



PARTIAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

<https://nrb.vermont.gov/>

[phone] 879-5614

CASE NO: 4C0473-7A

BPLP, LLC

85 Meadowland Drive

South Burlington, VT 05403

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On June 4, 2021, BPLP, LLC (the "Applicant") filed an application for an Act 250 permit for a project generally described as the release of a maximum of 23.2 acres of the existing 61.8 acres on-site mitigation area for primary agricultural soils. The project is located on Lot 4 of the Meadowlands Park on Meadowland Drive in South Burlington, Vermont. The Applicant's legal interest is ownership in fee simple described in a deed recorded in Book 273, Page 265 of the land records of South Burlington, Vermont.

The Applicant has requested partial findings of fact on Criteria 9(B) for the project. No permit will be issued unless and until the Applicant applies for and receives affirmative findings on all of the Act 250 criteria.

The Commission held a hearing on this application on July 8, 2021. The Commission also conducted a site visit immediately before the hearing and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on June 6, 2022 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

II. JURISDICTION

Jurisdiction attaches because the Project is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the Administrative Procedure Act (“APA”), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, “[t]he rules of evidence as applied in civil cases . . . shall be followed” in contested cases. Under the Vermont Rules of Evidence, “(a) judicially noticed fact must be one not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b); See *In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e).

Accordingly, official notice is hereby taken of exhibits and previously issued decisions associated with application #4C0473-7, the *City of South Burlington Comprehensive Plan* (2016) (the “South Burlington Comprehensive Plan”), the *Chittenden County ECOS Plan* (2018), and the *Natural Resources Board Statement of Procedure: Preservation of Primary Agricultural Soils Policy* (2012) subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

IV. AMENDMENT APPLICATION - RULE 34(E)

Whether the Applicant seeks to amend a critical permit condition

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

Land Use Permit (“LUP”) #4C0473-7 was issued on September 27, 2012 and authorized the subdivision of a 77.6 acre lot into four lots (Lot 1, Lot 2, Lot 3 and Lot 4), construction of a 60 space parking area and after-the-fact approval of a 24 space parking area and gravel storage area. LUP #4C0473-7 required both on-site and off-site mitigation for the project’s impacts on primary agricultural soils. The Applicant seeks to amend Conditions #23-27 of LUP #4C0473-7 to release a maximum of 23.2 acres of the 61.8 acres designated as on-site mitigation area for impacts to primary agricultural soils. Exhibit #008. The 23.2 acres is located on Lot 4 of the Meadowlands Park.

Conditions #23-27 of LUP #4C0473-7 state as follows:

23. *The Permittee shall protect 61.8 acres of primary agricultural soils through on-site mitigation, as depicted on Exhibit #17 (Sheet S2), in order to compensate for the acreage of primary agricultural soils whose agricultural potential has been reduced or eliminated as a result of the project.*

24. *The protected primary agricultural soils shall be maintained in a manner that will ensure they will be available for economic or commercial agriculture, in perpetuity. Activities, structures, or other non-agricultural improvements that might in any way prevent or reduce the use of the protected soils for economic or commercial agriculture shall be prohibited. If open protected soils are not being used for an economic or commercial agricultural purpose, the Permittee shall ensure that the soils remain open and unobstructed through accepted practices such as haying or brush hogging a minimum of once every two years.*

25. *No permit amendment is required for farming that will occur on the protected primary agricultural soils or will not conflict with any other applicable permit condition.*

26. *Pursuant to 10 V.S.A. § 6081(s), farming is permitted on lands exempt from amendment jurisdiction.*

27. *The following "right to farm" covenant shall be included in any declaration of covenants for the project and in each deed conveying any portion of the project tract:*

"Notice is given of the existence of preserved agricultural lands located in the vicinity of the lands conveyed herein. Current or future agricultural operations on these lands may include, without limitation: plowing; planting; fertilizing; spraying; the use of agricultural chemicals, pesticides and herbicides in the course of cultivating, harvesting, storing and transporting agricultural products; and the raising, feeding and management of livestock. Consistent with this notice, the lands are conveyed subject to a perpetual easement for any noise, odors, dust, and/or byproducts and impacts that may occur in the course of conducting accepted agricultural and best-management practices on these nearby agricultural lands. Grantees, by the acceptance of this deed, waive any objection to impacts arising from accepted agricultural and best-management practices, and are further notified that existing agricultural activities which are consistent with accepted agricultural and best-management practices do not constitute a nuisance or a trespass."

