



## LAND USE PERMIT AMENDMENT

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

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

[phone] 802-879-5614

**CASE NO:** 4C0436-32A

BVR, LLC

c/o Lindsay DesLauriers

4302 Bolton Access Road

Bolton, VT 05477

**LAWS/REGULATIONS INVOLVED**

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment #4C0436-32A, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 92, Pages 593-611; Book 96, Page 579, of the land records of the Town of Bolton, Vermont.

**This permit specifically authorizes the construction of approximately 7.2 miles of new lift-served mountain bike trails at Bolton Valley Resort (the "Project"). The mountain bike trails will be served by the existing Vista lift. The Project is located on Bolton Valley Access Road in Bolton, Vermont.**

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

1. The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the Project as approved by the District 4 Environmental Commission (the "Commission") in accordance with the following conditions.
2. The Project shall be completed, operated and maintained in accordance with the conditions of this permit, and the permit application, plans, and exhibits on file with the Commission and other material representations.

The approved plans are:

"Natural Resources Map Series Index Sheet," dated 3/12/21 (Exhibit #009a)



"Natural Resources Map Series Sheet 1 of 5," dated 3/12/21 (Exhibit #010a);  
"Natural Resources Map Series Sheet 2 of 5," dated 3/12/21 (Exhibit #011a);  
"Natural Resources Map Series Sheet 3 of 5," dated 3/12/21 (Exhibit #012a);  
"Natural Resources Map Series Sheet 4 of 5," dated 3/12/21 (Exhibit #013a);  
"Natural Resources Map Series Sheet 4 of 5," dated 3/12/21 (Exhibit #014a);  
"EPSC Narrative," dated 3/12/21 (Exhibit #028a);  
"EPSC Site Plan Sheet 1 of 5," dated 2/2/21 (Exhibit #029a);  
"EPSC Site Plan Sheet 2 of 5," dated 2/2/21 (Exhibit #030a);  
"EPSC Site Plan Sheet 3 of 5," dated 2/2/21 (Exhibit #031a);  
"EPSC Site Plan Sheet 4 of 5," dated 2/2/21 (Exhibit #032a);  
"EPSC Site Plan Sheet 5 of 5," dated 2/2/21 (Exhibit #033a);  
"EPSC Site Plan Blasting Area," dated 5/20/21 (Exhibit #037b);  
"Bicknell's Thrush Mitigation Area Plan," dated 11/9/20 (Exhibit #035);  
"Bicknell Thrush Conservation Easement," dated 7/5/05, last revised 11/9/20 (Exhibit #035);  
"Mitigation Map Series Index Sheet," dated 3/11/21 (Exhibit #038)  
"Mitigation Map Series Sheet 1 of 6," dated 3/11/21 (Exhibit #038);  
"Mitigation Map Series Sheet 2 of 6," dated 3/11/21 (Exhibit #038);  
"Mitigation Map Series Sheet 3 of 6," dated 3/11/21 (Exhibit #038);  
"Mitigation Map Series Sheet 4 of 6," dated 3/11/21 (Exhibit #038);  
"Mitigation Map Series Sheet 5 of 6," dated 3/11/21 (Exhibit #038);  
"Mitigation Map Series Sheet 6 of 6," dated 3/11/21 (Exhibit #038);  
"VWP Mitigation Map Series Index Sheet," dated 1/22/21 (Exhibit #042);  
"VWP Mitigation Map Series Sheet 1 of 3," dated 1/22/21 (Exhibit #042);  
"VWP Mitigation Map Series Sheet 2 of 3," dated 1/22/21 (Exhibit #042);  
"VWP Mitigation Map Series Sheet 3 of 3," dated 1/22/21 (Exhibit #042);  
"Site Details (1 of 3)," dated 2/24/21 (Exhibit #045);  
"Site Details (2 of 3)," dated 3/12/21 (Exhibit #046);  
"Site Details (3 of 3)," dated 5/20/21 (Exhibit #047a);

- “EPSC Existing Conditions Plan Sheet 1 of 5,” dated 3/10/21 (Exhibit #048);
- “EPSC Existing Conditions Plan Sheet 2 of 5,” dated 3/10/21 (Exhibit #049);
- “EPSC Existing Conditions Plan Sheet 3 of 5,” dated 3/10/21 (Exhibit #050);
- “EPSC Existing Conditions Plan Sheet 4 of 5,” dated 3/10/21 (Exhibit #051); and
- “EPSC Existing Conditions Plan Sheet 5 of 5,” dated 3/10/21 (Exhibit #052).
3. All conditions of Land Use Permit #4C0436 and amendments are in full force and effect except as further amended herein.
  4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
    - a. Individual Stormwater Permit #6488-INDC issued on April 19, 2021, by the ANR Watershed Management Division; and
    - b. Individual Wetland Permit #2019-720 issued on April 12, 2021, by the ANR Watershed Management Division.
  5. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
  6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
  7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
  8. No change shall be made to the design, operation or use of this Project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
  9. No further subdivision, alteration, and/or development on the tracts of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
  10. 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.
  11. 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.

12. The mountain bike trails will be operated from May 15th to November 1st each year. The hours of operation for the mountain bike trails will be limited to the following:
  - 1) Hours of operation from May 15th to June 30th shall be limited to 10:00AM to 6:00PM Friday through Sunday.
  - 2) Hours of operation from July 1st to August 31st shall be limited to 12:00PM to 8:00PM Monday through Friday, and 10:00AM to 7:00PM Saturday and Sunday.
  - 3) Hours of operation from September 1st to November 1st shall be limited to 10:00AM to 6:00PM Friday through Sunday.
  
13. The mountain bike trails will be operated in accordance with the *Bolton Valley Mountain Bike Trails Management Plan* (June 2006) incorporated as Exhibit #012 of LUP #4C0436-32. In addition, the Permittee shall comply with the following permit conditions related to on-going operations of the mountain bike trail system:
  - 1) All riders shall be required to read and sign forms which provide information on wildlife, sensitive habitats, protected wetlands, and the importance of staying on the designated trail system.
  - 2) The Permittee shall monitor rider actions daily. The Permittee shall penalize riders who intentionally or recklessly ride off-trail in sensitive natural resource or habitat areas; the penalties shall include but not be limited to, forfeiture of lift ticket and the right to use the bike trails.
  - 3) The Permittee shall maintain a log book that will contain at a minimum: the date and number of days of mountain bike use, the number of participants, any incidences of unauthorized trail use and observations of trail conditions. Permittees shall provide the District Coordinator a copy of the log book, if requested.
  - 4) The Permittee shall inspect and record trail conditions each week and after each rain event that triggers "wet conditions." All observations shall be entered into the log book. Photographic documentation shall be used for all rain events that trigger "wet conditions."
  - 5) All use of trails will be prohibited in wet conditions. Wet conditions are defined as ½ inch of rain in a two hour period. The restriction can only be lifted after a visual inspection of the trails and erosion control devices. All observations shall be entered into the log book.
  - 6) The Permittee shall close trails with persistent erosion problems until the trail has been restored. No replacement trails shall be installed or constructed without written authorization from the District Commission.

14. The following Project activities are prohibited between May 15 and August 1: (a) construction of any portion of the Project above 3,000 feet in elevation; and (b) blasting. In addition, the Commission directs that during this time period, no site work or construction activities shall occur within the blasting area depicted on Exhibit #037b.
15. Site work and construction hours shall be limited to 7:00AM to 7:00PM Monday through Saturday, with no construction on Sundays or State and Federal Holidays.
16. Blasting hours shall be limited to 8:00AM to 4:00PM Monday through Friday, with no blasting or construction related to blasting on Saturdays, Sundays or State and Federal Holidays.
17. The Permittee shall comply with the Agency of Natural Resources' *Best Management Practices for Blasting to Avoid Environmental Contamination* (2016).
18. The Permittees shall not allow the operation of crushing, sieving or screening operations on the tract without prior written approval by the District Commission.
19. The Permittee shall comply with the Blasting and Rock Excavation Plan and the Blasting Area EPSC Site Plan included as Exhibits #008a and 037b, respectively. The Blasting and Rock Excavation Plan includes, but is not limited to the following conditions:
  - 1) At least three days prior to any blasting, the Permittees shall notify or cause to notify the abutting property owners, and institutional operations and business establishments located within 1,000 feet of any blasting activity. These entities shall be notified of the blasting activities and duration by letter or personal contact.
  - 2) Ground vibration as measured by peak particle velocity shall not exceed 2.0 inches/second as a result of blasting.
  - 3) The Permittee shall conduct or cause to conduct pre-blast surveys and post-blast surveys for all structures located within 250 feet of the blasting activity. The pre-blast surveys shall occur at least two weeks before the first blasting event and the post-blast surveys shall occur upon completion of blasting activities.
  - 4) The Permittee shall conduct or cause to conduct seismic monitoring during blasting and blast monitoring reports shall be generated for each blast event. Blast monitoring reports shall be made available to the District Commission upon request.
20. The following activities are prohibited in Zone 1 of the source protection area: the application of nitrogen, pesticides, and herbicides; parking of motor vehicles; chemical or fuel storage except natural gas or propane and other chemicals that are required by the water system; salted or paved roads passing through the area; and any other activity that may contaminate the water supply.

