



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: 4C1160R-11

South Village Communities, LLC

P.O. Box 2286

South Burlington, VT 05407

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment 4C1160R-11, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 801, Page 465, of the land records of the City of South Burlington, Vermont, as the subject of a deed to South Village Communities, LLC.

This permit specifically authorizes the boundary line adjustment for Lots 63, 11, 11A, 11B, 48 and 48N; and subdivision of Lot 11 into three lots; and Lot 48N into five lots. Also, the permit authorizes construction of 11 duplex residential buildings on Lot 11 and four duplex buildings on Lot 48N with supporting infrastructure. Two of the new lots will become open space and the agricultural leasehold will be enlarged. The project is located at 55 Allen Road East, 161 Allen Road East and 230 Preserve 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.

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

The approved plans are:

Drawing P2 - "Existing Conditions – Phase 2 Lotting Plat," dated 10/31/2013, last revision 6/9/17 (Exhibit #007);

Drawing PL-1 - "Plat of Project Line Modification – Lots 11 & 92N-95N," dated 11/13/20 (Exhibit #009);

Drawing C1.0 - "Overall Site Plan," dated 11/13/20 (Exhibit #014);

Drawing C1.1 - "Existing Conditions Plan – Lot 11," dated 11/13/20 (Exhibit #015);

Drawing C2.0 - "Proposed Conditions Plan – Lot 11," dated 11/13/20, last revision 1/26/21 (Exhibit #016);

Drawing C2.1 - "Proposed Grading & Drainage Plan - Lot 11," dated 11/13/20, last revision 1/6/21 (Exhibit #017);

Drawing C2.2 - "Proposed Utility Plan – Lot 11," dated 11/13/20, last revision 1/6/21 (Exhibit #018);

Drawing C3.0 - "EPSC Site Plan – Lot 11," dated 11/13/20 (Exhibit #019);

Drawing C1.1 - "Existing Conditions Plan – Lot 48N," dated 11/13/20 (Exhibit #020);

Drawing C2.0 - "Proposed Conditions Plan – Lot 48N," dated 11/13/20, last revision 1/26/20 (Exhibit #021);

Drawing C2.1 - "Proposed Grading & Drainage Plan – Lot 48N," dated 11/13/20, last revision 1/6/21 (Exhibit #022);

Drawing C2.2 - "Proposed Utility Plan – Lot 48N," dated 11/13/20 (Exhibit #023);

Drawing C3.0 - "EPSC Site Plan – Lot 48N," dated 11/13/20 (Exhibit #024);

Drawing PAS-1 - "Existing Conditions Per Consent Decree – Master Plan," dated 2/24/21 (Exhibit #025);

Drawing PAS-2 - "Environmental Court Consent Decree Prime Ag Soil – Project Area, Existing Conditions – Master Plan," dated 2/24/21 (Exhibit #026);

Drawing PAS-3 - "Proposed Conditions Primary Ag Plan – Lots 11.1, 11.2, 48X & 48N - Master Plan," dated 2/24/21 (Exhibit #027);

Drawing S1.1 - "Consent Decree Exhibit C - Master Plan Phasing," dated June, 2004, last revision 3/30/09 (Exhibit #032);

Drawing L-101 - "South Village – Lot 11 – Lighting Plan & Details," dated 5/14/20, last revision 1/07/22 (Exhibit #035a);

Drawing L-101 - "South Village – Lot 48N – Lighting Plan & Details," dated 5/14/20 (Exhibit #036);

Drawing L-100 – “South Village – Lot 11 – Landscape Plan,” dated 5/14/20, last revision 1/07/22 (Exhibit #037a);

Drawing L-100 – “South Village – Lot 48N – Landscape Plan,” dated 5/14/20 (Exhibit #038); and

Drawing L-200 – “South Village – Lot 11 – Typical Plantings & Landscape Details,” dated 5/14/20, last revision 1/07/2022 (Exhibit #070).

