



State of Vermont

LAND USE PERMIT

CASE NO: 1R1016

The Compass Music and Arts
Foundation/Barn Opera
333 Jones Rd
Brandon, VT 05733

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

The District 1 Environmental Commission hereby issues Land Use Permit 1R1016, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit applies to the lands identified in Book 244, Pages 251, of the land records of the Town of Brandon, Vermont, as the subject of a deed to The Compass Music and Arts Foundation/Barn Opera, the Permittee.

This permit specifically authorizes the change of use of an 1851 barn in Brandon from residential storage into an event space for the use of BARN OPERA on the terms approved in this permit. The project is located on 1321 Pearl Street in Brandon, Vermont.

Jurisdiction attaches because the Project constitutes a “development” as that term is defined in 10 V.S.A. § 6001 et seq.

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 1R1016, the permit application, plans, and exhibits on file with the Commission, and other material representations.

The approved plans are:

Sheet 1 - “The Proposed Access and Parking Site Plan,” dated September 2019, (Exhibit #008);

Sheet 2 - “The Proposed Access and Parking Site Plan,” dated September 2019 (Exhibit #011).

2. 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.
3. The project is approved to host up to five events per year with a maximum total usage of 28 days and involving no more than 120 attendees and 60 vehicles per event. Usage significantly above these parameters is prohibited prior to review and approval of the District Coordinator or Commission under applicable Act 250 Rules. (Exhibits 001 and 028)
4. A uniformed police officer shall be stationed at or near the Sanderson Bridge to control traffic entering and exiting the Sanderson bridge during peak access and egress hours of

- the performances. All flaggers controlling traffic during peak access and egress hours of the performances shall be under the instruction of said uniformed police officer. (Exhibit 001)
5. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 6. No further subdivision, alteration, and/or development on the 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.
 7. 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.
 8. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
 9. A continuous line of silt fence shall be properly installed by the Permittee between the project's limits of disturbance and the 50-foot wetland buffer depicted in Exhibit 005. The silt fence shall be maintained during construction. (Exhibit 024)
 10. Water Supplies and Wastewater handling are subject to strict conformance with the conditions outlined in a letter dated February 28, 2020 from David Swift, Regional Engineer to Joshua Collier, project applicant. (Exhibit 028).
 11. The property is a historic site. As such, any future work on the grounds or the historic buildings shall be reviewed by the Division for Historic Preservation and the District Commission. No change shall be made to the design, operation or use of this project without first obtaining a jurisdictional opinion from the District Coordinator. (Exhibit 027)
 12. No excavation, grading, scraping, or other ground disturbing activities shall occur during construction or maintenance of driveways, staging areas, access roads, or parking areas. All driveway and parking surfaces shall be constructed utilizing geogrid or geotextile fabric and soil or crushed stone. (Exhibit 027)
 13. 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.
 14. The Permittee shall not erect additional exterior signage beyond that described in Exhibit 001 without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
 15. The Permittee shall not install exterior light fixtures beyond that described in Exhibits 001, 008, and 009 without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules.
 16. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit and the Findings of Fact before entering into any written contract of sale.
 17. Pursuant to 10 V.S.A. § 6090(b)(1), this permit 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).

18. 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.
19. 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 5th day of March 2020.

By /s/ _____
John Casella, II, 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.

E-Notification CERTIFICATE OF SERVICE # 1R1016

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit #1R1016 and Findings of Fact on March 5, 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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FOR INFORMATION ONLY

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**State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 1 ENVIRONMENTAL COMMISSION
440 Asa Bloomer State Office Building
Rutland, Vermont 05701-5903**

RE: The Compass Music and Arts
Foundation/Barn Opera
333 Jones Rd
Brandon, VT
05733

Application #1R1016

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

I. INTRODUCTION

On February 4, 2020, The Compass Music and Arts Foundation/Barn Opera filed an application for an Act 250 permit for a project generally described as changing the use of an 1851 barn in Brandon from residential storage into an event space for the use of BARN OPERA. The tract of land consists of 9.6 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on September 9, 2019, in the land records of Brandon, Vermont.

The Commission held a site visit and public hearing on this application on February 27, 2020. The Commission adjourned the hearing on February 27, 2020.

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 a development or subdivision pursuant to 10 V.S.A. § 6001 et seq.

III. FINAL PARTY STATUS

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:

The Applicant by Joshua Collier.

The landowner, if other than the applicant, by Joshua Collier.

The municipality of Brandon not represented.

