



LAND USE PERMIT

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: 4C1336

Town of Hinesburg
10632 VT Route 116
Hinesburg, VT 05461

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit #4C1336, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit applies to the lands identified in Book 32, Page 67 and Book 32, Page 29, of the land records of the Town of Hinesburg, Vermont.

This permit specifically authorizes the construction of Phase I upgrades to the Hinesburg Wastewater Treatment Facility including: (1) draining and sludge removal of Lagoon #1; (2) taking Lagoon #1 out of service; (3) constructing a drainage layer and underdrain system with groundwater pumping station within the Lagoon #1 footprint; (4) installing subgrade wick drains in Lagoon #1; and (5) filling Lagoon #1 above wick drains for the purpose of consolidating the compressible soil underneath the footprint of a future infrastructure (collectively the "Phase I Project"). The Phase I Project is located at 290 Lagoon Road in Hinesburg, Vermont.

Jurisdiction attaches because the reconstruction of the Facility, including Phase I and Phase II improvements, constitutes a substantial change to a pre-existing development pursuant to Act 250 Rule 2(C)(7) and requires a permit pursuant to 10 V.S.A § 6081. The reconstruction of the Facility does not qualify for an exemption under 10 V.S.A § 6081(d)(1) as it will expand the capacity of the Facility by more than 10%.

1. The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the Phase I Project as approved by the District 4

Environmental Commission (the "Commission") in accordance with the following conditions.

2. The Phase I Project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law #4C1336 and (c) the permit application, plans, and exhibits on file with the Commission and other material representations.

The approved plans are:

Sheet 1 - "General Construction Notes and Legend," dated June, 2021 (Exhibit #004);

Sheet 2 - "Existing Overall Site Plan," dated June, 2021 (Exhibit #005);

Sheet 3 - "Existing Site Plans and Sections," dated June, 2021 (Exhibit #006);

Sheet 4 - "Lagoon No. 2 Aeration Modifications Plan," dated June, 2021 (Exhibit #007);

Sheet 5 - "Lagoon Section and Aeration System Details," dated June, 2021 (Exhibit #008);

Sheet 6 - "Proposed Site Plan - Working Pad and Wick Drain Layout," dated June, 2021 (Exhibit #009);

Sheet 7 - "Proposed Site Plan Preload Grading," dated June, 2021 (Exhibit #010);

Sheet 8 - "Lagoon Sections," dated June, 2021 (Exhibit #011);

Sheet 9 - "Lagoon Sections," dated June, 2021 (Exhibit #012);

Sheet 10 - "Lagoon Sections," dated June, 2021 (Exhibit #013);

Sheet 11 - "Wick Drain Details," dated June, 2021 (Exhibit #014);

Sheet 12 - "Groundwater Pumping Station Details," dated June, 2021 (Exhibit #015);

Sheet 13 - "Erosion Control Details and Notes," dated June, 2021 (Exhibit #016); and

Sheet 2 - "Environmental Conditions Information," dated April, 2021 (Exhibit #019).

3. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Authorization of Notice of Intent #9226-9020 under Construction General Permit 3-9020 issued on May 24, 2021 by the ANR Watershed Management Division.
4. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
5. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.

6. A copy of this permit and plans shall be on the site at all times throughout the construction process.
7. No change shall be made to the design, operation or use of the Phase I Project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. No further subdivision, alteration, and/or development on the tract of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the Phase I Project is in compliance with the terms of this permit.
10. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. Construction hours shall be limited to 7:00AM to 5:00PM Monday to Saturday, with no construction on Sundays or State and Federal Holidays.
12. Sludge removed from Lagoon #1 will be disposed of in accordance with the Solid Waste Management Rules (2020).
13. Current operations of the Facility are regulated by NPDES Permit #3-1172 issued by the ANR Watershed Management Division. The Phase I Project shall be operated in accordance with the Interim Operation Plan included as Exhibit #024a and as approved by the ANR Wastewater Management Program.
14. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division on all roadways or disturbed areas within the Phase I Project during construction and until pavement and/or vegetation is fully established to control dust.
15. At a minimum, the Permittee shall comply with the Vermont Department of Environmental Conservation's Low Risk Site Handbook for Erosion Prevention and Sediment Control (February 2020).
16. The Permittee shall comply with Exhibits #009, 016 and 025 for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
17. 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.