3. All conditions of Land Use Permit 4C1160R and amendments are in full force and effect except as further amended herein.
4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit WW-4-2613-11 issued on January 18, 2022 by the ANR Drinking Water and Groundwater Protection Division;
 - b. Wastewater System and Potable Water Supply Permit WW-4-2613-12 issued on January 19, 2022 by the ANR Drinking Water and Groundwater Protection Division;
 - c. Authorization of Notice of Intent (NOI #4096-9050) under General Permit 3-9050 (Stormwater Discharge 3-Acre General Permit), issued on January 28, 2022 by the ANR Watershed Management Division; and
 - d. Individual Stormwater Discharge Permit #4096-INDC.2A issued on January 30, 2018 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 Permittee and their successors and assigns.
12. Construction hours shall be limited to Monday through Friday from 7:00 AM to 6:00 PM and Saturdays from 7:00 AM to 3:00 PM. There shall be no construction on Sundays or state/federal holidays.
13. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
14. Stabilized construction entrances must be installed and maintained as shown on Exhibits #019 and 024 (EPSC Plans). 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.
15. The Permittee 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.
16. 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.
17. The Permittee shall be obligated to implement the Construction Site Waste Reduction Plan approved by the Agency of Natural Resources Solid Waste Management Program and included as Exhibits #008 and 075 (Construction Site Waste Reduction Plan; and ANR Approval of the Plan).
18. The Permittee shall comply with Exhibits #001a, 019 and 024 (Revised Schedule B; and EPSC Plans) 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.

19. 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.
20. 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).
21. 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).
22. 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.
23. The Permittee 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. The Permittee is afforded a 10% reduction in transportation fee as a result of the proposed Transportation Demand Management measures (construction of new connecting sidewalks and recreational paths). The transportation fee is calculated as follows: \$2,069/PM peak hour trip × 4 trips × 0.9 [10% TDM discount for sidewalks/paths]. The Permittee shall pay a total transportation impact fee of **\$7,448.40** 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). Exhibit #056 (October 12, 2021 VTrans review letter).

24. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits #037a, 038 and 070 (Revised Landscape Plans) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
25. The installation of exterior light fixtures is limited to those approved in Exhibits #035a and 036 (Revised Lighting Plans) and shall be mounted no higher than 12 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.
26. The Permittee shall adhere to the agreement submitted by Mr. & Mrs. Foxman regarding revised street lighting at the intersection of North Jefferson Road and Douglas Lane, as well as additional landscaping to mitigate aesthetic concerns. Exhibit #073.
27. The Permittee shall not erect exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
28. Pursuant to 30 V.S.A. Section 51(e), the Permittee and/or subsequent lot owner, at a minimum, shall construct the two-family homes in accordance with Vermont's Residential Building Energy Standards (RBES) Stretch Code effective at the time of construction.
29. 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 OR Section C403.2.3 of the 2020 Vermont Commercial Building Energy Standards.
30. Should the City at any time agree to accept any private utilities being then operated by the Permittee and/or its assigns and successors in interest, the Permittee 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.
31. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 4C1160R-11 in all deeds of conveyance and leases.
32. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment before any written contract of sale is entered into.

33. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
34. All site work and construction shall be completed in accordance with the approved plans by **October 1, 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.
35. 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.
36. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 14th day of February, 2022.

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

Members participating in this decision:

Kate Purcell

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

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Land Use Permit 4C1160R-11

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

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LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On April 28, 2021, South Village Communities, LLC filed an application for an Act 250 permit for a project generally described as boundary line adjustments for Lots 63, 11, 11A, 11B, 48 and 48N, along with construction of 11 duplex residential buildings on Lot 11 and 4 duplex residential buildings on Lot 48N, all with supporting infrastructure. The tracts of land consist of 11.75 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on November 29, 2007 in the land records of South Burlington, Vermont.

The application, first submitted on April 28, 2021, included a request for a fee waiver. In collecting additional facts relating to the fee waiver request, the District Coordinator discovered that the Master Plan expired in 2017. The District Commission (the "Commission") denied the fee waiver request in a Memorandum of Decision dated May 20, 2021. The Applicant submitted a revised application on July 29, 2021, addressing all 10 criteria in light of the expired Master Plan. This application was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated August 10, 2021. The application was deemed complete on September 15, 2021 upon receipt of the required supplemental information.

The Commission held a hearing on this application on December 3, 2021. The Commission also conducted a site visit on December 3, 2021 and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on February 9, 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 is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. 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.

