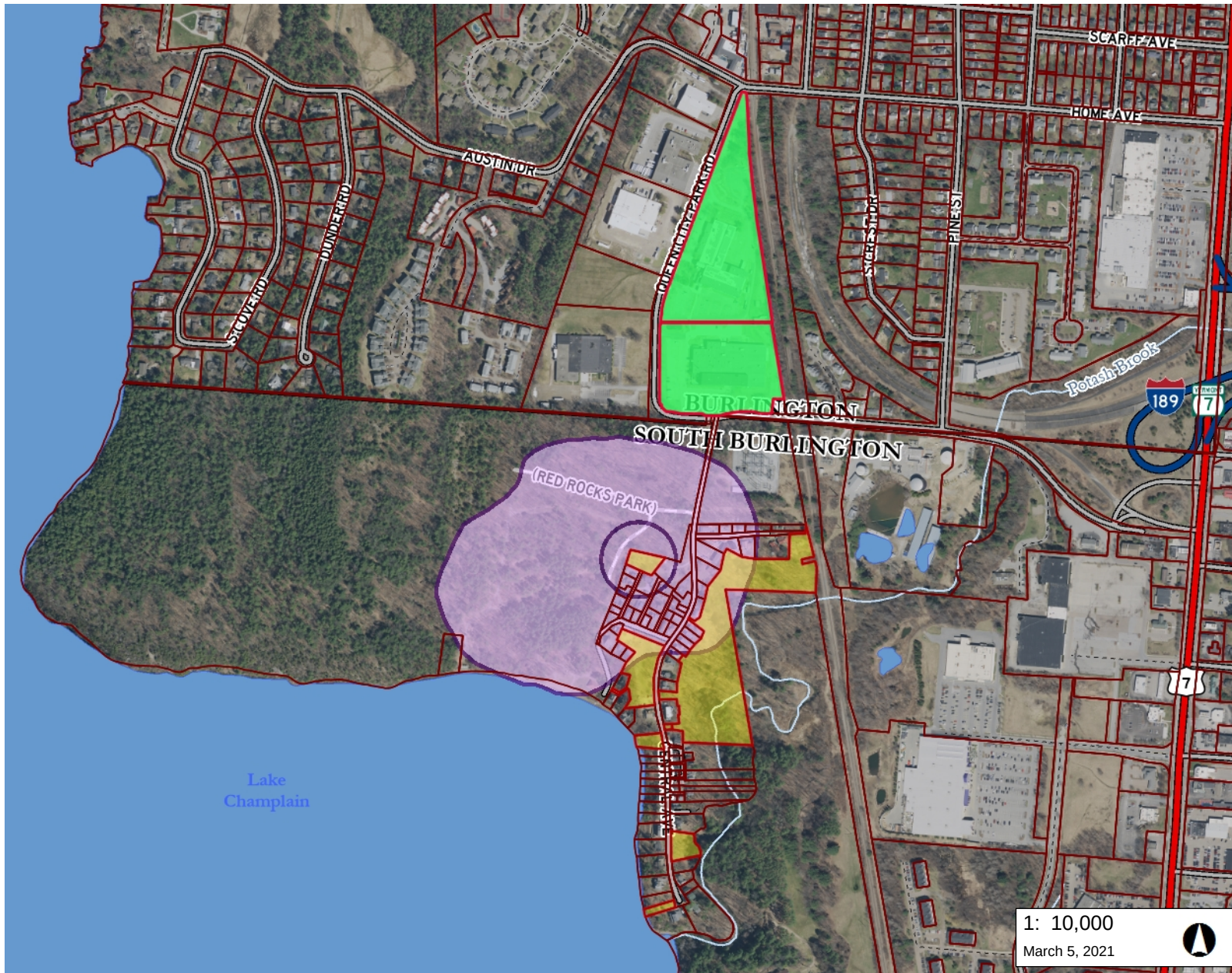
Senior Geologist, Director of Environmental Assessment and Remediation

Direct Phone / 802.229.1875

Mobile / 802.279.8174

E-Mail / dvoisin@stone-env.com





LEGEND

Ground Water SPA

- Active
- Proposed
- Inactive

Parcels (standardized)

Roads

- Interstate
- US Highway; 1
- State Highway
- Town Highway (Class 1)
- Town Highway (Class 2,3)
- Town Highway (Class 4)
- State Forest Trail
- National Forest Trail
- Legal Trail
- Private Road/Driveway
- Proposed Roads

Waterbody

- Stream/River
- Stream
- Intermittent Stream

Town Boundary

1: 10,000

March 5, 2021



NOTES

508.0 0 254.00 508.0 Meters

WGS_1984_Web_Mercator_Auxiliary_Sphere

© Vermont Agency of Natural Resources

1" = 833 Ft. 1cm = 100 Meters

THIS MAP IS NOT TO BE USED FOR NAVIGATION

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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)

CERTIFICATE OF SERVICE

I, Stephen Crowley, certify that on March 5, 2021, I served copies of the SBFD#1 SUPPORTING DOCUMENTS FOR MARCH 10 HEARING and associated exhibits on behalf of the South Burlington Fire District #1 to the service list below by email:

