The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov.

Burlington Planning Commission
149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/pz

Burlington Planning Commission
Tuesday, February 23, 2021, 6:30 P.M.
Remote Meeting via Zoom

To Join the Meeting on a Computer
Link: https://us02web.zoom.us/j/89830163519

To Join the Meeting on a Phone
Number: +1 312 626 6799 Meeting ID: 898 3016 3519

AGENDA

I. Agenda
II. Chair’s Report
III. Director’s Report
IV. Public Forum
See the Agenda Packet for details on how to participate in the public forum for this meeting.

V. Public Hearing ZA-21-03: R-L Boundary at 925 North Ave (Time Certain 6:45pm)
The Commission will hold a public hearing on a proposed amendment to relocate the R-L zoning district boundary that bisects the property at 925 North Avenue. Information related to this item is included in the agenda packet on p. 4.

Staff Recommendation: Approve the Municipal Bylaw Amendment report and refer the amendment to City Council with recommendation.

VI. Public Hearing ZA-21-04: Adaptive Reuse Definition
The Commission will hold a public hearing on a proposed amendment to update the Adaptive Reuse definition in the Burlington CDO. This amendment has been recommended by the Commission’s Ordinance Committee. Information related to this item is included in the agenda packet on p. 12.

Staff Recommendation: Approve the Municipal Bylaw Amendment report and refer the amendment to City Council with recommendation.

VII. Public Hearing ZA-21-05: Parking Garage Illumination Standard
The Commission will hold a public hearing on a proposed amendment to update references to IESNA lighting standards in the Burlington CDO. Information related to this item is included in the agenda packet on p. 14.

Staff Recommendation: Approve the Municipal Bylaw Amendment report and refer the amendment to City Council with recommendation.

VIII. Public Hearing ZA-21-06: Shoreline Property Setbacks and Buffer
The Commission will hold a public hearing on a proposed amendment to establish a maximum front yard setback and shoreline naturalization for shoreline properties in the Burlington CDO. This amendment has
been recommended by the City's Conservation Board and the Commission's Ordinance Committee. Information related to this item is included in the agenda packet on p. 16.

**Staff Recommendation:** Approve the Municipal Bylaw Amendment report and refer the amendment to City Council with recommendation.

IX. **Open Space Protection Plan Addendum**
Members of the Conservation Board and the consulting team leading the development of the Open Space Protection Plan addendum will attend to give a presentation and update to the Planning Commission.

X. **Commissioner Items**
  a. Committee Reports
  b. Joint Meeting with Council Ordinance Committee RE: Short Term Rentals on March 9 at 6:30

XI. **Minutes & Communications**
  a. The minutes of the February 9 meeting are enclosed in the agenda packet on p. 23
  b. Communications are enclosed in the agenda packet beginning on p. 26

XII. **Adjourn**
** Guidance for Participating in a Virtual Planning Commission Meeting **

As social distancing measures to preserve public health and safety continue to be required to prevent the spread of COVID-19, or are recommended as a standard practice, the Office of City Planning will be supporting the Planning Commission to conduct their meetings online via Zoom. Here is information about how to join a virtual meeting, and what to expect while participating.

** General Guidance for Public Participation **

Please remember that in this digital meeting environment, meetings are open to the public and anyone may be watching or listening even if you cannot see them. Meetings will be recorded, and both the recording and chat content of the meeting will be maintained as a public record.

Please ensure your display photo and screen name are professional, such as using your first and last name. Please test your audio and video prior to the start of a meeting, and familiarize yourself with how to join a meeting by your chosen method. And finally, please be patient with us. Technology doesn’t always work as planned, and we are all learning how to hold a successful virtual meeting!

** How to Join a Virtual Meeting **

Zoom allows participation via either computer or telephone. Each agenda for a meeting that will be conducted virtually will include details about how to join via either of these options, including a web address, phone number, Meeting ID, and password.

If you participate via computer, you have the option of seeing Commissioner videos and any presentation materials that may be shared. If you use either a standard phone or cell phone to call in, you will only hear the audio portion of the meeting. If you join via a smartphone, you may have the option to download the Zoom app, which will enable you to see and hear the meeting.

** How to Participate in a Virtual Meeting **

During meetings, only Planning Commission members and limited staff members will be viewed on video. Members of the public attending a meeting will be muted, except when invited to speak during public forum or a public hearing. Whether members of the public can speak at other times during the meeting is the discretion of the Chair.

If you want to speak during public forum, please take the following steps to assist us in making this process run as smoothly as possible:

- Email staff at mtuttle@burlingtonvt.gov by 5pm on the day before a meeting to indicate your interest in speaking. You do not need to provide your comments. Staff will enable your microphone as your name is called from a list of interested speakers.
- During a meeting, you can use the “Raise Hand” feature, or indicate in a chat message that you wish to speak during public forum. Staff will enable your microphone as your name is called.
- If you are interested in submitting your comments in writing instead of speaking during the meeting, you may do so by 5pm the day before a meeting, they will be forwarded to the Commissioners ahead of the meeting.
TO: Planning Commission
FROM: Meagan Tuttle, Principal Planner, Office of City Planning
DATE: January 27, 2021
RE: Proposed CDO Amendment ZA-21-03: R-L Boundary at 925 North Ave.

Overview & Background
This amendment was requested by the Board of Trustees for the Burlington Elks Lodge #916, located at 925 North Avenue. Representatives from the Elks have discussed this property with the Mayor and a number of City departments since 2014. Various options have been considered to enable the future use of the portion of the property abutting North Avenue by the Elks, while balancing conservation and connectivity to the Bike Path and adjacent Arms Forest and Rock Point lands. The Elks have re-engaged the City in this discussion, with a request to move the boundary between the R-L and RCO zoning districts to the west.

The Elks’ property at 925 North Avenue stretches east to west between North Avenue and the lakeshore, intersecting the bike path easement, and north to south between the boundary of the residential properties along Killarney Drive and the Arms Park and Rock Point properties. The approximately 400 feet of depth of the parcel from North Avenue is zoned R-L, while the balance of the property is zoned RCO-Conservation.

The Elks are requesting that the R-L boundary be moved to the west, from its current point between 25 and 41 Killarney Drive to a point between 65 and 75 Killarney Drive—a distance of approximately 340 feet. According to a survey conducted by the Elks, this change would rezone approximately 2.4 acres of the property from RCO to R-L. This is illustrated on the maps attached to this memo.

The requested change has been determined by the Elks to enable flexibility for additions or alterations to the Elks property to remain viable in its current location. Presently, the portion of the property zoned R-L is nonconforming in its lot coverage. The current R-L boundary encompasses just the developed portion of the property, with a 35% lot coverage limit. The requested change would move the boundary line west, beyond the clearing behind the Elks parking lot, into the wooded area abutting Arms Park. The boundary has been proposed to enable the property to become conforming and allow a modest increase in lot coverage to meet the Elks future needs.

The attached maps indicate portions of the property are also within the Natural Resource Overlay zone—specifically significant natural areas and wetland areas mapped as part of the Open Space Protection Plan. The NR Overlay-Natural Areas zone applies to much of the 2.4 acres requested to be rezoned. There are several trails traversing the private property that connect North Avenue and the bike path to trails in Arms Park and Rock Point.

