



State of Vermont

LAND USE PERMIT AMENDMENT

CASE NO: 1R0702-4

Endless Brook, LLC
c/o Paul McCoy Family Office
Services
31 St. James Avenue, Suite 740
Boston, MA 02116

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

The District 1 Environmental Commission hereby issues Land Use Permit Amendment 1R0702-4, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 174, Pages 155, of the land records of the Town of Poultney, Vermont, as the subject of a deed to Endless Brook, LLC, c/o Paul McCoy Family Office Services, the Permittee.

This permit specifically authorizes the construction of 25+/- miles of new mountain biking and recreation trails, to be completed in three phases. The project is located on a 1,414-acre tract, with a parking area located near 125 Town Farm Road in Poultney, Vermont.

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

The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District 1 Environmental Commission (the "Commission") in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with the conditions of this permit, Findings of Fact and Conclusions of Law 1R0702-4, the permit application, plans, and exhibits on file with the Commission, and other material representations.
2. All conditions of Land Use Permit #1R0702 and amendments are in full force and effect except as further amended herein.
3. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Authorization of Notice of Intent NOI #8775-9020 under Construction General Permit 3-9020 issued on March 12, 2020 by the ANR Watershed Management Division; and

- b. Individual Wetland Permit #2019-201 issued on April 28, 2020 by the ANR Watershed Management Division.
4. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
5. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
6. A copy of this permit and plans shall be on the site at all times throughout the construction process.
7. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. No further subdivision, alteration, and/or development on the tract/tracts of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. Except for trail maintenance, use of existing logging and skid roads for forest management activities, and existing designated VAST trails, the trails shall be for non-motorized recreational use only.
12. All trails shall be constructed to the standards set by the International Mountain Bicycling Association. (Exhibits 001-Schedule B and 039)
13. The Slate Valley Trail Organization (SVTO) shall implement the Trail Management Plan (including features regarding proper trail maintenance) depicted in Exhibit 016 and the Trail Management Plan for Deer Wintering Areas depicted in Exhibits 036 and 037. (Exhibits 032 and 046) If for any reason the SVTO fails to maintain the trail system, the responsibility for maintenance, pursuant to the aforementioned exhibits, shall revert to the Permittee.
14. Tree cutting to facilitate construction of trails shall be in accordance with representations made in Exhibit 001 (Schedule B). Any other logging or forest management activities on the parcel shall be in accordance with the Forest Management Plan depicted in Exhibit 014.
15. Any extracted stumps shall be disposed of on-site above the seasonal high-water table and not in any wetland or stream, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.

16. All stream crossings identified in Exhibit 045 shall span the bank full width. (Exhibit 027)
17. Except for the trails, stream crossings, and wetland crossings identified in Exhibit 045, and existing logging and skid roads, the Permittee shall maintain an undisturbed, naturally vegetated riparian zone along all streams on the project tract. The riparian zone shall be measured inland, perpendicular to, and horizontally 50-feet from the top-of-bank and extend to the water's edge at base flow conditions. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing; and mowing. (Exhibit 027)
18. All activities in the wetlands and buffer zones shall be completed, operated, and maintained as set forth in the wetlands permit application #2019-201 and the supporting materials submitted with the wetlands permit application including:
site plans titled Wetland Delineation Detail Map - Wetlands A through W; authored by Caitrin Maloney; dated 9/12/19 and revised 11/21/2019; including the Wetland Delineation Overview Map Sustainable Trailworks 2019, Wetland Delineation Detail Maps 1-9 and the Wetland Delineation Detail Map -Wetlands A through W; authored by Caitrin Maloney; revised 1/2/2020, with revised dates for Wetland L 1/10/2020 and Wetland E 3/26/2020.