By Email:

Thomas A. Little, Chair
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
NRB.Act250Essex@vermont.gov
aaron.brondyke@vermont.gov

The Burton Corporation
c/o JustinWorthley, Mike Fialko-Casey, Eric Bergstrom
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MikeF@burton.com;
erich@burton.com

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Commission
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abolduc@sburl.com
pconner@sburl.com
memery@sburl.com

Attn: Sharon Behar & Stephen Caflisch c/o Jed Lowy, SBFD #1 PC Chair South Burlington Fire District #1
c/o Mandy McDermott
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Counsel for Smith, Waters, Turner, Logan, de Terra, Goodman, Landauer, Bratt, O'Neill, Walrath, Herrick, Ellis, and Copp

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Mark Furnari
mark.furnari@gmail.com

Dated at South Burlington, Vermont, March 5, 2021.

By: Stephen Crowley
Asst Water Operator

March 8, 2021

Via First Class Mail & Email

Aaron Brondyke, State Coordinator
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
NRB.Act250Essex@vermont.gov

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 land use permits submits the attached *Wastewater and Potable Water Supply Permits, Nos. WW-4-2436-2 & WW-4-0489-4* for the involved properties.

Please let me know if you or the Commission have any questions about this updated information.

Sincerely,



Brian Dunkiel
On behalf of the Burton Corporation

cc: Service List

WASTEWATER SYSTEM AND POTABLE WATER SUPPLY PERMIT**LAWS/REGULATIONS INVOLVED**10 V.S.A. Chapter 64, Potable Water Supply and Wastewater System Permit
Wastewater System and Potable Water Supply Rules, Effective April 12, 2019**Permittee(s): Burton Corporation**
180 Queen City Park Road
Burlington, VT 05401**Permit Number: WW-4-0489-4**

This permit affects the following property/properties in the City of Burlington, Vermont:

Lot	Parcel	SPAN	Acres	Book/Page #'s
1	060-1-057-000	114-035-20462	8.60	Book:536 Page:697

This application, consisting of the relocation of an existing sewer line for an existing commercial building on an existing, 8.60 acre parcel utilizing municipal water and wastewater services, located at 180 Queen City Park Road, Burlington, VT 05401 in Burlington, Vermont, is hereby approved under the requirements of the regulations named above subject to the following conditions. Any person aggrieved by this permit may appeal to the Environmental Court within 30 days of the date of issuance of this permit in accordance with 10 V.S.A. Chapter 220 and the Vermont Rules of Environmental Court Proceedings.

1. GENERAL

- 1.1 The permittee is responsible to record this permit in the City of Burlington Land Records within 30 days of issuance of this permit and prior to the conveyance of any lot subject to the jurisdiction of this permit.
- 1.2 The permittee is responsible to record the design and installation certifications and other documents that are required to be filed under these Rules or under a permit condition in the City of Burlington Land Records.
- 1.3 Each assign or successor in interest shall be shown a copy of the Wastewater System and Potable Water Supply Permit and the stamped plan(s) prior to the conveyance of a lot.
- 1.4 By acceptance of this permit, the permittee agrees to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with the Vermont environmental and health statutes and regulations, and permit conditions.
- 1.5 This permit does not relieve the landowner from obtaining all other approvals and permits from other State Agencies or Departments, or local officials prior to construction.
- 1.6 All conditions set forth in WW-4-0489-3 shall remain in effect except as amended or modified herein.

2. CONSTRUCTION

- 2.1 Construction shall be completed as shown on the plans and/or documents prepared by Engineering Ventures PC (Paul M. Boisvert), with the stamped plans listed as follows:

Title	Sheet	Plan Date	Revision
Existing Conditions	C1.1	Mar 13 2020	10-23-20
Demolition Plan 1 of 2	C1.3	Mar 13 2020	10-23-20
Grading and Utility Plan	C2.1	Mar 13 2020	10-15-20
Sewer Profile 1 of 2	C2.2	Mar 13 2020	10-15-20
Sewer Details	C3.6	Mar 13 2020	10-15-20



Water Details	C3.7	Mar 13 2020	10-15-20
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- 2.2 Construction of wastewater systems or potable water supplies, or buildings or structures (as defined by the Wastewater System and Potable Water Supply Rules), or campgrounds, not depicted on the stamped plans, or identified in this permit, is not allowed without prior approval by the Drinking Water and Groundwater Protection Division.

3. INSPECTIONS

- 3.1 No permit issued by the Secretary shall be valid for a substantially completed wastewater system until the Secretary receives a signed and dated certification from a qualified Vermont Licensed Designer (or where allowed, the installer) on a Secretary-approved form that states:

"I hereby certify that, in the exercise of my reasonable professional judgment, the installation-related information submitted is true and correct and the wastewater system was installed in accordance with the permitted design and all permit conditions, were inspected, were properly tested, and have successfully met those performance tests"

or which satisfies the requirements of §1-311 of the referenced rules.