Proposed Amendment

Amendment Type

<table>
<thead>
<tr>
<th>Amendment Type</th>
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</thead>
<tbody>
<tr>
<td>Text Amendment</td>
</tr>
<tr>
<td>Map Amendment</td>
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<tr>
<td>Text &amp; Map Amendment</td>
</tr>
</tbody>
</table>

Purpose Statement

The intent of the proposed amendment is to rezone approximately 2.4 acres of the property located at 925 North Avenue from RCO-C to R-L.
Proposed Amendments

The following amendments to the Burlington CDO are included in this proposal:

1. **Amend map 4.3.1-1 Base Zoning Districts**
   - This rezones 2.4 acres of the property at 925 North Avenue from RCO-C to R-L. See attached maps.

2. **Amend maps 4.4.5-1 Residential Zoning Districts; 4.4.6-1 Recreation, Conservation, Open Space Districts; and 4.5.1-1 Design Review Overlay**
   - These changes ensure consistency among other maps tied to either the RCO or Residential zoning districts. See attached maps.

The excerpt of map 4.5.4-1 Natural Resource Overlay District is not proposed to be amended, and is included herein only to illustrate where the overlay districts apply to the portion of the property being rezoned.

Relationship to planBTV

*This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).*

<table>
<thead>
<tr>
<th>Theme</th>
<th>Dynamic</th>
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<tbody>
<tr>
<td>Land Use</td>
<td>Conserve</td>
<td>Sustain</td>
<td>Grow</td>
<td></td>
</tr>
</tbody>
</table>

Compatibility with Proposed Future Land Use & Density

The proposed amendment is compatible with the future land use plan in planBTV: *Comprehensive Plan.* planBTV identifies the North Avenue Corridor as an area planned to accommodate future growth, while the lands to the west and south of the developed area of the Elks Property as an area to conserve. Rezoning a portion of the property to RL enables greater intensity of development on the Elks property near North Avenue, while protecting the open space and natural communities contained on the western portion of the property. The Natural Resource Overlay districts are not proposed to change, and provide an additional protection against development encroaching into the significant natural areas on the property.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety or affordability.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<table>
<thead>
<tr>
<th>Planning Commission Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft Amendment prepared by: Requested by property owner</td>
</tr>
<tr>
<td>City Council Process</td>
</tr>
<tr>
<td>Ordinance Cmte discussion</td>
</tr>
<tr>
<td>First Read &amp; Referral to Ordinance Cmte</td>
</tr>
<tr>
<td>----------------------------------------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Excerpt of Base Zoning Districts Map

Base Zoning Districts
- Neighborhood Activity Center (NAC)
- Residential - Low Density (RL)
- Waterfront Residential - Low Density (RL-W)
- RCO - Recreation/Greenspace (RCO-RG)
- RCO - Conservation (RCO-C)
- Change RCO to RL

Elks Lodge
Arms Park
Rock Point

Burlington Comprehensive Development Ordinance, Map 4.3.1-1
Proposed Map for ZA-21-03, January 22, 2021
TO: Planning Commission  
FROM: Mary O’Neil, Principal Planner  
       Scott Gustin, Principal Planner & Zoning Division Manager  
DATE: January 27, 2021  
RE: Proposed CDO Amendment ZA-21-04: Adaptive Reuse Definition

**Overview & Background**

Adaptive Reuse, in accepted language and common development practice refers to the process of reusing an old site or building for a purpose other than which it was built or for which it was designed, while retaining their historic features. Along with brownfield reclamation, adaptive reuse is often utilized as a key tool in land conservation and the reduction of urban sprawl. Retention and rehabilitation of existing buildings also reduces the consumption of building materials, resources, energy and water needed for new construction.

Adaptive reuse deals with the issues of conservation and heritage policies. When old buildings become unsuitable for their programmatic requirements, as progress in technology, politics, and economics moves faster than the built environment, adaptive reuse comes in as a sustainable option for the reclamation of sites. In many situations, the types of buildings most likely to become subjects of adaptive reuse include 1) industrial buildings, as the process of manufacture moves away from cities; 2) political buildings, such as palaces and buildings which cannot support current and future visitors of the site; and 3) community buildings such as churches or schools where the use has changed over time. (Think the Adams School on South Union Street, or the Steeple Market in Fairfax.)

Adaptive reuse is as an effective way of reducing urban sprawl and environmental impact. By reusing an existing structure within a site, the energy required to create these spaces is lessened, as is the material waste that comes from destroying old sites and rebuilding using new materials. Through adaptive reuse old, unoccupied buildings can become suitable sites for many different types of use. It is the structural example of reduce-reuse-recycle.

The current Article 13 definition of adaptive reuse misses the key point as to reuse of an historic structure for something other than what it was originally built for. This amendment would revise the definition to include that point.

The Planning Commission Ordinance Committee discussed this amendment October 1, 2020 and unanimously recommended forwarding the amendment to the full Planning Commission for consideration.

**Proposed Amendment**

<table>
<thead>
<tr>
<th>Amendment Type</th>
<th>Map Amendment</th>
<th>Text &amp; Map Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose Statement</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The intent of the proposed amendment is to more accurately reflect the intent and purpose of adaptive reuse as it pertains to reuse of historic buildings.

**Proposed Amendments**

Deleted language is crossed out and new language is underlined in red.
Sec. 13.1.2 Definitions

Adaptive Reuse: For the purposes of this ordinance, adaptive reuse shall refer to the rehabilitation and reuse of a building or site listed or eligible for listing in the United States Department of the Interior's National Register of Historic Places or the Vermont State Register of Historic Places for a purpose other than that for which it was built or for which it was designed where alterations do not radically change, obscure, or destroy character-defining spaces, materials, features or finishes.

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

<table>
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<td>Sustain</td>
<td>Grow</td>
<td></td>
</tr>
</tbody>
</table>

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density. Standards as to adaptive reuse remain unchanged. The amendment revises the Article 13 definition to better reflect the intent and purpose of adaptive reuse of historic buildings.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety or affordability.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.

Process Overview

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<table>
<thead>
<tr>
<th></th>
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<td>Ordinance Cmte discussion</td>
<td>Ordinance Cmte recommend as modified</td>
<td>Second Read &amp; Public Hearing</td>
<td>CCOC Recommends Approval &amp; Adoption</td>
<td>Rejected</td>
</tr>
</tbody>
</table>
TO: Planning Commission  
FROM: Mary O’Neil, Principal Planner  
Scott Gustin, Principal Planner & Zoning Division Manager  
DATE: January 27, 2021  
RE: Proposed CDO Amendment ZA-21-05: Parking Garage Illumination Standard

Overview & Background
Sec. 5.5.2, Outdoor Lighting, (f) Specific Outdoor Lighting Standards, 5, Parking Garage Lighting, of the CDO sets the standard for illumination within parking garages. The language presently reads:

A. Light levels shall not exceed minimums recommended in IESNA document RP-20-98 or current edition.

This standard is out of date. The referenced document has been replaced (not simply updated) at least twice. Rather than referring to a specific document, the Planning Commission Ordinance Committee recommended changing the section to simply refer to the current IESNA (Illuminating Engineering Society of North America) standard for parking garage illumination.

The Planning Commission Ordinance Committee discussed this amendment April 4, 2019 and unanimously recommended forwarding the amendment to the full Planning Commission for consideration.