No material or substantial changes shall be made to the project without the prior written approval of the Vermont Wetlands Program, and the District Commission or the District Coordinator under applicable Act 250 Rules. Project changes, including transfer of property ownership prior to commencement of a project, may require a permit amendment and additional public notice.
19. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
20. Pursuant to the representation in Exhibit 032, there shall be "trail crossing" signs installed along Route 140 where trail users will be crossing Route 140.
21. The exhibits provided to the Commission show the Endless Brook Trailhead as existing. The "Future Parking" on the maps refers to the third site visited by the Commission and not the Endless Brook Trailhead. To reiterate the information provided in the application, there are no proposed improvements to Endless Brook Trailhead. To the extent that the applicant seeks final approval for designated parking areas, the applicant shall produce final parking lot design plans for all but the Fairgrounds lot (unless applicant seeks to enlarge that lot). (Exhibit 032)
22. The property may be an historic site. Removal of the Farmhouse is neither proposed nor authorized under this permit. All proposed future projects on either the

grounds or structures, including removal of the Farmhouse, shall be reviewed by the Vermont Division for Historic Preservation and may require the Permittee to have a qualified consultant prepare a determination of eligibility request for the State Register of Historic Places. Prior to commencement of any such project, the Permittee shall obtain an amendment to this permit from the District Commission or a jurisdictional opinion form the District Coordinator that a permit is not required. (Exhibits 029 and 032)

23. Based upon the broad outline of event planning by the Permittee and Slate Valley Trails Organization (SVTO) provided in Exhibits 001 and 033, the Permittee shall contact the District Coordinator no later than 90 days prior to any event involving 200 or more participants to provide the planned details for overflow parking and handwashing/toilet facilities as approved by the ANR Division of Drinking Water and Groundwater Protection, to obtain a jurisdictional determination as to whether the proposal constitutes a material change requiring a permit amendment, and to obtain a permit amendment as needed.
24. No vendors or live or piped music are approved for regular or event use prior to review and approval of the District Coordinator or Commission under applicable Act 250 Rules.
25. To mitigate impacts upon adjoining property owners, the Permittee shall install signs along those portions of the trail near the adjoining property indicating that 'This portion of the trail abuts private property and discretion is appreciated'. (Exhibit 032)
26. The Permittee shall not erect additional signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules.
27. The project impacts 0.42 of primary agricultural soils (PAS) for which 1.05 acres of mitigation are calculated. The Permittee shall mitigate the 0.42 of PAS impact if and when the cumulative PAS impacts (from this pending Act 250 Permit application and subsequent amendment impacts on this parcel or involved lands) result in a mitigation area of 2.0 or more acres, as further outlined in Exhibit 023 (letter dated 07/26/2019 from the Vermont Agency of Agriculture, Food & Markets).
28. Currently there is no agreement related to the shared maintenance of the shared roadway. Until such time that the neighboring parcels are developed, the Permittee shall maintain the shared roadway to their parcel. Once the other parcels are developed and additional maintenance is required the Permittee shall enter into a maintenance agreement with the other landowners.
29. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment and the Findings of Fact before entering into any written contract of sale.
30. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).

31. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2023**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
32. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Rutland, Vermont, this 3rd day of June 2020.

By /s/
John Casella, II, Acting Chair
District 1 Commission

Members participating in this decision: Mary Shaw and Devon Fuller.

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

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-

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1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

E-Notification CERTIFICATE OF SERVICE #1R0702-4

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit and Findings of Fact on June 3, 2020 by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Rutland@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB 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 the District Office of any email address changes.**

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**State of Vermont
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RE: Endless Brook, LLC
c/o Paul McCoy Family Office Services
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Boston, MA 02116

Application #**1R0702-4**
Findings of Fact,
Conclusions of Law, and Order
10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On June 13, 2019, Endless Brook, LLC c/o Paul McCoy Family Office Services filed an application for an Act 250 permit for a project generally described as construction of 25+/- miles of new mountain biking and recreation trails, to be completed in three phases. The tracts of land consist of 1,414 acres. The Applicant's legal interest is ownership in fee simple described in deeds recorded on June 2, 2016, February 5, 2018, April 23, 2018, and December 18, 2018, in the land records of Poultney, Vermont.

