

Vermont Superior Court  
Environmental Division  
2418 Airport Road, Suite 1  
Barre, VT 05641-8701  
(802) 828-1660  
September 18, 2012

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| Brian S. Dunkiel, Esq.  
| Dunkiel Saunders Elliott Raubvogel Ha  
| 91 College Street  
| Burlington VT 05401  
|  
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received  
9/20/12

Moran Plant A250 JO# 4-228

Docket No. 34-3-12 Vtec

Please see the enclosed ORDER signed by Judge Thomas G. Walsh on September 18, 2012.

FILED  
FILED

SEP 18 2012

VERMONT  
SUPERIOR COURT

ENVIRONMENTAL DIVISION

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 34-3-12 Vtec

In re Jurisdictional Opinion #4-228  
Development of Moran Plant/Waterfront North  
Burlington, Vermont

9/17/12  
DATE

**STIPULATION, FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND JUDGMENT ORDER**

NOW COME the City of Burlington, Vermont ("Burlington"), the Natural Resources Board Land Use Panel ("NRB"), and Alison Lockwood ("Lockwood"), and hereby stipulate that the Court may enter the following Findings of Fact, Conclusions of Law, and Judgment Order to resolve the above captioned matter:

**Findings of Fact**

1. Burlington obtained an Act 250 permit for Waterfront Park (LUP #4C0863 as amended by LUP#4C0863-1).
2. Burlington owns property to the north of Waterfront Park – totaling approximately 8.75 acres ± in size ("the Parcel").
3. The Parcel consists of a 6.5-acre parcel acquired by the City in 1991 and the City owned Moran Generating Plant property and operations yard, which were consolidated in 2010. A survey map reflecting the Parcel ("Parcel A" on the map) is attached hereto as Exhibit 1.
4. Burlington proposed to develop the Moran/Waterfront North project (Moran/WFN) on the Parcel.
5. In response to a request by Lockwood, the coordinator for the District #4 Environmental Commission issued a jurisdictional opinion (the "JO") finding jurisdiction over Moran/WFN.

Thomas G. Walsh, Environmental Judge

Tom Walsh

SO ORDERED

6. Burlington appealed the JO.
7. Subsequent to the issuance of the JO and this appeal, Burlington modified the scope of Moran/WFN.
8. The modifications included withdrawing renovations to the Moran Plant and surrounding area, removing the splash area/ice rink, and removing the Community Sailing Center boat storage yard and office/classroom building.
9. The project is now referred to as “Waterfront Access North” (“WAN”).
10. The WAN project will occur entirely within the boundaries of the Parcel (except where the bike path and Lake Street elements of the WAN project will be connected to the existing bike path and Lake Street).
11. The WAN project will cover approximately 70 percent of the Parcel. A revised Concept Site Plan for the WAN project, attached as Exhibit 2, reflects the changes from Moran/WFN to WAN by using a white masking overlay on the Moran/WFN project components that are not part of the WAN project.
12. WAN is primarily a transportation-based municipal project funded in large part by Federal Highway Administration (FHWA) grant funds.
13. The WAN project consists of the following:
  - a. improving and expanding Lake Street north from its present terminus;
  - b. reconfiguring and expanding the Bike Path from Penny Lane northward;
  - c. establishing a new parking lot east of the Water Department and Burlington Electric Department (BED) buildings containing approximately 75 spaces;
  - d. establishing additional parking up the length of Lake Street from Penny Lane to the boundary of the Urban Reserve;
  - e. upgrading existing parking behind the Water Department and BED buildings;
  - f. installing a storm water system for the parcel; and

- g. relocating and rebuilding the skatepark at a location north and west of its current location.
14. The scope of the WAN project represents a reduction in potential Act 250 impacts from Moran/WFN.
  15. The WAN project will not cause any physical change to the permitted Waterfront Park project. It does not call for any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit, or which may result in a significant adverse impact with respect to any of the criteria specified in 10 VSA Section 6086(a)(1) through (a)(10).
  16. No new parties could be affected by the reduction in the scope of the WAN project.
  17. Burlington intends to file an application to further amend LUP #4C0863-1.
  18. Burlington, NRB, and Lockwood attended a Court ordered mediation with attorney Christopher Ekman on August 29, 2012.
  19. At the mediation, the parties reached an agreement to resolve and settle this appeal.
  20. The parties' agreement is the product of a negotiated settlement and no party shall be prejudiced by it with respect to any future Act 250 permit applications pertaining to the WAN parcel.