4. DESIGN FLOW

- 4.1 Lot use and design flows (gpd) shall correspond to the following:

Lot	Building Use / Design Flow Basis	Wastewater	Water
1	Commercial building with 325 employees	4,875	4,875

5. WASTEWATER SYSTEM

- 5.1 The lot/project is approved for connection to the City of Burlington wastewater treatment facility as depicted on the plan(s) stamped by the Drinking Water and Groundwater Protection Division.

6. POTABLE WATER SUPPLY

- 6.1 The lot/project is approved with the existing connection to the water supply system owned by the City of Burlington as depicted on the plan(s) stamped by the Drinking Water and Groundwater Protection Division.

Peter Walke, Commissioner
Department of Environmental Conservation

Dated December 21, 2020

By 
William E. Zabiloski, Environmental Analyst VI
Essex Junction Regional Office
Drinking Water and Groundwater Protection Division

cc: Engineering Ventures PC

CERTIFICATE OF SERVICE

I hereby certify on this 8th day of March, 2021, a copy of the foregoing letter from Acting Chief of Police Jon Murad of the City of Burlington concerning Act 250 Land Use Permit Application 4C0174-6,4C0368-3, was sent to the following individuals by email at the addresses listed.

The Burton Corporation
c/o Justin Worthley, Mike Fialko-Casey, Eric Bergstrom
180 Queen City Park Road
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justinw@burton.com; MikeF@burton.com; erich@burton.com

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Chair, Selectboard/Chair, Planning Commission
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Donna Kinville, Town Clerk
Chair, Selectboard/Chair, Planning Commission
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VTrans Policy, Planning & Research Bureau
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FOR YOUR INFORMATION

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harris@roen.net

Mark Furnari
mark.furnari@gmail.com

Dated at Hinesburg, Vermont, this 8th day of March, 2021.

By: /s/ Kimberlee J. Sturtevant
Kimberlee J. Sturtevant, Esq.
Assistant City Attorney
Office of City Attorney & Corporation Counsel
149 Church St., Room 11
Burlington, VT 05401
(802) 865-7121

ksturtevant@burlingtonvt.gov

WASTEWATER SYSTEM AND POTABLE WATER SUPPLY PERMIT**LAWS/REGULATIONS INVOLVED**10 V.S.A. Chapter 64, Potable Water Supply and Wastewater System Permit
Wastewater System and Potable Water Supply Rules, Effective April 12, 2019**Permittee(s): Burton Corporation**
180 Queen City Park Road
Burlington, VT 05401**Permit Number: WW-4-2436-2**

This permit affects the following property/properties in the City of Burlington, Vermont:

Lot	Parcel	SPAN	Acres	Book/Page #'s
1	060-1-058-000	114-035-20463	6.90	Book:1006 Page:697

This application, consisting of a mixed use building for 74 employees, 15 skate park participants with 6 spectators, a food concession area, a performance space with capacity for 1,500 attendees, and a restaurant with 150 seats serving 2 meals/day on an existing, 6.90 acre parcel, utilizing municipal water and wastewater services, located at 266 Queen City Park Road in the City of Burlington, Vermont, is hereby approved under the requirements of the regulations named above subject to the following conditions. Any person aggrieved by this permit may appeal to the Environmental Court within 30 days of the date of issuance of this permit in accordance with 10 V.S.A. Chapter 220 and the Vermont Rules of Environmental Court Proceedings.

1. GENERAL

- 1.1 The permittee is responsible to record this permit in the City of Burlington Land Records within 30 days of issuance of this permit and prior to the conveyance of any lot subject to the jurisdiction of this permit.
- 1.2 The permittee is responsible to record the design and installation certifications and other documents that are required to be filed under these Rules or under a permit condition in the City of Burlington Land Records.
- 1.3 Each assign or successor in interest shall be shown a copy of the Wastewater System and Potable Water Supply Permit and the stamped plan(s) prior to the conveyance of a lot.
- 1.4 By acceptance of this permit, the permittee agrees to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with the Vermont environmental and health statutes and regulations, and permit conditions.
- 1.5 This permit does not relieve the landowner from obtaining all other approvals and permits from other State Agencies or Departments, or local officials prior to construction.
- 1.6 All conditions set forth in WW-4-2436-1 shall remain in effect except as amended or modified herein.

2. CONSTRUCTION

- 2.1 Construction shall be completed as shown on the plans and/or documents prepared by Engineering Ventures PC (Paul M. Boisvert), with the stamped plans listed as follows:

Title	Sheet	Plan Date	Revision
Existing Conditions	C1.1	Mar 13 2020	10-15-20
Demolition Plan 2 of 2	C1.4	Mar 13 2020	10-15-20
Grading and Utility Plan	C2.1	Mar 13 2020	12-9-20



Sewer Profile 2 of 2	C2.3	Mar 13 2020	10-15-20
Sewer Details	C3.6	Mar 13 2020	12-9-20
Water Details	C3.7	Mar 13 2020	10-15-20

- 2.2 Construction of wastewater systems or potable water supplies, or buildings or structures (as defined by the Wastewater System and Potable Water Supply Rules), or campgrounds, not depicted on the stamped plans, or identified in this permit, is not allowed without prior approval by the Drinking Water and Groundwater Protection Division.