Proposed Amendment

Amendment Type

<table>
<thead>
<tr>
<th>Text Amendment</th>
<th>Map Amendment</th>
<th>Text &amp; Map Amendment</th>
</tr>
</thead>
</table>

Purpose Statement
The intent of the proposed amendment is quite simply to refer to the current lighting standard for parking garages as established by IESNA.

Proposed Amendments
Deleted language is crossed out and new language is underlined in red.

[Begin text amendment]

PART 5: Performance Standards

Sec. 5.5.2 Outdoor Lighting
(f) Specific Outdoor Lighting Standards
5. Parking Garage Lighting
Recommended illumination levels for parking garages are generally higher and more uniform that that of exterior parking lots. Non-cut-off, up-light and in-direct light is often used to create a uniform lighting environment and an added feeling of security.

A. Light levels shall not exceed minimums currently recommended in by IESNA document RP-20-98 or current edition.
B. Any fixture visible from the exterior of the garage facility shall be a full cutoff or cut-off fixture or shall be constructed in a manner that prevents glare to be visible from the exterior of the parking garage (see examples pictured below)

6. – 9. As written.

[End text amendment]

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

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<td></td>
</tr>
</tbody>
</table>

Compatibility with Proposed Future Land Use & Density
The proposed amendment does not impact the types or density of potential land use and density. It simply brings the standards for parking garage illumination up to date, and the wording is such that reference will remain current.

Impact on Safe & Affordable Housing
The proposed amendment has no impact on housing safety or affordability.

Planned Community Facilities
The proposed amendment has no impact on planned community facilities.

Process Overview
The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions.

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<th>City Council Process</th>
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<tbody>
<tr>
<td>Draft Amendment prepared by: Staff, PC OC</td>
<td>First Read &amp; Referral to Ordinance Cmte</td>
</tr>
<tr>
<td>Presentation to &amp; discussion by Commission 1/26/21</td>
<td>Ordinance Cmte discussion</td>
</tr>
<tr>
<td>Approve for Public Hearing 1/26/21</td>
<td>Ordinance Cmte recommend as modified</td>
</tr>
<tr>
<td>Public Hearing 2/23/21</td>
<td>Second Read &amp; Public Hearing</td>
</tr>
<tr>
<td>Approved &amp; forwarded to Council</td>
<td>CCOC Recommends Approval &amp; Adoption</td>
</tr>
<tr>
<td>Continue discussion</td>
<td>Rejected</td>
</tr>
</tbody>
</table>
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TO: Planning Commission  
FROM: Scott Gustin, Principal Planner & Zoning Division Manager  
DATE: February 23, 2021  
RE: Proposed CDO Amendment ZA-21-06: Shoreline property setbacks & buffer zone

Overview & Background
This amendment seeks to establish a maximum front yard setback for shoreline properties in the waterfront residential districts and to provide a measure of shoreline naturalization upon development of shoreline properties.

The maximum front yard setback is proposed to remedy a recurring problem wherein the front yard setback, based on the average of neighboring properties, pushes development closer towards the shoreline and further into the riparian and littoral conservation zone. The shoreline is irregular. As a result, many shoreline properties vary in depth. In turn, placement of homes on these properties also varies. The residential front yard setback is based on the average of neighboring homes and works well in uniform neighborhoods. The average in these cases provides consistency along the street edge. Among shoreline properties, the variability of lot configurations and building locations renders the use of the average inappropriate. In some cases, strict use of the average actually pushes redevelopment closer towards the shoreline than existing development, counter to the intent of the riparian and littoral conservation zone. This amendment proposes a maximum front yard setback for waterfront residential properties to avoid recurrence of this problem.

The provision for shoreline naturalization is intended to establish a development threshold for improving shoreline conditions by allowing for some vegetative regeneration. Within the riparian and littoral conservation zone, development involving site work is reviewed by the Conservation Board with an eye towards tree retention and stormwater management capacity. Redevelopment of Burlington’s widely developed shorelines has a fairly low bar for shoreline impacts. Existing conditions cannot be made worse, but there is currently no provision for improving vegetative conditions along the shoreline. The proposed amendment, applied to development above a certain threshold, will allow for some degree of vegetative regeneration by establishing no-mow areas along the shoreline.

The Conservation Board reviewed this draft amendment December 7, 2020 and unanimously recommended approval. The Planning Commission Ordinance Committee discussed this amendment January 7, 2021 and unanimously recommended forwarding the amendment to the full Planning Commission for consideration.

Proposed Amendment

Amendment Type

<table>
<thead>
<tr>
<th>Text Amendment</th>
<th>Map Amendment</th>
<th>Text &amp; Map Amendment</th>
</tr>
</thead>
</table>

Purpose Statement

The intent of the proposed amendment is to enhance protection of the city’s environmentally sensitive shorelines. The city has already identified the need to protect surface waters from encroaching development and from nonpoint source pollution associated with stormwater runoff. It has also identified the need to preserve natural vegetative cover along the shoreline to protect native plants, wildlife habitat and corridors, and water quality.
The proposed maximum setback for shoreline properties within the waterfront residential zones will substantially limit occurrences of the average front yard setback requirement pushing development closer towards the shoreline. The no-mow provision is a simple and effective way to allow for vegetative regeneration along the shoreline. Such regeneration is consistent with the city’s articulated goals of protecting shoreline integrity, water quality, and wildlife habitat.

**Proposed Amendments**

Deleted language is crossed out and new language is underlined in red.

**[Begin text amendment]**

**Sec. 4.4.5 Residential Districts**

(a) Purpose:
As written.

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

**Table 4.4.5-1: Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W**

<table>
<thead>
<tr>
<th>Use</th>
<th>Lot Frontage</th>
<th>Lot Size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(linear feet)</td>
<td>(square feet)</td>
</tr>
<tr>
<td>RL, WRL</td>
<td>Min: 60’</td>
<td>Min: 6,000</td>
</tr>
<tr>
<td>RM, WRM</td>
<td>Min: 30’</td>
<td>Min: 6,000</td>
</tr>
<tr>
<td>RM, WRM</td>
<td></td>
<td>Min: NA</td>
</tr>
<tr>
<td>DUPLEX AND ABOVE</td>
<td></td>
<td>Min: 10,000</td>
</tr>
</tbody>
</table>

1. The DRB may adjust the frontage requirements for lots fronting on cul-de-sacs, multiple streets, or corner lots reflecting the existing neighborhood pattern on each respective street.
2. There are no minimum lot size or frontage requirements in the RH District.
3. Exception: Larger minimum lot size in RL and WRL larger lot overlay district; refer to Section 4.5.5 & Table 5.5-1.