#### **Conclusions of Law**

21. The Court retains jurisdiction of this *de novo* appeal.
22. The Parcel is separate and distinct from the Waterfront Park parcel, and was acquired by Burlington after the issuance of LUP #4C0863.
23. The WAN project, when considered alone, does not constitute "development" pursuant to 10 V.S.A. § 6001(3)(v) because it is a project for a municipal purpose that physically disturbs fewer than ten acres. In addition, the WAN project contains components of a Corrective Action Plan (CAP), approved by the Agency of Natural Resources. These

components are exempt from the definition of development under 10 V.S.A. § 6001(D)(vi)(I)(dd).

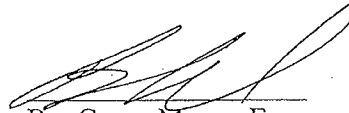
24. The WAN project will not cause any physical change to the permitted Waterfront Park project, or impact under Act 250 Rule 34(A). It does not call for any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit, or which may result in a significant adverse impact with respect to any of the criteria specified in 10 VSA Section 6086(a)(1) through (a)(10).
25. The WAN project will cause no cognizable change to permitted Waterfront Park project (LUP #4C0863, as amended).
26. The WAN project will cause no material change to the permitted Waterfront Park project (LUP #4C0863, as amended).
27. There is no Act 250 jurisdiction over the WAN project and no permit or permit amendment is required.

#### **Judgment Order**

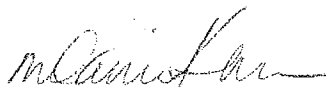
28. This appeal is dismissed with prejudice.
29. Each party shall bear its or her own costs and attorney fees.
30. The parties waive their rights to appeal this Judgment Order.
31. Burlington shall perform no work or development on the Waterfront Park parcel pursuant to the WAN project except to connect the bike path extension to the existing bike path, or on Lake Street, except to extend Lake Street within the Parcel and to connect the Lake Street extension with the existing Lake Street.

32. Within 60 days of the Court's entry of this Judgment Order, Burlington shall apply for an amendment to the existing Waterfront Park permit (LUP #4C0863) concerning the uses and management of the Waterfront Park.
33. For any public event involving 700 or more persons at the skatepark, and in order to appropriately regulate the flow of traffic and to direct event participants to appropriate parking locations, the director of the Department of Parks and Recreation shall insure that a uniformed traffic officer is located at or near the Parcel.
34. The skatepark shall be open only from dawn to dusk, unless changed by the City of Burlington.

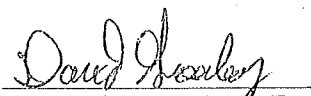
CITY OF BURLINGTON

  
 By: Gregg Meyer, Esq. 9/7/12  
 Brian Dunkiel, Esq. Date  
 Duly Authorized Agent

NATURAL RESOURCES BOARD  
 LAND USE PANEL

  
 By: Melanie Kehne, Esq. 9/7/12  
 Duly Authorized Agent Date

ALISON LOCKWOOD

  
 By: David Greenberg, Esq. 9/7/12  
 Duly Authorized Agent Date

SO ORDERED:

SEE PAGE ONE  
 Judge, Vermont Superior Court, Environmental Division Date

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33. For any public event involving 700 or more persons at the skatepark, and in order to appropriately regulate the flow of traffic and to direct event participants to appropriate parking locations, the director of the Department of Parks and Recreation shall insure that a uniformed traffic officer is located at or near the Parcel.