IV. 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) and who attended the hearing are:

1. The **Applicant**, by Patrick O'Brien, South Village Representative; and Dave Marshall, P.E., Project Engineer.
2. The **Vermont Agency of Natural Resources**, by Kevin Anderson, Regulatory Review Coordinator.
3. The **Vermont Agency of Transportation**, through comment letters dated October 12, 2021 and November 24, 2021 by Chris Clow, P.E., Transportation Engineer.
4. The **Vermont Agency of Agriculture, Food and Markets**, through an Entry of Appearance dated October 29, 2021 by Ari Rockland-Miller, Act 250 Coordinator.
5. The **City of South Burlington**, by Amanda Lafferty, Esq., Deputy City Attorney.
6. The **Chittenden County Regional Planning Commission**, through a comment letter dated December 2, 2021 by Charlie Baker, Executive Director.

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 hearing on this application. At the hearing the following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), testified in support of their requests, and were either admitted as parties or denied party status, as indicated below:

1. **Laurence Robert:** Admitted: Criteria 1(B), 5(A) and 10.
2. **Paul & Sheryl Foxman:** Admitted: Criteria 5(A) and 8.

Other neighbors in the South Village community contacted the Commission and expressed an interest in becoming involved in the proceedings, some of them while participating in the site visit, but they did not appear at the hearing to request party status.

ii. Final Party Status Determinations

Prior to the close of the evidence, the Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and revised the status of the following party:

Laurence Robert: Preliminarily granted party status on Criteria 1(B), 5(A) and 10;
Denied final party status on Criterion 10 for failure to make any showing of a particularized interest relating to the local or regional plan.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on September 15, 2021. The Commission distributed a notice and proposed permit establishing a deadline of October 29, 2021 by which parties, or the Commission on its own motion, could request a hearing on the application. The Commission received a timely request for a public hearing from Laurence Robert on October 27, 2021. On November 8, 2021 the Commission issued a Notice of Hearing indicating that a public hearing would be held because substantive issues were raised under Criteria 1B (Stormwater), 5A (Traffic), and 10 (Local and Regional Plans), unless that scope was expanded by the Commission at the hearing. 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 during the hearing. At the hearing, Mr. Robert raised issues concerning Criteria 1(B), 5(A) and 10. Mr. & Mrs. Foxman raised issues concerning Criteria 5A (Traffic) and 8 (Aesthetics). Therefore, the following Findings of Fact are limited to Criteria 1(B), 5(A), 8 and 10.

The findings of fact are based on the application, Exhibits 001 - 078, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the Commission must find that the project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and the burden is on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. The South Village Master Plan expired on July 9, 2017.
2. The project consists of boundary line adjustments for Lots 63,11, 11A, 11B, 48 and 48N, along with construction of 11 duplex residential buildings on Lot 11 and 4 duplex residential buildings on Lot 48N, all with supporting infrastructure. The tracts of land consist of 11.75 acres.
3. This application represents full build-out of the residential component of South Village. The original proposal was for 334 residential units. The current projected maximum build-out is 321 residential units.

Criterion 1(B) - Waste Disposal:

Findings of Fact

4. Waste generated by the project will include sewage, residential solid waste, stormwater runoff and stumps generated by site clearing.
5. The wastewater from the project will be disposed of through connection to the City of South Burlington municipal wastewater treatment system.
6. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit WW-4-2613-11 on January 18, 2022; and Wastewater System and Potable Water Supply Permit WW-4-2613-12 on January 19, 2022. Exhibits #071 and 072.
7. The project does not have any floor drains.

8. The ANR Department of Environmental Conservation has issued Authorization of Notice of Intent (NOI #4096-9050) under General Permit 3-9050 (Stormwater Discharge 3-Acre General Permit) on January 28, 2022 for the operational phase of the project. Exhibit #074.
9. The ANR Department of Environmental Conservation has issued Individual Stormwater Discharge Permit #4096-INDC.2A on January 30, 2018 by the ANR Watershed Management Division. Exhibit #076.
10. Mr. Robert expressed concerns about water flowing overland and down Allen Road East to its intersection with Spear Street. He questioned whether the proposed project will exacerbate this existing situation. Testimony of Mr. Robert.
11. The stormwater design includes a gravel wetland with emergency spillway. The design aims to address stormwater from the proposed project as well as future development of a commercial use and soccer field on an adjacent South Village parcel. Testimony of Kevin Anderson, ANR.

Conclusions of Law

The ANR permits create a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of stormwater and wastewater and waste collection, treatment and disposal systems authorized by the permits 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).