21. The maintenance and refueling of construction and service equipment shall be conducted at least 200 feet from any water source.
22. Prior to construction, the Permittee shall install fencing, bollards, boulders, or similar features around any well within 20 feet of a proposed trail to prevent inadvertent damage to well casings.
23. If a spill or release of any toxic substance occurs within the source protection area, the Permittee or their representative shall immediately report the event to the Vermont Department of Environmental Conservation Spills Program and the water system owner or operator. The Spills Program can be reached during regular office hours at 802-828-1138 or via the 24-hour hotline at 800-641-5005. Any person reporting a release shall speak directly with a Spills Program representative and cannot report by email, text, or other written form of communication. The person reporting a release shall provide water system identification number VT0005051 (Bolton Community Water System) to the Spills Program. The Permittee shall provide instructions, with contact phone numbers, for reporting a toxic substance release to all contractors for the Project and those instructions shall be displayed on site.
24. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division on all disturbed areas within the Project during construction and until pavement and/or vegetation is fully established to control dust.
25. The Permittee shall comply with Exhibits #028a, 029a, 030a, 031a, 032a, 033a, 037b, 045, 046, 047a and 057 for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
26. Stabilized access to the work areas will be accomplished via the existing work roads.
27. No more than 500 linear feet of the mountain bike trail expansion project shall be disturbed at any one time.
28. The Permittee shall assure that, prior to earth disturbance within any area of the site located within 100 feet upslope of a stream or wetland, silt fence or approved perimeter control shall be installed in accordance with The Vermont Standards and Specifications for Erosion Prevention and Sediment Control and the EPSC Plan at an appropriate distance down slope from disturbed areas and upslope from such waters.
29. All areas of earth disturbance must be stabilized within 14 days of initial disturbance. After this initial 14-day period, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site. The following exceptions apply: i)

Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches). Stabilization is not required if work is occurring in a created self-contained area consisting of the following: (1) Self-containment shall consist of at least 2-ft high berms; and (2) Berms shall be constructed of compacted clean fill, and of material suitable to the purpose of containment as determined by the EPSC Specialist; (3) Such areas shall be documented according to Part II.F of this Permit.

30. If construction activities involving earth disturbance will occur during the Winter Construction Period (October 15 through April 15), the permittee shall implement Winter Construction Erosion Prevention and Sediment Control practices as outlined in the Erosion Prevention and Sediment Control Plan and as identified The Vermont Standards and Specifications for Erosion Prevention and Sediment Control.
31. The Permittee shall designate a person as the on-site plan coordinator (“OSPC”) who shall be directly responsible for on-site implementation of the Erosion Prevention and Sediment Control Plan. Such person shall be knowledgeable in the principles and practice of erosion prevention and sediment control and possess the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of all erosion prevention and sediment control measures selected to control the quality of stormwater discharges from the construction and construction-related activity.
32. The Permittee is responsible for inspecting and maintaining erosion prevention and sediment controls that minimize or eliminate pollutants in the discharge in accordance with the requirements of this Individual Stormwater Discharge Permit #6488-INDC. An inspection report shall be completed for each inspection and signed by the OSPC or the person acting under the direction of the OSPC. These reports shall be made available to the Commission.
33. 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.
34. The Permittee shall maintain undisturbed, naturally vegetated riparian zones along all streams identified in Exhibit #038, except for preexisting disturbances and disturbances proposed in connection with this Project and depicted in Exhibit #038. Riparian zones shall be measured inland, perpendicular to, and horizontally 50 feet from the top of bank, or in areas where a wetland is contiguous to the stream, 50 feet from the upland edge of the delineated wetland and extending 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.

35. The Permittee shall maintain an undisturbed, naturally vegetated buffer zone on the Project Tract within 50 feet of any wetlands as depicted on Exhibits #009a, 010a, 011a, 012a, 013a and 014a, except for disturbances authorized under Individual Wetland Permit #2019-720. The term "undisturbed" means that there shall be 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 or mowing.
36. Tree trimming, tree removal, and canopy removal within riparian zones may be carried out to: (a) maintain permitted ski trail clearances; (b) for safety reasons such as removing hazard trees; and (c) for management of invasive species with the prior review and approval of the Vermont Fish and Wildlife Department. Tree Trimming, tree removal, and canopy removal within wetlands and wetland buffers shall comply with the Vermont Wetland Rules Allowed Uses.
37. All perennial and intermittent streams in the Project will be spanned using a wooden bridge on wood piers that span the top of bank of the stream. Exhibit #038. All ephemeral streams in the Project will be crossed via a culvert. Exhibits #007 and 047a.
38. All Class II and Class III wetlands will be spanned using wooden boardwalks or bridges set on wooden piers.
39. The Permittee shall complete the following mitigation related to streams and riparian buffer areas and as further detailed in the Vegetation Management/Stabilization Plan dated March 11, 2021, and depicted in the Mitigation Map Series Sheets 1-6 dated March 11, 2021, both included in Exhibit #038:
  - 1) Discontinue an existing mountain bike trail as shown on the Mitigation Map Series Sheets 1 and 3. Exhibit #038. Portions of this trail within the 50-foot riparian buffer zone of the stream will be restored via natural reforestation and supplemental plantings as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 4,068-sf of restored area. This mitigation shall be completed prior to the operation of the Project.
  - 2) Discontinue an existing mountain bike trail as shown on the Mitigation Map Series Sheets 1 and 3. Exhibit #038. Portions of this trail outside the 50-foot riparian buffer zone will be allowed to regenerate via natural reforestation. This amounts to approximately 13,138-sf of restored area. This mitigation shall be completed prior to the operation of the Project.



- 3) Install 5 new bridges at existing trails where at grade crossings of streams currently exist as shown on the Mitigation Map Series Sheets 2, 3 and 4. Exhibit #038. One new puncheon will be installed at the existing trail crossing of wetland 2020-9 as shown on the Mitigation Map Series Sheet 3. Exhibits #038 and 047a. This trail improvement work will not involve vegetation removal in the riparian zone. This mitigation shall be completed prior to the operation of the Project.
- 4) Reconstruct and stabilize 5 existing waterbars at intermittent streams at the existing primary work road as shown on the Mitigation Map Series Sheet 3. Exhibit #038. Waterbars would be reconstructed, shaped, and stabilized using appropriate size stone. Exhibit #047a. This trail improvement work will not involve vegetation removal in the riparian zone. This mitigation shall be completed prior to the operation of the Project.
- 5) Discontinue existing ski trail near Wilderness Lift mid-station as shown on the Mitigation Map Series Sheet 2. Exhibit #038. This existing wet area at the toe of an existing slope lies adjacent to, and is likely part of, partially delineated Class II wetland 2020-9. Two remotely sensed intermittent stream channels and their associated buffer area either pass through or adjacent to this area. This area will receive supplemental plantings within the 50-foot riparian buffer zone as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 7,396-sf of total restored area of which approximately 5,485-sf will receive supplemental plantings. This mitigation shall be completed prior to the operation of the Project.
- 6) Discontinue existing ski trail between Sherman's Pass work road and Vista lift line, near the Mid-Mountain lift top terminal as shown on the Mitigation Map Series Sheet 5. Exhibit #038. This existing wet area lies within a relatively flat section of the ski terrain and is likely Class II wetland. Two remotely sensed intermittent stream channels and their associated buffer area pass directly through this area. This area will receive supplemental plantings within the 50-foot riparian buffer zone as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 7,358-sf of which approximately 4,466-sf will receive supplemental plantings. This mitigation shall be completed prior to the operation of the Project.
- 7) Discontinue an existing ATV/work road in the Timberline Area as shown on the Mitigation Map Series Sheet 6. Exhibit #038. Under existing conditions, this ATV/work road runs parallel to an existing stream channel for approximately 760 linear feet and occupies the stream channel for at least 260 linear feet. This area will receive supplemental plantings within the 50-foot riparian buffer area as described in the Vegetation Management/Stabilization Plan, with the exception of where the road crosses ski trails, where a conservation mix will be utilized. Exhibit

#038. This amounts to approximately 7,862-sf of restored area of which approximately 6,276-sf will receive supplemental riparian plantings. This mitigation shall be completed prior to the operation of the Project.

