



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: 4C0923-5A,4C0694-7A

JAM Golf, LLC

PO Box 132

Lyndon, VT 05850

Blackrock Construction, LLC

68 Randall Street

South Burlington, VT 05403

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment 4C0923-5A,4C0694-7A, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 1390, Page 187, of the land records of the City of South Burlington, Vermont.

This permit specifically authorizes (1) subdivision of common Lots 1 and Lot 2; (2) construction of 32 residential units on footprint lots including 14 single-family homes and two duplexes on common Lot 1 (Units 1-18), and four single-family homes and five duplexes on common Lot 2 (Units 19-32); (3) construction of 1,020 feet of new roadway; and (4) construction of sidewalks, landscaping and supporting utility infrastructure. The project is located on what is commonly known as the Wheeler Parcel on 550 Park Road in South Burlington, 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 and constitutes development pursuant to 10 V.S.A. § 6001(3)(A)(iv).

1. The Permittees, and their assigns and successors in interest, are 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: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 4C0923-5A,4C0694-7A and (c) the permit application, plans, and exhibits on file with the Commission and other material representations. In the event of any conflict, the terms and conditions of this permit shall supersede the approved plans and exhibits.

The approved plans are:

- Sheet 1 - "Overall Site Plan," dated 2/26/20, last revision 7/12/21 (Exhibit 004);
- Sheet 2 - "Site Plan 'West'," dated 2/26/20, last revision 5/18/21 (Exhibit 005);
- Sheet 3 - "Site Plan 'East'," dated 2/26/20, last revision 5/18/21 (Exhibit 006);
- Sheet 4 - "Roadway Profile," dated 2/26/20, last revision 5/18/21 (Exhibit 007);
- Sheet 5 - "Roadway Details," dated 2/26/20, last revision 7/12/21 (Exhibit 008);
- Sheet 6 - "Water Details," dated 2/26/20, last revision 3/22/21 (Exhibit 009);
- Sheet 7 - "Sewer Details," dated 2/26/20, last revision 3/22/21 (Exhibit 010);
- Sheet 8 - "Pump Station Details," dated 2/26/20, last revision 3/22/21 (Exhibit 011);
- Sheet 9 - "Specifications," dated 2/26/20, last revision 3/12/21 (Exhibit 012);
- Sheet 10 - "Signage Plan," dated 2/26/20, last revision 5/18/21 (Exhibit 013);
- Sheet 11 - "Addressing Plan," dated 12/14/20, last revision 5/18/21 (Exhibit 014);
- Sheet E1 - "EPSC Pre-Construction Plan," dated 12/14/20, last revision 7/12/21 (Exhibit 015);
- Sheet E2 - "EPSC Construction Plan," dated 12/14/20, last revision 8/27/21 (Exhibit 016);
- Sheet E3 - "EPSC Stabilization Plan," dated 12/14/20, last revision 5/18/21 (Exhibit 017);
- Sheet E4 - "EPSC Details," dated 12/14/20 (Exhibit 018);
- Sheet L-100 - "Landscape Plan," dated 4/6/20, last revision 5/20/21 (Exhibit 019);
- Sheet L-101 - "Typical Lot and Utility Planting Details," dated 4/6/20, last revision 12/17/20 (Exhibit 020);
- Sheet L-102 - "Vegetation Management Plan," dated 4/6/20, last revision 5/20/21 (Exhibit 021);
- Sheet L-200 - "Lighting Plan," dated 4/6/20, last revision 5/20/21 (Exhibit 022);
- Sheet L-300 - "Landscape Details," dated 4/6/20, last revision 12/17/20 (Exhibit 023);
- Sheet L-301 - "Lighting Details," dated 4/6/20, last revision 12/17/20 (Exhibit 024);
- Sheet PL1 - "Subdivision Plat," dated 5/18/20 (Exhibit 025);
- Sheet S1 - "Stormwater Management Plan," dated 2/26/20, last revision 5/18/21 (Exhibit 026); and

Sheet S2 – “Stormwater Details,” dated 2/26/20, last revision 3/22/21 (Exhibit 027).

3. All conditions of Land Use Permit 4C0923 and amendments and Land Use Permit 4C0694 and amendments are in full force and effect except as further amended herein.
4. The Permittees shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit WW-4-4854-1 issued on March 22, 2022 by the ANR Drinking Water and Groundwater Protection Division;
 - b. A Permit to Construct a Water Line Extension C-3980-21.0 issued on January 31, 2022 by the ANR Drinking Water and Groundwater Protection Division;
 - c. Authorization of Notice of Intent 9297-9020 under Construction General Permit 3-9020 issued on May 12, 2022 by the ANR Watershed Management Division;
 - d. Authorization to Discharge Stormwater 9297-9050 under General Permit 3-9050 (3-Acre General Permit), issued on December 3, 2021 by the ANR Watershed Management Division; and
 - e. Vermont Wetland Permit 2021-0971 issued on December 2, 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 or the Natural Resources Board 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 Permittees and their successors and assigns.

12. Exterior construction hours shall be limited to 7:00 AM to 6:00 PM Monday through Friday, and 8:00 AM to 5:00 PM Saturdays with no construction on Sundays or federal holidays.
13. Blasting hours will be limited to 8:00 AM to 4:00 PM Monday through Friday, with no blasting on Saturdays, Sundays, or federal holidays.
14. The Permittees shall comply with the *Blasting Plan* included in Exhibit 028 with the following changes:
 - a. Blasting hours shall be 8:00 AM to 4:00 PM Monday through Friday with no blasting on Saturdays, Sundays, or federal holidays.
 - b. The Permittees shall conduct or cause to conduct pre-blast surveys and post-blast surveys for all structures located within 750 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.
 - c. At least two weeks prior to blasting, the Permittees shall notify residents, institutional operators and business establishments located within 1,000 feet of any blasting activity, the City of South Burlington Zoning Administrator, and the Commission. These entities shall be notified of the blasting activities and duration by letter or personal contact.
 - d. Ground vibration as measured by peak particle velocity shall not exceed 2.0 inches/second as a result of blasting. Air blast overpressure shall not exceed 133 dB at the residential structure closest to the blast site.
 - e. The Permittees shall conduct or cause to conduct seismic and noise monitoring during blasting and blast monitoring reports shall be generated for each blast event. Blast monitoring reports shall be made available to the Commission upon request.
15. The Permittees will also employ traffic controls during blasting where traffic control flaggers will stop traffic along Dorset Street, Park Road, Nicklaus Circle, and nearby recreation paths one (1) minute prior to any blast. Traffic will be stopped in these locations for a two (2) minute window associated with each blast, or until the blast scene is deemed safe by the blaster. Traffic stop locations are shown on Exhibit 120.
16. The Permittees shall implement the Vermont Department of Environmental Conservation's *Best Management Practices for Blasting to Avoid Environmental Contamination* (2016).
17. The Permittees shall not allow the operation of crushing, screening, or sieving operations at the project site without the prior written approval of the Commission.
18. All trucks owned, operated or under the control of the Permittees shall be securely covered when operated on public roadways when loaded with materials that may generate fugitive dust.

19. If a spill or release of any toxic substance occurs at the project site, the Permittees or their representative shall immediately report the event to the Vermont Department of Environmental Conservation Spills Program and the Champlain Water District. 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 VT0005092 to the Spills Program. The Permittees 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.
20. The buildings approved herein are not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittees shall apply and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
21. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
22. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
23. The Permittees shall be obligated to implement the Construction Site Waste Reduction Plan. Exhibit 117.
24. The Permittees shall apply and maintain water and/or other agents approved by the Watershed Management Division on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
25. Immediately upon initial clearing, grading or excavation, a stabilized construction entrance must be installed and maintained as shown on Exhibits 016 and 018. At a minimum, this entrance must be constructed and maintained in accordance with the specifications as described in the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020). No further clearing or construction may occur until the stabilized construction entrance is complete.
26. The Permittees shall comply with Exhibits 015, 016, 017, 018 and 115 for erosion prevention and sediment control. The Permittees 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.

27. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
28. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each workday. 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).
29. All disturbed areas of the site shall be stabilized, seeded, and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 15. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
30. In addition to conformance with all erosion prevention and sediment control conditions, the Permittees 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 Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
31. The Permittees shall maintain an undisturbed, naturally vegetated Class II wetland and 50-foot wetland buffer zone on the Project Tract as depicted on Exhibit 006 except for the disturbances authorized by Vermont Wetland Permit 2021-0971. 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.
32. The Permittees shall pay a proportional transportation impact fee toward the Champlain Parkway project pursuant to Act 145 – Transportation Impact Fees (2014). The transportation impact fee for the Champlain Parkway project is \$2,069 per PM peak hour trip and the project will result in 2PM peak hour trips through the Champlain Parkway project. The Applicant is afforded a 15% reduction in transportation fee as a result of the proposed Transportation Demand Management measures. The transportation fee is calculated as follows: [$\$ 2,069/\text{PM peak hour trip} \times 2 \text{ trips} \times 15\%$] = \$3,518. The Permittees shall pay a total transportation impact fee of **\$3,518** to the Vermont Agency of Transportation before commencement of construction (payment should be remitted to the

- Vermont Agency of Transportation Development Review and Permitting Services Section, Barre City Place, 219 North Main Street, Barre, VT 05641, Attn: Christopher Clow).
33. Prior to any site work, the Permittees shall install and maintain temporary fencing along the tree line to be retained as depicted on Exhibit 016.
 34. Any extracted stumps shall be disposed of 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.
 35. The Permittees shall maintain the safe stopping sight distance from the intersections of Zoey Circle and Park Road by vegetation trimming, when necessary.
 36. The Permittees and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits 019, 020 and 023 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
 37. The installation of exterior light fixtures is limited to those approved in Exhibits 005, 022 and 024 and shall be mounted no higher than 12 feet above grade level. All exterior residential building-mounted lighting fixtures shall be installed no higher than 20-feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
 38. The Permittees 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.
 39. Pursuant to 30 V.S.A. Section 51(e), the Permittees and/or subsequent lot owner, at a minimum, shall construct the single family home, two family home, multi-family home three stories or less, or residential addition 500 square feet or greater in accordance with Vermont's Residential Building Energy Standards (RBES) Stretch Code effective at the time of construction.
 40. The installation and/or use of electric resistance space heat is specifically prohibited unless (i) it is approved in writing by the District Commission and/or (ii) it specifically qualifies as an exception to the prohibition of electric-resistance building heating, pursuant to Section R404.2 of the 2020 Vermont Residential Building Energy Standards.
 41. The Permittees, upon completion of the construction of each residential building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 51(f).
 42. Should the City at any time agree to accept any private utilities being then operated by the Permittees and/or its assigns and successors in interest, the Permittees and/or its assigns and successors in interest shall be responsible to improve the same to City

- specifications and shall deed all lands involved with said improvements to the City. Such improvements may require a land use permit amendment.
43. The Permittees 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.
 44. The Permittees shall reference the requirements and conditions imposed by Land Use Permit 4C0923-5A,4C0694-7A in all deeds of conveyance and leases.
 45. 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 Permittees have not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
 46. All site work and construction shall be completed in accordance with the approved plans by **October 15, 2025**, 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.
 47. The Permittees 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 Permittees 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.
 48. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 20th day of July 2022.

By /s/Parker Riehle, Vice Chair
Parker Riehle, Vice 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, 2nd Floor, Suite 303, Burlington, VT 05401.

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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: 4C0923-5A,4C0694-7A

LAW/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 – 6111 (Act 250)

JAM Golf, LLC

PO Box 132

Lyndon, VT 05850

BlackRock Construction

68 Randall Street

South Burlington, VT 05403

I. INTRODUCTION

On September 22, 2021, JAM Golf, LLC and BlackRock Construction filed application number 4C0923-5A,4C0694-7A for a project generally described as: (1) subdivision of common Lots 1 and Lot 2; (2) construction of 32 residential units on footprint lots including 14 single-family homes and two duplexes on common Lot 1 (Units 1-18), and four single-family homes and five duplexes on common Lot 2 (Units 19-32); (3) construction of 1,020 feet of new roadway; and (4) construction of sidewalks, landscaping and supporting utility infrastructure. The project is located on what is commonly known as the Wheeler Parcel on 550 Park Road in South Burlington, Vermont. Applicant JAM Golf, LLC's legal interest is ownership in fee simple described in a deed recorded in Book 1390, Page 187, of the land records of the City of South Burlington, Vermont.

The application was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicants dated October 12, 2021. The application was deemed complete on December 21, 2021 after the receipt of supplemental evidence.

The District 4 Environmental Commission (the "Commission") issued a minor notice regarding the project on December 28, 2021. Pursuant to the notice, several timely requests for a hearing were filed by potential parties. Pursuant to Act 250 Rule 16, a site visit and prehearing conference were held on March 2, 2022 for the above-referenced application for the purpose of identifying contested facts and legal issues, discussing party status, and determining a hearing schedule.

On April 11, 2022, the Commission held a merits hearing for the above referenced application. After the merits hearing and pursuant to Act 250 Rule 13(B), the Commission issued a Hearing

Recess Order, which recessed the hearing and requested the submittal of supplemental evidence by the parties by April 29, 2022.

On April 28, 2022, the Applicants requested an extension to the deadline set forth in the Hearing Recess Order from April 29, 2022 to May 18, 2022. On April 29, 2022, James Lease submitted an objection to the Applicants' request.

On May 4, 2022, the Commission issued a Memorandum of Decision and Order extending the deadline for the Applicants and representatives John Bossange and James Leas to file supplemental evidence identified in Section II of the Hearing Recess Order to May 18, 2022, and invited any party to file responses to that evidence by June 1, 2022.

On June 1, 2022, representatives John Bossange and James Leas submitted a motion requesting that the Commission reconvene the hearing, and a memorandum supporting that motion.

On June 16, 2022, the Commission issued a Memorandum Of Decision And Order denying the motion to reconvene the hearing.

On June 19, 2022, representatives John Bossange and James Leas submitted a motion requesting that the Commission reconsider its denial of the motion to reconvene the hearing, and a memorandum supporting that motion. The Commission responds to that motion in its decision, which follows.

The Commission adjourned the hearing on July 17, 2022, after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

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

II. JURISDICTION

Jurisdiction attaches because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34 and constitutes development pursuant to 10 V.S.A. § 6001(3)(A)(iv).

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). This is a contested case. 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 judicially cognizable facts 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 on 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 the following documents, subject to the filing of an objection on or before 30 days from the date of this decision, pursuant to Act 250 Rule 6:

- 2018 Chittenden County ECOS Plan, Adopted 6/20/2018 by the Chittenden County Regional Planning Commission and the Greater Burlington Industrial Corporation.
- Comprehensive Plan (2016), South Burlington, Vermont, Adopted by the South Burlington City Council February 1, 2016.
- City of South Burlington Land Development Regulations (Effective February 28, 2022).
- City of South Burlington Official Zoning Map (effective February 28, 2022).
- Land Use Permit 4C0923-5, 4C0694-7 and exhibits.

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 Applicants do 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 **Applicants**, by Ben Avery of BlackRock Construction, LLC; Christopher Roy of Downs Rachlin Martin, PLLC; and Bryan Currier of O’Leary Burke Civil Associates.