The application, first submitted on June 13, 2019, was determined to be incomplete under Act 250 Rule 10(D) and was subsequently deemed complete on October 7, 2019.

The Commission held a site visit¹ and hearing on this application on Friday, November 8, 2019.² At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on June 3, 2020 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project constitutes "development" as that term is defined in 10 V.S.A. §6001 et seq., and because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. FINAL PARTY STATUS AND FRIENDS OF THE COMMISSION

- A. The following persons who attended the hearing have statutory party status pursuant to 10 V.S.A. § 6085(c)(1):
1. The Applicants, by Steven Conine, Alexi Conine, Craig Jewett, P.E., Caitrin Maloney and Hardy Avery.
 2. The Agency of Natural Resources, through an Entry of Appearance, dated November 7, 2019, by Kevin Anderson, Regulatory Policy Analyst.
 3. The Poultney Planning Commission, by Paul Donaldson.

¹ The site visit was limited to the two areas proposed on the plans for parking.

² On October 11, 2019, the District 1 Commission received a request to postpone the previously scheduled hearing due to an unavoidable conflict by the applicant.

4. The Poultney Selectboard, by Paul Donaldson.
- B. At the hearing, the Chair preliminarily granted status to the following Parties under the listed criteria:
 1. Diane Garrett and Norm Scribner, adjoiners, pursuant to Criteria 1B (wastewater and stormwater), 1E (streams), 1G (wetlands), 5 and 9K (parking and traffic), and 8 (aesthetic and wildlife habitat).
 2. Lauri and Jack Elliot, adjoiners, pursuant to Criterion 8 (aesthetics).
 3. Bill Osborne, adjoining property owner, pursuant to Criterion 8 (aesthetics and wildlife).
- C. The District Commission allowed the following persons or entities to participate pursuant to 10 V.S.A. § 6085(c)(5) as "Friends of the Commission."
 1. Slate Valley Trails, by Chuck Helfer, Gail, Helfer, and Silvia Cassano.
 2. Lake St. Catherine Country Club, by Jeff Houghton and John Belnavis.
 3. Lara Bitler, landowner and President of the Poultney Downtown Revitalization Committee.

There were no other requests for party status.

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and found no reason to change its preliminary determinations above.

D. Friends of the Commission

As noted above, the District Commission allowed the aforementioned nonparties to participate as Friends of the Commission pursuant to 10 V.S.A § 6085(c)(5).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|--|---------------------------------------|
| 1 - Air Pollution | 9(A) - Impact of Growth |
| Water Pollution | 9(B) - Agricultural Soils |
| 1(A) - Headwaters | 9(C) - Productive Forest Soils |
| 1(C) - Water Conservation | 9(D) - Earth Resources |
| 1(D) - Floodways | 9(E) - Extraction of Earth Resources |
| 1(F) - Shorelines | 9(F) - Energy Conservation |
| 2 - Water Supply | 9(G) - Private Utility Services |
| 3 - Impact on Existing Water Supplies | 9(H) - Costs of Scattered Development |
| 6 - Educational Services | 9(J) - Public Utility Services |
| 7 - Municipal Services | 9(L) - Settlement Patterns |
| 8 - Natural Areas | 10 - Local and Regional Plans |
| 8 - Historic Sites | |
| 8(A) - Wildlife Habitat & Endangered Species | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact below are specific to the criteria implicated in this case: 1(B) -- Waste Disposal, 1(E) -- Streams, 1(G) -- Wetlands, 4 - Soil Erosion, 5 and 9K -- Traffic, Parking, Effect on Public Roads (Public Investments), and 8 -- Aesthetics and are based on the application, Exhibits 001 -

051, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

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 District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. This project was unusual insofar as it involves the construction of approximately 25 miles of trails on tracts of approximately 1,400 acres.

Criterion 1(B) - Waste Disposal:

Findings of Fact

2. Stormwater treatment shall be addressed, constructed and maintained pursuant to the ANR Department of Environmental Conservation General Permit #3-9020 (Construction General Permit #8775-9020) for the construction phase of the Project. Exhibit 047.
3. Waste generated by humans at the parking areas will be contained and disposed of by a licensed vendor of portable toilets. Exhibit 033.

