

Office of
the Mayor
Burlington,
Vermont



Miro Weinberger
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FOR IMMEDIATE RELEASE

September 27, 2012
Contact: Mike Kanarick
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**Mayor Miro Weinberger Applauds Legal Settlement Clearing Way
for Forward Progress with Waterfront Access North Project
Bike Path Renovation, New Skatepark, Lake Street Extension, and New
Storm Water Controls to Move Forward to Construction in 2013**

Burlington, VT – Mayor Miro Weinberger today announced a legal settlement that resolves the last barrier to construction of the Waterfront Access North project. The project will renovate and relocate the bike path north of Waterfront Park, construct a new world-class skatepark, extend Lake Street, add street trees, landscaping, and parking, install a low-impact development (LID) storm water system, and remediate contaminated soils in the area. The legal settlement, approved last week by the Vermont Superior Court Environmental Division, involves the City of Burlington, the Vermont Natural Resources Board Land Use Panel, and Alison Lockwood, a resident of Lake Street. The settlement provides that an Act 250 permit is not necessary for the project making the project “shovel ready.”

“This settlement is good news for the City’s residents and visitors who enjoy Burlington’s waterfront area and comes at the right time for shovels to hit the ground during next year’s construction season,” said Weinberger. “Our next step is for Burlington voters to approve the remaining project funding by voting yes on the two November 6th ballot items that will help to fund this waterfront project.”

The Waterfront Access North project consists of the following:

- Improving and expanding Lake Street north to the southern boundary of the Urban Reserve with sidewalks, new road surface, street lighting, trees, and undergrounding of overhead utilities;

- Realigning and expanding the Bike Path from Penny Lane to the southern boundary of the Urban Reserve;
- Consolidating parking into a lot east of the Water Department and Burlington Electric Department (BED) buildings containing approximately 75 spaces;
- Establishing additional parking up the length of Lake Street from Penny Lane to the boundary of the Urban Reserve;
- Upgrading existing parking in the Fishing Pier parking lot west of the Water Department and BED buildings;
- Installing an innovative LID storm water system to protect Lake Champlain;
- Remediating a known Brownfield; and
- Relocating and building a new skatepark at a location northwest of its current location.

The City Council approved two ballot items for the November 6th election that would help fund the construction of the Waterfront Access North Project. One ballot item seeks voter approval for \$6,050,000 of general obligation bonds or notes for improvements that serve the Waterfront Tax Increment Finance (TIF) District. Another ballot item seeks voter approval for the creation of a Bike Path Improvement and Maintenance Fund, along with a ½ penny property tax increase dedicated to the new fund.

“The Waterfront TIF bond and bike path improvement fund, along with a highly competitive \$3.1 million TIGER (Transportation Investment Generating Economic Recovery) Discretionary Grant from the Federal Highway Administration (FHWA) round out the funding for the Waterfront Access North project,” said CEDO Director Peter Owens. “With voter approval on November 6th, the City will be ready to bring long-awaited recreational and environmental improvements to Burlington’s waterfront area.”

Please see the attached documents, including:

- *Signed Vermont Superior Court Stipulation, Findings of Fact, Conclusions of Law, and Judgment Order (with maps attached as exhibits)*
- *Waterfront Access North Site Plan*

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

| Brian S. Dunkiel, Esq. |
| Dunkiel Saunders Elliott Raubvogel Ha |
| 91 College Street |
Burlington VT 05401

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

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.

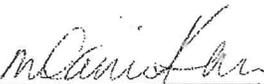
32. Within 60 days of the Court's entry of this Judgment Order, Burlington shall apply for an amendment to the existing Waterfront Park permit (LUP #4C0863) concerning the uses and management of the Waterfront Park.
33. For any public event involving 700 or more persons at the skatepark, and in order 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.
Brian Dunkiel, Esq.
Duly Authorized Agent

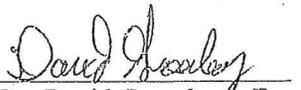
9/7/12
Date

NATURAL RESOURCES BOARD
LAND USE PANEL


By: Melanie Kehne, Esq.
Duly Authorized Agent

9/7/12
Date

ALISON LOCKWOOD


By: David Greenberg, Esq.
Duly Authorized Agent

9/7/12
Date

SO ORDERED:

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

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CITY OF BURLINGTON



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

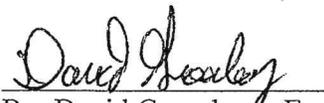
9/7/12
 Date

NATURAL RESOURCES BOARD
 LAND USE PANEL

By: Melanie Kehne, Esq.
 Duly Authorized Agent

Date

ALISON LOCKWOOD



By: David Greenberg, Esq.
 Duly Authorized Agent

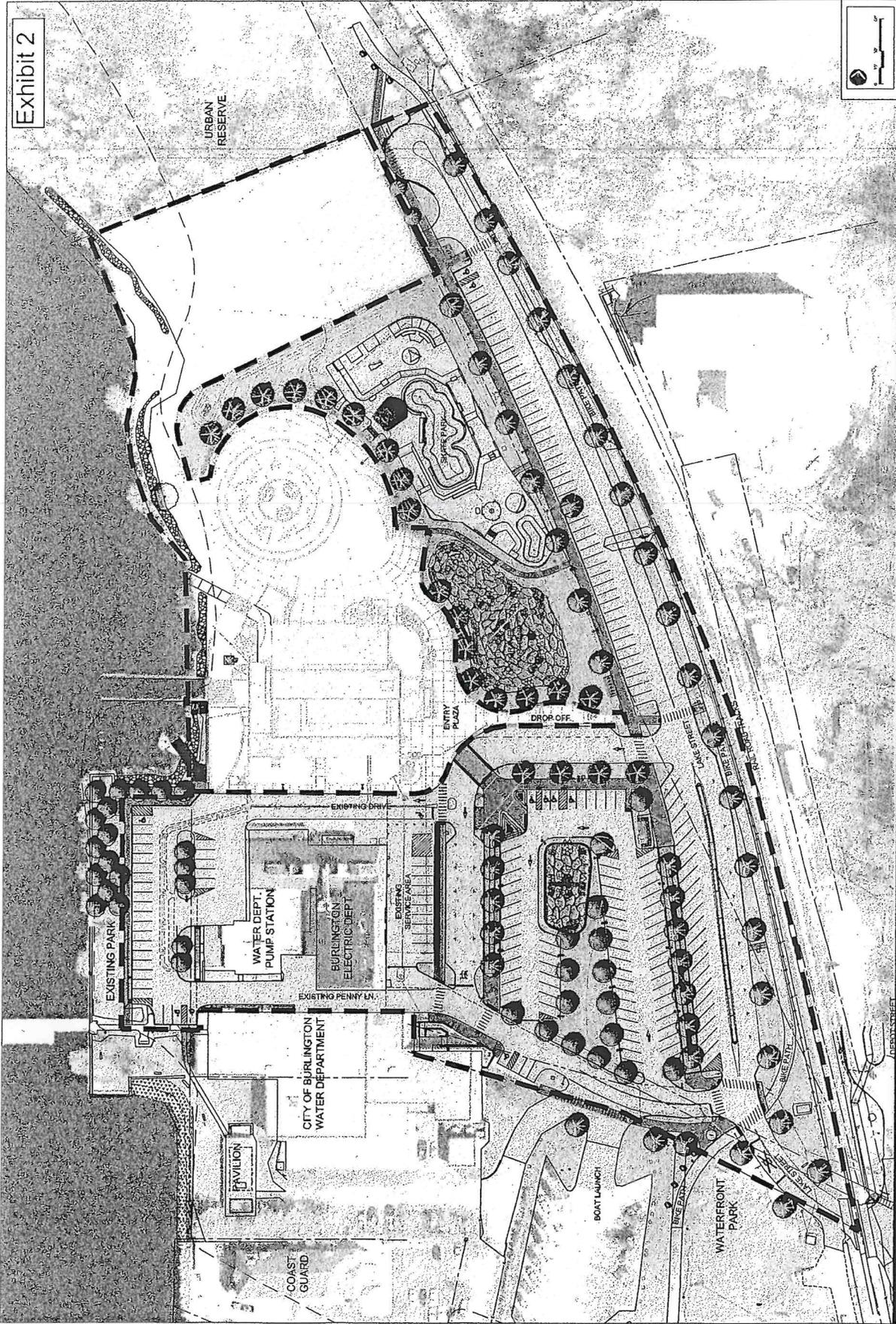
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 Date