**Table 4.4.5-2: Base Residential Density**

<table>
<thead>
<tr>
<th>District</th>
<th>Maximum dwelling units per acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOW DENSITY: RL, RL-W</td>
<td>7 units/acre</td>
</tr>
<tr>
<td>MEDIUM DENSITY: RM, RM-W</td>
<td>20 units/acre</td>
</tr>
<tr>
<td>HIGH DENSITY: RH</td>
<td>40 units/acre</td>
</tr>
</tbody>
</table>

Inclusive of new streets but exclusive of existing streets, and without bonuses or any Inclusionary Zoning allowances.
<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Max. Lot Coverage$^1$</th>
<th>Setbacks$^{1,3,4,5,6}$</th>
<th>Max. Height$^1$</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Front$^2$</td>
<td>Side$^3$</td>
</tr>
<tr>
<td>RL; WRL</td>
<td>35%</td>
<td>Min/Max: Ave. of 2 adjacent lots on both sides +/- 5-feet</td>
<td>Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides</td>
</tr>
<tr>
<td>RM</td>
<td>40%</td>
<td>Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet</td>
<td>Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides</td>
</tr>
<tr>
<td>WRM</td>
<td>60%</td>
<td>Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet</td>
<td>Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides</td>
</tr>
<tr>
<td>RH</td>
<td>80%</td>
<td>Min/Max: Ave of 2 adjacent lots on both sides +/- 5-feet</td>
<td>Min: 10% of lot width Or ave. of side yard setback of 2 adjacent lots on both sides</td>
</tr>
</tbody>
</table>

1. An additional ten per cent (10%) lot coverage may be permitted for accessory residential features per (d)3A below. Measurement of and exceptions to coverage, setback, and height standards are found in Art 5.
2. Average front yard setback of the principal structures on the 2 adjacent lots on both sides within the same block having the same street frontage. See Sec. 5.2.4.
3. In no event shall the side yard setback be required to exceed 20-feet, or the rear-yard setback be required to exceed 75-feet.
### Table 4.4.5-3: Residential District Dimensional Standards

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Max. Lot Coverage$^{1}$</th>
<th>Setbacks$^{1, 3, 4, 5, 6}$</th>
<th>Max. Height$^{1}$</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Front$^{2}$</td>
<td>Side$^{3}$</td>
</tr>
</tbody>
</table>

4. Additional setbacks from the lakeshore and other water features may be applicable per the requirements of the Sec 4.5.4 Riparian and Littoral Conservation Overlay Zone.

5. The side yard setback shall be calculated based on the 4 adjacent properties (2 on each side of the subject property). The right side yard setback is the average of the right side yard setback of the principal structures on these 4 properties. The left yard setback is the average of the left side yard setback of the principal structures on these 4 properties. The adjacent properties shall be within the same block having the same street frontage as the subject property. See Sec. 5.2.5.

6. Where there are fewer than 2 adjacent lots on both sides within the same block having the same street frontage, the average side yard setback shall be calculated from the fewer number of lots. Where there are no adjacent lots, the setback shall be 10% of the lot width.

7. For properties in the WRL and WRM zones with frontage along Lake Champlain or the Winooski River the front yard setback shall not be required to exceed 50 feet in any event.

(c) Permitted and Conditional Uses:
As written.

(d) District Specific Regulations:
As written.

### Sec. 4.5.4 Natural Resource Protection Overlay (NR) District

(a) Purpose and Authority:
The Natural Resource Protection Overlay District is intended to:

- Protect surface waters and wetlands from encroachment by development, and from sources of non-point pollution;
- Preserve natural lakeshore vegetative cover where reasonably possible consistent with the Vermont Shoreland Protection Act, and the protection of native plants and vegetative cover that provide lake shoreland wildlife habitat, to the greatest extent possible;
- Protect the functions and values of Burlington’s wetlands;
- Protect and enhance water quality near public beaches and other water-based recreation areas from sources of non-point pollution;
- Preserve natural features and communities, geologic features and cultural sites for education and research.
- Provide opportunities for public access where feasible and appropriate;
- Facilitate connections and corridors for wildlife between areas of publicly protected sites.
- Ensure that development that occurs within a Flood Hazard Area conforms to the requirements of the National Flood Insurance Program.
- Minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding and other flood related hazards; and
• Ensure that the design and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property; and
• Manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and
• Make the City of Burlington and its residents eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(b) Areas Affected
As written.

(c) District Specific Regulations: Riparian and Littoral Conservation Zone:

1. Permitted Uses:
Except where otherwise noted herein, only the following uses are permitted within the Riparian and Littoral Conservation Zone and its associated buffer subject to the requirements and limitations set forth below under subpart 4.

A. Normal maintenance of existing lawns and maintained grounds including mowing, trimming of vegetation and the removal of dead or diseased vegetation around a residence, decorative landscaping and planting, vegetable and flower gardens, and the repair of existing private landscaping structures such as walkways and walls;

B. “Accepted agricultural and silvicultural practices” as defined under 24 VSA Ch 117;

C. Normal maintenance of constructed wetlands and stormwater systems, provided that naturally occurring wetlands are not disturbed in conjunction with the maintenance;

D. Normal maintenance of existing docks, roads, rail lines, bridges, and culverts provided that disturbance to any shoreland is minimized in conjunction with such maintenance;

E. Selective cutting of less than 25 percent of the trees six inches or more in diameter at breast height over any 10 year cycle; and,

F. Recreational and educational activities such as hiking, walking, fishing, nature study, and bird watching and associated boardwalks and unimproved trails.

2. Prohibited Uses:
Except where noted herein, the following uses shall be prohibited within the Riparian and Littoral Conservation Zone and its associated buffer.

A. The deposition or introduction of organic and inorganic chemicals, including herbicides and pesticides, except when the application of pesticides is reviewed and approved by the BCB and DRB, and performed by an applicator certified by the Vermont Department of Agriculture for the sole purpose of controlling invasive species and subject to the requirements of the City’s pesticide application ordinance (Burlington Code of Ordinances, Chapter 17, Section 9); and,

B. The off-road use of any motorized vehicles including ATVs or dirt bikes (the temporary use of motorized vehicles used to construct and maintain permitted or regulated activities are specifically exempted from this prohibition);

3. Regulated Uses:
Except where otherwise noted herein, all uses permitted or conditionally permitted in the respective underlying zoning district, including any construction of buildings or other structures, and roads, parking areas or any other impervious surface, may be approved only within the Riparian and Littoral Conservation Zone and its associated buffer after review and approval pursuant to the requirements and limitations below under Subpart 4.

4. Requirements:
1. Any land disturbing activities (i.e., vegetation has been removed, or the landscape has been
graded or filled resulting in bare soil surfaces) shall include a stormwater management, erosion prevention and sediment control plan pursuant to the requirements of Sec 5.5.3 to be reviewed by the conservation board and approved by the city engineer.

In making determinations and decisions required herein, the city engineer shall consider the requirements of the most recent State of Vermont Stormwater Management Rules and Guidance document. The city engineer shall require the best practicable means be used to manage stormwater, prevent erosion, and control sedimentation. The city engineer is hereby authorized to develop performance standards to ensure conformance with these state stormwater management rules.

For properties with frontage along Lake Champlain or the Winooski River, development that includes 400 square feet or more of new or redeveloped lot coverage shall establish a no-mow zone along the shoreline. A no-mow zone is a new or existing vegetated area that is not mowed more than once per year and allows vegetation to grow and mature. (Refer to Shoreland Best Management Practices established by Vermont Department of Environmental Conservation). A no-mow zone shall be at least 15 ft. wide as measured inland from the 100 ft. elevation and shall be of a size equivalent to, or greater than, the new or redeveloped lot coverage, except that in no event shall a no-mow zone be required to extend more than 50 ft. wide as measured inland from the 100 ft. elevation or extend along more than 80% of a property’s shoreline frontage.