2. The **Vermont Agency of Transportation (“VTrans”)**, through an Entry of Appearance dated January 14, 2022 by Christopher Clow.
3. The **Vermont Agency of Natural Resources (“ANR”)**, through Entries of Appearance dated January 24, 2022 and February 4, 2022, by Jennifer Mojo.
4. The **Vermont Division for Historic Preservation (“VDHP”)**, through an Entry of Appearance dated January 24, 2022 by Scott Dillon.
5. The **Chittenden County Regional Planning Commission (“CCRPC”)**, through an Entry of Appearance dated March 3, 2022 by Charlie Baker.
6. The **City of South Burlington** was not represented at the prehearing conference; however, the City is a statutory party to this proceeding, therefore, the Commission will include the City of South Burlington in all correspondence for this proceeding

B. Interested Parties

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

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the Commission made preliminary determinations concerning party status at the commencement of the prehearing conference. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

1. **Inverness Homeowners Association (“HOA”)** (Park Road and Golf Course Road, South Burlington, VT) submitted a timely party status request under Criterion 1 (air), Criterion 5 for traffic, Criterion 8 for aesthetics, Criterion 9(F) for energy conservation and Criterion 10 for town and regional plans. Exhibits 056, 061, 074, and 079. The Inverness HOA was represented by John Bossange at the prehearing conference. After the prehearing conference the Inverness HOA filed additional comments regarding its request for party status on Criterion 10 that was voiced at the prehearing conference. Exhibits 077, 078, 080, 081 and 082. The Commission determined that this information would not unfairly delay the proceeding or place an unfair burden on the parties. Therefore, the Commission reviewed this information when preliminarily determining party status.
 - a. The Inverness HOA was preliminarily granted party status on Criterion 1 (Air) as it demonstrated a particularized interest with respect to dust, odors, noise, and vibrations associated with blasting and construction of the project. However, the Inverness HOA did not demonstrate a particularized interest with respect to carbon dioxide emissions that is distinguishable from the general public and their

party status standing therefore did not extend to the arguments related to carbon dioxide emissions.

- b. The Inverness HOA was preliminarily granted party status under Criterion 5 for traffic and Criterion 8 for aesthetics.
 - c. The Inverness HOA was preliminarily denied party status under Criterion 9(F) for energy conservation as the information it presented did not demonstrate a particularized interest that is distinguishable from the general public.
 - d. The Inverness HOA was preliminarily granted party status under Criterion 10 for the town and regional plans. Every citizen of a town where a project is proposed can claim a direct interest, distinct and different from the public in general, in the efficacy and viability of his or her town plan, an interest in seeing that such town plan is respected. *Re: John J. Flynn Estate and Keystone Development Corp.*, 4C0790-2-EB, Memorandum of Decision at 7 (Vt. Env. Bd. October 8, 2003); and see, *McLean Enterprises Corp.*, 2S1147 1-EB, Memorandum of Decision at 7 (Vt. Env. Bd. September 19, 2003). Individuals and corporations seeking party status under Criterion 10 still need to show that they have a particularized interest and that there is a reasonable possibility that the Commission's decision may affect that interest. The Commission preliminarily granted the Inverness HOA party status under Criterion 10.
2. **Glen Eagles HOA** (Park Road and Golf Course Road, South Burlington, VT) submitted a timely party status request under Criterion 1 (air), Criterion 5 for traffic, Criterion 8 for aesthetics and Criterion 9(F) for energy conservation. Exhibits 056, 061, 074 and 079. The Glen Eagles HOA was represented by John Bossange at the prehearing conference.
- a. The Glen Eagles HOA was preliminarily granted party status on Criterion 1 (air) as it demonstrated a particularized interest with respect to dust, odors, noise, and vibrations associated with blasting and construction of the project. However, the Glen Eagles HOA did not demonstrate a particularized interest with respect to carbon dioxide emissions that is distinguishable from the general public and their party status standing therefore did not extend to the arguments related to carbon dioxide emissions.
 - b. The Glen Eagles HOA was preliminarily granted party status under Criterion 5 for traffic and Criterion 8 for aesthetics.
 - c. The Glen Eagles HOA was preliminarily denied party status under Criterion 9(F) for energy conservation as the information it presented did not demonstrate a particularized interest that is distinguishable from the general public.

3. **Villas at Water Tower Hill HOA** (Nicklaus Circle, South Burlington, VT) submitted a timely party status request under Criterion 1 (air), Criterion 5 for traffic, Criterion 8 for aesthetics and Criterion 9(F) for energy conservation. Exhibits 056, 061, 074 and 079. The Villas at Water Tower Hill HOA was represented by John Bossange at the prehearing conference.
 - a. The Villas at Water Tower Hill HOA was preliminarily granted party status on Criterion 1 (air) as it demonstrated a particularized interest with respect to dust, odors, noise, and vibrations associated with blasting and construction of the project. However, the Villas at Water Tower Hill HOA did not demonstrate a particularized interest with respect to carbon dioxide emissions that is distinguishable from the general public and their party status standing therefore did not extend to the arguments related to carbon dioxide emissions.
 - b. The Villas at Water Tower Hill HOA was preliminarily granted party status under Criterion 5 for traffic and Criterion 8 for aesthetics.
 - c. The Villas at Water Tower Hill HOA was preliminarily denied party status under Criterion 9(F) for energy conservation as the information it presented did not demonstrate a particularized interest that is distinguishable from the general public.
4. **Neighbor's Committee to Stop Neighborhood Blasting (the "Neighbor's Committee")** (Various sites, South Burlington, VT) submitted a timely party status request under Criterion 1 (air), Criterion 5 for traffic, Criterion 8 for aesthetics and Criterion 9(F) for energy conservation. Exhibits 062, 070, 071, 072 and 079. The Neighbors were represented by John Bossange and James Leas at the prehearing conference.
 - a. The Neighbor's Committee was preliminarily granted party status on Criterion 1 (air) as it demonstrated a particularized interest with respect to dust, odors, noise, and vibrations associated with blasting and construction of the project. However, the Neighbor's Committee did not demonstrate a particularized interest with respect to carbon dioxide emissions that is distinguishable from the general public and its party status standing therefore did not extend to the arguments related to carbon dioxide emissions.
 - b. The Neighbor's Committee was preliminarily granted party status under Criterion 5 for traffic and Criterion 8 for aesthetics.
 - c. The Neighbor's Committee was preliminarily denied party status under Criterion 9(F) for energy conservation as the information it presented did not demonstrate a particularized interest that is distinguishable from the general public.

5. **James Leas** (37 Butler Drive, South Burlington, VT) submitted a timely party status request under Criterion 1 (air), Criterion 5 for traffic, Criterion 8 for aesthetics and Criterion 9(F) for energy conservation. Exhibits 058 and 073. It should be noted that Mr. Leas is a listed member of the Neighbor's Committee, but he also requested status as a private landowner.
 - a. Mr. Leas was preliminarily granted party status on Criterion 1 (air) as he has demonstrated a particularized interest with respect to dust, odors, noise, and vibrations associated with blasting and construction of the project. However, Mr. Leas did not demonstrate a particularized interest with respect to carbon dioxide emissions that is distinguishable from the general public and his party status standing therefore did not extend to the arguments related to carbon dioxide emissions.
 - b. Mr. Leas was preliminarily granted party status under Criterion 5 for traffic and Criterion 8 for aesthetics.
 - c. Mr. Leas was preliminarily denied party status under Criterion 9(F) for energy conservation as the information he presented did not demonstrate a particularized interest that is distinguishable from the general public.
6. **Madeline & George Weedon**¹ (170 Park Road, South Burlington, VT) submitted a timely party status request under Criterion 1 (air), Criterion 5 for traffic, Criterion 8 for aesthetics and Criterion 9(F) for energy conservation. Exhibit 076. It should be noted that Mr. & Mrs. Weedon are listed members of the Glen Eagles HOA, but they also requested status as private landowners.
 - a. Mr. & Mrs. Weedon were preliminarily granted party status on Criterion 1 (air) as they demonstrated a particularized interest with respect to dust, odors, noise, and vibrations associated with blasting and construction of the project. However, Mr. & Mrs. Weedon did not demonstrate a particularized interest with respect to carbon dioxide emissions that is distinguishable from the general public and their party status standing therefore did not extend to the arguments related to carbon dioxide emissions.
 - b. Mr. & Mrs. Weedon are preliminarily granted party status under Criterion 5 for traffic and Criterion 8 for aesthetics.

¹The Commission notes that in the *Pre-hearing Conference Report and Order & Hearing Notice* dated March 21, 2022, the Commission misspelled Madeline & George's last name as "Wheaton." The Commission notes here that the correct spelling of Madeline & George's last name is "Weedon."