The Commission finds that Conditions #23-27 of LUP #4C0473-7 are conditions that were critical to the issuance of LUP #4C0473-7, because the project authorized in that Permit would not comply with Criterion 9(B) without those permit conditions. LUP #4C0473-7 was not appealed. Therefore, the Commission must conduct the Rule 34(E) analysis, as set forth below.

Whether the Applicant seeks to relitigate a critical permit condition

The second factor that must be considered is whether the applicant "is merely seeking to relitigate the permit condition or to undermine its purpose and intent."

In this instance, LUP #4C0473-7 and the accompanying Memorandum of Decision and Order set aside Lot 4 as an on-site mitigation area for impacts to primary agricultural soils but also contemplated future development on Lot 4 as set forth below.

Condition #28 of LUP #4C0473-7 states as follows:

28. The Permittee shall comply with the terms and conditions of the Primary Agricultural Soils Off Site Mitigation Agreement, dated September 24, 2012. If any potential future uses of Lots #1, #2 or #4 are not considered industrial uses, then the Commission will evaluate whether a new offsite Agricultural Mitigation agreement may be needed.

Footnote 1 of the Memorandum of Decision and Order #4C0473-7 states, as follows:

1. We recognize that Lot #4 contains most of the permanently preserved on-site Primary Agricultural Soils, the remainder being on the Lane Press lot and the Dynapower lot (Lot #3). No development is proposed on Lot #4 at this time and any proposed development that impacts the [primary agricultural soils] will need to account for the agricultural mitigation for the original agricultural impacts that are being lost plus for the new proposed agricultural impacts.

Based on the wording presented in LUP #4C0473-7 and the Memorandum of Decision and Order #4C0473-7, the Commission has determined that the Applicant is not merely seeking to relitigate the permit condition or undermine its purpose and intent. Therefore, the Commission proceeds to review the other factors under Rule 34(E).

Flexibility vs. Finality

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

- a. Changes in facts, law or regulations beyond the permittee's control.

In 2012, when the LUP #4C0473-7 was issued, 10 V.S.A. § 6093(a)(4)(B) directed that:

"In any application to a district commission for expansion of an existing industrial park, compact development patterns shall be encouraged that assure the most efficient use of land and the realization of maximum economic development potential through appropriate densities. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) of this title, nor to requirements established in subdivision (9)(C)(iii)."

In 2012 when LUP #4C0473-7 was issued, 10 V.S.A. § 6086(a)(9)(B)(iii) directed that:

“Except in the case of an application for a project located in a designated growth center, the subdivision of development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovated land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation.”

And the Land Use Panel’s *Statement of Procedure: Preservation of Primary Agricultural Soils*, effective July 1, 2006, defined compact development patterns as follows:

“Compact development patterns” means the use of innovative land use design specifically intended to minimize or eliminate the fragmentation of primary agricultural soils on a project tract, thus preserving a percentage of the primary agricultural soils on a project tract or tracts, capable of supporting or contributing to an economic or commercial agricultural operation, consistent with the ratio requirements of 10 V.S.A. §6093.

Importantly, after LUP #4C0473-7 was issued in 2012, 10 V.S.A. § 6093(a)(4)(B) was amended to read as follows:

“In any application to a District Commission to amend a permit for an existing industrial park, the most efficient and full use of land shall be allowed consistent with all applicable criteria of subsection 6086(a) of this title. Industrial park expansions or industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) or 6086(a)(9)(C)(iii) of this title.”