For properties with frontage along Lake Champlain or the Winooski River, development shall be located no closer to the shoreline than existing development wherever reasonably possible.

2. Agricultural and silvicultural activities shall follow Best Management Practices for the Protection of Water Quality;

3. Installation of any seawalls, rip-rap or other shoreland retention structures shall be submitted for review by the conservation board who shall consult with the city engineer prior to issuance of a recommendation to the DRB; and,

4. No new stormwater outfall shall directly discharge into any surface water without approval and implementation of a stormwater management plan approved by the city engineer.

Relationship to planBTV

This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).

<table>
<thead>
<tr>
<th>Theme</th>
<th>Dynamic</th>
<th>Distinctive</th>
<th>Inclusive</th>
<th>Connected</th>
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<tbody>
<tr>
<td>Land Use</td>
<td>Conserve</td>
<td>Sustain</td>
<td></td>
<td>Grow</td>
</tr>
</tbody>
</table>

Compatibility with Proposed Future Land Use & Density

The proposed amendment does not impact the types or density of potential land use and density. It provides enhanced protection of Burlington’s environmentally sensitive shorelines and is consistent with express goals of the city to protect its shorelines, water quality, and wildlife habitat and contiguity. The amendment enables more appropriate development siting and establishes a threshold for improving shoreline conditions.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety or affordability.

Planned Community Facilities

The proposed amendment has no impact on planned community facilities.
**Process Overview**

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<table>
<thead>
<tr>
<th>Planning Commission Process</th>
<th>Approved &amp; forwarded to Council</th>
<th>City Council Process</th>
<th>CCOC Recommends Approval &amp; Adoption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft Amendment prepared by: Staff, Conservation Board</td>
<td>Presentation to &amp; discussion by Commission 1/26/21</td>
<td>Ordinance Cmte recommend as modified</td>
<td>Rejected</td>
</tr>
<tr>
<td>Public Hearing 2/23/21</td>
<td>Approve for Public Hearing 1/26/21</td>
<td>Second Read &amp; Public Hearing</td>
<td></td>
</tr>
<tr>
<td>1/26/21</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**City Council Process**

- First Read & Referral to Ordinance Cmte
- Ordinance Cmte discussion
- Ordinance Cmte recommend as modified
**Burlington Planning Commission**

**Tuesday, February 9, 2021, 6:30 P.M.**

Remote Meeting via Zoom

**Draft Minutes**

<table>
<thead>
<tr>
<th>Members Present</th>
<th>A Montroll, H Roen, A Friend, E Lee, J Wallace-Brodeur, C Mason, Z Hightower, J Hanson</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Present</td>
<td>D White, M Tuttle, S Gustin, K Sturtevant, W Ward, P Wehman</td>
</tr>
<tr>
<td>Attendance</td>
<td>E McArdle, W Gonyaw, L Jenson, S Bushor, J Marks, D Ward Lyons, E Hanley, D Hanley, A Magyar, M Kuprych, J Caulo, E Mahnke, A Stark, (one additional phone number not identified by name)</td>
</tr>
</tbody>
</table>

**I. Agenda**

- **Call to Order**
- **Time:** 6:35 pm
- **Agenda:** No Changes

**II. Public Forum**

<table>
<thead>
<tr>
<th>Name</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>E McArdle</td>
<td>Urge Committee to get this right. STRs don’t impact 99% of housing stock. Should focus on other housing problems, such as student housing. Policy goes after ‘little guy,’ hurt tenants, and force small landlords to sell property. Use own STR to supplement long-term tenant’s income. STR in a small multi-unit building was the only way to make homeownership work in BTV. Lack of large landlords and tenants in this conversation demonstrates STRs are not a threat. Perception of STR hosts is that city wants to penalize property owners, and feel this issue is related to the greater political movement in the city. Feel many policies proposed on Town Meeting ballot will destroy city, force out little guys, increase the wealth gap. Does Committee understand unintended consequences of this proposal?</td>
</tr>
<tr>
<td>E Hanley</td>
<td>Concerned that the proposal still requires a host on-site for duplexes. Feel this enables bigger landlords to stay in business, while putting out the ‘little guy’.</td>
</tr>
<tr>
<td>D Hanley</td>
<td>Have worked hard to manage property to provide for children and retirement. But have had trouble renting duplex, needed STR to make money and pay taxes. Have invested a lot in furnishing property, and have used it to support a lot of people during COVID. Many benefits offered by STRs. As a realtor, a lot of property owners are thinking of selling because of trends in the city.</td>
</tr>
<tr>
<td>D Lyons</td>
<td>Encourage Committee to enable all currently active STRs to be grandfathered in all residential zoning districts as long as they’re registered, inspected and current on taxes. Cap them at 500 STRs and allow off-site hosting in all buildings. Could no longer afford the 20% of long-term renters who did not maintain my property. STRs are not occupying an abundance of housing, and many are now inactive due to COVID. Seems there is a way to balance benefits with impacts.</td>
</tr>
</tbody>
</table>
### Proposed CDO Amendment: Short Term Rentals

**Action:** No action.

**Motion:**

- Staff provided a communication and background on the difference between zoning violations and legal preexisting non-conforming uses, and answered questions about how STRs have been permitted under existing standards. A Councilor expressed unease about potentially granting amnesty to zoning violations, while also using Ch. 18 to regulate STRs which doesn’t allow legally non-conforming status to future STRs.
- Staff also clarified that non-conformities apply to the CDO, but not Ch. 18, and that anyone with an existing zoning permit for an STR today would benefit from legal non-conforming status.
- A Committee member asked about the benefit of locating STR standards in minimum housing code instead of zoning if the committee advances a less restrictive policy. Staff and Commissioners clarified that the CDO isn’t the best mechanism for regulating some of the details associated with STRs and that enforcement isn’t as straightforward. Ch. 18 also provides flexibility to make the policy more or less permissive overtime. The Committee agreed that it wanted to continue to move forward with utilizing Ch. 18 for regulating some of the STR standards.
- Staff also outlined how the draft STR policy is now divided between the CDO (zoning) and Ch. 18 (Minimum Housing Standards) based on the last meeting.
- The Committee reviewed the proposed changes to the CDO, including to Article 13, Appendix A, and Article 14. In response to a Commissioner question, staff indicated that Appendix A permits or prohibits STRs where housing is permitted or prohibited, but then regulates the extent of how an STR can operate under Ch. 18. Committee agreed with proposed changes to the CDO with an additional reference to “subject to Rooms & Meals” tax as part of the STR definition.
- Following a discussion about the per-building limit on number of STRs in Ch.18, the Committee directed staff to add a provision that allows a host to STR a dwelling unit that is their primary residence, regardless of the number of units in a building and regardless of whether the host is a tenant or owner.