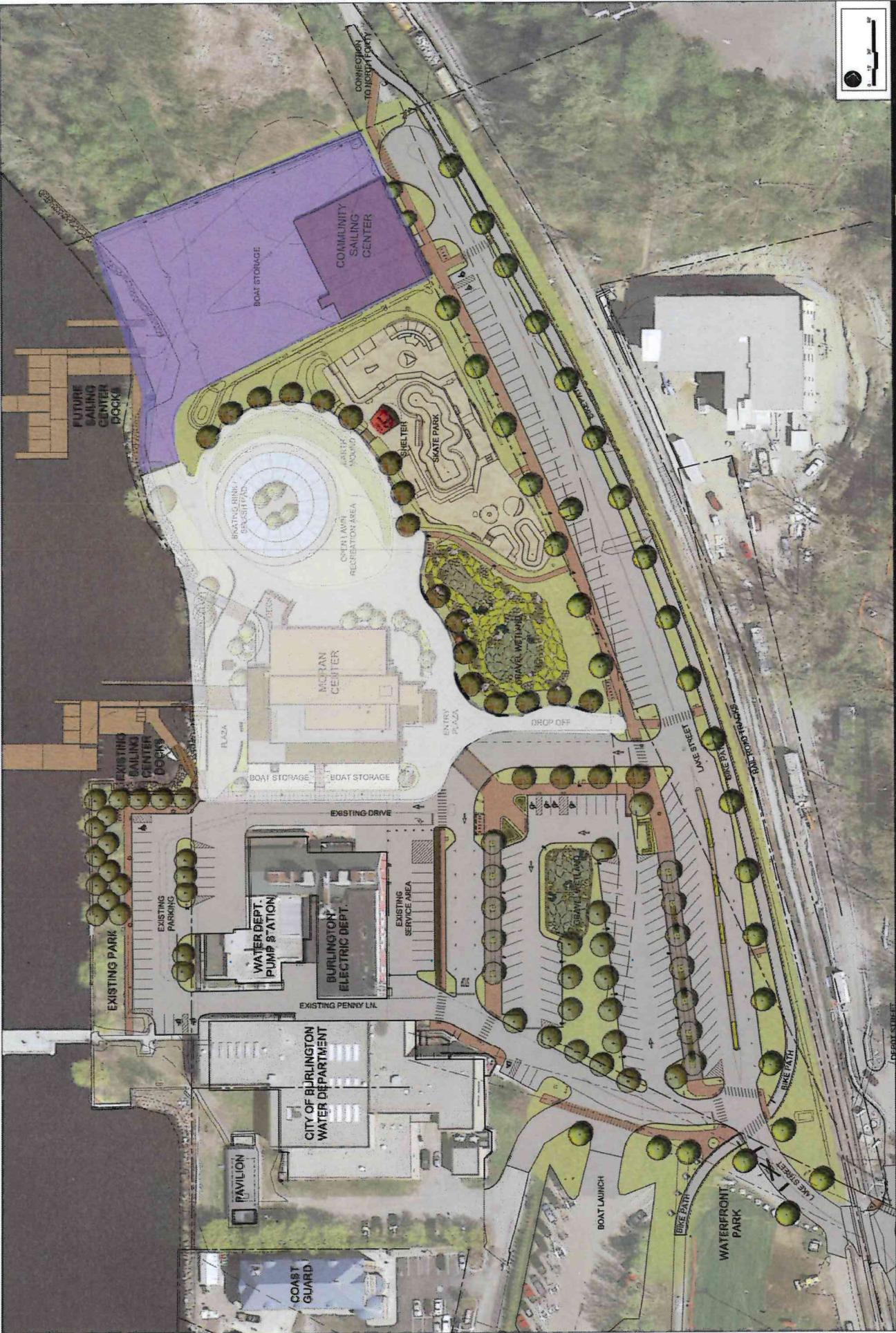
SO ORDERED:

 Judge, Vermont Superior Court, Environmental Division

 Date

Exhibit 2





STREET GROUP
 100 WASHINGTON STREET
 BURLINGTON, VT 05401
 TEL: 802-255-1234
 WWW.STREETGROUP.COM

MORAN CENTER
 CONCEPT SITE PLAN

September 11, 2013