The Applicant contends that for the purposes of the Rule 34(E) analysis, these changes to 10 V.S.A. § 6093(a)(4)(B) are material in this case.

b. Changes in technology, construction, or operations which necessitate the amendment.

The Applicant has not presented any changes in technology or construction that would necessitate an amendment.

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

The Applicant has presented an alternate means of mitigating the impacts to primary agricultural soils protected under LUP #4C0473-7. The Applicant proposes that these impacts be mitigated through off-site mitigation rather than on-site mitigation provided that appropriate circumstances are found by the Commission.

The Commission is not immediately persuaded that an alternate means of mitigation is more efficient or effective to mitigate the impact addressed by the original condition. Under LUP #4C0473-7, however, the Commission allowed the mitigation to be a combination of on-site and off-site, and the Commission did contemplate a future means of mitigation for Lot 4 in Footnote 1 of the Memorandum of Decision and Order #4C0473-7 which stated:

"1. We recognize that Lot #4 contains most of the permanently preserved on-site Primary Agricultural Soils, the remainder being on the Lane Press lot and the Dynapower lot (Lot #3). No development is proposed on Lot #4 at this time and any proposed development that impacts the [primary agricultural soils] will need to account for the agricultural mitigation for the original agricultural impacts that are being lost plus for the new proposed agricultural impacts."

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

As stated in the *City of South Burlington Comprehensive Plan* (2016), Lot 4 is located in the City of South Burlington's Southeast Quadrant ("SEQ") which is intended to create a balance between housing, complimentary land uses, and conservation.

The South Burlington Comprehensive Plan includes clear objectives to conserve productive farmland and primary agricultural soils within the City and to incentivize agriculture and local food production dispersed throughout the City. Yet, that Plan also acknowledges that the economic prospects for traditional, larger-scale farming, especially dairy farming, have faded in the SEQ with the last two herds of dairy cows having been sold in 2003 and 2004, leaving only hay fields and other limited agricultural operations in the SEQ.

Per the South Burlington Comprehensive Plan, Lot 4 is located within the Industrial-Open Space zoning district which is intended to provide land for high-quality, large-lot industries and offices whose buildings and operations are consistent with a location in an environmentally healthy and visually sensitive area adjacent to residential neighborhoods. It is also planned for medium to higher intensity development with the overall goal to foster high quality jobs, provide for medium to large scale industrial, educational, mechanical and office park environments, among other related uses.

Based on the available information, the Commission finds that the Applicant's proposed change would further the goals and objectives of the South Burlington Comprehensive Plan.

- e. Manifest error on the part of the Commission, the former Environmental Board, or the Environmental Court in the issuance of the permit condition.

No error by the Commission, the former Environmental Board or the Environmental Court is alleged by any party.

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

It is reasonable for parties to rely upon the terms and conditions of a permit, or at least to rely on their right to be heard on an application to amend the permit. In re Eustance, No. 13-1-06 Vtec, Decision at 12 (2/16/07), Judgment Order (3/16/07), aff'd, 2007-156 (Vt. S. Ct. 3/13/09). See also, Re: Dr. Anthony Lapinsky and Dr. Colleen Smith, #5L1018-4/#5L0426-9-EB, FCO at 12 (10/3/03).

The Commission acknowledges that the Agency of Agriculture, Food and Markets relied on the critical permit conditions included in LUP #4C0473-7. At the same time, it is important to note that the Commission – and the LUP itself – expressly contemplated the future development of Lot 4 in the Memorandum of Decision and Order #4C0473-7 and that decision was not appealed by any party. In addition, the Agency of Agriculture, Food and Markets attended the site walk and hearing on July 8, 2021 for this application and filed comments but did not oppose the Applicant's proposal in this case. Exhibit #010.

After considering all the factors the Commission finds that pursuant to Act 250 Rule 34(E), and in consideration of the arguments proposed under subsections (c) and (d), that flexibility clearly outweighs finality, so the amendment application will be considered on its merits.

V. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) who attended the hearing are:

1. The **Applicant**, by Peter Pollak of Burlington Properties Limited Partnership, LLC ("BPLP") and Robert Rushford, Esq. and Jeffrey Polubinski, Esq. of Gravel & Shea, PC.
2. The **Vermont Agency of Agriculture, Food and Markets ("AAFM")**, by Ari Rockland-Miller at the Hearing.

3. The **Vermont Agency of Natural Resources (“ANR”)**, by Jennifer Mojo in an entry of appearance dated July 7, 2021.

In addition to the statutory parties listed above, Don Rendall and Alison Mulbury-Stone from the Natural Resources Board (“NRB”) attended the Hearing.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

No requests for party status were made at or prior to the Hearing. Mr. Bob Bamburger from Lane Press attended the Hearing but did not request party status or friends of the Commission status.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has requested partial findings of fact on Criteria 9(B), only. The findings of fact are based on the application, exhibits and other evidence in the record. The burden of proof under Criterion 9(B) is on the applicant.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the Commission must find that the project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. No permit will be issued unless and until the Applicant applies for and receives affirmative findings on all of the Act 250 criteria.

Criterion 9(B) - Primary Agricultural Soils:

Findings of Fact

1. LUP #4C0473-7 authorized the subdivision of a 77.6 acre lot into four lots (Lot 1, Lot 2, Lot 3, and Lot 4), construction of a 60 space parking area and after-the-fact approval of a 24 space parking area and gravel storage area.
2. Appropriate circumstances were found by the Commission for the project associated with application #4C0473-7 and the resulting LUP required 61.8 acres of on-site mitigation and 12.8 acres of off-site mitigation for the project’s impacts on primary agricultural soils. Exhibits #017 and 026 of LUP #4C0473-7.
3. Lot 4 is 38.55 acres in size and Lot 4 was included as part of the 61.8 acres of on-site mitigation preserved under LUP #4C0473-7. Exhibits #016 and 017 of LUP #4C0473-7.

4. The Applicant now seeks to release a maximum of 23.2 acres of the 61.8 acres of on-site mitigation preserved under LUP #4C0473-7. Exhibit #008. The 23.2 acres is located entirely on Lot 4 and consists of Vergennes clay with 2 to 6% slopes (VeB), Vergennes clay with 6 to 12% slopes (VeC) and Covington silt clay (Cv). Exhibit #008.
5. A minimum of 38.6 acres of the 61.8 acres of on-site mitigation preserved under LUP #4C0473-7 will remain as on-site mitigation. Exhibit #017 of LUP #4C0473-7. A portion of the 38.6 acres to remain as on-site mitigation is located on property not controlled by the Applicant. Exhibit #005.
6. Lot 4 is not located in a designated growth area referenced in 10 V.S.A. § 6093(a)
7. The Applicant represents that the project does not interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands. Exhibit #001.
8. The Applicant represents that it does not own or control any lands other than primary agricultural soils which are reasonably suited to the purpose of the project. Exhibit #001.
9. Lot 4 is bordered to the west by the Lane Press and Dynapower buildings (LUP #4C1030 and amendments), the DR Power Equipment building (LUP #4C0572 and amendments), Vermont Route 116 and the Rye Meadows commercial and residential development (LUP #4C1270 and amendments) on the other side of Route 116, and other residential developments (LUP #4C0694 and amendments); to the north by I-89 and commercial and industrial buildings located off Tilley Drive (LUP #4C1153 and amendments) and Community Drive (LUP #4C0190 and amendments); to the east by the Green Acres Quarry (LUP #4C0949 and amendments); and to the south by portions of the Meadowland Business Park (LUP #4C1005 and amendments), a solar array, the Green Acres residential development (LUP #4C0530 and amendments), other residential lots and the Muddy Brook Reserve. The surrounding uses are supported by municipal infrastructure including water, sewer, natural gas, and electricity.
10. The municipal plan that applies to the project is the *City of South Burlington Comprehensive Plan* (2016). The regional plan that applies to the project is the *Chittenden County ECOS Plan* (2018).
11. As stated in the *City of South Burlington Comprehensive Plan* (2016), Lot 4 is located in the City of South Burlington's Southeast Quadrant ("SEQ") which is intended to create a balance between housing, complimentary land uses, and conservation.
12. The *City of South Burlington Comprehensive Plan* (2016) includes clear objectives to conserve productive farmland and primary agricultural soils within the City and to incentivize agriculture and local food production dispersed throughout the City. Yet, Lot 4 is located