- c. Mr. & Mrs. Weedon were preliminarily denied party status under Criterion 9(F) for energy conservation as the information they presented did not demonstrate a particularized interest that is distinguishable from the general public.
7. **Natalie Fleischman** (Fairway Drive, South Burlington) submitted a timely party status request on January 24, 2022, requesting party status under Criterion 5 for traffic. Exhibit 065.
 - a. Ms. Fleischman was preliminarily granted party status under Criterion 5 for traffic.
8. **Drew Shatzer** submitted an untimely letter on April 2, 2022 expressing concern about wildlife. Mr. Shatzer did not provide details on where he lives or how he has a particularized interest that is distinguishable from the general public. Mr. Shatzer is denied party status. Exhibit 083.
9. **Allan Strong** submitted an untimely letter on April 8, 2022 expressing concern about wildlife. Mr. Strong did not provide details on where he lives or how he has a particularized interest that is distinguishable from the general public. Mr. Strong is denied party status. Exhibit 097a.

ii. Final Party Status Determinations

Prior to the close of hearings, the Commission re-examined the above 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.

C. Friends of the Commission

No request to participate as a Friend of the Commission was made.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission initiated the review process on this application as a minor application review under Act 250 Rule 51. The Commission distributed a notice and proposed permit establishing a deadline of January 24, 2022 by which parties, or the Commission on its own motion, could request a hearing on this matter. The Commission received timely requests for a public hearing. On February 7, 2022 the Commission issued a Notice of Site Visit and Prehearing Conference indicating that a prehearing would be held because substantive issues were raised. Based on the testimony and information submitted, the Commission determined that substantive issues were raised on Criterion 1 (air), Criterion 5 (traffic), Criterion 8 (aesthetics), and Criterion 10 (Town and Regional plans). Pursuant to Act 250 Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or sub-criteria at issue. Therefore, the following Findings of Fact are limited to Criterion 1 (air), Criterion 5 (traffic), Criterion 8 (aesthetics), and Criterion 10 (Town and Regional plans).

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.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the Commission must find that the project complies with these criteria and, therefore, is not detrimental to the public health, safety, or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the Applicants, 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.

Criterion 1 - Air Pollution:

Findings of Fact

1. No ANR Air Pollution Control Permit is required for the project, as it does not trigger jurisdictional thresholds.
2. The Applicants note that blasting will be required for the installation of roadways, utilities and building foundations. The Applicants estimate that approximately 12,000 cubic yards of material would need to be blasted and removed from the project site. Exhibits 001 and 119.
3. Modifications to blast hole sizes, depths, spacing, and loading are usually made, if necessary, following the first blasts to meet control and seismic considerations. As an average starting point, the blasting company is likely to drill an array of blast holes approximately 11 feet deep and 3.5 inches in diameter with approximately 21.16 lbs. of explosives packed in each hole. Exhibit 028.
4. Mr. Leas, Mr. Bossange, the Neighbors and the Weedons have expressed concerns related to blasting, including property damage, vibrations, fly-rock, traffic safety, and traffic closures on nearby streets and recreation paths. Exhibits 056, 061 063, 071, 072, 073, 076, 079 and 104.
5. To increase safety during blasting, the Applicants will use a qualified blasting contractor and will regulate access to the blast area. Exhibit 028.
6. To increase safety during blasting, the Applicants will use warning and all-clear signals during blasting and will use blast mats to prevent fly-rock for each blast event. Exhibit 028. The Applicants will also employ traffic controls during blasting where traffic control flaggers will stop traffic along Dorset Street, Park Road, Nicklaus Circle, and nearby recreation paths one (1) minute prior to any blast. Traffic will be stopped in these locations

for a two- (2) minute window associated with each blast event, or until the blast area is deemed safe by the qualified blasting contractor. Traffic stop locations are shown on Exhibit 120.

7. The Applicants shall comply with the *Blasting Plan* included in Exhibit 028 with the following changes:
 - a. Blasting hours shall be limited to 8:00 AM to 4:00 PM Monday through Friday with no blasting on Saturdays, Sundays, or federal holidays.
 - b. The Applicants shall conduct or cause to conduct pre-blast surveys and post-blast surveys for all structures located within 750 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.
 - c. At least two weeks prior to blasting, the Applicants shall notify residents, institutional operators and business establishments located within 1,000 feet of any blasting activity, the City of South Burlington Zoning Administrator, and the Commission. These entities shall be notified of the blasting activities, impacts to traffic, warning signals and duration by letter or personal contact.
 - d. Ground vibration as measured by peak particle velocity shall not exceed 2.0 inches/second as a result of blasting. Air blast overpressure shall not exceed 133 dB at the residential structure closest to the blast site.
 - e. The Applicants shall conduct or cause to conduct seismic and noise monitoring during blasting, and blast monitoring reports shall be generated for each blast event. Blast monitoring reports shall be made available to the Commission upon request.
8. Blasting activities shall conform to ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016).
9. Mr. Leas, Mr. Bossange, the Neighbors and the Weedons have expressed concerns associated with noise from blasting, drilling, truck loading and unloading, and construction activities. Exhibits 058, 061, 072, 073, 076 and 079.
10. To reduce noise, the Commission will limit construction hours to 7:00 AM to 6:00 PM Monday through Friday, and 8:00 AM to 5:00 PM on Saturdays, with no construction on Sundays or federal holidays.
11. To reduce noise, the Commission will limit blasting hours to 8:00 AM to 4:00 PM Monday through Friday with no blasting on Saturdays, Sundays, or federal Holidays.

12. The City of South Burlington has limited blasting to a duration of three months, measured from the first blast to the last blast with caveats for the Applicants to extend blasting operations as reviewed and approved by the City. In addition, the City of South Burlington has limited the Applicants to no more than two blasts per day. Exhibit 042.
13. Mr. Leas, Mr. Bossange, the Neighbors, and the Weedons have expressed concerns associated with dust and odors associated with blasting, construction, and trucking. Exhibits 071, 073, 076 and 079.
14. During construction, the Applicants propose to control dust by using stabilized construction entrances (Exhibits 016 and 018), through the application of water and/or other dust control agents as approved by ANR, and limiting the disturbed area to no more than 5 acres at one time (Exhibit 115).
15. To further control dust, the Commission will prohibit the Applicants from allowing the operation of crushing, screening, or sieving operations on the project site without prior written approval by the Commission.
16. To further control dust, the Commission will require that all trucks owned, operated or under the control of the Applicants shall be securely covered when operated on public roadways when loaded with materials that may generate fugitive dust.
17. All buildings constructed as part of the project will be heated using high efficiency gas furnaces in accordance with the recommendations of the Vermont Department of Public Service and Vermont's *Residential Building Energy Standards* (2020).

Conclusions of Law

As conditioned herein, the Commission concludes that this project will not result in undue air pollution. The Commission concludes that this project complies with Criterion 1 (Air Pollution).

Criterion 5 - Transportation:

Findings of Fact

18. The project includes the construction of a looped roadway, Zoey Circle, which has two means of access/egress onto Park Road. Exhibit 004.
19. Ms. Fleischman, Mr. Bossange, and the Neighbors expressed concerns that the project would include a high car volume and exacerbate traffic delays and result in traffic congestion. Exhibits 056, 065 and 079.