18. 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).
19. 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).
20. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
21. The Permittee shall maintain an undisturbed, naturally vegetated riparian buffer zone on the Project Tract along the LaPlatte River, which shall begin at the water's edge at base flow conditions, and shall further extend 50 feet measured inland from, perpendicular to, and horizontally from the Top of Bank as depicted on Exhibit #019. 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.
22. No exterior lighting or signs are proposed for the Phase I Project. The Permittee shall not erect exterior signage or lighting 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.

23. The Permittee shall provide each prospective purchaser of any interest in the Phase I Project a copy of the Land Use Permit and the Findings of Fact before any written contract of sale is entered into.
24. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #4C1336 in all deeds of conveyance and leases.
25. Pursuant to 10 V.S.A. § 6090(b)(1), this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
26. All site work and construction shall be completed in accordance with the approved plans by **October 1, 2023**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
27. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
28. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 2nd day of July, 2021.

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

Members participating in this decision:

Pam Loranger

Scott Baldwin

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

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LAWS/REGULATIONS INVOLVED

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I. INTRODUCTION

On April 7, 2021, Town of Hinesburg filed an application 4C1336 for the reconstruction of the Hinesburg Wastewater Treatment Facility (the "Facility") which will be completed in two phases. Phase I will include: (a) draining and sludge removal of Lagoon #1; (b) taking Lagoon #1 out of service; (c) constructing a drainage layer and underdrain system with groundwater pumping station within the Lagoon #1 footprint; (d) installing subgrade wick drains in Lagoon #1; and (e) filling Lagoon #1 above wick drains for the purpose of consolidating the compressible soil underneath the footprint of a future infrastructure. Phase II will include: (a) upgrades to the existing main pump station; (b) construction of a new headworks; (c) construction of two new sequential batch reactor tanks with pre- and post-equalization tanks; (d) construction of a new filtration and disinfection building with associated equipment; (e) construction of a new sludge storage tank and new in-plant pump station; (f) construction of a new control building; and (g) once the new treatment plant is operational Lagoons #2 and #3 will be drained, cleaned and taken out of service. The Facility is located at 290 Lagoon Road in Hinesburg, Vermont. The application was deemed complete on April 27, 2021.

The Applicant has requested full findings of fact on all 10 environmental criteria for Phase I, and partial findings of fact on Criteria 1, 1(A), 1(C), 1(D), 1(F), 5, 6, 7, 8A, 9A, 9B, 9C, 9D, 9E, 9G, 9H, 9J, 9K, 9L, 10 for Phase II. No permit will be issued for Phase II unless and until the Applicant applies for the remaining criteria for Phase II and receives affirmative findings for the balance of the criteria.

The application, first submitted on April 7, 2021, was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated April

16, 2021. The application was deemed complete on April 27, 2021 upon receipt of the required supplemental information.

The Commission convened a Prehearing Conference on this application on May 14, 2021 for the purpose of identifying contested facts and legal issues, discussing party status, and determining a hearing schedule. Pursuant to Executive Order 01-20 and associated Addenda and Directives issued by Governor Scott based upon the coronavirus (COVID-19) emergency, this Prehearing Conference was conducted remotely via Microsoft Teams video conferencing software. The Commission also conducted a site visit on May 14, 2021 and placed its observations on the record.

On June 10, 2021 the Commission held a Hearing on the application. The Hearing was conducted remotely via Microsoft Teams video conferencing software. At the end of the Hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the Hearing on June 28, 2021, after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

II. JURISDICTION

Jurisdiction attaches because the reconstruction of the Facility, including Phase I and Phase II improvements, constitutes a substantial change to a pre-existing development pursuant to Act 250 Rule 2(C)(7) and requires a permit pursuant to 10 V.S.A § 6081. The reconstruction of the Facility does not qualify for an exemption under 10 V.S.A § 6081(d)(1) as it will expand the capacity of the Facility by more than 10%.