The Brandon Town Planning Commission not represented.

The Regional Planning Commission not represented.

The State of Vermont Agency of Natural Resources (ANR) through an entry of appearance by Kevin Anderson, ANR Office of Policy and Planning, dated February 26, 2020.

There were no other party status requests.¹

¹ The Commission received an email requesting Friends of the Commission status, and a "Letter of Support" from Hillary Knapp. Exhibits 023 and 025. Ms. Knapp did not attend the hearing or provide any testimony therein pursuant to the statute. Accordingly, Ms. Knapp's request is denied.

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.

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 | 8 – Historic Sites |
| Water Pollution | 8(A) - Wildlife Habitat & Endangered Species |
| 1(A) - Headwaters | 9(A) - Impact of Growth |
| 1(C) - Water Conservation | 9(B) - Agricultural Soils |
| 1(D) - Floodways | 9(C) - Productive Forest Soils |
| 1(E) - Streams | 9(D) - Earth Resources |
| 1(F) - Shorelines | 9(E) - Extraction of Earth Resources |
| 1(G) - Wetlands | 9(F) - Energy Conservation |
| 2 - Water Supply | 9(G) - Private Utility Services |
| 3 - Impact on Existing Water Supplies | 9(H) - Costs of Scattered Development |
| 4 - Soil Erosion | 9(J) - Public Utility Services |
| 6 - Educational Services | 9(L) – Settlement Patterns |
| 7 - Municipal Services | 10 - Local and Regional Plans |
| 8 – Natural Areas | |

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

The findings of fact are based on the application, Exhibits 001 - 029, and other evidence in the record. Pursuant to the notice, the criteria implicated in this case were 1(B) - Waste Disposal, 5 and 9K – Traffic/Parking and Effects on Public Investments- Pearl Street and the Bridge and 8 – Aesthetics and Historic Sites. 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. The project is located near Otter Creek and the one-lane bridge across the Creek.
2. Residential development near the project is limited.

Criterion 1(B) - Waste Disposal and 1(G) Wetlands:

Findings of Fact

3. Dundon's Plumbing of Orwell (or another licensed waste hauler) will be bringing a mobile trailer/contained wastewater system for restroom facilities and will externally supply grey water, and remove all waste materials after every event. Bottled water will be available. Exhibit 001.
4. The project requires no Stormwater permit. Terry Purcell, Environmental Analyst in DEC's Stormwater Program, reviewed the application. Based on the site plan (Exhibit 005), the project does not involve enough impervious surface or earth disturbance to trigger the need for Agency stormwater permits. Exhibit 001.
5. The ANR Department of Environmental Conservation issued a letter dated February 28, 2020 outlining the conditions under which the project may be operated as designed for no more than 28 days per year. The Commission adopts and incorporates by reference this letter and its conditions.
6. Zapata Courage, District Wetland Ecologist with DEC, visited the site and reviewed the application. Ms. Courage approves the wetland delineation shown on the site plan and determined the project, if constructed as proposed, will not require a Vermont wetland permit. The proposed parking area is within 30 feet of a Class II wetland buffer zone. To prevent inadvertent disturbance of, or discharge of sediment to, the Class II wetland and its buffer zone during project construction, the Agency respectfully requests the District Commission include the following condition in any land use permit it issues for the project: "A continuous line of silt fence shall be properly installed by the Permittees between the project's limits of disturbance and the 50-foot wetland buffer depicted in Exhibit 005. The silt fence shall be maintained during construction."

Conclusions of Law

As permitted herein, 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, nor unduly impact wetlands.

The Project complies with Criteria 1(B) and 1(G).

Criterion 5 - Transportation and 9K - Public Investments

Findings of Fact

7. The project is proposed for up to eight events per year (Exhibit 001), with parking for 60 vehicles and maximum occupancy of 120. Exhibit 001 and testimony.
8. Peak vehicle trips to and from the Sanderson one-way Covered Bridge will occur, typically between 6 and 7 pm (arrivals) and 10-10:30 pm (departures). Testimony and Exhibit 001.
9. The developer will provide uniformed Brandon police traffic officer at the bridge during peak traffic hours. Testimony and Exhibit 001.

Conclusions of Law

Criterion 5(A) requires that the Project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways." See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

Criterion 5(B) requires that a project, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The Commission concludes that the Project as conditioned herein, will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

The Project complies with Criterion 5(A).

The Project incorporates all appropriate transportation measures and complies with Criterion 5(B).