34. The skatepark shall be open only from dawn to dusk, unless changed by the City of Burlington.

CITY OF BURLINGTON



By: Gregg Meyer, Esq.  
Brian Dunkiel, Esq.  
Duly Authorized Agent

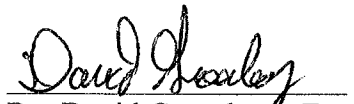
9/7/12  
Date

NATURAL RESOURCES BOARD  
LAND USE PANEL

By: Melanie Kehne, Esq.  
Duly Authorized Agent

\_\_\_\_\_  
Date

ALISON LOCKWOOD



By: David Greenberg, Esq.  
Duly Authorized Agent

9/7/12  
Date

**SO ORDERED:**

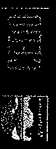
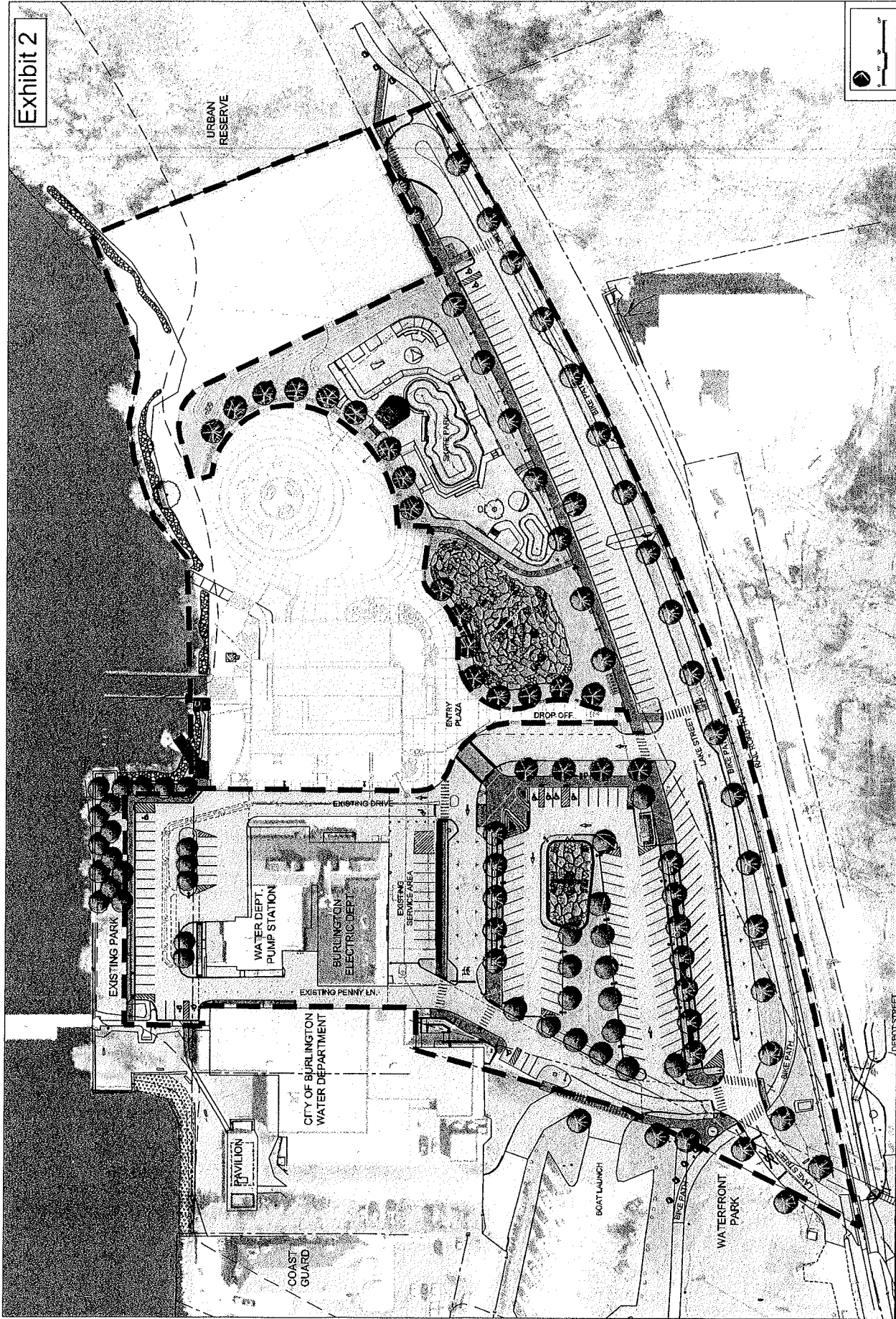
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Judge, Vermont Superior Court, Environmental Division