### IV. Commissioner Items

<table>
<thead>
<tr>
<th>Action: N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion: NA</td>
</tr>
<tr>
<td>- Planning Commission’s next meeting is Feb. 23, 2021 at 6:30pm and next Joint Committee meeting is March 9, 2021 at 6:30pm.</td>
</tr>
</tbody>
</table>

### V. Minutes & Communications

<table>
<thead>
<tr>
<th>Action: Approved the minutes and accepted the communications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion by: A Friend</td>
</tr>
<tr>
<td>- Minutes Approved: January 26, 2021</td>
</tr>
<tr>
<td>- Communications filed enclosed in agenda packet, and additional communications posted online at <a href="https://www.burlingtonvt.gov/CityPlan/PC/Agendas">https://www.burlingtonvt.gov/CityPlan/PC/Agendas</a></td>
</tr>
</tbody>
</table>

### VI. Adjourn

<table>
<thead>
<tr>
<th>Adjournment</th>
<th>Time: 8:32pm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion: H Roen</td>
<td>Second: E Lee</td>
</tr>
</tbody>
</table>
February 10, 2021

Thomas A. Little, Esq.
Chair
District 4 Environmental Commission
NRB.Act250Essex@Vermont.gov

Aaron Brondyke, State Coordinator
aaron.brondyke@vermont.gov

Re: Burton Corporation Applications 4C0174-6; 4C0358-3 -- List of Witnesses; Noise Evaluation Documents

Dear Chairman Little and Coordinator Brondyke:

I write to list the witnesses who may testify at the hearing and to estimate the time needed for each, as required by the Prehearing Conference Order. I also enclose the memorandum requested in paragraph #10 of the Order, pertaining to noise data, accompanied by a brief report from the acoustics expert with whom we have consulted. You will see that the memorandum and report go beyond seeking the raw data underlying the noise report; they ask that the Commission require submission, by the applicant, of the architectural and engineering plans for the project.

The persons who may testify are twelve of my thirteen clients – Lawrence Smith, Laura Waters, Michael Turner, Luc Logan, Diane de Terra, Douglas Goodman, Almy Landauer, Wendy Bratt, Sharon O’Neill, Dana Walrath, Stephanie Herrick and Janice Ellis. Ms. Copp is responding to a severe family emergency, and will not be able to testify. We will be submitting prefiled direct testimony on March 3, 2021. I anticipate that the time needed for their oral testimony will be three or four minutes each, basically to be sworn, to identify themselves and to introduce and admit their written prefiled testimony. That would be followed by cross-examination and re-direct examination. If there were no cross-examination, the thirteen witnesses could all be done within one hour.

We plan also to call our acoustics expert, Mr. Robert Rand, and our transportation expert, Mr. Michael Santos. I hope to submit written prefiled from each of these experts, also on March 3, 2021, if that is possible. Given that we all will be participating by zoom or similar means, the more we can address by written testimony in advance of the hearing, the easier it will be for the Commission and all the parties to digest the evidence and ask the witnesses questions about the evidence. I hope that the applicant’s witnesses, including its experts, also will submit prefiled testimony.

If the Commission, or any parties, have any concerns or objections, please let me know.
Sincerely,

Jim
James A. Dumont, Esq.
STATE OF VERMONT
DISTRICT 4 – ENVIRONMENTAL COMMISSION

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

MOTION FOR ORDER REQUIRING SUBMISSION OF NOISE DOCUMENTATION
and
MEMORANDUM IN SUPPORT

Lawrence Smith and the other 12 citizen parties to this matter move pursuant to Board Rule 20 that the Commission order production of the following documents:

1. RSG design and calculations and “fit up” acoustical consultant design and calculations.
2. RSG survey data, meter files, recordings and field notes acquired during sound level monitoring at Higher Ground’s existing facility in South Burlington during a hard rock concert on August 17, 2019.
3. Project noise model (the CADNA model) for maximum recurring octave band and dBA hard rock concert sound levels starting from design basis, and supporting assumptions, through specific model inputs for exterior and interior noise sources and noise attenuation of building elements, barriers and other noise controls, propagation and comparison to existing background sound levels.
4. Project architect’s stamped plans and sections drawings addressing consultants’ noise control and fit-up requirements.
5. Engineering stamped calculations and drawings for HVAC, load-bearing capacity and requirements and roof modifications and wall modifications addressing consultants’ noise-control and fit-up requirements.
6. Renovation/fit-up noise controls with complete specifications including any structural and roof mass loading modifications, materials, baffling, curtains, barriers, absorbers, silencers, duct and equipment lagging, enclosures, doors and door seals.
7. New, modified and existing noise producing mechanical equipment specifications, including sound power level specifications and noise control packages.
8. Build-out design basis and sound power level assumptions and noise calculations for number and locations of people and vehicles making noise onsite during events for full built-out capacity.

These are the documents listed by acoustic expert Robert Rand, in the attached letter. Mr. Rand’s CV also is attached.

Memorandum

Natural Resources Board Rule 20(a) authorizes the Commission to order production of
any supplementary information that may assist the Commission in resolving issues raised in a proceeding or that may assist it in deciding whether or not to grant a permit. Rule 20(b) authorizes the Commission to require such investigations, tests, certifications, witnesses or assistance as it deems necessary to evaluate the effects of a project under the criteria in question or any other issue before it.

The Commission possesses the authority to require the Burton Corporation to submit the listed information. The decision the Commission must make is whether it should exercise that authority to order production of the listed documents.

Queen City Park and the adjoining Arthur Court are residential neighborhoods. Red Rocks Park is the gemstone of all local parks. Queen City Park and Red Rocks Park are in South Burlington. As the Commission will see in the hearing on the merits, the South Burlington Land Development Regulations, the South Burlington Comprehensive Plan, the South Burlington Public Nuisance Ordinance (its noise ordinance) and the South Burlington Ordinance Regarding Licensure and Regulation of Circuses, Carnivals and Other Shows (its entertainment ordinance), set aside this area of South Burlington for residential and open space uses, prohibit noise that is plainly audible 50 feet from the source building, and subject all entertainment licenses to the prohibition against noise that extends “beyond the boundary of the activity” if that noise interferes with neighboring uses – in this case, residential and park uses.

The noise impacts of this project on the residences and Red Rocks Park are likely to be severe. The venue will host rock bands, and will seat 1500 attendees. The venue will have an outdoor lounge. The venue is directly across the street from Central Avenue, where Mr. Smith and many others reside, directly across the street from Red Rocks Park, and physically adjoins homes owned by Ms. O’Neill and Mr. Goodman on Arthur Court. The outdoor lounge will face
Red Rocks Park and Central Avenue. The parking lot, into which the 1500 attendees will pour at each concert’s end late at night, also faces Red Rocks Park and Central Avenue. The only noise barrier for the lounge and the parking lot will be the venue building – but the lounge and the parking lot are on the Central Avenue/Red Rocks Park side of the building. The building will reflect noise toward these areas, not interrupt it.

Mr. Smith and his colleagues have consulted with Mr. Rand. Mr. Rand reviewed the RSG reports and found that its noise predictions are contradicted by the limited data contained in the report, and that the predictions fall below typical sound levels for rock concerts. Mr. Rand has listed the documents needed to arrive at an accurate understanding of the likely noise impacts.

Production of these documents would not be burdensome, given the size of the project and its potential impacts. If the Burton Corporation does not possess the requested documents, it need not create them. It need only disclose that these documents do not exist.

**Conclusion**

The Commission is respectfully requested to order production of the listed documents.