- 8) Relocate the existing work road outside of the wetland buffer near the Vista lift top terminal as shown on the Mitigation Map Series Sheet 4. Exhibit #038. The wetland buffer area will be restored with a conservation seed mix as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 1,228-sf of restored buffer area. This mitigation shall be completed prior to the operation of the Project.
  - 9) Remove existing 5-foot diameter culvert and existing concrete dam at former water intake to eliminate these existing barriers to aquatic organism passage as shown on the Mitigation Map Series Sheet 1. Exhibit #038. The existing corrugated metal culvert will be replaced with an open bottom structure, and the dam will be removed, and channel restored at the existing dam location. The Permittee agrees to develop preliminary engineering plans for this work and submit to the District Commission, ANR and the Fish & Wildlife Department for review and approval within 1 year of issuance of this decision. The mitigation will be implemented with 3 years of issuance of this decision.
  - 10) For mitigation areas #1, 2, 5, 6 and 7, above, the Permittee will plant a row of trees, install boulders, fencing or other ANR approved means at each end of the mitigation areas to create a visual and physical barrier to future road or trail use.
  - 11) The Permittee will perform annual monitoring of the planted areas commencing in the first growing season post-installation and continuing for a period of five years. A brief letter report documenting the findings will be prepared. Reports will be furnished to the District Commission by November 30 of each monitoring year. Should the performance standard of 75 percent survival of planted species fail to be achieved, the Permittee will present within the report proposed remediation plans to address the shortfall as well as any other issue observed during the evaluation. At the end of the five-year period, provided that the performance standard is met, the Permittee would cease annual monitoring and reporting.
40. The Permittee shall complete the following mitigation related to wetlands and as further detailed in Exhibit #056:
- 1) 15,982 square feet of Class II wetland and buffer zone will be restored to mitigate for impacts incurred by the Project. The mitigation will be split between three separate former trail areas depicted on Exhibit #042. Mitigation will involve allowing the former trail areas to naturally revegetate, and permanently demarcating the areas with trees, large boulders, fencing, or ANR approved

alternative to prevent disturbance of the mitigation areas. Demarcation shall be installed before trail construction is completed.

- 2) The Applicant shall retain an environmental compliance monitor to be on site during all site preparation and construction related activities taking place in the Class II wetland and buffer zones to assure compliance with Individual Wetland Permit #2019-720.
  - 3) All contractors' equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species. The permittee shall monitor the portion of the wetlands in question annually during early July for five years following construction for the nuisance plant species purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*). All nuisance plants found shall be pulled by hand and disposed of by burial or burning in a non-wetland location. If hand pulling is not feasible, a state approved invasive species control plan is required.
41. The Permittee shall complete the following mitigation related to Bicknell's Thrush habitat and as further detailed in Exhibits #054 and 058:
- 1) The Permittee will provide a 6,210-sf on-site mitigation area, located above 3,000 ft in elevation and within the current extent of the ski trail named "Show Off Chute." This ski trail will be discontinued and will be allowed to revegetate into a spruce-fir forested condition. Prior to operation of the Project, the Permittee shall mark the boundaries of the "Proposed Bicknell's Mitigation Area (Reforestation Area)" shown in Exhibit #035 with signs and physical barriers, such as ropes and brush, to prevent human access to the area while it revegetates. The Permittee shall maintain these signs and physical barriers until the mitigation area is fully reforested.
  - 2) The Permittee will provide a 6,210-sf mitigation area via expansion of the existing approximately 6-acre Bicknell's Thrush Conservation Area incorporated as Exhibit #027 of LUP #4C0436-29. The expansion of the Conservation Area is proposed to be achieved by extending southern end of the existing conservation area. Exhibit #035. Prior to the operation of the Project the Permittee shall file a geo-referenced field boundary file depicting the entirety of the Bicknell's Thrush Conservation Area to the Commission prior to the operation of the Project. The Commission will also require that any modification to the Bicknell's Thrush Conservation Area will require a Rule 34(E) analysis.
42. Condition #15 of Land Use Permit #4C0436-32 is hereby removed.
43. Any extracted stumps shall be disposed of on-site above the seasonal high-water table and not in any wetland or buffer area, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.

44. No exterior lighting fixtures or usage is authorized by this permit.
45. Other than trail signs depicted in Exhibit #040 the Permittee shall not erect exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
46. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment before any written contract of sale is entered into.
47. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #4C0436-32A in all deeds of conveyance and leases.
48. 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).
49. All site work and construction shall be completed in accordance with the approved plans by **October 1, 2024**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
50. 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.
51. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Essex Junction, Vermont, this 25<sup>th</sup> day of June 2021.

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

Members participating in this decision:

Monique Gilbert

Pam Loranger

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, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401.



# 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] 802-879-5614

**CASE NO:** 4C0436-32A

Bolton Valley Resort  
4302 Bolton Access Road  
Bolton, VT 05477

**LAWS/REGULATIONS INVOLVED**

10 V.S.A. §§ 6001 - 6111 (Act 250)

## I. INTRODUCTION

On August 21, 2020, Bolton Valley Resort filed an application for an Act 250 permit for a project generally described as construction of approximately 7.2 miles of lift-served mountain bike trails at Bolton Valley Resort (the "Project"). The Applicant's legal interest is described in deeds recorded in Book 92, Pages 593-611; and Book 96, Page 579, of the land records of the Town of Bolton, Vermont.

The application, first submitted on August 21, 2020, was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated August 31, 2020. The application was deemed complete on March 26, 2021 upon receipt of the supplemental information.

The Commission held a Prehearing Conference on this application on April 14, 2021 and held a Hearing on May 3, 2021. The Commission also conducted a site visit on April 29, 2021 and placed its observations on the record at the Hearing. At the end of the Hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on June 21, 2021 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 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 Land Use Permit #4C0436-29 and exhibits; Land Use Permit #4C0436-32 and exhibits; Vermont Fish & Wildlife Department’s *Rare and Uncommon Animals of Vermont* (March 2017); Vermont Fish & Wildlife Department’s *Synonymy of Vermont Natural Community Types with National Vegetation Classification Associations* (October, 2019); and Agency of Natural Resources *Vermont Water Quality Standards* (January, 2017) 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)**

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).

In this application, the Applicant does not seek to amend such a critical permit condition, so the Commission may consider the merits of the amendment application without conducting the rest of the Rule 34(E) analysis.

### **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 Lindsey DesLauriers of Bolton Valley Resort and Peter Smiar of VHB at the Prehearing and Hearing; and Chris Puttick of Bolton Valley Resort, Dave Kelly of Gravity Logic; Justin Day of GW Tatro and Zelda Dively of VHB at the Hearing.

2. The **Vermont Agency of Natural Resources**, by Kevin Anderson and Maureen Lynch at the Prehearing and Hearing; and Julie Follensbee, Toni Mikula and Lee Simard at the Hearing.

B. Interested Parties

No other persons were present as the Prehearing Conference and no requests for party status or Friends of the Commission status were made.

Prior to the close of Hearing, 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.

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

- |   |                                       |
|---|---------------------------------------|
| 1 - Water Pollution                       | 9(A) - Impact of Growth               |
| 1(C) - Water Conservation                 | 9(B) - Primary Agricultural Soils     |
| 1(D) - Floodways                          | 9(C) - Productive Forest Soils        |
| 1(F) - Shorelines                         | 9(D) - Earth Resources                |
| 2 - Water Supply                          | 9(F) - Energy Conservation            |
| 3 - Impact on Existing Water Supplies     | 9(G) - Private Utility Services       |
| 5(A) - Transportation Congestion & Safety | 9(H) - Costs of Scattered Development |
| 5(B) - Transportation Demand Management   | 9(J) - Public Utility Services        |
| 6 - Educational Services                  | 9(K) - Effects on Public Investments  |
| 7 - Municipal Services                    | 9(L) - Settlement Patterns            |
| 8 - Aesthetics                            | 10 - Local and Regional Plans         |
| 8 - Historic Sites                        |                                       |
| 8 - Rare and Irreplicable Natural Areas   |                                       |

The findings of fact are based on the application, exhibits 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 the burden is 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 includes the construction of 7.2 miles of new mountain bike trails within the Bolton Valley Resort. These trails will be constructed with a packed earth surface. The beginner trails and advanced trails, marked in green and blue on the Project maps respectively, will be constructed with a 6-foot-wide finished trail width and will require an 18-foot-wide area of vegetation clearing. The intermediate trails, marked in purple on the Project maps, will be constructed with a 5-foot-wide finished trail and will require a 15-foot-wide area of vegetation clearing. Exhibits #007 and 009a, 010a, 011a, 012a, 013a and 014a.
2. Riders will be conveyed up the Vista chair lift to the starting point of the trails at the top of Vista Peak at approximately elevation 3,120 feet above mean sea level ("amsl"). Riders will exit the trail system near the Bolton Base Lodge at approximately elevation 2,150 feet amsl. Exhibits #009a, 010a, 011a, 012a, 013a and 014a.
3. Several existing mountain bike trails, served by the Vista chair lift, were previously approved by Land Use Permit ("LUP") #4C0436-32.
4. The *Bolton Valley Mountain Bike Trails Management Plan* (June 2006) was incorporated as Exhibit #012 of LUP #4C0436-32. This plan detailed the Applicant's ongoing monitoring and maintenance required during the operation of the existing mountain bike trails. The Applicant has represented that the Project will be operated in accordance with that Trail Management Plan except for the new seasonal hours of operations detailed in Finding #5, herein. Exhibit #036.
5. As with the existing mountain bike trails, the new trails will be operated from May 15<sup>th</sup> to November 1<sup>st</sup> each year. The hours of operation for the mountain bike trails will be limited to the following:
  - 1) Hours of operation from May 15<sup>th</sup> to June 30<sup>th</sup> shall be limited to 10:00AM to 6:00PM Friday through Sunday.
  - 2) Hours of operation from July 1<sup>st</sup> to August 31<sup>st</sup> shall be limited to 12:00PM to 8:00PM, Monday through Friday, and 10:00AM to 7:00PM on Saturday and Sunday.
  - 3) Hours of operation from September 1<sup>st</sup> to November 1<sup>st</sup> shall be limited to 10:00AM to 6:00PM Friday through Sunday.