The Commission observed the current runoff conditions during the site visit and appreciates the concerns raised about overland flow. The Commission relies on the project's compliance with the stormwater rules in terms of infiltration, treatment and peak flow management. The project is planned to reduce surface water runoff by reducing the watershed area and providing better treatment through a new gravel wetland. The Authorization of Notice of Intent (NOI #4096-9050) under General Permit 3-9050 (Stormwater Discharge 3-Acre General Permit) and the Individual Stormwater Discharge Permit #4096-INDC.2A provide adequate site protection to improve the current situation and addresses the new construction.

The project will meet all applicable Department of Environmental Conservation (DEC) stormwater regulations and also regulations on waste disposal and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. In addition, the project will not cause undue water pollution.

The project complies with Criterion 1(B) (Waste Disposal).

Criterion 5 - Transportation:

Findings of Fact

12. The project is not located in a Transportation Improvement District (TID) established by VTrans pursuant to Act 145. If a project is not located in a TID and it has impacts on nearby transportation infrastructure, the Commission may set a mitigation fee if the development will benefit from a state or municipal transportation capital project that is proposed to alleviate congestion in the area of the proposed development. 10 V.S.A. § 6105. VTrans has created a capital plan to address the transportation demands in the general area, and the project will benefit from those transportation improvements.
 - a. The project's traffic impacts were assessed in a Traffic Impact Study prepared by RSG and a supplemental study prepared by WCG. Exhibits #033 and 067.
 - b. The project introduces traffic demand management (TDM) efforts with the construction of new connecting sidewalks and recreational paths. A reduction in transportation impact fees is permitted to account for Transportation Demand Management (TDM) programs offered by an applicant (10 VSA § 6106 (b)(5)). VTrans recommends an additional reduction of 10% from the Act 145 fee based on this TDM strategy. Exhibit #056.
 - c. The Applicant's proposed redevelopment is located not far from the Champlain Parkway project that is included on the VTrans Capital Program (project number MEGC M 5000(1)). The Applicant will pay a transportation impact fee of \$7,448.40 to VTrans relative to the Champlain Parkway project. Exhibit #056.
13. The two proposed project sites will be served by new private lanes that will connect internally to the existing South Village street network which is distributed primarily to Spear Street via Preserve Road, Allen Road East and South Jefferson Road with a small amount using the Midland Avenue connector to Dorset Street.
14. The estimated traffic from the proposed project is 14 vehicles per hour (vph) during the AM peak hour and 16 vph during the PM peak hour. The previously proposed 100 student school on the project site would have generated 101 AM peak vph and 26 PM peak vph. Exhibit #062.
15. Each residential unit will be provided a minimum of two parking spaces using both garages and surface areas.
16. Mr. & Mrs. Foxman expressed concerns about headlights and congestion in the vicinity of their home at the intersection of new Douglas Lane and North Jefferson Road. Testimony of Mr. & Mrs. Foxman.

17. The Foxmans and Mr. Robert expressed concerns about Midland Avenue being used as a cut-through to Dorset Street, testifying that the narrow width of Midland Avenue coupled with the density of development and high speeds in that area could create a dangerous situation. Both the Foxmans and Mr. Robert questioned whether or not the traffic study for the proposed project was completed before or after Midland Avenue opened to traffic. Testimony of the Foxmans and Mr. Robert.
18. The Applicant stated that the Traffic Impact Study took into account the originally proposed 334 residential units, even though the total residential build-out is now 321 units. Exhibit #033.
19. The Applicant provided an Updated Traffic Assessment dated January 10, 2022. Exhibit #067.

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 has reviewed all of the traffic assessments provided by the Applicant and is satisfied that reasonable measures are in place to address traffic congestion and safety relating to the project. The Commission finds that the South Village street system does not provide an actual “short-cut” to and from Dorset Street because of the width of the connecting streets and the intentionally circuitous design of the streets. The Commission concludes that the project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation. The project complies with Criterion 5(A).

Given the type, scale and transportation impacts of this project, the following transportation measures are appropriate: construction of new connecting sidewalks and recreational paths. In addition, given the proposed number of PM peak hour trips generated by the project, a fee of

\$7,448.40 sufficiently mitigates any transportation impacts resulting from the project. With these additional measures, the project complies with Criterion 5(B).