3. INSPECTIONS

- 3.1 No permit issued by the Secretary shall be valid for a substantially completed potable water supply and wastewater system until the Secretary receives a signed and dated certification from a qualified Vermont Licensed Designer (or where allowed, the installer) on a Secretary-approved form that states:

“I hereby certify that, in the exercise of my reasonable professional judgment, the installation-related information submitted is true and correct and the potable water supply and wastewater system were installed in accordance with the permitted design and all permit conditions, were inspected, were properly tested, and have successfully met those performance tests”

or which satisfies the requirements of §1-311 of the referenced rules.

4. DESIGN FLOW

- 4.1 Lot use and design flows (gpd) shall correspond to the following:

Lot	Building Use / Design Flow Basis	Wastewater	Water
1	74 employees, 15 skate park participants with 6 spectators, a food concession area, a performance space with capacity for 1,500 attendees, and a restaurant with 150 seats serving 2 meals/day	9,690	9,690

5. WASTEWATER SYSTEM

- 5.1 The lot/project s approved for connection to the City of Burlington wastewater treatment facility as depicted on the plan(s) stamped by the Drinking Water and Groundwater Protection Division.
- 5.2 This permit is based, in part, on a determination by the municipality that sufficient capacity exists in the wastewater treatment facility and associated sanitary sewer collection line to accommodate the design flow of this project. This permit does not imply the municipality will grant allocation to the building.

6. POTABLE WATER SUPPLY

- 6.1 The lot/project is approved for connection to the water supply system owned by the City of Burlington as depicted on the plan(s) stamped by the Drinking Water and Groundwater Protection Division.
- 6.2 This permit is based, in part, on a determination by the municipality that sufficient capacity exists in the municipal public water system to accommodate the design flow approved by this permit. This permit does not imply that the municipality will grant allocation for the building.

6.3 The landowner shall install and maintain backflow prevention devices that conform to Vermont Department of Public Safety standards and NFPA 13 for any connection of a sprinkler fire suppression system to a public drinking water system.

Peter Walke, Commissioner
Department of Environmental Conservation

Dated January 7, 2021

By 

William E. Zabiloski, Environmental Analyst VI
Essex Junction Regional Office
Drinking Water and Groundwater Protection Division

cc: Engineering Ventures PC

**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 March 8, 2021, I served copies of *Wastewater and Potable Water Supply Permits, Nos. WW-4-2436-2 & WW-4-0489-4* on behalf of the Burton Corporation in the above-referenced proceeding to the service list below by the delivery method noted:

By Email:

Thomas A. Little, Chair
District 4 Environmental Commission
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Stephen Crowley, Asst. Water Operator
South Burlington Fire District #1
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steve.crowley1@gmail.com

Attn: Sharon Behar & Stephen Caflisch
c/o Jed Lowy, SBFD #1 PC Chair
South Burlington Fire District #1
c/o Mandy McDermott
5 Pine Place
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Counsel for the City of South Burlington

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*Counsel for Smith, Waters, Turner, Logan,
de Terra, Goodman, Landauer, Bratt,
O'Neill, Walrath, Herrick, Ellis, and Copp*

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Harris Roen
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Burlington, VT 05401
harris@roen.net

Mark Furnari
mark.furnari@gmail.com

Dated at Burlington, Vermont, this 8th day of March, 2021.

By: /s/ Grace Grundhauser
Grace Grundhauser
Paralegal



POLICE DEPARTMENT
CITY OF BURLINGTON

TO: District 4 Environmental Commission
c/o Aaron J. Brondyke, State Coordinator
ref Case No. 4C0174-6, 4C0368-3

FROM: Acting Chief of Police Jon Murad

DATE: February 9, 2021

RE: Reiterating Burlington Police Department Letter of Support for Burton's Burlington Hub / Higher Ground Performing Arts Center and application for an Act 250 permit

In letters dated April 17, 2020, and April 30, 2020 (attached at bottom), the Burlington Police Department (BPD) offered its support to the Burlington Development Review Board for a proposal by Burton to develop a mixed-use facility in Burlington's south end.

In the ten months since, the Burlington City Council has drastically limited the BPD's authorized headcount, and the BPD now foresees significant service reductions. Neighbors have cited these potential reductions as a source of concern about the project. These possible reductions do not change our support of the Burton project, however.

Both Mayor Miro Weinberger and I have publicly expressed concerns about the staffing trajectory, but both of us are also committed to doing all that we can to continue providing public safety staffing at levels Burlingtonians expect. Nevertheless, service disruptions are possible, particularly from 0300 hours to 0730 hours, which is the BPD's Midnight Shift. The rationale for locating disruptions in those hours is to prioritize patrol for the Day Shift and the Evening Shift. This means that even if service disruptions become necessary, BPD will maintain coverage until 0300 hours. Thus, the period of possible service disruption does not overlap Burton's anticipated hours of operation. Furthermore, I am hopeful that the service disruptions may be addressed by new resource deployments by the time the pandemic has ended and the Burton mixed-use facility is open for business.