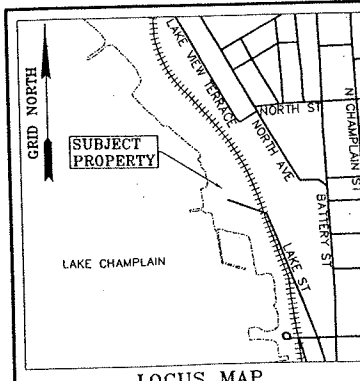
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Date





Exhibit 2

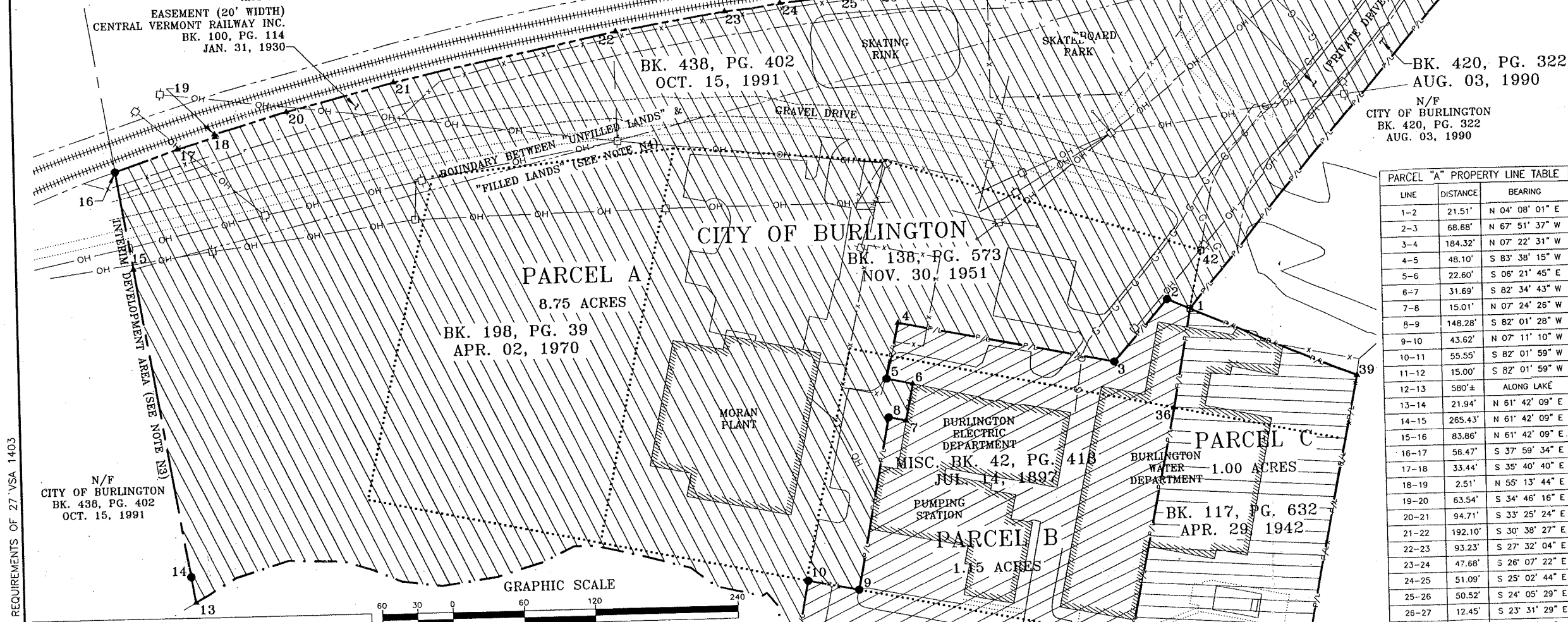




**REFERENCES:**  
 R1 - A plat entitled "A PORTION OF THE CENTRAL VERMONT RAILWAY, INC. LANDS BURLINGTON, VERMONT PROPERTY PLAT" prepared by Donald L. Hamlin Consulting Engineers, Inc. Essex Junction, VT, dated 10/1/91, drawing 3A, filed in Slide 241C of the City of Burlington Land Records.  
 R2 - A plat entitled "A PORTION OF THE CENTRAL VERMONT RAILWAY, INC. LANDS BURLINGTON, VERMONT PROPERTY PLAT" prepared by Donald L. Hamlin Consulting Engineers, Inc. Essex Junction, VT, dated 10/1/91, drawing 1B, filed in Slide 241B of the City of Burlington Land Records.  
 R3 - A plat entitled "A PORTION OF THE CENTRAL VERMONT RAILWAY, INC. LANDS BURLINGTON, VERMONT PLAN NOTES" prepared by Donald L. Hamlin Consulting Engineers, Inc. Essex Junction, VT, dated 10/1/91, drawing 3F, filed in Slide 242B of the City of Burlington Land Records.  
 R4 - A plat entitled "A PORTION OF THE CENTRAL VERMONT RAILWAY, INC. LANDS BURLINGTON, VERMONT PROPERTY PLAT" prepared by Donald L. Hamlin Consulting Engineers, Inc. Essex Junction, VT, dated 10/1/91, drawing 3E, filed in Slide 242A of the City of Burlington Land Records.  
 R5 - A plat entitled "A PORTION OF THE CENTRAL VERMONT RAILWAY, INC. LANDS BURLINGTON, VERMONT PROPERTY PLAT" prepared by Donald L. Hamlin Consulting Engineers, Inc. Essex Junction, VT, dated 10/1/91, drawing 1A, filed in Slide 241A of the City of Burlington Land Records.  