Date: February 10, 2021  

/s/James A. Dumont  
James A. Dumont, Esq.
February 9, 2021

James A. Dumont, Esq.
Law Office of James A. Dumont, Esq., PC
15 Main Street, PO Box 229
Bristol, VT 05443

Re:  RSG Noise Assessment Report, April 20, 2020
RSG Memo to Justin Worthley, August 3, 2020
Burton Snowboards & Higher Ground Hub Project

As requested, I write to highlight discrepancies found in the referenced report that call for a thorough review of the Hub Project renovation design calculations and supporting engineering data.

Concert noise design basis discrepancies

The subject report's Table 2 provides the basis sound pressure levels for interior noise during "Hard Rock" concerts that are stated as used for calculation of exterior noise levels at nearby properties.

![Table 2: Modeled Interior Sound Pressure Levels (dBZ, Unless Specified Otherwise)](image)

The octave levels are listed as "dBZ" or unweighted. Using standard decibel arithmetic, the A-weighted logarithmic sums of those levels are 93 and 81 dBA; not 99 and 86 dBA listed in Table 2.

From experience the 93 dBA is well below typical loudest recurring sound levels during interior hard rock concerts, as is the 99 dBA. The discrepancy clouds the basis for the exterior noise predictions; the octave band levels or the dBA level. If the renovation design is based on the octave band levels, the exterior noise levels appear under-predicted by many dB, and renovation may be insufficient. If the design is based on the dBA level, calculations could not factor low frequency transmission or noise control attenuation.

RSG's report states there are "plans for the Hub Project" and "Higher Ground is working with another acoustical consultant to fit-up the interior of the concert venue". "Fit-up" details (engineering drawings, calculations, specifications) are not provided in the RSG Report or Memo. The discrepancies in Table 2 combined with the lack of engineering detail call for design review.

Recommendation: Modeling/renovation design and supporting details should be provided for review.

- RSG design and calculations and "fit-up" acoustical consultant design and calculations;
- RSG survey data, meter files, recordings and field notes acquired during sound level monitoring at Higher Ground’s existing facility in South Burlington during a hard rock concert on August 17, 2019.
- Project noise model (the CADNA model) for maximum recurring octave band and dBA hard rock concert sound levels starting from design basis, and supporting assumptions, through specific model inputs for exterior and interior noise sources and noise attenuation of building elements, barriers, and other noise controls, propagation and comparison to existing background sound levels;

- Project architect's stamped plans and sections drawings addressing consultants' noise control and fit-up requirements;

- Engineering stamped calculations and drawings for HVAC, load bearing capacity and requirements and roof modifications and wall modifications addressing consultants' noise-control and fit-up requirements;

- Renovation/fit-up noise controls with complete specifications including any structural and roof mass loading modifications, materials, baffling, curtains, barriers, absorbers, silencers, duct and equipment lagging, enclosures, barriers, doors, and door seals.

- New, modified, and existing noise producing mechanical equipment specifications including sound power level specifications and noise control packages.

- Build-out design basis and sound power level assumptions and noise calculations for number and locations of people and vehicles making noise onsite during events for full build-out capacity.

Respectfully Submitted,

Robert W. Rand, ASA, INCE (Member Emeritus)
CAPABILITIES STATEMENT JANUARY 2019

Rand Acoustics is a sole proprietor acoustics consultancy offering expertise since 1996 in environmental noise impact assessment and interior acoustics and audio-visual design; noise measurement, analysis, and mitigation.

AREAS OF EXPERTISE

- Industrial and Environmental Noise Impact Assessment, Analysis and Mitigation
- Expert Witness Testimony
- Architectural Acoustics and Sound System Design
- Audible Noise Measurements, Recording, Analysis and Mapping
- Infrasonic Acoustic Pressure Measurement and Analysis
- Noise Exposure Level Prediction, Analysis and Cost Estimating
- Specialized Consulting on Request

PROFESSIONAL EXPERIENCE

- Rand Acoustics, Owner and Principal Consultant, 1996-

ACADEMIC DEGREE

- B.A., 1979, University of Maine, Mathematics, Minor Computer Sciences
  One-Year Study, Noise and Vibration Control Theory, Electrical Engineering Dept

PROFESSIONAL ORGANIZATIONS

- Institute of Noise Control Engineering (INCE), 1982-Present
- Acoustical Society of America (ASA), 1980-1984, 1993-Present
- Association for Computing Machinery (ACM), 1980-1985
- American Society of Composers, Authors and Publishers (ASCAP), 2010-Present

PROFESSIONAL PUBLICATIONS


Publications in print

- “Wind turbine noise, an independent assessment” (with Ambrose, S.E.), Knox Courier Gazette, Rockland, Maine, September 2010.
- “Wind turbine noise: an independent assessment of sound quality” (with Ambrose, S.E.), Knox Courier Gazette, Rockland, Maine, September 2010.
- “Wind turbine noise: noise complaints predictable” (with Ambrose, S.E.), Knox Courier Gazette, Rockland, Maine, October 2010.

EXPERT TESTIMONY

<table>
<thead>
<tr>
<th>Date</th>
<th>Case or Project</th>
<th>Case Number</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov-10</td>
<td>Bog Wind</td>
<td>n/a</td>
<td>Wareham, MA, Zoning Board of Appeals</td>
</tr>
<tr>
<td>Feb-11</td>
<td>Plymouth Wind</td>
<td>n/a</td>
<td>Plymouth, MA, Selectmen Hearing</td>
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<tr>
<td>Jul-11</td>
<td>Noise Rulemaking: Exhibit AR-79</td>
<td>n/a</td>
<td>Maine, Board of Environmental Protection</td>
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<tr>
<td>Jun-12</td>
<td>Wind Turbine Health Effects</td>
<td>12-015 &amp; -018</td>
<td>Ontario, Environmental Review Tribunal</td>
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<td>Oct-12</td>
<td>Urirama Wind, Aruba</td>
<td>n/a</td>
<td>Aruba, Hearing with Prime Minister Aruba, Parliamentary Special Hearing</td>
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<td>Jan-13</td>
<td>Highland Wind Farm, LLC</td>
<td>2535-CE-100</td>
<td>Wisconsin, Public Service Board</td>
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<tr>
<td>Nov-13</td>
<td>SB 58</td>
<td>n/a</td>
<td>Ohio Senate, Public Utilities Commission</td>
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<tr>
<td>Apr-15</td>
<td>Citizens for Quiet Skies</td>
<td>2013CV031563</td>
<td>District Court, Boulder County, CO</td>
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<td>Jul-16</td>
<td>SUP, Osborn Wind, LLC</td>
<td>n/a</td>
<td>Planning and Zoning Commission, Clinton County, MO</td>
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<tr>
<td>Aug-16</td>
<td>Timbermill CUP Hearings</td>
<td>CUP-16-01</td>
<td>Board Of Commissioners, Perquimans County, NC</td>
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<tr>
<td>Jul-18</td>
<td>Penn Forest Hearings</td>
<td>17-1011</td>
<td>Zoning Board, Penn Forest, PA</td>
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<tr>
<td>Sep-18</td>
<td>Dekalb County Public Hearing</td>
<td>n/a</td>
<td>Zoning Board, Dekalb County, IL</td>
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</tbody>
</table>
CLIENT/PROJECT LIST (PARTIAL)