**Criterion 1 - Air Pollution; and Criterion 9(E) – Extraction of Earth Resources:**

Findings of Fact

6. No ANR Air Pollution Control Permit is required for the Project, as the Project does not trigger jurisdictional thresholds.
7. During construction, the Applicants will control dust through the application of water and/or other dust control agents as approved by the ANR.
8. The Applicant represents that blasting is required for the installation of a section of the beginner trail, marked in green on the Project maps, at approximately 2,900 ft amsl.
9. The Applicant originally proposed a blasting area that was approximately 300 feet long, 20 feet wide and 9 feet deep, resulting in approximately 2,000 cubic yards of material to be removed. Exhibits #008a, 013a, 032a, 036 and 037b.
10. The Applicant revised the size of the blasting area at the request of the Commission. The revised blasting area will occupy the same alignment as originally proposed, but will only be approximately 140 feet long, resulting in approximately 800 cubic yards of material to be removed. Exhibits #037b, and 061. The remaining 160 feet of trail is no longer proposed to be constructed with blasting. Instead, this area will be constructed using a combination of wooden bridging, wooden boardwalk and gravel fill. The revisions to the blasting area will result in slightly less tree clearing than originally proposed. Exhibits #037b and 061.
11. The Applicants estimate that it will take approximately 5 days to complete the blasting within the revised blasting area. Exhibit #037b and 061.
12. ANR requests and the Commission approves the following permit condition related to construction and blasting hours, in order to protect Bicknell's Thrush foraging and nesting habitat (Exhibit #058):
  - 1) The following project activities are prohibited between May 15 and August 1: (a) construction of any portion of the Project above 3,000 feet in elevation; and (b) blasting. In addition to the condition proposed by ANR, the Commission directs that during this time period, no site work or construction activities shall occur within the blasting area depicted on Exhibit #037b.
13. Site work and construction hours will be limited to 7:00AM to 7:00PM Monday through Saturday, with no construction on Sundays or State and Federal Holidays.
14. Blasting hours will be limited to 8:00AM to 4:00PM, Monday through Friday, with no blasting activities on Saturdays, Sundays or State and Federal Holidays.

15. Blasting activities will conform to the Blasting Plan and Rock Excavation Plan and the ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016). Exhibit #008a.
16. The Blasting Plan (Exhibit #008a) includes, but is not limited to, the following provisions:
  - 1) At least three days prior to blasting, the abutting property owners, and institutional operators and business establishments located within 1,000 feet of any blasting activity, shall be notified by the Applicant of the blasting activities and duration by letter or personal contact.
  - 2) Ground vibration as measured by peak particle velocity shall not exceed 2.0 inches/second as a result of blasting.
  - 3) The Applicants shall conduct or cause to conduct pre-blast surveys and post-blast surveys for all structures located within 250 feet of the blasting activity. The Commission will by permit condition require that the pre-blast surveys shall occur at least two weeks before the first blasting event and the post-blast surveys shall occur upon completion of blasting activities.
  - 4) The Applicants shall conduct or cause to conduct seismic monitoring during blasting, and blast monitoring reports shall be generated for each blast event. The Commission will by permit condition require that blast monitoring reports be made available to the District Commission upon request.
17. The Applicant represents that no crushing, screening, sieving or other material processing activities are proposed to occur on site. Exhibit #036. Blasted material will be roughly sorted and temporarily stockpiled before being used for trail building. Exhibit #036 and 037b. The Applicant represents that the majority of blasted material is expected to be used during trail building. Exhibit #036. If surplus material is required to be taken off-site, it will be trucked out using the existing work road.
18. The Project will be constructed and stabilized in accordance with Individual Stormwater Discharge Permit #6488-INDC (Exhibit #057) and the site-specific erosion prevention and sediment control plans. (Exhibits #028a, 029a, 030a, 031a, 032a, 033a, 037b, 045, 046 and 047a).
19. In accordance with the Individual Stormwater Discharge Permit #6488-INDC, site work and soil disturbance will proceed in a stepwise fashion where a maximum of 500 linear feet of trail work is allowed at any time.

## Conclusions of Law

Under Criterion 1 (Air Pollution), a permit will be granted if the subdivision or development will not result in undue air pollution.

Under Criterion 9(E), a permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material: (i) when it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and (ii) upon approval by the District Commission of a site rehabilitation plan which insures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the State, except that the gravel, silt and sediment may be removed pursuant to the rules of the Agency of Natural Resources, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resource board.

The Project will comply with ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016), the blasting plan (Exhibit #008a) and the Project will be constructed and stabilized in accordance with Individual Stormwater Discharge Permit #6488-INDC (Exhibit #057) and the site-specific erosion prevention and sediment control plans (Exhibits #028a, 029a, 030a, 031a, 032a, 033a and 037b). In addition, the Applicant has reduced the size of the blasting area at the request of the Commission. Therefore, the Commission concludes that the Project complies with Criterion 1(Air Pollution) and Criterion 9(E)(Extraction of Earth Resources).

### **Criterion 1(A) – Headwaters; Criterion 1(B) - Waste Disposal; and Criterion 4 - Soil Erosion:**

#### Findings of Fact

20. The entire Project is located in a headwaters area. At a minimum, the Project is located above 1,500 ft amsl and is within the watershed of a public water supply designated by ANR.
21. The Project includes construction at and above 2,500 ft amsl. The State of Vermont classifies waters at and above 2,500 ft amsl as Class A waters, or high-quality waters which have significant ecological value 10 V.S.A. §1252-1253. Under the *Vermont Water Quality Standards* (January 2017), Class A waters are managed to achieve and maintain waters in a natural condition.

22. There are no Department of Health or applicable Department of Environmental Conservation regulations regarding the reduction of the quality of the ground or surface waters in headwaters areas.
23. The Project is partially located within a groundwater source protection area ("SPA") and a surface water SPA related to the Bolton Community Water System (VT0005051). The proposed trails occur in all three zones of the SPA: Zone 1, the isolation zone; Zone 2, the primary recharge area; and Zone 3, the secondary recharge area. Exhibit #054.
24. ANR requests and the Commission approves the following permit conditions related to SPAs (Exhibit #054):
  - 1) The following activities are prohibited in Zone 1 of the SPA: the application of nitrogen, pesticides, and herbicides; parking of motor vehicles; chemical or fuel storage except natural gas or propane and other chemicals that are required by the water system; salted or paved roads passing through the area; and any other activity that may contaminate the water supply.
  - 2) The maintenance and refueling of construction and service equipment shall be conducted at least 200 feet from any water source.
  - 3) Prior to construction, the Permittee shall install fencing, bollards, boulders, or similar features around any well within 20 feet of a proposed trail to prevent inadvertent damage to well casings.
  - 4) If a spill or release of any toxic substance occurs within the SPA, the Permittee or their representative shall immediately report the event to the Vermont Department of Environmental Conservation Spills Program and the water system owner or operator. The Spills Program can be reached during regular office hours at 802-828-1138 or via the 24-hour hotline at 800-641-5005. Any person reporting a release shall speak directly with a Spills Program representative and cannot report by email, text, or other written form of communication. The person reporting a release shall provide water system identification number VT0005051 (Bolton Community Water System) to the Spills Program. The Permittee shall provide instructions, with contact phone numbers, for reporting a toxic substance release to all contractors for the Project and those instructions shall be displayed on site.
25. Blasting activities will conform to the Blasting Plan and Rock Excavation Plan and the ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016). Exhibit #008a.