III. OFFICIAL NOTICE

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

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

Accordingly, official notice is hereby taken of the Hinesburg Town Plan (2017), the Town of Hinesburg Zoning Regulations (2020), the Chittenden County ECOS Plan (2018) and NPDES Permit #3-1172 effective on March 1, 2018, subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

IV. AMENDMENT APPLICATION - RULE 34(E)

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

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

V. PARTY STATUS AND FRIENDS OF THE COMMISSION

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

1. The **Applicant**, by Erik Bailey of the Town of Hinesburg at the site walk and Wayne Elliott and Merrick Gillies of Aldrich + Elliott Engineers at the Prehearing and Hearing.
2. The **Vermont Agency of Natural Resources (“ANR”)**, by Jen Mojo at the Prehearing and at the Hearing.
3. The **Chittenden County Regional Planning Commission (“CCRPC”)**, through and entry of appearance by Charlie Baker dated May 14, 2021.

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

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has requested full findings on all 10 environmental criteria for Phase I, and partial findings of fact on Criteria 1, 1(A), 1(C), 1(D), 1(F), 5, 6, 7, 8A, 9A, 9B, 9C, 9D, 9E, 9G, 9H, 9J, 9K, 9L, 10 for Phase II. No permit will be issued for Phase II unless and until the Applicant applies for the remaining criteria for Phase II and receives affirmative findings for the balance of the criteria.

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

and the burden is on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application. Therefore, the application shall serve as the Findings of Fact on these criteria:

- | | |
|---|--|
| 1(A) - Headwaters | 8(A) - Wildlife Habitat & Endangered Species |
| 1(F) - Shorelines | 9(A) - Impact of Growth |
| 1(G) - Wetlands | 9(B) - Primary Agricultural Soils |
| 2 - Water Supply | 9(C) - Productive Forest Soils |
| 3 - Impact on Existing Water Supplies | 9(D) - Earth Resources |
| 5(A) - Transportation Congestion & Safety | 9(E) - Extraction of Earth Resources |
| 5(B) - Transportation Demand Management | 9(F) - Energy Conservation |
| 6 - Educational Services | 9(G) - Private Utility Services |
| 7 - Municipal Services | 9(H) - Costs of Scattered Development |
| 8 - Aesthetics | 9(L) - Settlement Patterns |
| 8 - Natural Areas | |
| 8 - Historic Sites | |

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.

Criterion 1 - Air Pollution & Water Pollution:

Findings of Fact

1. There will be no air pollutant emissions or noxious odors from the Phase I Project.
2. During construction of Phase I, the Applicant will control dust through the use of water and/or calcium chloride. Exhibit #001a.
3. The Phase I Project construction hours shall be limited to 7:00AM to 5:00PM Monday through Saturday, with no construction on Sundays. Exhibit #001a. The Commission will also require that no construction shall occur on State or Federal Holidays.
4. Current operations at the Facility are regulated by a NPDES Permit #3-1172 issued by the ANR Watershed Management Division.
5. During Phase I, Lagoon #1 will be taken out of service while Lagoons #2, 3A and 3B will remain in operation. The Applicant has submitted an Interim Operation Plan to the ANR

Wastewater Management Program for operations of the Facility while Lagoon #1 is out of service. Exhibit #024a. The ANR Wastewater Management Program has approved the Interim Operations Plan. Exhibit #028.

6. The Applicant has not provided information regarding air pollution or water pollution for Phase II of the Project.

Conclusions of Law – Phase I & II

Under Criterion 1, the Commission must determine that a project will not result in undue water or air pollution. In making this determination the Commission shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable Health and Environmental Conservation Department regulations.

The Commission finds that the Phase I Project will not include any undue air or water pollution provided that the Phase I Project is operated in compliance with the findings herein and the approved NPDES Permit and Interim Operation Plan. Therefore, the Phase I Project complies with Criterion 1.

No information has been provided to the Commission regarding air or water pollution for Phase II of the Project. Therefore, Phase II of the Project does not comply with Criterion 1 unless and until the Applicant addresses Criterion 1 under a subsequent application and receives affirmative findings from the Commission.