Criterion 8 - Aesthetics:

FINDINGS OF FACT

Findings of Fact: Aesthetics, Scenic or Natural Beauty

20. Both of the project sites sit on gently sloping and mostly open former pasture or tillable farm land. Between the two sites is the *Farm at South Village* (the "Farm") which will gain 1.4 acres via a boundary line adjustment as part of the project. A small Class III wetland will remain and be permanently delineated by a split rail fence.
21. The proposed units are two-family homes built in close proximity, allowing for the creation of open space areas adjacent to each grouping of units and allowing for the increase in the size of the Farm.
22. The homes will conform to the Design Review Standards of South Village with traditional roof lines, fenestration details and street-facing front entries. The homes will be wood framed and sided, and trimmed with either wood, vinyl, cement board, or composite materials in traditional colors. The roofs will be architectural-style asphalt shingles. Exhibit #068 (Architectural Drawing).
23. The project will be landscaped as outlined on Exhibits #037a, 038 and 070 (Revised Landscape Plans & Details). The Applicant agreed to continually maintain the landscaping as approved.
24. Exterior lighting will consist of fixtures adjacent to the entries and on the porches/stoops, along with street lighting and will be installed as depicted on Exhibits #035a and 036 (Revised Lighting Plans). All fixtures will 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.
25. Mr. & Mrs. Foxman expressed concerns about the proposed street light at the intersection of new Douglas Lane and North Jefferson Road. Testimony of Mr. & Mrs. Foxman.
26. Mr. & Mrs. Foxman entered into a private agreement with the Applicant regarding the proposed street lighting and the proposed landscaping to mitigate their concerns about aesthetics. The agreement satisfies their concerns. Exhibit #073 (January 20, 2022 letter from the Foxmans).

27. There are no proposed exterior signs.

CONCLUSIONS OF LAW

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

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 the 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: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *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 *Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13*).

The project is infill residential development within the South Village Community Development. The proposed buildings are compatible with the surrounding buildings in terms of size, colors, and materials. In addition, the lots approved herein were previously approved for development. The proposed project will not have an adverse aesthetic effect. Accordingly, we need not look at whether the effect is undue.

We conclude that the project is compatible with its surroundings and will have no adverse aesthetic impact. Accordingly, it complies with Criterion 8.

Criterion 10 – Town and Regional Plans:

Findings of Fact

28. The municipal plan that applies to this application is The City of South Burlington Comprehensive Plan adopted on February 1, 2016.
29. The municipal approval for this project includes a condition of approval that requires that 15 of the 30 homes meet the affordable requirements of Section 18.02 of the South Burlington Land Development Regulations. More specifically, this project helps to achieve one of the main goals outlined in Section 2.2(B) of the City's Comprehensive Plan by advancing the City's goal of constructing 1,080 affordable housing units by 2025.
30. Mr. Robert expressed his concern that the proposed project is too dense and contains too many affordable units. He further explained his belief that the City of South Burlington has waived too many regulations to allow the proposed project. Testimony of Mr. Robert.
31. The Deputy City Attorney noted that the proposed project was reviewed by the City of South Burlington over the course of several years (2019-2020). Three previous DRB decisions established the layout of affordable units and their location within South Village. None of these DRB decisions were appealed. Testimony of Amanda Lafferty, Esq.
32. Upon construction of the proposed project, South Village will have affordable housing units on five different streets throughout the neighborhood. Testimony of Applicant.
33. The regional plan that applies to this application is the CCRPC ECOS Regional Plan adopted on June 20, 2018.
34. The regional plan's second strategy is to strive for 80% of new development in areas planned for growth. The proposed project conforms to this strategy because its location falls within the Suburban Planning Areas as displayed on the ECOS Future Land Use Map.

Conclusions of Law

Before issuing a permit, the District 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 Plan and has determined that the City Plan is sufficiently specific. *Re: The Mirkwood Group #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 19 (Vt. Envtl. Bd. August 19, 1996)*. Because we find that the City Plan is clear and unambiguous it is unnecessary to review the zoning bylaws. See *In re Frank A. Molgano Jr. 163 Vt. 25 (1994)*.

In Act 250 proceedings in which the provisions of a regional plan or a municipal plan are relevant to the determination of any issue:

- (1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;
- (2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact. 24 V.S.A. § 4348(h).

Maple Tree Place Associates, #4C0775-EB, Findings of Fact, Conclusions of Law, and Order at 53 (Vt. Envtl. Bd. June 25, 1998).

The Commission has reviewed the relevant portions of the municipal plan and the regional plan. The Commission finds the proposed project to be in conformance with both plans.

The project complies with Criterion 10.