 R6 - A plat entitled "LANDS OF THE CITY OF BURLINGTON LAKE STREET, BURLINGTON, VERMONT PROPERTY PLAT THE MORAN PLANT" prepared by Lamoureux & Dickinson Consulting Engineers, Inc., Essex Junction, VT, dated 3/2/09, project number 09001, provided by the Resource Systems Group, Inc. White River Junction, Vermont.  
 R7 - A plat entitled "CITY OF BURLINGTON COMMUNITY DEVELOPMENT DEPARTMENT BURLINGTON, VERMONT SUBDIVISION PLAN OF A PORTION OF THE WATERFRONT PROPERTY" prepared by Donald L. Hamlin Consulting Engineers, Inc., Essex Junction, VT, last revised 9/14/93, drawing P-2, filed in Slide 273A of the City of Burlington Land Records.

**NOTES:**  
 N1 - This survey was performed using an electronic total station to traverse between control points established using dual frequency GPS receivers, resulting in a closure with a relative precision that exceeds 1:10000.  
 N2 - An average orthometric height of 103 feet was used for grid distance computations. A combined factor of 1.00005076 was used. All bearings, distances and coordinates are shown as Vermont Grid, NAD 83 in U.S. Survey Feet.  
 N3 - Interim Development Area limit based on an extension of the southerly boundary of 9 Lakeview Terrace in substitution of the "Conservation Map" that has not yet been documented.  
 N4 - Filled lands are impressed with the public trust doctrine pursuant to the lawsuit of State of Vermont and City of Burlington v. Central Vermont Railway, Inc. Supreme Court Docket No. 87-807.  
 N5 - Underground utilities located by others.  
 N6 - No easements was found for utilities shown hereon.