Criterion 1(B) - Waste Disposal:

Findings of Fact

7. Waste generated by the Phase I Project will include wastewater, sludge and stormwater runoff.
8. Current operations at the Facility are regulated by a NPDES Permit #3-1172 issued by the ANR Watershed Management Division. The Facility has a permitted capacity of 250,000 gpd. The current average daily flows are approximately 167,000 gpd or approximately 67% of the permitted capacity. Exhibit #021.
9. The ultimate discharge location of the Facility is the LaPlatte River. The NPDES Permit #3-1172 requires the Applicant to monitoring the influent and effluent to the Facility and regulates the characteristics of the effluent that will be discharged to the LaPlatte River.

10. During Phase I, Lagoon #1 will be taken out of service while Lagoons #2, 3A and 3B will remain in operation.
11. At the Hearing the Applicant testified that Lagoon #1 will be drained by redirecting material from Lagoon #1 into the lagoons that will remain in operation and run through the treatment process. Sludge removed from Lagoon #1 will be disposed of in accordance with the Solid Waste Management Rules (2020). Exhibit #021.
12. The Applicant has submitted an Interim Operation Plan for operations of the Facility while Lagoon #1 is out of service. Exhibit #024a. The ANR Wastewater Management Program has approved the Interim Operations Plan. Exhibit #028. The Applicant represents that even with Lagoon #1 taken out of service, sufficient volume remains so that adequate hydraulic retention time can be provided at current average daily and peak flows. Exhibit #024a.
13. The ANR Watershed Management Division has issued coverage under Construction General Permit #9226-9020 for the construction of the Phase I Project. Exhibit #025.
14. The Applicants will use erosion prevention and sediment control ("EPSC") measures contained in a site-specific EPSC Plans to control stormwater runoff during construction of the Phase I Project. Exhibits #009 and 016.
15. The Phase I Project does not require coverage under an operational-phase stormwater permit.
16. The Phase I Project includes the installation of wick drains at approximately 60 feet deep on a triangular grid pattern. Exhibits #009 and 014. The wick drains will be used to collect groundwater via a pump station in order to compress porous subsurface soils. Groundwater generated from the wick drains will be discharged into Lagoon #3B and run through the treatment process. Exhibits #010 and 015.
17. The Phase I Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Conclusions of Law – Phase I

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

The ANR permits create a presumption pursuant to Act 250 Rule 19 that the disposal of wastes authorized by the permits will not result in undue water pollution. In addition, the ANR Wastewater Management Program has approved the Interim Operations Plan for operation of the Facility under Phase I. Exhibits #024a and 028. Technical determinations made by ANR in issuing the permits are entitled to substantial deference. 10 V.S.A § 6086(d). No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Phase I Project will meet all applicable regulations on waste disposal including that the sludge removed from Lagoon #1 will be disposed of in accordance with the Solid Waste Management Rules (2020).

The Commission concludes that the Phase I Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Therefore, the Phase I Project complies with Criterion 1(B).

Criterion 1(C) - Water Conservation:

Findings of Fact

18. The Phase I Project will not require the use of a water supply. Exhibit #001a.
19. The Applicant has not provided information regarding water supply or water conservation measure for Phase II of the Project.

Conclusions of Law – Phase I & II

Under Criterion 1(C), a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

The Commission concludes that the Phase I Project will not require the use of a water supply. Therefore, the Phase I Project complies with Criterion 1(C).

No information has been provided to the Commission regarding water conservation measures for Phase II of the Project. Therefore, Phase II of the Project does not comply with Criterion 1(C) unless and until the Applicant addresses Criterion 1(C) under a subsequent application and receives affirmative findings from the Commission.

Criterion 1(D) - Floodways:

Findings of Fact

20. The Phase I Project is not located in a floodway or river corridor but is located within the floodway fringe. Exhibits #019 and 027.
21. The base flood elevation in this area is at elevation 323.5 feet. The top of berm for the existing Lagoon #1 is at elevation 332 feet, and above the base flood elevation. Exhibits #006 and 021.
22. ANR has determined that all work for the Phase I Project will occur within the existing Lagoon #1 where the existing berms are well above the base flood elevation. Exhibit #027. Given the existing berms are well above the base flood elevation, this area does not currently provide any floodwater storage or conveyance during the base flood; therefore, the proposed project would have no effect on base flood elevations or velocities. Exhibit #027. ANR concludes that the Phase I Project will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, welfare or safety of the public or of riparian owners during flooding. Exhibit #027.
23. The Applicant has not provided information regarding floodways for Phase II of the Project, nor has ANR reviewed or commented on Criterion 1(D) for Phase II of the Project.