26. The Applicant will dispose of any extracted stumps on-site above the seasonal high-water table, and not in any wetland, or at a State-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
27. Wastewater associated with the operation of the Project will not exceed the existing wastewater capacity afforded to the Bolton Valley Resort. Exhibit #055.
28. The Project is located on bedrock or soils in hydrologic group C or D. Exhibits #029a, 030a, 031a, 032a and 033a. There are four hydrologic groupings of soils designated as A, B, C and D. Soils in the A grouping are most permeable, while soils in the D grouping are the least permeable.
29. The trails will be constructed with a packed earth surface. The beginner trails and advanced trails will require an 18-foot-wide area of vegetation clearing and a 6-foot-wide finished trail width. The intermediate trails will require a 15-foot-wide area of vegetation clearing and a 5-foot-wide finished trail width. Side slopes of trails will be allowed to revegetate. Exhibits #007 and 009a, 010a, 011a, 012a, 013a and 014a.
30. Stabilized access to the work areas will be accomplished via the existing work roads. Exhibit #007.
31. The Project will be constructed in accordance with Individual Stormwater Discharge Permit #6488-INDC (Exhibit #057) and the site-specific erosion prevention and sediment control plans. (Exhibits #028a, 029a, 030a, 031a, 032a, 033a, 037b, 045, 046 and 047a). The Individual Stormwater Discharge Permit #6488-INDC includes, but is not limited to, the following conditions:
  - 1) No more than 500 linear feet of Mountain Bike Trail Expansion Project shall be disturbed at any one time.
  - 2) The Applicant shall assure that, prior to earth disturbance within any area of the site located within 100 feet upslope of a stream or wetland, silt fence or approved perimeter control shall be installed in accordance with The Vermont Standards and Specifications for Erosion Prevention and Sediment Control and the EPSC Plan at an appropriate distance down slope from disturbed areas and upslope from such waters.
  - 3) All areas of earth disturbance must be stabilized within 14 days of initial disturbance. After this initial 14-day period, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site. The following exceptions apply: i) Stabilization is not required if work is to continue

in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches). Stabilization is not required if work is occurring in a created self-contained area consisting of the following: (1) Self-containment shall consist of at least 2-ft high berms; and (2) Berms shall be constructed of compacted clean fill, and of material suitable to the purpose of containment as determined by the EPSC Specialist; (3) Such areas shall be documented according to Part II.F of this Permit.

- 4) If construction activities involving earth disturbance will occur during the Winter Construction Period (October 15 through April 15), the permittee shall implement Winter Construction Erosion Prevention and Sediment Control practices as outlined in the Erosion Prevention and Sediment Control Plan and as identified The Vermont Standards and Specifications for Erosion Prevention and Sediment Control.
  - 5) The Applicant shall designate a person as the on-site plan coordinator (“OSPC”) who shall be directly responsible for on-site implementation of the Erosion Prevention and Sediment Control Plan. Such person shall be knowledgeable in the principles and practice of erosion prevention and sediment control and possess the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of all erosion prevention and sediment control measures selected to control the quality of stormwater discharges from the construction and construction-related activity.
  - 6) The Applicant is responsible for inspecting and maintaining erosion prevention and sediment controls that minimize or eliminate pollutants in the discharge in accordance with the requirements of this Individual Stormwater Discharge Permit #6488-INDC. An inspection report shall be completed for each inspection and signed by the OSPC or the person acting under the direction of the OSPC. In addition, the Commission directs that these inspection reports will be made available to the Commission.
32. The Applicant represents that the Project will be operated in accordance with the *Bolton Valley Mountain Bike Trails Management Plan* (June 2006) incorporated as Exhibit #012 of LUP #4C0436-32. In addition, the Commission will include the following permit conditions related to on-going operations of the mountain bike trail system:

- 1) All riders shall be required to read and sign forms which provide information on wildlife, sensitive habitats, protected wetlands, and the importance of staying on the designated trail system.
  - 2) The Applicant shall monitor rider actions daily. The Applicant shall penalize riders who intentionally or recklessly ride off-trail in sensitive natural resource or habitat areas; the penalties shall include but not be limited to, forfeiture of lift ticket and the right to use the bike trails.
  - 3) The Applicant shall maintain a log book that will contain at a minimum: the date and number of days of mountain bike use, the number of participants, any incidences of unauthorized trail use and observations of trail conditions. Permittees shall provide the District Coordinator a copy of the log book, if requested.
  - 4) The Applicant shall inspect and record trail conditions each week and after each rain event that triggers "wet conditions." All observations shall be entered into the log book. Photographic documentation shall be used for all rain events that trigger "wet conditions."
  - 5) All use of trails will be prohibited in wet conditions. Wet conditions are defined as ½ inch of rain in a two-hour period. The restriction can only be lifted after a visual inspection of the trails and erosion control devices. All observations shall be entered into the log book.
  - 6) The Applicant shall close trails with persistent erosion problems until the trail has been restored. No replacement trails shall be installed or constructed without written authorization from the District Commission.
33. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

#### Conclusions of Law

Under Criterion 1(A), a permit will be granted when it is demonstrated that the development will meet any applicable Health and Environmental Conservation Department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development and which lands are (i) headwater of a watershed characterized by steep slopes and shallow soils or (ii) drainage area of 20 square miles or less; or (iii) above 1,500 feet elevation; or (iv) watershed of a public water supply designated by the Agency of Natural Resources; or (v) areas supplying significant amounts of recharge waters to an aquifer.



Under Criterion 1(B), a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the project will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

Under Criterion 4, a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The Project is located within a headwaters area, on steep slopes and within a groundwater SPA and a surface water SPA. In addition, the surface waters in the Project area above elevation 2,500 ft are Class A waters managed for a high degree of protection under *Vermont Water Quality Standards* (January 2017).

Due to the Project's sensitive location, it is imperative that construction of the Project is undertaken in strict compliance with the Individual Stormwater Discharge Permit #6488-INDC (Exhibit #057), the site-specific erosion prevention and sediment control plans (Exhibits #028a, 029a, 030a, 031a, 032a, 033a, 037b, 045, 046 and 047a) the Blasting Plan and Rock Excavation Plan (Exhibit #008a) and the ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016). Further, the Commission will include permit conditions to protect the SPAs and to protect against erosion caused by the ongoing operation of the mountain bike trails.

It should be noted that the ANR stormwater permit creates a presumption under Act 250 Rule 19 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. Technical determinations are entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

As conditioned herein, the Project will meet applicable Department of Health and Department of Environmental Conservation regulations regarding the reduction of the quality of the ground or surface waters in headwaters areas. Therefore, the Project complies with Criterion 1(A) (Headwaters).

As conditioned herein, the Project will meet all applicable Department of Environmental Conservation regulations on waste disposal and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Therefore, the Project complies with Criterion 1(B) (Waste Disposal).

As conditioned herein, 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. Therefore, the Project complies with Criterion 4 (Soil Erosion).

**Criterion 1(E) - Streams:**

Findings of Fact

34. Streams are located throughout the Project site. Riparian buffer zones are measured from the water's edge at base flow conditions to the top of bank or top of slope, and extending further 50 feet measured inland from, perpendicular to, and horizontally from the top of bank or top of slope. Streams and associated riparian buffer zones are depicted in Exhibits #009a, 010a, 011a, 012a, 013a and 014a. The location of the top of bank or top of slope has been determined using the ANR *Guidance for Agency Act 250 and Section 248 Comments Regarding Riparian Buffers* (2005).
35. The Applicant and ANR have consulted extensively on Criterion 1(E), which resulted in several changes to trail alignments and stream crossings to avoid and minimize stream and riparian zone impacts. Exhibit #054.
36. The Project is proposed to cross 4 perennial streams, 33 intermittent streams and 11 ephemeral streams. Exhibit #038.
37. The Project will result in 41,794 square feet ("sf") of impacts to riparian buffer zones, with an additional 8,337-sf of impacts related to existing buffer area encroachments. Exhibit #038. The Applicant represents that the avoidance of such residual impacts is infeasible and ANR concurred with this assessment. Exhibit #054.
38. The Applicant represents that all perennial and intermittent streams in the Project will be spanned using a wooden bridge on wood piers that span the top of bank of the stream. Exhibit #038. Ephemeral streams in the Project will be crossed via a culvert. Exhibits #007 and 047a.
39. The Applicant represents that stream crossings will be made perpendicular to the stream to the extent feasible. Exhibit #007. Trail approaches to streams will be made at the steepest possible gradient for the trail rating to limit the linear footage of encroachments in the riparian buffer zones. Exhibit #007 and 038.
40. The Applicant represents that disturbed areas within the riparian buffer zones will receive final stabilization within 48 hours of final grading. Exhibit #038.