Stipulating that the BPD still expects the project leads to adhere to the Operational Management Plan discussed in my letter of April 20, 2020, the BPD reiterates its support of Burton's Conditional Use application.



Jon Murad, Acting Chief of Police



**POLICE DEPARTMENT
CITY OF BURLINGTON**

TO: Burlington Development Review Board
FROM: Chief of Police Jennifer Morrison
DATE: April 17, 2020
RE: Burton's Burlington Hub / Higher Ground Performing Arts Center and application for a Conditional Use permit

The Burlington Police Department has reviewed proposals by Burton to develop a mixed-use facility in Burlington's south end. Insofar as the provision of police services is concerned, Deputy Chief Jon Murad of the Burlington Police Department (BPD) has discussed Burton's proposals with representatives of the company and the project, specifically Justin Worthley and John Caulo. On his recommendation, the BPD offers its approval of Burton's Conditional Use application to the Development Review Board, with certain conditions listed below.

Burton seeks to convert unused warehouse space at its Queen City Park Road campus into a mixed-use facility. This facility is intended to be a part of and consistent with the South End Arts District. According to Burton's "Mixed Use Hub" concept, the spaces would include a food hall, indoor skate park, retail store, and performing arts venue. Higher Ground, a local event producer currently based in South Burlington, will operate the performing arts center. These uses would be combined with Burton's core functions that are already on-site, including its R&D/prototype center, walk-up warranty service, and product innovation and testing labs.

On a typical daily basis, providing police services with regard to these uses is within BPD's capacity. But some of the larger events envisioned for the facility—up to 1,500 people—will require close coordination with facility owners and managers. The challenge will be that some large events at the new Higher Ground / Mixed Use Hub have the potential to divert BPD resources during times when those resources are normally focused on downtown Burlington's "bar closing."

Specific concerns include: managing traffic flow in either direction on Queen City Park Road, particularly at the narrow bridge over the railroad tracks between Arthur Ct and Central Ave but also north to the intersection with Home Ave; large gatherings in the parking lots before and after large events; the potential for disorder inside the venue during large events and/or performances by specific artists whose followings include disproportionate numbers of disruptive elements; and, for the South Burlington Police Department (SBPD), after-hours activity potentially leaking into Red Rocks Park and down Central Ave.



POLICE DEPARTMENT
CITY OF BURLINGTON

Accordingly, BPD's approval of the Conditional Use application is contingent on assurances by Burton and Higher Ground that event-specific, properly resourced security plans are put in place to address traffic concerns, crowd control, and the potential for disorder. Such plans might include additional private security personnel, personnel to direct traffic, and potentially armed security personnel (of the type provided by off-duty law enforcement).

During Deputy Chief Murad's discussion with Mr. Worthley and Mr. Caulo, attended as well by South Burlington Police Chief Shawn Burke, it was made clear that close coordination has been a hallmark of the relationship between Higher Ground and the SBPD. Building on the coordination Higher Ground and SBPD have enjoyed and furthering it in the new relationship between Higher Ground and BPD will be integral to ensuring public safety for large events.

Regarding Burton's well-earned reputation as a good neighbor, we note Burton's invaluable role in fighting the current global COVID-19 pandemic. Governor Phil Scott recently called Burton's efforts "a prime example of how Vermonters are rising to the occasion and uniting around a common purpose during these unprecedented times." The Burlington Police Department has every reason to believe this responsible corporate citizenship will continue as the Mixed Use Hub is developed.

Assuming that assurances of proper security for large events are provided, BPD supports Burton's Conditional Use application.

Jennifer Morrison, Chief of Police

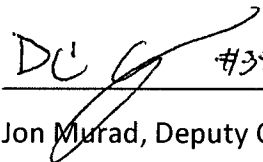


POLICE DEPARTMENT
CITY OF BURLINGTON

TO: Burlington Development Review Board
FROM: Deputy Chief of Police Jon Murad
DATE: April 30, 2020
RE: Follow Up to Burlington Police Department Letter of Support for Burton's Burlington Hub / Higher Ground Performing Arts Center and application for a Conditional Use permit

On Thursday, April 30, 2020, the undersigned attended a meeting with Luke McGowan (Director, Burlington Community Economic Development Office) and representatives of Burton and Higher Ground (Justin Worthley, Alex Crothers, Alan Newman, Mark Balderston, and John Caulo). During this meeting we discussed the "Burton Hub – Performing Arts Center (PAC) Operational Management Plan" of April 23, 2020, and the ways in which it addressed observations previously made by the Burlington Police Department (BPD) in a letter dated April 17, 2020. Having reviewed and discussed the Operational Management Plan, the BPD reiterates its approval of Burton's Conditional Use application to the Development Review Board, without reservation.

The Operational Management Plan addresses pre-event management, event management, and post-event management, and delineates responsive protocols based on event size. It covers traffic, gatherings outside the venue, coordination with local law enforcement, and screening and security policies. Owing to the clarity of and assurances in the Operational Management Plan, as well as the project leads' demonstrated history of responsible management and strong relationships with the South Burlington Police Department, the BPD offers its unconditional support of Burton's Conditional Use application.