Conclusions of Law – Phase I & II

Under Criterion 1(D), a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria: (i) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and endanger the health, safety, and welfare of the public or of riparian owners during flooding; and (ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.

The Commission concludes that the Phase I Project will not involve the development or subdivision of lands within any floodway, but the Phase I Project does involve development within the floodway fringe. The Commission concludes that the Phase I Project will not restrict or divert the flow of flood waters nor significantly increase the peak discharge of a river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding. Therefore, the Phase I Project complies with Criterion 1(D).

No information has been provided to the Commission regarding floodways for Phase II of the Project. Therefore, Phase II of the Project does not comply with Criterion 1(D) unless and until the Applicant addresses Criterion 1(D) under a subsequent application and receives affirmative findings from the Commission.

Criterion 1(E) - Streams:

Findings of Fact

24. The Phase I Project is located near the LaPlatte River.
25. By permit condition the Commission directs that the Applicant shall maintain an undisturbed, naturally vegetated riparian buffer zone on the Project Tract along the LaPlatte River, which shall begin at the water's edge at base flow conditions, and shall further extend 50 feet measured inland from, perpendicular to, and horizontally from the Top of Bank as depicted on Exhibit #019. 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.
26. These erosion control measures for the Phase I Project have been reviewed and have been found to be sufficient to maintain the stream in its natural condition. The Applicants will use EPSC measures contained in a site-specific EPSC Plans to control stormwater runoff during construction of Phase I. Exhibits #009 and 016.
27. The Phase I Project will not endanger the health, safety, or welfare of the public or of adjoining landowners.

Conclusions of Law – Phase I

Under Criterion 1(E), a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners.

The Commission concludes that the Phase I Project will maintain an undisturbed riparian buffer along the LaPlatte River. As conditioned herein, the Commission concludes that the Applicant will maintain the natural condition of any streams, and will not endanger the health, safety or welfare of the public or of adjoining landowners. Therefore, the Phase I Project complies with Criterion 1(E).

Criterion 4 - Soil Erosion:

Findings of Fact

28. The ANR Watershed Management Division has issued coverage under Construction General Permit #9226-9020 for the construction of the Phase I Project. Exhibit #025.
29. The Applicants will use EPSC measures contained in a site-specific EPSC Plans to control stormwater runoff during construction of the Phase I Project. Exhibits #009 and 016.
30. The Phase I Project will be constructed in compliance with the Low Risk Site Handbook for Erosion Prevention and Sediment Control (February 2020).
31. The total authorized disturbance for the Phase I Project is 1.60 acres. Exhibit #025.
32. The Phase I Project will not affect the capacity of soil on the site to hold water.

Conclusions of Law – Phase I

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

The ANR permit creates a presumption pursuant to Act 250 Rule 19 that the disposal of wastes authorized by the permit will not result in undue water pollution. Technical determinations made by ANR in issuing the permits are entitled to substantial deference. 10 V.S.A § 6086(d). No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that the construction of the Phase I Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. Therefore, the Phase I Project complies with Criterion 4.

Criterion 9(J) - Public Utility Services:

Findings of Fact

33. The Phase I Project will not require supportive governmental and public utility facilities and services beyond what the Facility currently uses and will not place an excessive or uneconomic demand on these services. Exhibit #001a.

34. The supportive governmental and public utility facilities and services to be used by the Phase II Project, at a minimum will include water supply, and electricity. The Applicant has not provided information regarding any demands on public utility facilities and services, or capital improvement programs or plans associated with Phase II of the Project.

Conclusions of Law – Phase I & II

Under Criterion 9(J), a permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

The Commission finds that the Phase I Project will not require supportive governmental and public utility facilities and services beyond what the Facility currently uses and will not place an excessive or uneconomic demand on these services. Therefore, the Phase I Project complies with Criterion 9(J).

No information has been provided to the Commission regarding any demands on public utility facilities and services, or capital improvement programs or plans associated with Phase II of the Project. Therefore, Phase II of the Project does not comply with Criterion 9(J) unless and until the Applicant addresses Criterion 9(J) under a subsequent application and receives affirmative findings from the Commission.