within the Industrial-Open Space zoning district which is intended to provide land for high-quality, large-lot industries and offices whose buildings and operations are consistent with a location in an environmentally healthy and visually sensitive area adjacent to residential neighborhoods. It is also planned for medium to higher intensity development with the overall goal to foster high quality jobs, provide for medium to large scale industrial, educational, mechanical and office park environments, among other related uses.

13. The Commission did contemplate a future, alternate means of mitigation for Lot 4 in Footnote 1 of the Memorandum of Decision and Order #4C0473-7, which states:

"1. We recognize that Lot #4 contains most of the permanently preserved on-site Primary Agricultural Soils, the remainder being on the Lane Press lot and the Dynapower lot (Lot #3). No development is proposed on Lot #4 at this time and any proposed development that impacts the [primary agricultural soils] will need to account for the agricultural mitigation for the original agricultural impacts that are being lost plus for the new proposed agricultural impacts."

14. As stated previously, the Applicant seeks to release a maximum of 23.2 acres on Lot 4 from on-site mitigation.
15. AAFM states that a ratio of 1:1 applies to the release of soils previously set aside on-site to mitigate impacts to primary agricultural soils on the tract from the previously permitted project. Exhibit #010. The Commission agrees with this statement.
16. AAFM also notes that the Applicant has not presented a specific development plan for Lot 4 under this application and it is necessary to ensure that the remaining proposed on-site mitigation soils on Lot 4 would be consistent with AAFM's standard review practices: at least 2.0 contiguous acres, free of Class I and II wetlands or buffers, at least 100-feet wide, and including a proposed access to be available for agricultural use. 10 V.S.A. § 6093(a)(2). Exhibit #010. The Commission agrees with this statement.
17. For the future development of Lot 4, the Applicant has requested a 1:1 mitigation ratio for an Industrial Park and requested appropriate circumstances to mitigate future impacts to Lot 4. Exhibit #005.
18. Given that the Applicant has not presented a specific development plan or proposed use for Lot 4 under this application, the amount of primary agricultural soils impacts resulting from future development of Lot 4 and any required mitigation for a future development on Lot 4 are unknown. Exhibit #005.

19. AAFM has recommended that the final acreage of both primary agricultural soils impact and mitigation associated with the future development of Lot 4 be subject to further site-specific review. Exhibit #010. The Commission agrees and finds the Applicant's request regarding the future development of Lot 4 to be too speculative.

Conclusions of Law

Act 250 defines primary agricultural soil as either (1) an important farmland soils map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture as prime, statewide, or local importance, or (2) "soils on the project tract that the Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities..." 10 V.S.A. §6001(15).

The Commission finds that the project evaluated under application #4C0473-7 resulted in a reduction in the potential of primary agricultural soils. As a result, LUP #4C0473-7 set aside 61.8 acres as on-site mitigation and due to a finding of appropriate circumstances 12.8 acres were mitigated off-site. The Applicant is now proposing to release a maximum of 23.2 acres from on-site mitigation previously set aside on Lot 4 (see Exhibit #008).

Given the findings of our previous decision and the findings made above, the Commission concludes that appropriate circumstances remain and that the mitigation associated with LUP #4C0473-7 may be a combination of on-site and off-site. The Commission finds that a minimum of 38.5 acres will remain in on-site mitigation. The Commission finds that payment of an off-site mitigation fee will further the goal of preserving primary agricultural soils for present and future agricultural use. The Commission also finds that the off-site mitigation arrangement is not inconsistent with the agricultural elements of the local and regional plans and 24 V.S.A §4302.