Conclusions of Law

The ANR permit creates a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of wastewater and waste collection, treatment and disposal systems authorized by the permit(s) will not result in undue water pollution. Technical determinations made by ANR in issuing the permit(s) are entitled to substantial deference. 10 V.S.A § 6086(d).

The Project will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

The Project complies with Criterion 1(B).

Criterion 1(E) - Streams:

Findings of Fact

4. The project involves approximately 23 stream crossings as located on Exhibit 010.
5. In Exhibit 027, ANR made the following conclusions and requests associated with stream impacts:

As shown in Exhibit 010, the project tract encompasses several streams, including the Poultney River, Lavery Brook, and Mill Brook, as well as unnamed tributaries to those streams and Endless Brook. If improperly designed and maintained, stream crossings and trails occurring close to streams can negatively affect the natural condition of streams by restricting streamflow, eroding streambanks,

and removing streamside (i.e., riparian) vegetation. The Applicant's representatives met on site with Josh Carvajal, River Management Engineer with DEC's Rivers Program, in July 2019. Mr. Carvajal is responsible for reviewing applications for stream alteration permits, which are required for any movement, excavation, or fill involving 10 or more cubic yards annually in any perennial stream. 2 Mr. Carvajal determined the three stream crossings proposed by the Applicant on the perennial streams identified in Exhibit 010 (crossing numbers 13, 19, and 22) do not require stream alteration permits provided bridges are used that span the bankfull width and the amount of material 1 <https://enb.vermont.gov/> 2 See 10 V.S.A. Chapter 41 and the Vermont Stream Alteration Rule. 2 disturbed would not be 10 cubic yards or more. 3 The Applicant agreed to substitute crossing 22, identified in Exhibit 010 as a culvert, with a bridge to ensure stream crossings would span the bankfull width and disturbance would not equal or exceed 10 cubic yards. Under Criterion 1(E), the Agency reviews Act 250 applications for their conformance with the Agency's Guidance for Agency Act 250 and Section 248 Comments Regarding Riparian Buffers.4 Undisturbed, naturally vegetated riparian zones (i.e., riparian buffers) provide many ecological functions. Riparian zones protect water quality by shading the stream channel and maintaining cool water, moderating harsh winter temperatures, and providing filtered light to the stream that inhibits excessive algal growth. Vegetated riparian zones also filter out sediments, nutrients, trash, pathogens, and toxic chemicals transported by surface runoff and serve as surface water infiltration zones contributing to maintenance of stream baseflows. These areas support aquatic food chains on which aquatic biota depend. Riparian zones also serve as sources for large woody materials that influence habitat formation, provide refuge for aquatic biota, and promote channel stability. Disturbances within riparian zones can dramatically limit the benefits and services they provide to the adjacent stream reach and downstream waters. A site visit by Agency staff on October 9, 2019 confirmed more streams are present on the project tract and near proposed trails than are depicted in Exhibit 010. Following the site visit, the Agency requested the Applicant revise Exhibit 010 to show these additional streams and add a 50-foot buffer around streams to evaluate the project's avoidance of the riparian zone. The Applicant updated Exhibit 010, as requested, and revised crossing 22 to be a bridge as discussed above. The updated exhibit demonstrates proposed trails essentially enter and exit the riparian zone as directly as possible. No proposed trails follow streams within the riparian zone for an unwarranted length, except portions of existing logging roads south and upstream of crossing 22 that would become part of the trail network. Because these logging roads already exist and would continue to be used for forest management, their proposed use for non-motorized recreation would not create any significant additional riparian zone disturbance. To ensure the project maintains the natural condition of streams crossed by and near the project, the Agency respectfully requests the District Commission include the following conditions in any land use permit issued in this matter: X. All stream crossings identified in Exhibit XY shall span the bankfull width. 3 The term "bankfull width" refers to the lateral dimension of the stream channel and the point at which streamflow just begins to enter the active floodplain. See "Identification of Bankfull Stage," available online at https://dec.vermont.gov/sites/dec/files/wsm/rivers/docs/rv_identification_of_bankfull_stage.pdf. 4 Available online at: <http://anr.vermont.gov/sites/anr/files/co/planning/documents/guidance/Guidance%20for%20Agency%20Act%20250%20and%20Section%20248%20Comments%20Regarding%20Riparian%20Buffers.pdf>. 3 Y. Except for the trails, stream crossings, and wetland crossings identified in Exhibit XY, and existing logging and skid roads, the Permittee shall maintain an undisturbed, naturally vegetated riparian zone along all streams on the project tract. The riparian zone shall be measured inland, perpendicular to, and horizontally 50-feet from the top-of-bank and extend to the water's edge at base flow conditions. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing; and mowing. By email to the Agency on November 6, 2019, Caitrin Maloney, representative for the Applicant, stated the Applicant consents to the above permit conditions. Please note that "Exhibit XY" in the conditions should be replaced with the exhibit number assigned to the attached revised Exhibit 010.