Criterion 9(K) – Development Affecting Public Investments:

Findings of Fact

35. The Project is a wastewater treatment facility which is considered a public utility facility.
36. The Project is adjacent to governmental and public utility facilities, services, and lands. It is adjacent to the LaPlatte River and the ultimate discharge location of the Facility is the LaPlatte River.
37. Current operations of the Facility are regulated by NPDES Permit #3-1172 which specifies the characteristics of the effluent that will be discharged to the LaPlatte River.
38. The Applicant has submitted an Interim Operation Plan for operations of the Facility while Lagoon #1 is out of service. Exhibit #024a. The ANR Wastewater Management Program has approved the Interim Operations Plan. Exhibit #028. The Applicant

represents that even with Lagoon #1 taken out of service, sufficient volume remains so that adequate hydraulic retention time can be provided at current average daily and peak flows. Exhibit #024a.

39. The Applicant has not provided information regarding impacts or discharges to the LaPlatte River associated with Phase II of the Project.

Conclusions of Law – Phase I & II

Under Criterion 9(K), a permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.

Where the public investment is project itself, public entity's governing body which proposes the project has discretion to decide whether it is an appropriate public investment and is responsible for the consequences. *Rutland Public Schools, #1R0038-4-EB (1/29/92)*. [EB #530M]. The Commission finds that the Phase I and Phase II Project is a public investment itself and therefore the governing body which proposes the project has discretion to decide whether it is an appropriate public investment.

The Commission also finds that the Facility is located next to the LaPlatte River. The Phase I Project will not unreasonably or unnecessarily endanger the public or quasi-public investment and will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the LaPlatte River because it will establish an undisturbed riparian buffer and discharges associated with the Facility will be in accordance with NPDES Permit #3-1172 and the Interim Operation Plan approved by the ANR Wastewater Management Program. Exhibit #024a. Therefore, the Commission concludes that the Phase I Project complies with Criterion 9(K).

No information has been provided to the Commission regarding impacts or discharges to the LaPlatte River associated with Phase II of the Project. Therefore, Phase II of the Project does not comply with Criterion 9(K) unless and until the Applicant addresses Criterion 9(K) under a subsequent application and receives affirmative findings from the Commission.

Criterion 10 – Town and Regional Plans:

Findings of Fact

40. The municipal plan that applies to this application is the Hinesburg Town Plan (2017).

41. The municipal zoning bylaws that apply to this application is the Town of Hinesburg Zoning Regulations (2020).
42. The Project has received a conditional use approval for development in a flood hazard area from the Hinesburg Development Review Board. Exhibit #029.
43. The Regional Plan that applies to this application is the Chittenden County ECOS Plan (2018).
44. The CCRPC has indicated that the Project is in conformance with the Planning Areas of the Chittenden County ECOS Plan (2018). Exhibit #022.

Conclusions of Law – Phase I & II

Under Criterion 10, the Commission must find that a project is in conformance with any duly adopted local or regional plan or capital program.

The Commission has reviewed the Hinesburg Town Plan (2017) 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 Project in consideration of the zoning bylaws. See *In re Frank A. Molgano Jr. 163 Vt. 25 (1994)*. The Hinesburg Development Review Board has approved a conditional use approval for development in a flood hazard area and the CCRPC has indicated that the Project is in conformance with the Planning Areas of the Chittenden County ECOS Plan (2018).

The Project complies with Criterion 10.

VII. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that Phase I, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit #4C1336, will comply with the Act 250.

Based upon the foregoing Findings of Fact, the Commission concludes that Phase II does not comply with all of the required criteria. 10 V.S.A. § 6086(a). For Phase II, the Applicant shall submit an application for a permit amendment that addresses Criteria 1, 1(B), 1(C), 1(D), 1(E), 1(G), 2, 3, 4, 8, 9(F), 9(J), and 9(K). These Findings of Fact contained herein for Phase II are valid for a period of five years.

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C1336 is hereby issued for Phase I.