20. The project includes 32 residential units and is expected to generate 23 vehicles per hour (“vph”) during the AM peak hour and 28 vph during the PM peak hour. Exhibit 121.
21. The Applicants’ traffic report indicates that the project will have a minimal effect on traffic congestion and the level of service (“LOS”) at the analyzed intersections. Exhibit 121. The Applicants’ traffic report indicates that LOS for turning movements from Park Road onto Dorset Street would remain at LOS B in the 2026 Build scenario. The Applicants’ traffic report indicates that LOS for turning movements from Zoey Circle onto Park Road would be LOS A in the 2026 Build scenario. Exhibit 121.
22. The tract is not located in a Transportation Improvement District (“TID”).
23. VTrans has assessed a total Act 145 transportation impact fee of \$3,518 for the project. Exhibit 057. The City of South Burlington assessed a municipal transportation impact fee of approximately \$31,416 (\$924 per PM peak hour trip) for the project. Exhibit 121.
24. Each new residential unit will have space for parking in the driveway. Additional parking for peak periods is available along the new street, Zoey Circle. Exhibit 001.
25. The City’s DRB received several public comments requesting that the project be required to install a crosswalk from Nicklaus Circle to the Project across Dorset Street. The Applicants and the DRB looked into this request. Because there is no safe location for a crosswalk to terminate on the west side of Dorset Street in the vicinity of Nicklaus Circle at this time, the DRB found it infeasible as part of this project. Exhibit 042.
26. Mr. Leas and Mr. Bossange expressed concern that Park Road has a significant change in elevation in the vicinity of the project. The eastern intersection of Zoey Circle and Park Road is near the lowest elevation of Park Road, where cars and bikes will be moving fastest. Mr. Leas and Mr. Bossange expressed concern that cars skid off the road or lose sight of Park Road in the vicinity of the project due to snow cover and wind-swept snow. Mr. Leas and Mr. Bossange also expressed concern that the two entrances to the project multiply the danger for pedestrians on the recreation path. Exhibits 056, 106 and 106a.
27. The posted speed limit on Dorset Street is 40 miles per hour (“mph”). Exhibit 121.
28. A southbound left-turn lane presently exists on Dorset Street allowing for left-turn movements from Dorset Street onto Park Road. This left-turn lane reduces conflicts between southbound left-turns and through movements. Exhibit 121
29. The posted speed limit on Park Road is 25 mph. Exhibit 121.

30. The recommended intersection sight distance for a 25 mph posted speed limit is 280 feet. Both intersections of Zoey Circle and Park Road meet or exceed the recommended intersection sight distance. Exhibit 121.
31. With a prevailing speed of 35 mph, which is higher than the posted speed limit on Park Road, the recommended safe stopping sight distance is 250 feet for a flat grade and 275 feet for a 6% grade. Exhibit 121. Both intersections of Zoey Circle and Park Road meet or exceed the recommended safe stopping sight distance. Exhibits 005, 006 and 121. The Commission will by permit condition require that the Applicants maintain the safe stopping sight distance from the intersections of Zoey Circle and Park Road by vegetation trimming, when necessary.
32. There are no VTrans High Crash Locations in the vicinity of the project. The nearest high crash location is the Dorset Street/Kennedy Drive/I-189 intersection located approximately one mile north of the project intersection. Exhibit 033.
33. The project includes a new 5-foot-wide sidewalk along Zoey Circle and a new 10-foot-wide paved recreation path extending from Zoey Circle cross-country to an existing recreation path along Dorset Street. Exhibit 004. The existing recreation paths along Park Road and Dorset Street will be maintained.
34. Crosswalks will be installed at the two intersections of Zoey Circle and Park Road to delineate safe areas for pedestrian crossings. A third crosswalk will be installed at the intersection of the new cross-country recreation path and Zoey Drive, to connect the new recreation path to the new sidewalk. Exhibits 004, 005, 006 and 007. Each crosswalk will be illuminated by a 12-foot streetlight to provide visibility of these cross walks at night. Exhibits 005, 006 and 022.
35. Park Road is a publicly owned roadway. Once constructed and accepted by the City of South Burlington, Zoey Circle will also be a publicly owned roadway. The City is responsible for maintaining City-owned roadways including snow removal.
36. Mr. Leas contends that the project should be redesigned to require a single entrance to the development off Dorset Street, rather than Park Road. Exhibits 056, 101 and 106. The Commission notes that the testimony provided by Mr. Leas or Mr. Bossange did not benefit from technical analysis, evaluations, or studies.
37. Mr. Leas, Mr. Bossange, and the Weedons expressed concern over the amount of construction truck traffic required for the project and expressed concern that each blast event would require traffic to be stopped for a period of time which could inhibit access

to the surrounding neighborhoods by emergency vehicles. Exhibits 058, 061, 071, 072 and 076.

38. Mr. Leas, Mr. Bossange, and the Neighbors expressed concerns that access to the recreation path will be severely limited during construction. Exhibit 071, 073 and 079. The Neighbors also raised concerns over school children using the recreation path to commute to and from school. Exhibit 079.
39. To increase safety during blasting, the Applicants will use warning and all-clear signals during blasting and will use blast mats to prevent fly-rock for each blast event. Exhibit 028. The Applicants will also employ traffic controls during blasting where traffic control flaggers will stop traffic along Dorset Street, Park Road, Nicklaus Circle, and nearby recreation paths one (1) minute prior to any blast. Traffic will be stopped in these locations for a two- (2) minute window associated with each blast event, or until the blast area is deemed safe by the qualified blasting contractor. Traffic stop locations are shown on Exhibit 120.

Conclusions of Law

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

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

The Commission appreciates the concerns expressed by Mr. Leas, Mr. Bossange, the Neighbors, the Weedons, and Ms. Fleischmann regarding traffic safety and congestion. However, under Act 250, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. The Commission may, however, attach reasonable conditions to alleviate traffic burdens or increase safety.

The Commission concludes that the project will not cause unreasonable traffic congestion with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation. Given the proposed number of PM peak hour trips generated by the

project, the Commission will require the Applicants to pay a fee of \$3,518 to VTrans to sufficiently mitigate any transportation impacts. In addition, the Commission notes that the City of South Burlington assessed a municipal transportation impact fee of approximately \$31,416 (\$924 per PM peak hour trip) for the project.

The Commission finds that the sidewalks, the new connection to the Dorset Street Recreation Path, and the three proposed crosswalks on Zoey Circle constitute appropriate and reasonable transportation demand management strategies that provide safe access and connections to adjacent lands and existing pedestrian, bicycle, and transit networks and services. The Commission concurs with the City's conclusion that a crosswalk extending from the Dorset Street Recreation Path to Nicklaus Circle is not reasonable to require in the present application, given the project tract's lack of frontage on Dorset Street, the lack of sidewalks on Nicklaus Circle, and the small number of homes on Nicklaus Circle.

After considering all of the evidence, the Commission finds that the project is not likely to cause unsafe traffic conditions given the posted speed limit on the roadways, the presence of sidewalks, recreation paths, future crosswalks, and sight distances from the new intersections. By permit condition, the Commission will require that the Applicants maintain the safe stopping sight distance from the intersections of Zoey Circle and Park Road by vegetation trimming when necessary, and that the Applicants implement traffic control measures during blasting operations.

As conditioned herein, the Commission concludes that the project complies with Criterion 5(A) and Criterion 5(B).

Criterion 8 – Aesthetics, Scenic and Natural Beauty:

Findings of Fact

40. The project tract is located within a rural and residential area in South Burlington, Vermont.
41. The project tract is currently occupied by an open field and a stand of trees. Exhibits 106b and 106c.
42. The project tract was once included within the City of South Burlington's Wheeler Park but is no longer located within Wheeler Park due to a land exchange set forth in an agreement between the City of South Burlington, Highlands Development Company, LLC and JAM Golf, LLC executed in 2015. Exhibit 096a. This land exchange and associated primary agricultural soils mitigation was approved by the Commission under Land Use Permit 4C0923-5, 4C0694-7 issued on July 25, 2017.