41. The Applicant proposes the following mitigation for impacts to streams and riparian buffers as further detailed in the Vegetation Management/Stabilization Plan dated March 11, 2021 and depicted in the Mitigation Map Series Sheets 1-6 dated March 11, 2021, both included in Exhibit #038:
- 1) Discontinue an existing mountain bike trail as shown on the Mitigation Map Series Sheets 1 and 3. Exhibit #038. Portions of this trail within the 50-foot riparian buffer zone of the stream will be restored via natural reforestation and supplemental plantings as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 4,068-sf of restored area. This mitigation shall be completed prior to the operation of the Project.
  - 2) Discontinue an existing mountain bike trail as shown on the Mitigation Map Series Sheets 1 and 3. Exhibit #038. Portions of this trail outside the 50-foot riparian buffer zone will be allowed to regenerate via natural reforestation. This amounts to approximately 13,138-sf of restored area. This mitigation shall be completed prior to the operation of the Project.
  - 3) Install 5 new bridges at existing trails where at grade crossings of streams currently exist as shown on the Mitigation Map Series Sheets 2, 3 and 4. Exhibit #038. One new puncheon will be installed at the existing trail crossing of wetland 2020-9 as shown on the Mitigation Map Series Sheet 3. Exhibits #038 and 047a. This trail improvement work will not involve vegetation removal in the riparian zone. This mitigation shall be completed prior to the operation of the Project.
  - 4) Reconstruct and stabilize 5 existing waterbars at intermittent streams at the existing primary work road as shown on the Mitigation Map Series Sheet 3. Exhibit #038. Waterbars would be reconstructed, shaped, and stabilized using appropriate size stone. Exhibit #047a. This trail improvement work will not involve vegetation removal in the riparian zone. This mitigation shall be completed prior to the operation of the Project.
  - 5) Discontinue existing ski trail near Wilderness Lift mid-station as shown on the Mitigation Map Series Sheet 2. Exhibit #038. This existing wet area at the toe of an existing slope lies adjacent to, and is likely part of, partially delineated Class II wetland 2020-9. Two remotely sensed intermittent stream channels and their associated buffer area either pass through or adjacent to this area. This area will receive supplemental plantings within the 50-foot riparian buffer zone as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 7,396-sf of total restored area of which approximately

5,485-sf will receive supplemental plantings. This mitigation shall be completed prior to the operation of the Project.

- 6) Discontinue existing ski trail between Sherman's Pass work road and Vista lift line, near the Mid-Mountain lift top terminal as shown on the Mitigation Map Series Sheet 5. Exhibit #038. This existing wet area lies within a relatively flat section of the ski terrain and is likely Class II wetland. Two remotely sensed intermittent stream channels and their associated buffer area pass directly through this area. This area will receive supplemental plantings within the 50-foot riparian buffer zone as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 7,358-sf of which approximately 4,466-sf will receive supplemental plantings. This mitigation shall be completed prior to the operation of the Project.
- 7) Discontinue an existing ATV/work road in the Timberline Area as shown on the Mitigation Map Series Sheet 6. Exhibit #038. Under existing conditions, this ATV/work road runs parallel to an existing stream channel for approximately 760 linear feet and occupies the stream channel for at least 260 linear feet. This area will receive supplemental plantings within the 50-foot riparian buffer area as described in the Vegetation Management/Stabilization Plan, with the exception of where the road crosses ski trails, where a conservation mix will be utilized. Exhibit #038. This amounts to approximately 7,862-sf of restored area of which approximately 6,276-sf will receive supplemental riparian plantings. This mitigation shall be completed prior to the operation of the Project.
- 8) Relocate the existing work road outside of the wetland buffer near the Vista lift top terminal as shown on the Mitigation Map Series Sheet 4. Exhibit #038. The wetland buffer area will be restored with a conservation seed mix as described in the Vegetation Management/Stabilization Plan. Exhibit #038. This amounts to approximately 1,228-sf of restored buffer area. This mitigation shall be completed prior to the operation of the Project.
- 9) Remove existing 5-foot diameter culvert and existing concrete dam at former water intake to eliminate these existing barriers to aquatic organism passage as shown on the Mitigation Map Series Sheet 1. Exhibit #038. The existing corrugated metal culvert will be replaced with an open bottom structure, and the dam will be removed, and channel restored at the existing dam location. The Applicant agrees to develop preliminary engineering plans for this work and submit to the District Commission, ANR and the Fish & Wildlife Department for review and approval within 1 year of issuance of an LUP for Project. The mitigation will be implemented with 3 years of issuance of an LUP for Project.

- 10) For mitigation areas #1, 2, 5, 6 and 7, above, the Applicant will plant a row of trees, install boulders, fencing or other ANR approved means at each end of the mitigation areas to create a visual and physical barrier to future road or trail use.
  - 11) The Vegetation Management/Stabilization Plan dated March 11, 2021, indicates that the Applicant will perform annual monitoring of the planted areas commencing in the first growing season post-installation and continuing for a period of five years. A brief letter report documenting the findings will be prepared. Reports will be furnished to the District Commission by November 30 of each monitoring year. Should the performance standard of 75 percent survival of planted species fail to be achieved, the Applicant will present within the report proposed remediation plans to address the shortfall as well as any other issue observed during the evaluation. At the end of the five-year period, provided that the performance standard is met, the Applicant would cease annual monitoring and reporting. Exhibit #038.
42. ANR requests and the Commission approves the following permit condition (Exhibit #054):
- 1) The Permittee shall maintain undisturbed, naturally vegetated riparian zones along all streams identified in Exhibit #038, except for preexisting disturbances and disturbances proposed in connection with this project and depicted in Exhibit #038. Riparian zones shall be measured inland, perpendicular to, and horizontally 50 feet from the top of bank, or in areas where a wetland is contiguous to the stream, 50 feet from the upland edge of the delineated wetland and extending 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. Tree trimming, tree removal, and canopy removal may be carried out to: (a) maintain permitted ski trail clearances; (b) for safety reasons such as removing hazard trees; and (c) for management of invasive species with the prior review and approval of the Vermont Fish and Wildlife Department.

#### Conclusions of Law

Act 250 criterion 1(E) directs that a proposed project must be shown to "whenever feasible, maintain the natural condition of the streams on or adjacent to the project], and . . . not endanger the health, safety, or welfare of the public or of adjoining landowners." 10 V.S.A. § 6086(a)(1)(E).

The Commission concludes that the Project will result in stream crossing and impact to riparian buffer areas. The Applicant and ANR have consulted extensively on Criterion 1(E), which resulted in several changes to the trail layout and stream crossings to avoid and minimize stream and riparian zone impacts. Exhibit #054. The Project is proposed to cross 4 perennial streams, 33 intermittent streams and 11 ephemeral streams resulting in 41,794-sf of impacts to riparian buffer zones, with an additional 8,337-sf of impacts related to existing buffer area encroachments. Exhibit #038. The Applicant represents that the avoidance of such residual impacts is infeasible and ANR concurred with this assessment. Exhibit #054.

The Applicant and ANR propose, and the Commission accepts the proposed permit conditions and the proposed mitigation with modifications to the language of the proposed permit conditions and proposed mitigation as stated within the Findings of Fact.

As conditioned herein, the Commission concludes that the Applicant will, whenever feasible, maintain the natural condition of any streams, and will not endanger the health, safety or welfare of the public or of adjoining landowners. Therefore, the Project complies with Criterion 1(E).

**Criterion 1(G) - Wetlands:**

Findings of Fact

43. Class II wetlands and associated 50-foot buffer zones and Class III wetlands are located throughout the Project site and are depicted in Exhibits #009a, 010a, 011a, 012a, 013a and 014a. The Project will impact 20 Class II wetlands as described in Exhibit #056. The Project will also impact several Class III wetlands.
44. The ANR Wetlands Program has issued coverage under Individual Wetland Permit #2019-720 on April 12, 2021. Exhibit #056. The Individual Wetland Permit authorizes 1,777-sf of wetland impact and 38,967-sf of wetland buffer impact.
45. The Applicant represents that trails constructed within Class II and Class III wetlands will use elevated boardwalks or bridges set on wooden piers. Exhibit #007 and testimony of the Applicant at the Hearing.
46. The Applicant represents that trail construction work within wetlands and wetland buffers will be performed in accordance with the Vermont Wetland Program's Public Guidance document *Recreational Trail Building and Wetlands*, as well as Vermont Wetland Rules Section 6.16 *Best Management Practices for Duck Blinds, Fences, Catwalks, Docks*. Exhibit #007.