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 4C1160R-11, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 4C1160R-11 is hereby issued.

DATED this 14th day of February, 2022.

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

Commissioners participating in this decision:

Kate Purcell

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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Exhibit List



Application #	4C1160R-11 (2/9/22)
Applicant(s)	South Village Communities, LLC
Landowner(s)	South Village Communities, LLC
Project Town(s):	South Burlington

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	4/28/21	001 Act 250 Application	Applicant
001a	7/29/21	001a Act 250 Application Revised 7-29-21	Applicant
002	4/28/21	002 Cover Letter to Coordinator (4/21/21)	Applicant
002a	7/29/21	002a Cover Letter Revised 7-29-21	Applicant
003	4/28/21	003 Schedule G	Applicant
003a	7/29/21	003a Schedule G Revised 7-29-21	Applicant
004	4/28/21	004 Location Map	Applicant
005	4/28/21	005 City of S. Burl Approval Lot 11	Applicant
006	4/28/21	006 City of S. Burl Approval Lot 48N	Applicant
007	4/28/21	007 P-2 Lotting Plat	Applicant
008	4/28/21	008 PL-1 Plat of Project Line Modification	Applicant
009	4/28/21	009 Construction Waste Management Plan	Applicant
010	4/28/21	010 Stormwater Narrative	Applicant
011	4/28/21	011 Prior PAS Findings	Applicant
012	4/28/21	012 PAS Matrix	Applicant
013	4/28/21	013 Photos of the Existing Conditions	Applicant
014	4/28/21	014 C1.0 Overall Site Plan	Applicant
015	4/28/21	015 Lot 11 - C1.1 Existing Conditions Site Plan	Applicant
016	4/28/21	016 Lot 11 - C2.0 Proposed Conditions Site Plan	Applicant
017	4/28/21	017 Lot 11 - C2.1 Proposed Grading Plan	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
018	4/28/21	018 Lot 11 - C2.2 Proposed Site Utility Plan	Applicant
019	4/28/21	019 Lot 11 - C3.0 Proposed EPSC Site Plan	Applicant
020	4/28/21	020 Lot 48N - C1.1 Existing Conditions Site Plan	Applicant
021	4/28/21	021 Lot 48N - C2.0 Proposed Conditions Site Plan	Applicant
022	4/28/21	022 Lot 48N - C2.1 Proposed Grading Plan	Applicant
023	4/28/21	023 Lot 48N - C2.2 Proposed Site Utility Plan	Applicant
024	4/28/21	024 Lot 48N - C3.0 Proposed EPSC Site Plan	Applicant
025	4/28/21	025 PAS -1 Existing Conditions per Consent Decree	Applicant
026	4/28/21	026 PAS-2 Consent Decree Existing Conditions at Project Sites	Applicant
027	4/28/21	027 PAS-3 Proposed On-site Impacts and Mitigation Area	Applicant
028	4/28/21	028 Class III Wetland Determination.	Applicant
029	4/28/21	029 Application Fee Reduction Request	Applicant
030	5/4/21	030 Email by Dist. Coord. to Applicant re Additional Information for Fee Reduction (5/4/21)	Act 250
031	5/5/21	031 Email by Patrick O'Brien, SD Ireland re Master Plan Narrative (5/5/21)	Applicant
032	5/5/21	032 Plan Showing Highlighted Previously Master Plan Reviewed Areas	Applicant
033	7/29/21	033 Traffic Impact Studies	Applicant
034	7/29/21	034 South Village Local Approvals	Applicant
035	7/29/21	035 Lot 11 - L-101 Lighting Plan	Applicant
035a	1/10/22	035a L-101 Lighting Plan and Details-Revised 01-07-2022	Applicant
036	7/29/21	036 Lot 48N - L-101 Lighting Plan	Applicant
037	7/29/21	037 Lot 11 - L-100 Landscaping Plan	Applicant
037a	1/10/22	037a L-100 Landscape Plan -Revised 01-07-2022	Applicant
038	7/29/21	038 Lot 48N - L-100 Landscaping Plan	Applicant
039	7/29/21	039 PAS Review Correspondence	Applicant
040	7/29/21	040 S Village homes DRC Standards	Applicant
041	7/29/21	041 Consolidated Communications ATS Letter	Applicant
042	7/29/21	042 Green Mountain Power ATS Letter	Applicant
043	9/15/21	043 Cover Letter by D. Marshall re Supplemental Information (9/15/21)	Applicant
044	9/15/21	044 Archaeological Resource Assessment and EOF Letter (10/1/2001)	Applicant