**BASIS OF BEARINGS & COORDINATES**  
 Datums: Horizontal - NAD 83 (CORSS96) SFC (4400 VT) ± FT  
 Vertical - NAVD83 (GEOID09)  
 EASEMENT  
 CITY OF BURLINGTON  
 BK. 439, PG. 195  
 OCT. 15, 1991



ORIGINAL DRAWING-INK ON POLYESTER FILM MEETING THE REQUIREMENTS OF 27 VSA 1403

N/F  
 CITY OF BURLINGTON  
 BK. 438, PG. 402  
 OCT. 15, 1991

EASEMENT (20' WIDTH)  
 CENTRAL VERMONT RAILWAY INC.  
 BK. 100, PG. 114  
 JAN. 31, 1930

EASEMENT (WIDTH VARIES)  
 CENTRAL VERMONT RAILWAY INC.  
 BK. 100, PG. 114  
 JAN. 31, 1930

EASEMENT (30' WIDTH)  
 UNITED STATE OF AMERICA  
 BK. 120, PG. 512  
 AUG. 10, 1945

BK. 420, PG. 322  
 AUG. 03, 1990

N/F  
 CITY OF BURLINGTON  
 BK. 420, PG. 322  
 AUG. 03, 1990

BK. 438, PG. 402  
 OCT. 15, 1991

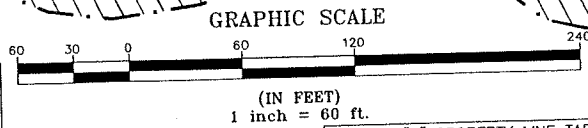
PARCEL A  
 8.75 ACRES  
 BK. 198, PG. 39  
 APR. 02, 1970

CITY OF BURLINGTON  
 BK. 138, PG. 573  
 NOV. 30, 1951

BURLINGTON ELECTRIC DEPARTMENT  
 MISC. BK. 42, PG. 418  
 JUL. 14, 1897

PARCEL C  
 1.00 ACRES  
 BURLINGTON WATER DEPARTMENT  
 BK. 117, PG. 632  
 APR. 29, 1942

PARCEL B  
 1.15 ACRES



**~LEGEND~**

- 5/8" DIA. IRON ROD SET FLUSH (UNLESS OTHERWISE NOTED) WITH VSE CAP
- ▲ UNMONUMENTED POINT
- ⊙ DRILL HOLE SET
- ⊠ CONCRETE MONUMENT FOUND
- ⊕ UTILITY POLE & GUY WIRE
- ⊖ GUY POLE
- N/F NOW OR FORMERLY OWNED BY
- OH— OVERHEAD UTILITY
- x— EDGE OF PAVEMENT
- ..... INTERIOR LOT LINE
- — — — — MEAN WATER MARK
- · — · — · — EASEMENT LIMIT
- · — · — · — RAILROAD EASEMENT LIMIT
- · — · — · — EDGE OF CONCRETE
- G — UNDERGROUND GAS LINE
- P/L — PROPERTY LINE
- ||||| RAILROAD TRACKS
- ▨ BUILDING

**PARCEL "B" PROPERTY LINE TABLE**

LINE	DISTANCE	BEARING
1-36	84.99'	S 81° 28' 55" W
36-37	252.11'	S 82° 47' 42" W
37-36	275'±	ALONG LAKE
12-11	15.00'	N 82° 01' 59" E
11-10	55.55'	N 82° 01' 59" E
10-9	43.62'	S 07° 11' 10" E
9-8	148.28'	N 82° 01' 28" E
8-7	15.01'	S 07° 24' 26" E
7-6	31.69'	N 82° 34' 43" E
6-5	22.60'	N 06° 21' 45" W
5-4	48.10'	N 83° 38' 15" E
4-3	184.32'	S 07° 22' 31" E
3-2	68.68'	S 67° 51' 37" E
2-1	21.51'	S 04° 08' 01" W

**PARCEL "C" PROPERTY LINE TABLE**

LINE	DISTANCE	BEARING
1-39	153.01'	S 04° 08' 01" W
39-40	267.30'	S 82° 13' 51" W
40-37	172'±	ALONG LAKE
37-36	252.11'	N 82° 47' 42" E
36-1	84.99'	N 81° 28' 55" E