47. The Applicant represents that clearing and soil disturbance limits in wetland buffers will be limited to a 10-foot-wide maximum width, except a maximum of 16 foot width will be used where a banked turn is required. Exhibit #007.
48. No additional activities are allowed in the wetlands and associated buffer zones without the approval of the Secretary unless such activities are allowed uses under Vermont Wetland Rules Section 6. No draining, dredging, filling, grading, or alterations of the water flow is allowed. No cutting, clearing, or removal of vegetation within the wetlands and buffer zones is allowed with the exception of the proposed project area as approved by the Individual Wetland Permit #2019-720. The Applicant represents that tree trimming and cutting within wetlands and wetland buffers will be completed using hand tools and will comply with the Vermont Wetland Rules Section 6.1 *Silvicultural activities*. Exhibit #007.
49. The following mitigation for impacts to wetlands and wetland buffers is required by the Individual Wetland Permit #2019-720 and the VWP Mitigation Map Series included as Exhibits #056 and 042, respectively:
  - 1) Approximately 15,982-sf of Class II wetland and buffer zone will be restored to mitigate for impacts incurred by the Project. The mitigation will be split between three separate former trail areas depicted on Exhibit #042. Mitigation will involve allowing the former trail areas to naturally revegetate, and permanently demarcating the areas with trees, large boulders, fencing, or approved alternative to prevent disturbance of the mitigation areas. Demarcation shall be installed before trail construction is completed.
  - 2) The Applicant shall retain an environmental compliance monitor to be on site during all site preparation and construction related activities taking place in the Class II wetland and buffer zones to assure compliance with Individual Wetland Permit #2019-720.
  - 3) All contractors' equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species. The permittee shall monitor the portion of the wetlands in question annually during early July for five years following construction for the nuisance plant species purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*). All nuisance plants found shall be pulled by hand and disposed of by burial or burning in a non-wetland location. If hand pulling is not feasible, a state approved invasive species control plan is required.

## Conclusions of Law

Individual Wetland Permit #2019-720, 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. Technical determinations made by ANR are entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

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

### **Criterion 8(A) - Wildlife Habitat and Endangered Species:**

#### Findings of Fact

50. The Project site contains Bicknell's Thrush (*Catharus bicknelli*) habitat. According to the Vermont Fish & Wildlife Department's list of *Rare and Uncommon Animals of Vermont* (March 2017), Bicknell's Thrush is considered to be a State-ranked S2B rare species, and a Species of Greatest Conservation Need in Vermont. Exhibits #054 and 058.
51. Bicknell's Thrush breeds and nests in dense montane conifer forests in Vermont. Exhibit #058. The breeding and nesting season for Bicknell's Thrush is from May 15<sup>th</sup> to August 1<sup>st</sup>, each year. Exhibit #054.
52. The vast majority of Bicknell's Thrush nesting habitat occurs at elevations of 2,640 feet amsl and greater, although the elevation varies with latitude. Exhibit #058. For the Project, ANR considers Bicknell's Thrush habitat to be present above elevation 3,000 feet amsl. Exhibits #035 and 054.
53. The Project area contains Montane Spruce-Fir Forests. ANR considers Montane Spruce-Fir Forests to be necessary wildlife habitat for Bicknell's Thrush. Exhibit #054. The relatively high canopy and lack of young, regenerating trees within the Project area makes this location less valuable for nesting but still significant for behaviors related to territoriality, breeding, and/or foraging. Exhibit #058.
54. The Project will result in approximately 6,210-sf of permanent clearing in Bicknell's Thrush habitat located above 3,000 ft amsl. In this area construction will consist of cutting a roughly 10-foot-wide corridor to allow for construction of a new mountain bike trail. Exhibit #013a. Once trail grading is completed, trail side slopes will be allowed to revegetate, leaving a 6-foot-wide finished trail. Exhibit #035.



55. The Applicant proposed mitigation for the impacts to the Bicknell's Thrush habitat including a 2:1 mitigation ratio for tree cutting impacts associated with the Project: a 1:1 mitigation ratio for reforestation, and a 1:1 mitigation ratio for conservation. Exhibit #035.
56. The Applicant has proposed to discontinue the "Show Off Chute" ski trail to mitigate for impacts to Bicknell's Thrush habitat. Exhibit #035. Revegetation of this ski trail would result in a total forest block of approximately 30,000-sf. Exhibit #035. At the Hearing, ANR stated that full natural reforestation of this area will take approximately 20 years to complete. However, ANR states that the planned reforestation of the ski trail should lead to the kind of dense regeneration of spruce that Bicknell's Thrush need for nesting habitat. Exhibit #058. At the hearing, ANR stated that although it would take considerable time for this area to provide suitable nesting habitat it could immediately provide suitable foraging habitat.
57. The Applicant has proposed mitigation for the impacts to the Bicknell's Thrush habitat. Exhibit #035. ANR agrees with the Applicant's proposed mitigation and has requested additional conditions as summarized below. Exhibits #054 and 058.
  - 1) The Applicant will provide a 6,210-sf on-site mitigation area, located above 3,000 ft amsl and within the current extent of the ski trail named "Show Off Chute." This ski trail will be discontinued and will be allowed to revegetate into a spruce-fir forested condition. Prior to operation of the Project, the Permittee shall mark the boundaries of the "Proposed Bicknell's Mitigation Area (Reforestation Area)" shown in Exhibit #035 with signs and physical barriers, such as ropes and brush, to prevent human access to the area while it revegetates. In addition to the condition proposed by ANR, the Commission directs that the Applicant maintain these signs and physical barriers until the mitigation area is fully reforested.
  - 2) The Applicant will provide a 6,210-sf mitigation area via expansion of the existing approximately 6-acre Bicknell's Thrush Conservation Area incorporated as Exhibit #027 of LUP #4C0436-29. The expansion of the Conservation Area is proposed to be achieved by extending southern end of the existing conservation area. Exhibit #035. In addition to the condition proposed by ANR, the Commission directs that the Applicant shall file a geo-referenced field boundary file depicting the entirety of the Bicknell's Thrush Conservation Area to the Commission prior to the operation of the Project. The Commission will also require that any modification to the Bicknell's Thrush Conservation Area will require a Rule 34(E) analysis.
  - 3) The following project activities are prohibited between May 15 and August 1: (a) construction of any portion of the project above 3,000 feet in elevation; and (b) blasting. In addition to the condition proposed by ANR, the Commission directs

that during this time period, no site work or construction activities shall occur within the blasting area depicted on Exhibit #037b.

58. The Applicant requests the removal of condition #15 of LUP #4C0436-32 which seasonally restricts groups congregating at the top of the mountain, until after August 1<sup>st</sup> of each year. Exhibit #035. At the Hearing, ANR agreed that the condition can be removed.
59. Recreation activities within and near the Bicknell's Thrush habitat may affect behavior, presence and breeding success of the Bicknell's Thrush, but the topic has received little study. Exhibit #058. At the Hearing, ANR stated that the Project area is more likely to provide foraging habitat rather than breeding habitat due to the high canopy and that no nesting pairs have been confirmed within the Project area. At the Hearing, ANR stated that recreational activities would not result in an undue impact to foraging behaviors.
60. LUP #4C0436-32 authorized several existing mountain bike trails and up to 3 race events per year. The Applicant is not proposing to increase the number of race events per year. Exhibit #061. The Applicant has stated that race events use staggered start times and therefore, do not result in unusual crowding at the top of the lift. Exhibit #061.
61. The Applicant represents that the Project will be operated in accordance with the *Bolton Valley Mountain Bike Trails Management Plan* (June 2006) incorporated as Exhibit #012 of LUP #4C0436-32. In addition, the Commission will include the following permit conditions related to on-going operations of the mountain bike trail system:
  - 1) All riders shall be required to read and sign forms which provide information on wildlife, sensitive habitats, protected wetlands, and the importance of staying on the designated trail system.
  - 2) The Applicant shall monitor rider actions daily. The Applicant shall penalize riders who intentionally or recklessly ride off-trail in sensitive natural resource or habitat areas; the penalties shall include but not be limited to, forfeiture of lift ticket and right to use the trails.

#### Conclusions of Law

Criterion 8(A) requires that the Commission not grant a permit if it the proposed Project will destroy or significantly imperil necessary wildlife habitat or any endangered species in accordance with 10 V.S.A § 6086(a)(8)(A).

Criterion 8(A) involves a three-part test: (1) whether the project will impact any necessary wildlife habitat or endangered species; (2) whether the project will destroy or significantly imperil such habitat or species; and (3) whether one or more of sub-criteria (i) through (iii) is satisfied.

*Re: Gary Savoie d/b/a WLPL and Eleanor Bemis, #2W0991-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Envtl Bd. October 11, 1995).* If the Project will destroy or significantly imperil necessary wildlife habitat, and if any of the sub-criteria apply, then the permit must be denied. *Southview Associates, 153 Vt. 171 (1989).*

1. *Whether the project will impact any necessary wildlife habitat or endangered species*

Necessary wildlife habitat is defined by Act 250 as “concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species or wildlife at any period in its life including breeding and migratory periods.” 10 V.S.A § 6001(12).

The Project will include 6,210-sf of permanent clearing above 3,000 feet amsl. ANR has stated that the area located above 3,000 ft amsl is considered necessary wildlife habitat for the Bicknell’s Thrush which is a State-ranked S2B rare species, and a Species of Greatest Conservation Need in Vermont. The Commission agrees that the Project will impact necessary wildlife habitat.

2. *Whether the project will destroy or significantly imperil such habitat or species*

The Project will destroy or significantly imperil 6,210-sf of necessary wildlife habitat. Therefore, the Commission must review the sub-criteria.