43. Other high-density residential developments have been constructed to the east, south, and west of the project tract, including residential development associated with the Vermont National Country Club (4C0983 permit series) and Foulsham Hollow (4C1295 permit series). Properties to the north include Wheeler Park and portions of the Vermont National golf course.
44. The municipal regulations that apply to the project are the *City of South Burlington Comprehensive Plan* (2016) and the *City of South Burlington Land Development Regulations* (Effective February 28, 2022).
45. The project is located within the area marked “Very Low Intensity--Principally Open Space,” as outlined on Map 11 – Future Land Use of the *City of South Burlington Comprehensive Plan* (2016). Exhibit 084a.
46. According to the *City of South Burlington Land Development Regulations* (Effective February 28, 2022), the project is located within the City’s Southeast Quadrant Neighborhood Residential North (“SEQ-NRN”) district. The SEQ-NRN was established in 2016 as a specific response to a legal agreement creating this district and is planned for residential development. Exhibit 042.
47. Mr. Leas and Mr. Bossange contend that the height, color, and materials to be used will look nothing like the homes in the area but will have more in common with the newer cluster developments further south on Dorset Street and that two-story buildings along Park Road or Dorset Street would create too much visibility in the open field. Exhibit 056. Mr. Leas and Mr. Bossange further claim that the project will be hostile to the character of the area and will have an adverse aesthetic effect to neighbors, the community, and scenic resources. Exhibit 106.
48. Within the SEQ-NRN district, there are three zones in which buildings are limited to one story. The Applicants have proposed to locate seven dwelling units in these areas (Units 1, 2, 8, 9, 10, 17, and 18), consisting of five single family units and two units in duplex homes. Exhibit 004.
49. The size and height of the proposed buildings are similar to those in the surrounding area.
50. The proposed residential buildings will be contemporary in style with a variety of number of stories, building style, roof orientations, cladding details, and architectural details. Exhibit 118. The exterior colors of the buildings will be drawn from a palette that is consistent with the homes in the area. Exhibits 001 and 118.

51. Exterior lighting will consist of three pole-mounted streetlights and will be installed at each crosswalk. All street lighting fixtures will have concealed light sources and reflector surfaces will be concealed from view beyond the perimeter of the area to be illuminated. Exhibits 005, 006 and 022.
52. By permit condition, the Commission will require that all exterior residential building-mounted lighting fixtures be installed no higher than 20 feet above grade level and shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
53. No exterior signage is proposed to be installed.
54. Utility lines will be located underground, and no dumpsters or propane tanks are proposed. Above-ground utility cabinets will be screened with plantings. Exhibit 020.
55. The trees to be retained, including a large oak tree, will be protected by fencing and/or flagging prior to and during construction. Exhibits 015, 016 and 017.
56. The project will be landscaped with street trees, foundation plantings, and buffer plantings that screen the proposed development from surrounding properties. Exhibits 019, 020, 021 and 023. By permit condition, the Commission will require the Applicants to continually maintain the landscaping as approved.
57. The project includes recreation paths, open space, and a community garden near the western intersection of Zoey Circle and Park Road. Exhibit 019.
58. Mr. Leas, Mr. Bossange, and the Neighbors have expressed concern that the project is too dense and requested that fewer homes be constructed on the project site. Exhibits 056 and 079.
59. The project was granted approval by the City of South Burlington Development Review Board in consideration of the *City of South Burlington Land Development Regulations*, which includes certain density standards. Exhibit 042.
60. The Applicants have presented information regarding the density of other developments in the vicinity of the project. Although the project is denser than other developments in the vicinity, it is noteworthy that the existing developments on Park Road and Golf Course Road have a higher unit/acre density than the project. Exhibit 118.
61. Mr. Leas and Mr. Bossange contend that the project would be located in a highly visible field next to the historic Wheeler House property which will destroy the aesthetics of the surroundings. Exhibits 056 and 106.

62. VDHP considered the project's effects on historic structures, districts and landscapes including the Wheeler House which is listed on the State Register of Historic Places as Foulsham Farms (Survey 414-21). VDHP concludes that due to the compatible design, distance and intervening landscaping, the project will not adversely affect the historic site. Exhibit 066.
63. Mr. Leas also contends that the project violates the *South Burlington Open Space Committee Report* (2014), because the area is considered a high importance viewshed and the project would interfere with this viewshed. Exhibits 092a, 102, 105, 105a, 106, 106b, 106c and 106d.
64. Using the data and process identified in the *South Burlington Open Space Committee Report* (2014), the City has identified a series of scenic viewpoints and established scenic view protection overlay districts in the Southeast Quadrant within the *City of South Burlington Land Development Regulations* (Effective February 28, 2022). Exhibit 078. According to the *City of South Burlington Land Development Regulations* (Effective February 28, 2022) the project site is not located within a scenic view protection overlay district.
65. Mr. Leas and Mr. Bossange contend that the project violates *Chittenden County ECOS Plan* (2018), *Chittenden County ECOS Plan Supplement 3* (2020), and the *City of South Burlington Comprehensive Plan* (2016). Exhibit 109a. Mr. Leas also contends that the project violates a variety of other plans and studies that have been produced for the City over time. Exhibits 085a, 086a, 087a, 088, 089a, 091a, 092a, 093a, and 109b.
66. The Commission notes that these plans do not use mandatory language but merely provide recommendations to the City.
67. The Chittenden County Regional Planning Commission (CCRPC) chose to make the 2018 ECOS Plan a strategic plan that is intended to provide **general advisory guidance** and intentionally chose to use "should," rather than shall, in the Plan's goal statements. Exhibit 123. The bold lettering of the words "general advisory guidance," is bolded in the original text of the plan to emphasize that the plan and its future land use map are not to be used as strict regulatory documents. Exhibit 124.
68. The *City of South Burlington Comprehensive Plan* (2016) recommends a number of actions and practices that should be undertaken by the City and community to help achieve the goals and objectives of the plan. The *City of South Burlington Comprehensive Plan* (2016) states that, "it is important to note that these recommendations are not mandates, but are suggestions to help guide the operations of the City and its citizens. This plan and its recommendations are intended to aid the City as it prepares and adopts regulations prepares capital budgets and annual work programs, and forms citizen committees to

study a particular concern. These recommendations shall be implemented only after considerable thought, discussion, and analysis." Exhibit 078.

Conclusions of Law

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8).

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Envtl. Ct. May 17, 2010)* (citations omitted); see also, *Re: Quechee Lakes Corporation, 3W0411-EB and 3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Envtl. Bd. Nov. 4, 1985); In re Halnon, 174 Vt. 514 (mem.)* (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Envtl. Ct. May 17, 2010)* (citing *Re: Susan Dollenmaier, 3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt Envtl. Bd. Feb. 7, 2005); In re Eastview at Middlebury, Inc., No. 256-11-06 Vtec, slip op. at 5 (Vt. Envtl. Ct. Feb. 15, 2008), aff'd, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ."* *In re McShinsky, 153 Vt. 586, 589 (1990)* (quoting *In re Quechee Lakes Corp., 154 Vt. 543, 553-54 (1990)*).

1. Adverse Effect

To determine whether a project will have an adverse aesthetic effect, the Commission looks to whether the project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including the following: (a) the nature of the project's surroundings; (b) the compatibility of the project's design with those surroundings; (c) the suitability of the colors and materials selected for the project; (d) the locations from which the project can be viewed; and (e) the potential impact of the project on open space.²

The project is located in a rural and residential area in South Burlington, Vermont. The tract currently contains an open field and a stand of trees. The project includes the construction of 32 new residential units and the construction of roadways, utilities, sidewalks, and paths. Although

² *In re: Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Envtl. Ct. May 17, 2010)* (citations omitted); see also, *In re: Quechee Lakes Corporation, 3W0411-EB and 3W0439-EB, Findings of Fact, Conclusions of Law.*

² *In re: Quechee Lakes Corp et al. 3W0411-EB and 3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Envtl. Bd., Nov. 4, 1985)*(cited in *In re: Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13*).

the project will be visible from neighboring properties, the size of the new residential buildings is similar to those in the surrounding area and the architectural style and materials will not cause buildings to stand apart from surrounding developments. Although the project is generally consistent with the surrounding properties, it is perceived as a significant change to the tract.

The Commission concludes that the project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, *Decision and Order at 15 (May 22, 2010)* (citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, 4C0238-5-EB, *Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Envtl. Bd. 4/9/02)*. A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action*, 2WO694-I-EB, *Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Envtl. Bd. 12/21/00)*.

A plan which states "consideration should be made . . ." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott*, 7C1079(Revised)-EB, *Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Envtl. Bd. Dec. 8, 2000)*.