 #337 04/30/2020
Jon Murad, Deputy Chief of Operations



HEARING RECESS ORDER

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: 4C1301-3

BC Community Housing, LLC
PO Box 1335
Burlington, VT 05402

351-375 North Avenue Home Owners
Association, LLC
PO Box 1335
Burlington, VT 05402

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. Introduction

On November 30, 2020, BC Community Housing, LLC, and 351-375 North Avenue Home Owners Association, LLC (the "Applicants") filed application number 4C1301-3 for the following revisions to the Cambrian Rise Development: (a) increasing the maximum number of units for the Cambrian Rise Development from 739 to 770; (b) increasing the maximum number of hotel rooms from 42 to 50; (c) increasing the maximum square footage of commercial space to 112,600 square feet; (d) converting one level of understory parking in Building C to residential units for a total of 125 units; (e) altering Building M by adding an additional floor for a total of six floors, increasing the building footprint for a total of 117 units, adding a second level of understory parking, expanding the surface parking, revised landscaping, and façade changes; (f) adding an additional floor to Building P for a total of five floors; and (g) adding an additional floor to Building Q/R for a total of six floors. The project is located at 311-375 North Avenue in Burlington, Vermont. This application was deemed complete on December 29, 2020 after the receipt of supplemental evidence. A copy of the application and plans for this project are available for review online at the Natural Resources Board web site (<http://nrb.vermont.gov>) by clicking on "Act 250 Database" and entering project number 4C1301-3.

The Commission convened a Prehearing Conference for application 4C1301-3 on February 5, 2021, for the purpose of identifying contested facts and legal issues, discussing party status, and determining a hearing schedule. Pursuant to Executive Order 01-20 and associated Addenda and Directives issued by Governor Scott based upon the coronavirus (COVID-19) emergency, and as authorized under Act 92 (2020), this prehearing conference was conducted remotely via Microsoft



Teams video conferencing software. The Prehearing Conference was conducted pursuant to Act 250 Rule 16, with Chair Thomas A. Little presiding. Prior to the prehearing conference, a site visit was held at the project site.

On March 1, 2021, the Commission held a Hearing for application 4C1301-3. The Hearing was conducted remotely via Microsoft Teams video conferencing software. Pursuant to Act 250 Rule 13(B), the Commission recessed the Hearing pending submittal of additional information by the Parties as set forth below.

II. Party Status

1. The following persons are entitled to party status pursuant to 10 V.S.A. § 6085(c)(1):
 - A. The **Applicants**, by Eric Farrell and Sonya Enright of BC Community Housing, LLC and Farrell Real Estate at the Prehearing Conference and Hearing; Dave Marshall of Civil Engineering Associates at the Hearing; Corey Mack of Resource Systems Group, Inc. at the Hearing; and Michael Buscher of T. J. Boyle Associates at the Hearing.
 - B. The **Chittenden County Regional Planning Commission ("CCRPC")** at the Prehearing Conference and Hearing by Taylor Newton and through an entry of appearance dated February 9, 2021 by Charlie Baker. CCRPC is a statutory party.
 - C. The **Vermont Agency of Transportation ("VTrans")** through an entry of appearance dated February 4, 2021 by Christopher Clow. VTrans is a statutory party.
 - D. The **Vermont Agency of Natural Resources ("ANR")** through an entry of appearance dated February 4, 2021 by Jennifer Mojo. ANR is a statutory party.
 - E. The **Vermont Division for Historic Preservation ("VDHP")** at the Hearing by Elizabeth Peebles. VDHP is a statutory party.
2. No other persons were present at the Prehearing Conference or Hearing and no requests for party status or Friends of the Commission status were made.

Pursuant to 10 V.S.A. § 6085(c)(6), the Commission will re-examine its party status decisions prior to the close of the Hearing and will state its final party status decisions either in the decision it issues on the case or in a separate memorandum.

III. Supplemental Evidence

Pursuant to Act 250 Rule 20(A), and with regard to the testimony provided, the Commission requires that the Applicant submit the following information:

1. Water and wastewater allocation letters that relate to the proposed project, or other documentation showing that the proposed project's impacts are fully covered by prior allocation letters.
2. Cross section plans depicting the grade and proposed building heights that were shown at the Hearing.

IV. Order

1. The Applicants shall file the required supplemental evidence with the Commission on or before March 10, 2021 at 4:30 PM.
2. Parties may file responses to filings made by the Applicants on or before March 19, 2021 at 4:30 PM.
3. The above documentation shall be provided to all Parties listed on the attached certificate of service and **one (1)** digital version of the documentation plus **one (1)** paper set shall be submitted to the District Commission Office. The Commission requests that the Commission's digital version be attached as an email to the NRB public folder ([nrb-act250\[district office\]@vermont.gov](mailto:nrb-act250[district office]@vermont.gov)) or, if larger than 3 MB in size, uploaded to the NRB ftp site (see <http://nrb.vermont.gov/documents/application-guide-act-250>). Any upload to the NRB ftp site should be followed up with an email to the NRB public folder and to the District Coordinator informing that the files have been uploaded.