6. The commission will incorporate the findings above and will include the proposed conditions in the permit.

Conclusions of Law

As found and conditioned herein, the Commission concludes that the applicant will maintain the natural condition of any streams, and will not endanger the health, safety or welfare of the public or of adjoining landowners.

The Project complies with Criterion 1(E).

Criterion 1(G) - Wetlands:

Findings of Fact

7. The project requires, and the Applicant filed for, an individual wetland permit. The application and draft and final permits, once issued, may be found on the ENB by searching for permit number 2019-201.
8. On 28 April 2020, the ANR Department of Environmental Conservation issued INDIVIDUAL WETLAND PERMIT AND DETERMINATION. Exhibit 048.

Conclusions of Law

The Individual Wetland Permit, issued by ANR, creates a presumption pursuant to Act 250 Rule 19 that the Project will not violate the Vermont Wetland Rules relating to significant wetlands. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

As found and conditioned herein, the Project complies with Criterion 1(G).

Criterion 4 - Soil Erosion:

Findings of Fact

9. Concerns about soil erosion are addressed in the Stormwater permit issued for the project.
10. The ANR Water Quality Division has issued AUTHORIZATION TO DISCHARGE UNDER GENERAL PERMIT 3-9020 on March 12, 2020. Exhibit 047.

Conclusions of Law:

The ANR stormwater permit creates a presumption under Rule 19(E)(6) that stormwater runoff during construction authorized by the permit will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. In addition, technical determinations entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that the construction of the Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The Project complies with Criterion 4.

Criteria 5 and 9(K) – Transportation and Public Investments:

Findings of Fact

11. As described by the applicant in Exhibit 001: “There are two main access points to the bike trail network. Parking Area 1 (existing) is located on Town Farm Road, a public town road off of VT Route 140. Parking Area 2 (existing) is located at 859 Endless Brook Road. Additionally, visitors to Lake St. Catherine State Park will be able to access the trails via an access road/right of way across Route 30 from the park entrance.”
12. As further described by the applicant in Exhibit 001: “The traffic will be dispersed to two different trailheads, which are accessed via different state highways: Route 30 and Route 140. Some users will access from their homes, getting to the trailhead via foot or bike. The access point at Town Farm Road is anticipated to see more use as there is a greater diversity of trail offerings there. The anticipated users of these trails are a diverse group, and tend to access the trails at different times of the day, so use will not be concentrated during any one time of day. Slate Valley Trails collects user data through a trail log posted at the trailhead. The log for 2018 shows an average of 75 parties (or 164 people) visiting per month in summer (June-Sept). This is an average of 2.5 parties (or 5.5 people) per day in the summer. Winter use is less than a quarter of this amount. The additional trails will increase use some, but even a fivefold increase in use would only result in an estimated 7.5 trips per day to the Endless Brook trailhead. The Town Farm trailhead is anticipated to have double the use of the Endless Brook trailhead. This could result in up to 15 trips per day. Given that some users access in the morning, and some in the afternoon, there should be plenty of parking on a daily basis.”
13. Parking has been described as follows in Exhibit 001: “There are 20 parking spaces with 25 overflow spaces at the Town Farm trailhead. This is plenty of parking for an anticipated daily usage rate of up to 15 trips per day. There may be events held at the Town Farm Road trailhead. We estimate that there may be the following types of events held annually, likely by Slate Valley Trails or other trail groups: 1) Spring trail clean up: Annual spring volunteer trail clean up, held on a weekend day from about 10am-2pm, probably about 40-50 people attending, approximately 25 cars. 2) Annual Trail Event: There is potential that Slate Valley Trails would hold a trail-related event each year (a group ride or run event). The event may attract up to 200 people plus volunteers. Parking would be held in the main parking lot area, with any overflow being directed to the large field on the east side of Route 140. 3) A youth-related trail event: This type of event would be held on a weekend, and may attract about 50 people arriving in 25 cars. 4) Other trail rides/walks/runs: These events would be held in the morning or evening on weekdays in the summer months (maybe one or two events per month), and may attract about 15-20 people arriving in 10 cars.”
14. In Exhibit 032, the applicant clarified the parking plan as follows: “At the hearing, the applicant’s rep indicated parking for up to 45 vehicles at the “Fairgrounds” trailhead and up to 10 spaces at the “Endless Brook” trailhead. The parking at the Endless Brook trailhead is described on the maps as “future parking.” This is an incorrect assumption. The exhibits provided to the commission clearly show the Endless Brook Trailhead as existing. The “Future Parking” on the maps refers to the third site visited by the Commission and not the Endless Brook Trailhead. To reiterate the information provided in the application, there are no proposed improvements to Endless Brook Trailhead. **To the extent that the applicant seeks final approval for designated parking areas, the applicant shall produce final parking lot design plans for all but the Fairgrounds lot (unless applicant seeks to enlarge that lot).** The parking site plan for the lot adjacent to Endless Brook Road which was distributed by Mr. Jewett at the hearing and labeled “Trailhead Parking Site Plan” is lacking in detail and shall be resubmitted with detail sufficient to locate the lot on the ground

and in relation to both Endless Brook Road, Route 30 and the adjacent proposed trail network. See accompanying revised Trailhead Site Plan. Any parking proposed for either the Lake St. Catherine State Park property, or the Lake St. Catherine Country Club properties shall be accompanied by a signed agreement with those public and private entities and shall be accompanied by site plans clearly demarcating the proposed parking areas and assigned spaces. The Lake St Catherine State Park is a public, first come, first serve parking lot. Regular users are free to utilize this parking space as long as space is available and they are willing to pay the Park's entrance fee. For larger events, the applicant and its partner the Slate Valley Trail Organization will utilize overflow parking at the Fairgrounds Trailhead. An exhibit showing the overflow parking is included. If more parking is needed, other provisions, such as busing and carpooling, will be organized/coordinated to offset parking needs." [Emphasis added.]

15. With regard to events, the Permittee stated that The Slate Valley Trail Organization (SVTO) will handle event organization. SVTO, in Exhibit 033, described the event planning as follows:

The HRO question from the Commission: Please provide the SVTO event schedule for 2020-2021. This submittal shall include either known or estimated total attendance for each event and shall include plans for parking and provision of portable toilets as well as a description of what, if any, vendors are expected to participate with sales areas.