**COORDINATE TABLE**

MON. NO.	DESCRIPTION	COORDINATE
1	4"x4" CONCRETE MONUMENT FOUND 0.1' ABOVE GROUND STABLE	N 722977.0 E 1451637.3
14	5/8" DIA. IRON ROD SET 0.5' ABOVE GROUND WITH CAP MARKED "VSE LS 527"	N 723711.23 E 1451165.70
16	5/8" DIA. IRON ROD SET FLUSH WITH CAP MARKED "VSE LS 527"	N 723876.81 E 1451473.25
42	4"x4" CONCRETE MONUMENT FOUND 0.2' ABOVE GROUND STABLE	N 722983.0 E 1451687.2

**PARCEL "A" PROPERTY LINE TABLE**

LINE	DISTANCE	BEARING
1-2	21.51'	N 04° 08' 01" E
2-3	68.68'	N 67° 51' 37" W
3-4	184.32'	N 07° 22' 31" W
4-5	48.10'	S 83° 38' 15" W
5-6	22.60'	S 06° 21' 45" E
6-7	31.69'	S 82° 34' 43" W
7-8	15.01'	N 07° 24' 26" W
8-9	148.28'	S 82° 01' 28" W
9-10	43.62'	N 07° 11' 10" W
10-11	55.55'	S 82° 01' 59" W
11-12	15.00'	S 82° 01' 59" W
12-13	580'±	ALONG LAKE
13-14	21.94'	N 61° 42' 09" E
14-15	265.43'	N 61° 42' 09" E
15-16	83.86'	N 61° 42' 09" E
16-17	56.47'	S 37° 59' 34" E
17-18	33.44'	S 35° 40' 40" E
18-19	2.51'	N 55° 13' 44" E
19-20	63.54'	S 34° 46' 16" E
20-21	94.71'	S 33° 25' 24" E
21-22	192.10'	S 30° 38' 27" E
22-23	93.23'	S 27° 32' 04" E
23-24	47.68'	S 26° 07' 22" E
24-25	51.09'	S 25° 02' 44" E
25-26	50.52'	S 24° 05' 29" E
26-27	12.45'	S 23° 31' 29" E
27-28	73.77'	S 19° 19' 55" E
28-29	52.50'	S 21° 38' 16" E
29-30	25.48'	S 20° 54' 12" E
30-31	70.98'	S 19° 37' 46" E
31-32	54.08'	S 19° 02' 47" E
32-33	23.69'	S 19° 02' 47" E
33-34	72.53'	S 18° 55' 39" E
34-35	90.27'	S 18° 10' 04" E
35-1	368.62'	N 68° 49' 03" W

MEAN WATER MARK  
 ELEVATION = 95.5' (NGVD 29)

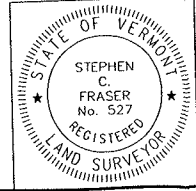
LAKE CHAMPLAIN  
 STATE OF VERMONT  
 NAVIGABLE WATERS

Approval of this lot line adjustment plat does not constitute the creation of a separate parcel or lot. It adjusts the physical location of the common boundary of the adjoining parcels or lots. This lot line adjustment has been approved by:

City of Burlington Administrative Officer/ Assistant Administrative Officer  
 Date: \_\_\_\_\_ Zoning Permit # \_\_\_\_\_

I certify that this plat, is based on information abstracted from documents, parcel evidence, and physical evidence. The survey work identified hereon is consistent with this information.  
 I certify that this plat meets the requirements of 27 VSA Section 1403 and complies with Vermont Board of Land Surveyors Rules, Part 5.4 and 5.5, adopted under 26 VSA Section 2544(a).

Signed: *Stephen C. Fraser* Date: 11/30/10  
 Stephen C. Fraser, L.S. #527



**BOUNDARY SURVEY**  
 LANDS OF  
 CITY OF BURLINGTON  
 off LAKE STREET  
 BURLINGTON, VERMONT

SCALE: 1" = 60' SURVEY DATE: MAY 2010 PLAT DATE: 11-30-10  
 VSE PROJECT #: 10019 DRAWN BY: JMR SHEET 1 OF 1  
 Vermont Survey and Engineering, Inc.  
 79 River Street, Montpelier, Vermont  
 (802) 229-9138 ~ info@vermontsurvey.com