After the above information has been received, the Commission will reconvene the hearing only if there are outstanding questions or if the Commission determines that a party has reasonable questions about the additional information. If the information has not been received within 30 days from the date of this notice, or if the hearing is not reconvened, the Commission will set a date for adjournment and issue a final decision based on the existing record following a full deliberation of the issues. If the Applicant wishes to continue the recess beyond 30 days from the date of this notice, it must notify the District Commission in writing on or before the 30th day.

An appeal from this order may be filed with the Environmental Court in accordance with 10 V.S.A. Chapter 220 and the Rules for Environmental Court Proceedings.

If any party has any questions or wishes to request the hearing be reconvened, please contact the District Coordinator, Rachel Lomonaco at Rachel.Lomonaco@vermont.gov or 802-879-5658.

Dated this 1st day of March 2021.

By /s/Thomas A. Little, Chair
Thomas A. Little, Chair
District 4 Commission

Other Commissioners participating in this decision:

Parker Riehle

Monique Gilbert

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of March 2021, a copy of the foregoing ACT 250 HEARING RECESS ORDER #4C1301-3, 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

BC Community Housing, LLC
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efarrell@farrellpropertiesvt.com
senright@farrellpropertiesvt.com

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Chair, City Council/Chair, City Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
abovee@burlingtonvt.gov

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

Elizabeth Lord, Land Use Attorney
Jennifer Mojo, Reg. Policy Analyst
Agency of Natural Resources
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jennifer.mojo@vermont.gov

Barry Murphy/Vt. Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
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Craig Keller/Jeff Ramsey/Christopher Clow
VTrans Policy, Planning & Research Bureau
Barre City Place
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Vt. Agency of Agriculture, Food & Markets
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Montpelier, VT 05620-2901
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Division for Historic Preservation
c/o Elizabeth Peebles
National Life Building, Drawer 20
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elizabeth.peebles@vermont.gov
scott.dillon@vermont.gov; james.duggan@vermont.gov
accd.projectreview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
Thomas Little, Chair
Parker Riehle/Monique Gilbert
111 West Street
Essex Junction, VT 05452

Charlie Pughe
cwpughe@qmavt.com

Dated at Essex Junction, Vermont, this 1st day of March, 2021.

/s/Christine Commo
Natural Resources Board Technician
879-5614
christine.commo@vermont.gov

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Burlington Planning Commission

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Burlington, VT 05401
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(802) 865-7195 (FAX)
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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, March 9, 2021, 6:30 P.M.

Remote Meeting via Zoom

Minutes

Members Present	A Montroll, H Roen, A Friend, E Lee, J Wallace-Brodeur, B Baker, C Mason, Z Hightower, J Hanson
Staff Present: D White, M Tuttle, S Gustin, K Sturtevant, W Ward, P Wehman	
Attendance: D Deen, K Ferravanti, M Bean, P Rockholz, R Sheppard, E Morrow, Participant "12345", L Kettler, D Lane, D Hanley, E Hanley, E Redic, W Cormac, H Ott, B Cooke, J Sharpe, E McArdle, C Vanzandt, B Smith, R Danielson, C Haessly, H Cluse, A Stark, M Klein, R Handy Holmes, S Hamilton, J Vandette, M Barger, D Ward Lyons, B Gonyaw, B Yanovsky, J Marks, B Kiss, E Beaudry, M Harasiuk, L Jensen, K McVeigh, A Magyar, S Gerrish, M Masters, D Culkins, D Sheppard, "Amy", S Jones, D Kirk, S Bushor, three additional participants identified by phone number only	

I. Agenda

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

II. Public Forum

Name	Comment
E Redic	Landlords trying to find a compromise with the Committee is a mistake. Committee should consider why they believe they have more rights to private property than the owners.

III. Proposed CDO Amendment: Short Term Rentals

Action: Approve Municipal Bylaw Amendment report and warn a public hearing on proposed CDO Amendments, and accept comment on Ch. 18 elements during public hearing.		
Motion: J Wallace Brodeur	Second: E Lee	Vote: Approved Unanimously (vote by Commissioners only)
Committee discussion of proposed CDO and Ch. 18 amendments, which are posted online at: https://www.burlingtonvt.gov/CityPlan/PC/Agendas - Staff provided brief update on minor tweaks to the language based on last meeting, and answered questions about proposed STR Bill H.200 and regulatory takings related to primary residency requirements. - A Montroll proposed a modification to allow for an off-site STR host in single unit and duplex dwellings if the owner has owned the property for 3 years. Intent is to enable current hosts to continue, allow the city to know how many people will take advantage of this approach, and to modify the rules later be more restrictive if needed.		

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.