SVTO responded as follows: "The expected Slate Valley Trails event schedule for 2020 is as follows. Events will be held at the Fairgrounds Trailhead on Town Farm Road: 1. A spring trail cleanup work session in early May – 30- 40 participants, current parking in the established lot is sufficient, one portable toilet, no vendors. 2. A trails opening day early June – 60 - 80 participants, current parking in the established lot and adjacent overflow spaces is sufficient, one portable toilet, no vendors. 3. A trail running race in early September – 80 -120 participants, overflow parking on mowed fields at the Fairgrounds Trailhead will be sufficient, one portable toilet for under 100 people and two for over 100, no vendors. 4. We have been approached by another organization to host a trail running race in late October with projected 300-400 participants. If this event takes place, overflow parking will be used, and additional participants will be bused in from designated parking lots in the Town of Poultney. The organization hosting the race will rent additional portable toilets. There will be no vendors. Slate Valley Trails expects to hold a series of outings in 2020. The outings will rotate between the Endless Brook LLC properties and other public trails systems in the area. Planned outings include bicycling, hiking, trail running, bird and nature walks, and trail stewardship and maintenance days. Previous years' outings have ranged between 5 – 10 participants and these averages are expected to continue. Current parking and portable toilets are sufficient. There will be no vendors. It is expected that 2021 events will be similar to those in 2020.

16. Based upon the representations above, the permit will be conditioned accordingly to require additional details for toilets and overflow parking for events drawing 200 or more participants.
17. Portions of the project are adjacent to or across the road from public investments such as Route 140 and Lake St. Catherine State Park.
18. As conditioned herein, the Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the facility, service or lands.
19. The Project will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands.

Conclusions of Law

Criterion 5 requires that the project be shown not to create unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation. As conditioned herein, the project will conform with these requirements.

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the applicant bears the burden of proving that the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands. 10 V.S.A § 6086(a)(9)(K). As conditioned herein, the Commission concludes that the Project complies with Criterion 9(K).

Criterion 8 - Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas:

FINDINGS OF FACT: Aesthetics, Scenic or Natural Beauty

20. With regard to adjoiner Elliot, the permittee stated (Exhibit 032): "The applicant already relocated the trail alignment in this area (during build out) to mitigate impacts to the adjoiner. The applicant is also proposing to install signs along this trail indicating that this portion of the trail abuts private property and discretion is appreciated. An exhibit showing the location of the signage is included. 7. A written statement, in coordination with the Division of Historic Preservation, on future plans for the historic home near the Fairgrounds trailhead. See attached. The Applicant does not propose the removal of the Farmhouse at this time. If and when removal is proposed the applicant understands that they shall request that the VT Department of Historic Preservation review this proposal through the Department's Intake Process. Review and comments from the Department is required prior to the submission of an LUP amendment application requesting the removal of the Farmhouse. 8. If the access road on the Scribner properties is proposed for current use for vehicle access (and not simply bicycle access) to the trail or to future parking, provide a road maintenance or other agreement outlining the obligations as between the applicant and the landowner for road maintenance. Currently there is no agreement related to the shared maintenance of the shared roadway. Until such time that the neighboring parcels are developed, the applicant will maintain the shared roadway to their parcel. Once the other parcels are developed and additional maintenance is required the applicant will enter into a maintenance agreement with the other landowners."
21. With regard to historic resources, the Permittee stated (Exhibit 032): "A written statement, in coordination with the Division of Historic Preservation, on future plans for the historic home near the Fairgrounds trailhead. See attached. The Applicant does not propose the removal of the Farmhouse at this time. If and when removal is proposed the applicant understands that they shall request that the VT Department of Historic Preservation review this proposal through the Department's Intake Process. Review and comments from the Department is required prior to the submission of an LUP amendment application requesting the removal of the Farmhouse."
22. With regard to shared use and maintenance of the Scribner access road, the Permittee stated as follows (Exhibit 032): "Currently there is no agreement related to the shared maintenance of the shared roadway. Until such time that the neighboring parcels are developed, the applicant will maintain the shared roadway to their parcel. Once the other

parcels are developed and additional maintenance is required the applicant will enter into a maintenance agreement with the other landowners.”

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to the potential for noise or other impacts upon adjoining during events and upon potential historic resources. As conditioned herein the Commission concludes that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

V. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit #1R0702, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 1R0702-4 is hereby issued.

Dated at Rutland, Vermont, this 3rd day of June 2020.

By /s/
John Casella, II, Acting Chair
District 1 Commission

Members participating in this decision: Mary Shaw and Devon Fuller

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

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.