10. The project is adjacent to the Sanderson Covered Bridge, a public investment. As noted above, a traffic control officer will direct traffic at the bridge during peak traffic hours.
11. As conditioned herein, the Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the public investment.
12. 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 Sanderson bridge.

Conclusions of Law

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).

The Commission concludes that the Project complies with Criterion 9(K).

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

13. The present site, including the barn, will be preserved in largely the same design as reflected in its original construction. The Commission finds this laudable and will condition the permit as request by the Division of Historic Preservation.
14. By a preponderance of the evidence, the project is found by the Commission to not present any under adverse impacts aesthetically – having preserved the barn – which is in harmony with its surroundings, and not proposing adverse noise or other impacts which have the potential for undue impacts upon any neighbors.
15. As presented in Exhibit 001: The 10.1-acre site contains two barns, both built in 1850s, with the large barn hayloft being designated as the performance space. The barns are set on a hill adjacent to a rocky outcropping just to the south of Otter Creek. Part of the property is designated as floodplains and wetlands, which was a part of the allure of the site - that no permanent structure would ever be built to degrade the natural beauty of the land. See Exhibits 6 & 7 for photos of the interior and exterior of the property, and Exhibit #17 for the full historical preservation proposal.

16. As presented: The barn in question is an 1851 dairy barn of post and beam construction, with barn red board and batten exterior with a tin roof. The unique Vermont aesthetic that the barns provide were a determining factor in the selection of this site. While it has been a residential storage area for 23 years, we plan to permanently install fixed theatre seats on stadium raised platforms, in order to accommodate the increase in interest in BARN OPERA and as a performance venue in Brandon and Vermont as a whole. There will be no tree cutting, nor any lighting that would affect the current ambiance of the location.
17. As presented: We expect there to be 2 types of signage, as per the Brandon Town Land Use Ordinance: One, a flush mounted abstract sculpture of the BARN OPERA Logo on the gabled end of the barn facing the Sanderson Covered Bridge, lit by 2 downward-facing gooseneck lights, and one freestanding sign. Exhibits 010-012. All signage will comply with section 407 of the adopted Brandon Town Land Use Ordinance in size and design.
18. Noise: The final noise mitigation for the BARN OPERA House will consist of 4 layers of sound barrier (Exterior siding, vapor barrier, insulation, interior facing) which will significantly reduce any noise concerns for neighbors. Exhibit 029.
19. Lighting: The exterior lighting will be provided via solar lanterns that will sufficiently illuminate the walkway to the parking area, as well as to the drop-off area. All lights used in the exterior will be dark-sky compatible as one of the things that will be encouraged is stargazing after events, with a telescope that will be available for the public to use following events.
20. Solar Energy: As this project seeks to create the first Carbon Neutral (or negative) theatre in the country, the efficient and environmentally considered utilities are also selected to maintain natural aesthetic. Currently on the small barn to the south, there are 42 solar panels that are currently used to power the house adjacent to the property, as well as the barns. That will continue, and because the roofline is south facing, any audience or community member driving by will not see the solar panels. There will be electric heat pumps that will provide all heat and cooling, and there will be no propane nor combustion inside the building.
21. VDHP has considered the project's effects on historic structures, districts, and landscapes. The project property is listed in the State Register of Historic Places as the Sanderson Farm (Survey #1102-21) and includes a c.1850 house and associated farm buildings. Therefore, the property meets the definition of a "historic site" for purposes of Act 250 review. Since the time of the 1975 historic survey some of the outbuildings have been removed and one new outbuilding was constructed. Today the historic site includes the c.1850 house, a 19th century hay and dairy barn with a silo, an early 20th century storage shed, and a late twentieth century barn. It is our understanding that the property has been subdivided so that the house is no longer on the same parcel as the farm buildings and is not part of this LUP application. VDHP has consulted with the Applicant regarding the scope of work for alterations to the historic barn. It is VDHP's opinion that the alterations as proposed will not detract from the characteristics which make the site historic.
22. As permitted herein, any future modification implicating historic sites impacts will require the review and approval of the District Coordinator or District Commission under applicable Act 250 Rules.

CONCLUSIONS OF LAW

As conditioned herein, the Commission finds that the project 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). Accordingly, the project complies with Criterion 8.

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 #1R1016, 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 #1R1016 is hereby issued.

Dated at Rutland, Vermont, this 5th day of March 2020.

By /s/ _____
John Casella, II, Chair
District #1 Environmental Commission

Commissioners 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.