The Commission has reviewed relevant portions of *City of South Burlington Comprehensive Plan* (2016) Exhibit 084a; the *Wildlife and Natural Communities Assessment of the Southeast Quadrant* (2004) Exhibit 085a; *South Burlington Open Space Strategy* (2002) Exhibit 086a; *A Study of Breeding Birds in the Southeast Quadrant of South Burlington* (2004) Exhibit 087a; *Dorset Park Natural Area Natural Resource Inventory and Management Recommendations* (2009) Exhibit 089a; *Final Report of the Interim Zoning Committee to the South Burlington City Council* (2020) Exhibit 091a; *South Burlington Open Space Committee Report* (2014) Exhibit 092a; and *Wheeler Nature*

Park Management Plan (2015) Exhibit 093a. The Commission finds that these plans use aspirational language (e.g., “may”, “should”, “strongly encouraged”) and not mandatory language (e.g., “shall”, “shall not”). The Courts have long held that aspirational language in a plan serves as an inadequate foundation for regulatory prohibitions. No mandatory language prohibiting the project was identified in these plans. Therefore, there are no clear community standards relevant to the proposed project’s impacts on aesthetics.

The Commission has reviewed relevant portions of the *City of South Burlington Land Development Regulations* (Effective February 28, 2022). The Commission finds that the development regulations use mandatory and not merely aspirational language.

The tract is located within the SEQ-NRN within which the City of South Burlington has specifically planned for residential uses and a related network of open spaces. The project was granted approval by the City of South Burlington Development Review Board in consideration of the *City of South Burlington Land Development Regulations* (Effective February 28, 2022). The project is not located within a Scenic View Protection Overlay District. The Commission finds that the project does not violate a clear written community standard.

(b) Offensive or Shocking Character

Criterion 8 “was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever.” *Re: Okemo Mountain, Inc. 2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986)*. Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers, No. 302-12-08 Vtec, Decision and Order at 11-12; Horizon Development Corp., 4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env’tl. Bd. Aug. 21, 1992)*. As a threshold matter, the Commission must evaluate if a project is offensive or shocking as viewed from the perspective of an average person. *In re: Goddard College Conditional Use, Nos. 175-12-11 Vtec and 173-12-12 Vtec, slip op. at 14 (Vt. Super. Ct. Env’tl. Div. Jan. 6, 2014)*.

The Commission acknowledges that the project will be significantly different than the present condition of the tract. Among other differences is the transformation of the tract to a densely built residential area. However, the Commission finds that the average person would not be offended or shocked to find a development of this nature at this location as other similar residential projects have been permitted and constructed nearby (e.g., including land use permit 4C0983 permit series, 4C1295 permit series, 4C0161 permit series, 4C0746 series, and 4C1127 series).

Given these considerations, while the effects are substantial, the Commission concludes that the project would not be offensive or shocking to the average person considering the steady changes to this part of South Burlington over time. Given all of these considerations and conditions, we find that the project is not offensive or shocking.

(c) Generally Available Mitigating Steps

The question under this factor of the aesthetics analysis is whether the Applicants have “failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.” *In re Times & Seasons, 2008 VT 7, ¶ 8*. If a project does have an adverse aesthetic effect, the applicant must “take generally available mitigating steps to reduce the negative aesthetic impact of a particular project,” otherwise, “[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse.” *In re Stokes Communications Corp., 164 Vt. 30, 39 (1995)* (quoted in *In re Rinkers, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)*). A generally available mitigating step “is one that is reasonably feasible and does not frustrate [either] the project’s purpose or Act 250’s goals.”

To mitigate the aesthetic impacts of the project, the Applicants have designed the buildings such that the size of the proposed buildings is similar to those in the surrounding area and the architectural style and materials will not cause the proposed buildings to stand apart from their surroundings. In addition, all proposed lighting will be down-shielded, and utilities will be located underground.

The Applicants have proposed new landscaping and preservation of some existing vegetation. The project will be landscaped with street trees, foundation plantings and buffer plantings that screen the proposed development from surrounding properties. Exhibits 019, 020, 021 and 023. The Applicants have agreed to continually maintain the proposed landscaping as approved.

Given all of these considerations, the Commission finds that the Applicants have taken the available mitigating steps to minimize adverse impacts of the project on the scenic or natural beauty of the area.

Based on the above, the Commission concludes that the project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

Criterion 10 – Town and Regional Plans:

Findings of Fact

69. The regional plan that applies to the project is the *Chittenden County ECOS Plan (2018)*.

70. Mr. Leas contends that no maps within *Chittenden County ECOS Plan* (2018) show that development is allowable on the project tract, as the tract is mapped as a Rural Planning Area. Mr. Leas also contends that the *Chittenden County ECOS Plan* (2018) calls for developing more stringent standards and thresholds for development in the Rural Planning Areas. Mr. Leas and Mr. Bossange contend that the project is not in conformance with the *Chittenden County ECOS Plan* (2018). Exhibits 080, 081, 082, 099a and 109a.
71. According to the *Chittenden County ECOS Plan* (2018), the project is located within the Rural Planning Area which is identified as an area that provides for low density commercial, industrial, and residential development that is compatible with working lands and natural areas. Exhibit 099a.
72. In letters dated March 3, 2022, and June 13, 2022, the Chittenden County Regional Planning Commission determined that the proposed project is in conformance with the *Chittenden County ECOS Plan* (2018) by meeting the intent of the Rural Planning Area. Exhibit 075.
73. The municipal plan that applies to the project is the *City of South Burlington Comprehensive Plan* (2016). Exhibit 078.
74. Mr. Leas contends that no maps, including the future land use map, within the *City of South Burlington Comprehensive Plan* (2016) show that development is allowable on the project tract. Mr. Leas asserts that the project is not in conformance with the *City of South Burlington Comprehensive Plan* (2016). Exhibits 077 and 109a.
75. The project is located within the area marked "Very Low Intensity--Principally Open Space," as outlined on Map 11 – Future Land Use of the *City of South Burlington Comprehensive Plan* (2016). Exhibit 084a.
76. Within the areas marked "Very Low Intensity--Principally Open Space," development is not inherently prohibited, but these areas reflect the lowest building densities in the City. Uses other than open space and agriculture should have restrictive regulations and minimize their footprint. Primary and secondary natural resources are given priority and disturbance is to be carefully avoided or minimized. Exhibit 084a
77. According to the *City of South Burlington Comprehensive Plan* (2016), the purpose of the future land use map is not to define residential building density or enumerate the specific figures for other factors of land development intensity, but to provide guidance to the related Land Development Regulations, such that the distribution and relative effect of these developments is in keeping with the City's overall goals. Exhibit 078. The map provides for a series of broad categories of planned land intensity. The features on this

map are purposefully blended so as not to focus on a specific parcel or delineation between land use features. That level of specificity is left to the official zoning map. Exhibit 084a.

78. The City of South Burlington *Official Zoning Map* (effective February 28, 2022) shows the project tract is located within the City's Southeast Quadrant Neighborhood Residential North ("SEQ-NRN") district and not barred from development.
79. The *City of South Burlington Comprehensive Plan* (2016) recommends a number of actions and practices that should be undertaken by the City and community to help achieve the goals and objectives of the plan. The *City of South Burlington Comprehensive Plan* (2016) states that, "it is important to note that these recommendations are not mandates but are suggestions to help guide the operations of the City and its citizens. This plan and its recommendations are intended to aid the City as it prepares and adopts regulations, prepares capital budgets and annual work programs, and forms citizen committees to study a particular concern. These recommendations shall be implemented only after considerable thought, discussion, and analysis." Exhibit 078.
80. The municipal regulations that apply to the project are the *City of South Burlington Land Development Regulations* (Effective February 28, 2022).
81. The *City of South Burlington Land Development Regulations* (Effective February 28, 2022) state that, "The purpose of these Land Development Regulations is to implement the Comprehensive Plan of the City of South Burlington..."
82. According to the *City of South Burlington Land Development Regulations* (Effective February 28, 2022), the project is located within the City's Southeast Quadrant Neighborhood Residential North ("SEQ-NRN") district. The SEQ-NRN was established in 2016 as a specific response to a legal settlement agreement creating this district and is planned for residential development. Exhibit 042.
83. The project was granted approval by the City of South Burlington Development Review Board in consideration of the *City of South Burlington Land Development Regulations* (Effective February 28, 2022). Exhibit 042.
84. The *City of South Burlington Land Development Regulations* (Effective February 28, 2022) include site design standards that require compatibility with adjacent natural areas. These standards include fencing and landscape buffering along the Dorset Street Recreation Path, fencing and limited landscape buffering along a resource protection area, landscape buffering along the Park Road Recreation Path, limited fencing along the Park Road

Recreation Path, and three delineated portions of the tract where structures are specifically limited to one story in height. Exhibit 042.