The Commission notes that the acreage proposed to be released from on-site mitigation has not yet been finalized because the Applicant has not submitted a specific development plan for Lot 4. The Commission finds that the release of any on-site mitigation is possible, but dependent on a specific development plan for Lot 4. Therefore, the Commission will defer its final decision on the release of previously set aside on-site mitigation under Criterion 9(B) until the Applicant submits a specific development plan for Lot 4. That said, the Commission does find that a ratio of 1:1 applies to the release of soils previously set aside on-site to mitigate impacts to primary agricultural soils on the tract from the previously permitted project. The Commission also finds that it is necessary that the remaining on-site mitigation soils on Lot 4 would be consistent with AAFM's standard review practices: at least 2.0 contiguous acres, free of Class I and II wetlands or buffers, at least 100-foot wide, and including a proposed access to be available for agricultural use. 10 V.S.A. § 6093(a)(2).

Since the Applicant has not presented a specific development plan for Lot 4 under this application, the amount of primary agricultural soils impacts resulting from future development

of Lot 4 and any required mitigation for that future development remain unknown. The final acreage of primary agricultural soils impacts, and mitigation associated with the future development of Lot 4 are dependent on an evaluation of the remaining Act 250 criteria and a specific development plan for Lot 4. Therefore, the Commission will defer its final decision on the future development of Lot 4 for Criterion 9(B) until the Applicant proposes a specific development plan for Lot 4 and the remaining criteria are applied for.

VII. SUMMARY CONCLUSION OF LAW

The Findings of Fact and Conclusions of Law are limited to Criterion 9(B). Based upon the foregoing Findings of Fact, the Commission concludes that the project complies with the Rule 34(E) Analysis. The Commission is deferring its final decision on Criterion 9(B) until a specific development plan for Lot 4 is presented to the Commission and the remaining criteria are applied for. No permit will be issued unless and until the Applicant applies for and receives affirmative findings on all of the Act 250 criteria.

These findings of fact and conclusions of law are valid for a period of five years from the date of issuance of this document.

DATED this 7th day of June, 2022.

By /s/Thomas A. Little, Chair
Thomas A. Little, Chair
District 4 Environmental Commission

Commissioners participating in this decision:

Parker Riehle

Kate Purcell

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

Partial Findings of Fact, Conclusions of Law, and Order #4C0473-7A
Page 13

For additional information on filing appeals, see the Court's website at:
<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

Exhibit List



Application #	4C0473-7A (9/3/21)
Applicant(s)	BPLP, LLC f/k/a Burlington Properties Limited Partnership
Landowner(s)	BPLP, LLC f/k/a Burlington Properties Limited Partnership
Project Town(s):	South Burlington

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	6/4/21	001 Act 250 Application	Applicant
002	6/4/21	002 Schedule G	Applicant
003	6/4/21	003 Project Locus	Applicant
004	6/4/21	004 Site Plan (Subdivision Plat)	Applicant
005	6/4/21	005 Rule 21 Petition for Partial Findings	Applicant
006	7/7/21	006 ANR Entry of Appearance Comments (7/7/21)	ANR
007	8/20/21	007 Response to Hearing Recess Order (8/20/21)	Applicant
008	8/20/21	008 Proposed Mitigation Map	Applicant
009	8/20/21	009 Redline Markup to Excerpt from Petition for Partial Findings	Applicant
010	9/3/21	010 AAFM Comments re Applicant's Response to Hearing Recess Order (9/3/21)	AAFM
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CERTIFICATE OF SERVICE

I hereby certify on this 7th day of June 2022, a copy of the foregoing ACT 250 PARTIAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER #4C0473-7A, 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

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FOR YOUR INFORMATION

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Dated at Essex Junction, Vermont, this 7th day of June, 2022.

/s/Christine Commo
Natural Resources Board Technician
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