Tuesday, March 9, 2021

- Some Committee members supported the concept as a middle ground and because it is responsive to public comment and current STR scenarios. It was noted however, that hosts must be aware that under Ch. 18 it would not guarantee right to STR in perpetuity due to annual registration process.
- Other Committee members continued to support regulations that are more restrictive of off-site hosting because proposal would not completely curb speculation and reduce the number of units used for STRs, and were concerned that there would be tremendous push-back to revising the regulations later if needed.
- Staff answered questions from Commissioners related to previous topics including process for imposing new STR fees, why a city-wide STR cap or a limit on nights rented were not recommended, and questions about the Ch 18 permitting process.
- E Lee recommend that the Council consider a year or more grace period after adoption of new rules before proactive enforcement takes place for STRs that will not be able to be continued.
- H Roen felt that the Committee will have failed if it doesn't address existing STRs by people who are trying to get by, and indicated that either the Committee or the Council must consider a solution before adopting a policy.

IV. Public Forum on STRs

Name	Comment
K McVeigh	Tenant renting an STR as a way to earn a living, put life savings into an apartment with landlord and it is main way of earning money to live above the poverty line for the first time. Allow existing STRs to continue while preventing new ones.
E Beaudry	Eliminating non-owner occupied STRs will put people out of business. Guests would not visit Burlington without STRs, and don't want to stay in homes with people's personal belongings. This impacts community, hosts and small businesses.
E Hanley	Like idea for non-owner-occupied duplexes because has owned property for 30 years and lived there for 5. New generation wants STR for travel, benefit the city's economy and creates jobs.
D Lyons	Disappointed Committee cannot find balance between small property owners and tenants in the city. Will continue to advocate for small non-owner-occupied properties, and appreciate Commissioner bringing a "both, and" suggestion. Councilors need to compromise.
J Marks	Reading for L Kotorman: Purchased a property that is now a duplex to support retirement. Hosting has kept rent low for long term tenants, helped afford taxes and make investment in property. Proposal feels like penalty for choosing not to be a larger investor with more units. May need to sell property because cannot make the debt service as a long-term rental.
E Morrow	Applicant on Ethan Allen Parkway successfully turned a single-family home into a hotel, and now proposing to add additional units as STRs. As Chair of the DAB, the Committee needs to clarify what a hotel is, and whether it can be a single building or multiple. Regarding STR regulations, new homeowners should be treated the same as longer-term homeowners.
E McArdle	Makes no sense to allow non-owner occupied STRs for 3-4 units, but not single unit and duplex. Hosts have come to meetings for a year and have suffered great emotional distress. Extremely disappointed by some members' use of taxes as disincentives, and the treatment of all landlords the same as large property owners.
J Sharpe	Some Committee members have Airbnbs, and find it inappropriate that those circumstances are being allowed, but not those of hosts coming to these meetings. Not being sympathetic to hosts is also detrimental to tourism.
C Haessly	Renter that hosts and concerned that would not be allowed to continue to STR. Renters should be allowed to rent their own unit, plus be allowed to rent one or

Tuesday, March 9, 2021

	two other units in the city. Committee needs to find a middle ground. Currently in a pandemic, and need to consider how people need to comply with health and safety requirements.
S Bushor	Disappointed about the legal opinion about allowing existing STR hosts to continue, and agonize over the STR hosts who will be negatively impacted. Want to protect the housing stock, long term renters, and single family homes, but concerned about how this will impact people who live close to the edge. Don't understand why no STRs are allowed in buildings of more than 5 units.
L Jenson	Report shared with the Committee regarding impact of STRs on housing costs. Rapid rise in housing cost not substantially driven by STRs and strict regulations on STRs are unlikely to resolve affordability crisis. Suggests that the foundation for the regulation in Burlington is false. Parties and nuisance issues are not unique to STRs. STRs are not something a host does overnight and takes back as they are time consuming and expensive. A lot of hosts are doing so because taxes are so high already, so idea of more taxes is very hard. Concerned that no safety inspection is required for partial unit STRs in owner occupied property.
A Stark	Like 3 year ownership idea to address comments the Committee has heard. Have heard a lot of concern about the "haves" (including small time landlords) and "have nots", but think there are other housing supply solutions the Committee could take that would be more impactful. Quoted report on STR impact on housing affordability. No data that tighter regulations will help low income tenants, so Committee shouldn't consider this vote a panacea for alleviating inequity in city.

V. Commissioner Items

Action: N/A		
Motion: NA	Second: NA	Vote: NA
- Planning Commission's next meeting is Mar. 23, 2021 at 6:30pm - E Lee: Reiterate public comment that Committee should look at hotel definition - B Baker: Agree with comments that there are other housing policies that have greater impact than STR regulations, including historic materials, additions to historic buildings, not allowing housing in the South End Enterprise district.		

VI. Minutes & Communications

Action: Approved the minutes and accepted the communications		
Motion by: A Friend	Second: H Roen	Vote: Approved Unanimously
• Minutes Approved: February 23, 2021 • Communications filed enclosed in agenda packet, and additional communications posted online at https://www.burlingtonvt.gov/CityPlan/PC/Agendas		

VII. Adjourn

Adjournment		Time: 8:44pm
Motion: H Roen	Second: E Lee	Vote: Approved Unanimously



Signed: April 15, 2021

Andy Montroll, Chair

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "Meagan", with a long horizontal flourish extending to the right.

Meagan Tuttle, Comprehensive Planner