045	9/15/21	045 DEC Wetland Division Signoff (8/20/21)	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
046	9/15/21	046 Letter by UVM Consulting Archaeology Program re End of Field Letter for Archaeological Phase II/III Site Evaluation Study	Applicant
047	9/15/21	047 Draft HOA Covenants for The Cottages at South Village	Applicant
048	9/15/21	048 Lot 11 Sewer Allocation	Applicant
049	9/15/21	049 Lot 11 Water Allocation by South Burlington Water Department (1/22/21)	Applicant
050	9/15/21	050 Lot 48N Duplex Buildings Preliminary Water Allocation (1/22/21)	Applicant
051	9/15/21	051 Lot 48N Sewer Allocation	Applicant
052	9/15/21	052 Sample Deed w/Language for Shared and Common Elements Reference Lot 48N	Applicant
053	9/15/21	053 School Impact Questionnaire	Applicant
054	9/15/21	054 Municipal Impact Questionnaire	Applicant
055	9/15/21	055 Stormwater 9050 Permit Application Receipt (9/3/21)	Applicant
056	10/12/21	056 VTrans Comment Letter (10/12/21)	VTrans
057	10/27/21	057 Hearing/Party Status Request by L. Robert (10/27/21)	Opponent
058	10/29/21	058 Dept. of Ag. Review Letter re Consideration of Prime Ag Soils (10/29/21)	AAFM
059	11/3/21	059 Email by L. Robert re Wetland Runoff Photos Dated 10/27/21 (11/3/21) (Email 1)	Opponent
060	11/3/21	060 Email by L. Robert re Wetland Runoff Photos Dated 10/31/21 (11/3/21) (Email 2)	Opponent
061	11/22/21	061 Notice of Appearance by Colin McNeil, Esq., City of South Burlington (11/18/21)	Municipality
062	11/24/21	062 VTrans Additional Comments (11/24/21)	VTrans
063	11/29/21	063 Party Status Request by Paul and Sheryl Foxman (11/26/21)	Opponent
064	12/2/21	064 Letter by S. Pouliot, Adjoiner (12/2/21)	Opponent
065	12/2/21	065 Letter by CCRPC (12/2/21)	Regional Planning Commission
066	1/10/22	066 Cover Letter by Patrick O'Brien re HRO Response (1/10/22)	Applicant
067	1/10/22	067 WCG South Village Traffic Update 1-10-2022	Applicant
068	1/10/22	068 Architectural drawing 1-10-2022	Applicant
069	1/10/22	069 South Village Email by Danielle Ade - Revised Lot 11 Lighting 1-10-22	Applicant
070	1/10/22	070 L-200 Typical Planting and Landscape Details-Revised 01-07-2022	Applicant
071	1/19/22	071 Wastewater Permit #WW-4-2613-11 Issued January 18, 2022	Applicant
072	1/19/22	072 Wastewater Permit #WW-4-2613-12 Issued January 19, 2022	Applicant
073	1/21/22	073 Foxman Agreement Letter (1/20/22)	Abutter
074	1/28/22	074 Vt. DEC Authorization to Discharge Under General Permit 3-9050 Permit Number 4096-9050 Issued 1/28/22	Applicant
075	2/3/22	075 Email by Patrick O'Brien, SD Ireland re Construction Waste Reduction Plan - Approval by B. Surwilo, Solid Waste	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
076	2/9/22	076 DEC Watershed Management Division Discharge Permit 4096-INDC.2A Issued 1/30/18	Applicant
077	2/9/22	077 Email by P. O'Brien to District 4 Coordinator re Landscaping (2/9/22)	Applicant
078	2/9/22	078 South Village Landscaping Guidelines	Applicant
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CERTIFICATE OF SERVICE

I hereby certify on this 14th day of February 2022, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C1160R-11, 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

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Chair, City Council/Chair, City Planning Commission
Amanda Lafferty, Esq., Deputy City Attorney
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FOR YOUR INFORMATION

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Kate Purcell/Pam Loranger
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Susan Darnell
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Steve Pouliot
spouliot@vabvi.org

Dated at Essex Junction, Vermont, this 14th day of February, 2022.

/s/Christine Commo
Natural Resources Board Technician
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