3. *Whether one or more of sub-criteria (i) through (iii) is satisfied:*

- (i) *Will the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or*
- (ii) *Have or will all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species been or be applied; or*
- (iii) *Does the applicant own or control a reasonable acceptable alternative site that would allow the development or subdivision to fulfill its intended purpose.*

Although the Project will impact necessary wildlife habitat, the loss is sufficiently mitigated on-site with a 2:1 mitigation ratio. Mitigation consists of a 1:1 mitigation ratio for reforestation within the existing “Show Off Chute” ski trail, and a 1:1 mitigation ratio for perpetual conservation of habitat. The mitigation proposed constitutes reasonable and feasible means of mitigating the diminution of the habitat. Therefore, the Commission finds that with the mitigation proposed, the Project complies with sub-criterion (ii). Because the Commission finds that the Project complies with sub-criterion (ii), it need not proceed further with an assessment if the Project under sub-criteria (i) or (iii).

## Conclusion

As conditioned herein, the Project complies with Criterion 8A.

## VII. 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 #4C0436-32A, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

## VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C0436-32A is hereby issued.

DATED this 25<sup>th</sup> day of June, 2021.

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

Commissioners participating in this decision:

Monique Gilbert

Pam Loranger

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, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401.

# Exhibit List



<b>Application #</b>	4C0436-32A (5/21/21)
<b>Applicant(s)</b>	Bolton Valley Resort, LLC
<b>Landowner(s)</b>	BVR, LLC
<b>Project Town(s):</b>	Bolton

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	8/21/20	001 Act 250 Application Form	Applicant
002	8/21/20	002 Schedule G	Applicant
003	8/21/20	003 Signature Page	Applicant
004	8/21/20	004 Schedule A	Applicant
005	8/21/20	005 Adjoiner List	Applicant
005a	3/19/21	005a Adjoiner List (Rev. 3/19/21)	Applicant
006	8/21/20	006 Cover Letter	Applicant
007	8/21/20	007 Basis of Design Memo	Applicant
008	8/21/20	008 Blasting Plan	Applicant
008a	3/15/21	008a Blasting Plan (Rev. 9/3/20)	Applicant
009	8/21/20	009 BV MB Natural Resources Map Series Index 20200820	Applicant
009a	3/15/21	009a BV MB Natural Resources Map Series Index (3/12/21)	Applicant
010	8/21/20	010 BV MB Natural Resources Map Series 1 20200820	Applicant
010a	3/15/21	010a BM MB Natural Resources Map Sheet 1 (3/12/21)	Applicant
011	8/21/20	011 BV MB Natural Resources Map Series 2 20200820	Applicant
011a	3/15/21	011a BV MB Natural Resources Map Sheet 2 (3/12/21)	Applicant
012	8/21/20	012 BV MB Natural Resources Map Series 3 20200820	Applicant
012a	3/15/21	012a BV MB Natural Resources Map Sheet 3 (3/12/21)	Applicant
013	8/21/20	013 BV MB Natural Resources Map Series 4 20200820	Applicant
013a	3/15/21	013a BV MB Natural Resources Map Sheet 4 (3/12/21)	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
014	8/21/20	014 BV MB Natural Resources Map Series 5 20200820	Applicant
014a	3/15/21	014a BV MB Natural Resources Map Sheet 5 (3/12/21)	Applicant
015	8/21/20	015 A1 Typical Section Notes List 20100811	Applicant
016	8/21/20	016 A2 Straight Span Bridge 20100811	Applicant
017	8/21/20	017 A3 Contour Bridge 20100811	Applicant
018	8/21/20	018 A4 Curved Flat Bridge 20100811	Applicant
019	8/21/20	019 A5 Wooden Double 20100811	Applicant
020	8/21/20	020 A6 Wooden Table 20100811	Applicant
021	8/21/20	021 A7 Wooden Ladder Drop 20100811	Applicant
022	8/21/20	022 A8 Wooden Berm 20100811	Applicant
023	8/21/20	023 A9 Typical Boardwalk 20100811	Applicant
024	8/21/20	024 A10 Typical Overpass 20100811	Applicant
025	8/21/20	025 A11 Typical Hiking Trail Crossing 20100811	Applicant
026	8/21/20	026 Armored Culvert Typical	Applicant
027	8/21/20	027 Bermed Turn Typical	Applicant
028	8/21/20	028 C1.01 EPSC Narrative 20200807	Applicant
028a	3/29/21	028a C1.01 EPSC Narrative (3/12/21)	Applicant
029	8/21/20	029 EPSC Site Plan Sheet 1 of 5 20200813	Applicant
029a	3/26/21	029a EPSC Site Plan Sheet 1 of 5 (3/12/21)	Applicant
030	8/21/20	030 EPSC Site Plan Sheet 2 of 5 20200813	Applicant
030a	3/26/21	030a EPSC Site Plan Sheet 2 of 5 (3/12/21)	Applicant
031	8/21/20	031 EPSC Site Plan Sheet 3 of 5 20200813	Applicant
031a	3/26/21	031a EPSC Site Plan Sheet 3 of 5 (3/12/21)	Applicant
032	8/21/20	032 EPSC Site Plan Sheet 4 of 5 20200813	Applicant
032a	3/26/21	032a EPSC Site Plan Sheet 4 of 5 (3/12/21)	Applicant
033	8/21/20	033 EPSC Site Plan Sheet 5 of 5 20200813	Applicant
033a	3/26/21	033a EPSC Site Plan Sheet 5 of 5 (3/12/21)	Applicant
034	8/21/20	034 Primary Agricultural Soils Map	Applicant
035	3/15/21	035 Bicknell's Thrush Impact and Mitigation Summary Memo (11/9/20)	Applicant
036	3/15/21	036 Letter to District Coordinator re Response to Incomplete Letter of 8/21/20 (3/12/21)	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
037	3/15/21	037 Blasting Area EPSC Plan (3/12/21)	Applicant
037a	3/26/21	037a Blasting Area EPSC Plan Revised	Applicant
037b	5/21/21	037b EPSC Site Plan Blast Area 2021-05-20	Applicant
038	3/15/21	038 Criterion 1E Summary Memo and Mitigation Map Series 1-6 (3/11/21)	Applicant
039	3/15/21	039 Municipal Questionnaire	Applicant
040	3/15/21	040 Signage Examples	Applicant
041	3/15/21	041 Site Area Photos	Applicant
042	3/26/21	042 VWP Mitigation Series (1/22/21)	Applicant
043	3/26/21	043 9030-6488-INDC-Draft	Applicant
044	3/26/21	044 9190-2019-720 IndivPermitDraft	Applicant
045	3/26/21	045 EPSC Site Details DT1.01 (3/12/21)	Applicant
046	3/26/21	046 EPSC Site Details DT1.02 (3/12/21)	Applicant
047	3/26/21	047 EPSC Site Details DT1.03 (3/12/21)	Applicant
047a	5/21/21	047a DT1.03 EPSC Site Details 2021-05-20	Applicant
048	3/26/21	048 EPSC Existing Conditions Plan 1 of 5 (3/12/21)	Applicant
049	3/26/21	049 EPSC Existing Conditions Plan 2 of 5 (3/12/21)	Applicant
050	3/26/21	050 EPSC Existing Conditions Plan 3 of 5 (3/12/21)	Applicant
051	3/26/21	051 EPSC Existing Conditions Plan 4 of 5 (3/12/21)	Applicant
052	3/26/21	052 EPSC Existing Conditions Plan 5 of 5 (3/12/21)	Applicant
053	4/8/21	053 CCRPC Comment Letter	Regional Planning Commission
054	4/28/21	054 ANR Entry of Appearance Comments	ANR
055	4/28/21	055 Lindsay DesLauriers Prefiled Testimony re Operating Plan	Applicant
056	4/28/21	056 Individual Wetland Permit #2019-720 Issued April 12, 2021	Applicant
057	4/28/21	057 Stormwater Discharge Permit #6488-INDC Issued April 19, 2021	Applicant
058	5/21/21	058 ANR Response to Hearing Recess Order	ANR
059	5/21/21	059 HRO Response Letter - 5-21-2021	Applicant
060	5/21/21	060 Act 250 Hearing - Applicant Slides	Applicant
061	5/21/21	061 Lindsay DesLauriers Hearing Recess Order Response 2021-05-21	Applicant
062		062	
063		063	

## CERTIFICATE OF SERVICE

I hereby certify on this 25<sup>th</sup> day of June, 2021, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C0436-32A, 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](mailto:NRB.Act250Essex@vermont.gov)**

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### FOR YOUR INFORMATION

District #4 Environmental Commission  
Thomas Little, Chair  
Monique Gilbert/Pam Loranger  
111 West Street  
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 25<sup>th</sup> day of June, 2021.

/s/Christine Commo  
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