For Phase II, the Applicants shall submit an application for a permit amendment that addresses Criteria 1, 1(B), 1(C), 1(D), 1(E), 1(G), 2, 3, 4, 8, 9(F), 9(J), and 9(K). These Findings of Fact contained herein for Phase II are valid for a period of five years.

DATED this 2nd day of July, 2021.

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

Commissioners participating in this decision:

Pam Loranger

Scott Baldwin

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.

Exhibit List



Application #	4C1336 (6/18/21)
Applicant(s)	Town of Hinesburg
Landowner(s)	Town of Hinesburg
Project Town(s):	Hinesburg

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	4/7/21	001 Act 250 Application	Applicant
001a	4/26/21	001a Act 250 Application Revised (4/26/21)	Applicant
001b	4/26/21	001b Signed Schedule A	Applicant
002	4/7/21	002 Schedule G	Applicant
003	4/7/21	003 Sheet T - Title Sheet and Index of Drawings	Applicant
004	4/7/21	004 Sheet 1 - General Construction Notes and Legend	Applicant
005	4/7/21	005 Sheet 2 - Existing Overall Site Plan	Applicant
006	4/7/21	006 Sheet 3 - Existing Site Plans and Sections	Applicant
007	4/7/21	007 Sheet 4 - Lagoon 2 Aeration Modifications Plan	Applicant
008	4/7/21	008 Sheet 5 - Lagoon Section and Aeration System Details	Applicant
009	4/7/21	009 Sheet 6 - Proposed Site Plan - Working Pad and Wick Drain Layout	Applicant
010	4/7/21	010 Sheet 7 - Proposed Site Plan Preload Grading	Applicant
011	4/7/21	011 Sheet 8 - Lagoon Sections	Applicant
012	4/7/21	012 Sheet 9 - Lagoon Sections	Applicant
013	4/7/21	013 Sheet 10 - Lagoon Sections	Applicant
014	4/7/21	014 Sheet 11 - Wick Drain Details	Applicant
015	4/7/21	015 Sheet 12 - Groundwater Pumping Station Details	Applicant
016	4/7/21	016 Sheet 13 - Erosion Control Details and Notes	Applicant
017	4/26/21	017 Cover Letter re Supplemental Information and Revised Application (4/26/21)	Applicant
018	4/26/21	018 Proposed Phase II Project Site Plan Figure No. 1 (4/21)	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
019	4/26/21	019 Environmental Conditions Map Figure No. 2 (4/21)	Applicant
020	4/26/21	020 Project Scheduled - March 2021	Applicant
021	4/26/21	021 Aldrich + Elliott Supplemental Information (4/26/21)	Applicant
022	5/14/21	022 Letter by Charlie Baker, Exec. Dir, CCRPC Comments on Proposed Project (5/14/21)	Regional Planning Commission
023	5/27/21	023 Additional Supplemental Information (5/27/21)	Applicant
024	5/27/21	024 Attachment A - Plan of Operation	Applicant
024a	6/14/21	024a Plan of Operation - Updated June 8, 2021	Applicant
025	5/27/21	025 Attachment B - Construction General Permit 9226-9020 Issued May 24, 2021	Applicant
026	5/27/21	026 Attachment C - Rare, Threatened or Endangered Species (2/10/21)	Applicant
027	6/8/21	027 ANR Comments (6/8/21)	ANR
028	6/14/21	028 Approval Letter by DEC Wastewater Management Program (6/9/21)	ANR
029	6/18/21	029 Town of Hinesburg DRB Findings of Fact, Conclusions & Order Approval Dated June 15, 2021	Municipality
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CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of July 2021, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C1336, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to NRB.Act250Essex@vermont.gov

Erik Bailey
Town of Hinesburg
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jdubingrossman@hinesburg.org
ebailey@hinesburg.org

Dated at Essex Junction, Vermont, this 2nd day of July, 2021.

Melissa Ross, Town Clerk
Chair, Selectboard/Chair, Planning Commission
Town of Hinesburg
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mross@hinesburg.org

/s/Christine Commo
Natural Resources Board Technician
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Chittenden County Regional Planning Commission
c/o Charlie Baker, Exec. Dir.
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FOR YOUR INFORMATION

District #4 Environmental Commission
Thomas Little, Chair
Pam Loranger/Scott Baldwin
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