85. The project is located within the Rural Planning Area, as outlined on Map 2 – Future Land Use of the *Chittenden County ECOS Plan* (2018). Exhibit 099a.
86. The proposed project is part of a 435-acre planned unit development (PUD) approved by the District Commission in 1996. The PUD has City of South Burlington approval to include 354 residential units, including residential units constructed to date and homes that have yet to be constructed, like the proposed 32-dwelling units. Exhibit 124.
87. Understanding the context of the proposed 32 dwelling units within a much larger PUD that includes hundreds of homes, and hundreds of acres of land, is critical to evaluating the current proposal's conformance with the ECOS Plan. Exhibit 124.
88. Compatibility "with working lands and natural areas so that these places may continue to highlight the rural character and self-sustaining natural area systems," as required via the ECOS Rural Planning Area purpose statement, does not require complete preservation of land and protection from development. The cluster of 32 dwelling units continues the existing pattern of development within the PUD that retains the vast majority of the 435-acre PUD site for outdoor recreational uses and preservation of natural areas. Exhibit 124.
89. Mr. Leas and Mr. Bossange move to strike the findings from the March 3 CCRPC letter and to strike the conclusion/opinions from the June 13 CCRPC letter, and further request that the Commission re-open the public hearing. Exhibit 127.

Conclusions of Law

Before issuing a permit, the Commission must find that the project is in conformance with any duly adopted local or regional plan or capital program. 10 V.S.A § 6086(a)(10).

The Commission has reviewed the *City of South Burlington Comprehensive Plan* (2016) and has determined that the provisions in question are not sufficiently specific. See, *Re: The Mirkwood Group 1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Envtl. Bd. August 19, 1996)*. Therefore, it is necessary to review the zoning bylaws. See *In re Frank A. Molgano Jr.* 163 Vt. 25 (1994).

The Commission has reviewed the *City of South Burlington Land Development Regulations* (Effective February 28, 2022). The project was granted approval by the City of South Burlington Development Review Board in consideration of the *City of South Burlington Land Development Regulations* (Effective February 28, 2022). Exhibit 042. The project design has addressed the height and buffering requirements for the City's SEQ-NRN zoning sub-district. The Commission agrees

that the project conforms to the *City of South Burlington Land Development Regulations* (Effective February 28, 2022).

The Project is also consistent with the Chittenden County Regional Planning Commission's 2018 ECOS Plan. The Commission concurs with CCRPC's evaluation that this compact residential development, served by municipal water and sewer, will be compatible with the conservation of working lands and natural areas by clustering residential development to protect the open space around it. While Wheeler Park is a critical recreation resource and natural area for South Burlington, the subject property is not part of Wheeler Park as the Opponents inaccurately assert. The record reflects that the subject property was removed from the city park and conveyed to Applicant JAM Golf, LLC in 2017, specifically for dense residential development, in order to allow for an expansion of the park in another location, thereby resulting in an overall increase in protected natural area. That subdivision and land conveyance to the Applicants was approved in a prior Act 250 proceeding (4C0923-5,4C0694-7), and is not the matter before us now. The Commission agrees with CCRPC's evaluation that the dense residential development proposed in the current application continues the existing pattern of development within the 435-acre PUD site that retains the vast majority of the site for outdoor recreational uses and preservation of natural areas. Therefore, the proposed Project is in conformance with the Rural Planning Area and the ECOS Plan.

The Applicants have satisfied their burden of demonstrating the Project's compliance with local and regional plans. The Project complies with Criterion 10.

COMMISSION'S DECISION ON JUNE 19, 2022 MOTION TO RECONSIDER

On June 19, 2022, John Bossange and James Leas submitted a motion requesting that the Commission reconsider its denial of the motion to reconvene the hearing, and a memorandum supporting that motion. The Commission will now address the merits of the motion.

Requested Alteration #1

In its June 16, 2022 Memorandum of Decision and Order, the Commission noted that the municipal and regional plans contain aspirational and non-mandatory language. Mr. Bossange and Mr. Leas request that the Commission remove that statement from its Decision and Order with regard to the municipal plan.

The Commission has reviewed the Opponents' memorandum in support of its requested Alteration #1 and will not modify its June 16, 2022 Decision and Order as requested. The municipal plan (the *City of South Burlington Comprehensive Plan* (2016) has been part of the official record in this proceeding since March 4, 2022 (Exhibit 078), and is cited in the foregoing findings

of fact and conclusions of law. The Commission reviewed Exhibit 078 prior to issuing its June 16 decision.

Requested Alteration #2

Mr. Bossange and Mr. Leas request that the Commission add: “the false statements by BlackRock and JAM Golf on the Act 250 application demonstrate a lack of credibility of the Applicants.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #2 and will not modify its June 16, 2022 Decision and Order as requested.

Requested Alteration #3

Mr. Bossange and Mr. Leas request that the Commission add: “this lack of credibility is not material to the Commission’s deliberations under Criterion 10 but is material to its deliberations under Criteria 1, 5, and 8.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #3 and will not modify its June 16, 2022 Decision and Order as requested.

Requested Alteration #4

Mr. Bossange and Mr. Leas request that the Commission remove “the statement lauding the June 13 CCRPC letter.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #4 and will not modify any of its statements with regard to the CCRPC’s June 13, 2022 comments.

Requested Alteration #5

Mr. Bossange and Mr. Leas request that the Commission “replace that statement with one censoring the CCRPC for first distorting its own definition of Rural Planning Area and then providing incomplete context that omits the fact that the PUD was established in the land-swap deal between the city and the developers and the city’s regulations were previously in conformance with the city plan but were required to be amended to conform to the land-swap agreement and to contradict the municipal and regional plans.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #5 and will not modify its June 16, 2022 Decision and Order as requested.

Requested Alteration #6

Mr. Bossange and Mr. Leas request that the Commission add: “state law bans admission of writings without the opportunity for cross examination.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #6 and will not modify its June 16, 2022 Decision and Order as requested.

Requested Alteration #7

Mr. Bossange and Mr. Leas request that the Commission add: “the CCRPC letters are excluded as hearsay unless the opportunity for cross examination is provided.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #7 and will not modify its June 16, 2022 Decision and Order as requested.

Requested Alteration #8

Mr. Bossange and Mr. Leas request that the Commission add: “a hearing will be scheduled with the opportunity for cross examination of people responsible for the Act 250 application and the CCRPC letters for a full and true disclosure of the facts.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #8 and will not modify its June 16, 2022 Decision and Order as requested.

Requested Alteration #9

Mr. Bossange and Mr. Leas request that the Commission revise its decision as follows: “While the 2018 ECOS Plan is intended to provide general advisory guidance, its Future Land Use Map clearly and specifically shows the proposed 32-house project area as part of the full rectangular area of the Wheeler Nature Park in a Rural Planning Area, and its definition of Rural Planning Area includes specific limits on development that apply to that full rectangular area, including the proposed 32-house project area.”

The Commission has reviewed the Opponents’ memorandum in support of its requested Alteration #9 and will not modify its June 16, 2022 Decision and Order as requested.

For the reasons set forth in the June 16 Memorandum of Decision and Order and herein, the Commission denies the Motion from Mr. Bossange and Mr. Leas and affirms its June 16, 2022 Memorandum of Decision and Order.

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 Applicants, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 4C0923-5A,4C0694-7A, 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 4C0923-5A,4C0694-7A is hereby issued.

Dated July 20, 2022.

By /s/Parker Riehle, Vice Chair
Parker Riehle, Vice Chair
District 4 Commission

Commissioners participating in this decision:

Monique Gilbert

Pamela 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, 2nd Floor, Suite 303, Burlington, VT 05401.