- Advanced Recycling, Concord, NH, Five-Year Continuous Noise Monitoring System
- Air Force Band Studio Building, Acoustic Design, Hanscomb Air Force Base, Hanscomb, MA
- Bank of Boston Conference Rooms Design, Interior Acoustics and Noise Control
- Beth El Temple Center, Belmont, MA A/V and Acoustics Consulting
- Boston Museum of Science Exhibit Designs, Interior Acoustics
- Boston University Teaching Rooms Designs, Interior Acoustics
- Boston Stock Exchange A/V Consulting
- Boston Children’s Museum Exhibit Designs, Acoustics
- Bridgeville Compressor Station, Eastern Shore Natural Gas Company
- CBS Corporation, Foxboro, MA, CBS Scene Complex, Interior Acoustics and A/V Designs
- Citizens Bank, Boston, Conference Rooms Design
- City of Bath, ME, Noise Abatement Study
- Dana Farber Hospital, PET/CT Facility, Speech Intelligibility and Noise Mitigation Project
- Deer Island Secondary Treatment Plant, MWRA, Noise Emissions Consulting
- East Ryegate Plant, Ryegate, VT, Noise Emissions Study
- Harvard Business School, Spangler Center Teaching Rooms Designs
- Harvard Business School, Mailbox Project
- Harvard Law School, Langdell Hall Renovation
- Holden Frost House, Topsham, ME, Acoustic Analysis
- Houghton Mifflin Company
- Massachusetts Institute of Technology Teaching Rooms Designs
- Ministry of Education Center, Kuwait Teaching Rooms Designs
- Mount Vernon, Maine, Community Center, Acoustic Improvements
- Nieman Institute, Cambridge, MA, A/V Consulting
- Ocean Mammal Institute Whale Study, Maui, Study of Navy LFAS Noise Emissions
- Old Orchard Beach, ME, Noise Ordinance Revisions
- Peabody Essex Museum, Salem, MA, “Sound of Spirit” Exhibit Acoustic Design
- Philadelphia Cogeneration Facility, Philadelphia, PA, Noise and Vibration Reduction Project
- Pownal, Maine, Community Center, Interior Acoustics Impulse Study and Improvements
- Public Service Company, NH, Schiller Station, Unit Five Noise Assessment Project
- South Freeport, Maine, Community Church Interior Acoustic Improvements
- Sylvania Lightpoint Training Center, Danvers, MA Acoustic and A/V Consulting
- Tennessee Aquarium, Exhibit Acoustic Designs
- Ulysses S. Grant National Historic Site, A/V Consulting
- United States Army, STRICOM OSV Program, Electro-Acoustic System Design and Acceptance Testing
- University of Massachusetts, Teaching Rooms Acoustic and A/V Designs
- University of Texas at Austin, Bass Concert Hall, Vibration/Acoustic Noise Reduction Project
- Verizon Data Center, Andover, MA, A/V Consulting
- Victoria Mansion, Portland, ME, Noise Reduction Consulting
- Virginia Air and Space Museum, Acoustic Impulse Study, Exhibit Design
District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

CERTIFICATE OF SERVICE

I certify that I have today delivered a Motion for Order Requiring Submission of Noise Documentation and Memorandum of Support, a Letter to the District Commission, as well as two Attachments to all other parties to this case as follows:

- By Electronic Mail

The name and address of the party to whom the mail was addressed or personal delivery was made are as follows:

The Burton Corporation
c/o JustinWorthley, Mike Fialko-Casey, Eric Bergstrom
180 Queen City Park Road
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justinw@burton.com;
MikeF@burton.com;
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Division for Historic Preservation
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ACCD.ProjectReview@vermont.gov

Dated: 2/10/2021

/s/ Caroline Engvall
Caroline Engvall
Assistant to Counsel,
James A. Dumont, Esq.
dumont@gmavt.net
February 10, 2021

Thomas A. Little, Chair  
District 4 Commission  

Re: 4C0174-6, 4C0368-3 The Burton Corporation - Burlington

Dear Mr. Little:

The City of South Burlington submits this notice in accordance with Subsection IV (2) of your January 25, 2021 Prehearing Conference Report and Order.

On January 19, 2021, on behalf of the City of South Burlington, City Councilor Meaghan Emery submitted a memorandum to State Coordinator Brondyke outlining concerns of the City of South Burlington relating to the above-referenced application. This memorandum put in writing and expanded upon comments made by Councilor Emery during the January 13, 2021 prehearing conference. At this time, the City of South Burlington is not planning on calling witnesses during the public hearing or submitting pre-filed testimony but requests that the Commission consider the concerns raised by Councilor Emery when issuing its decision in this matter.

Sincerely,

Colin K. McNeil  
McNeil, Leddy and Sheahan, P.C.  
271 South Union Street  
Burlington, Vermont 05401  
(802) 863-4531  
emeneil@mcneilvt.com

cc: Service list  
   Aaron J. Brondyke, State Coordinator
District 4 Environmental Commission

Re: Burton Corporation Applications 4C0174-6; 4C0358-3

CERTIFICATE OF SERVICE

I certify that I have today delivered a Letter to District 4 Environmental Commission to all other parties to this case as follows:

- By Electronic Mail

The names and address of the party to whom the mail was addressed or personal delivery was made are as follows:

The Burton Corporation

c/o Justin Worthley, Mike Fialko-Casey, Eric Bergstrom
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ACCD.ProjectReview@vermont.gov
February 10, 2021

Via First Class Mail & Email

Thomas A. Little, Chair
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
NRB.Act250Essex@vermont.gov

Re: Act 250 Land Use Permit Application Nos. 4C0174-6, 4C0368-3 – The Burton Corporation, Burlington

Dear Thomas:


    Also, pursuant to the Commission’s Prehearing Report, which requires parties to report “the number of witnesses that each participant plans to call at the public hearing, and the anticipated time for each witness to testify on direct examination.” Burton anticipates calling five witnesses at the public hearing, and estimates that each witness’s direct testimony will last between 20 and 30 minutes.

Please let me know if you or the Commission have any questions about this updated information.

Sincerely,

Jon Rose
On behalf of the Burton Corporation

cc: Prehearing Report Service List
Applicant, the Burton Corporation (“Burton”), submits this memorandum in response to the District 4 Environmental Commission’s (the “Commission”) January 25, 2021 Prehearing Conference Report & Order (the “Prehearing Order”), which directed Burton to:

provide a detailed, cogent memorandum of law that explains the Applicant’s position that the District Commission may not consider the results of the Applicant’s soil testing for hazardous waste contamination in the context of the Applicant’s compliance with 10 V.S.A. §§ 6086(a)(1)(B), 6086(a)(3), and 6086(a)(9)(K).

Prehearing Order at III.

As we discuss below, there is no evidence of any release\(^1\) or threatened release of hazardous materials at Burton’s property, nor is there any basis to conclude that the activities proposed by the pending application threaten a release. The testing and pre-characterization measures discussed at the prehearing conference in this matter are simply precautionary steps Burton and the Vermont Department of Environmental Conservation (“DEC”) are taking to identify potential concerns at the site. The scope of ongoing testing is unrelated to the development for which Burton is seeking Act 250 approval, and the pre-characterization

\(^1\) A “release” means “the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands in the state, or into waters outside the jurisdiction of the state when damage may result to the public health, lands, waters or natural resources within the jurisdiction of the state.” Vermont Hazardous Waste Management Regulations 7-103 (effective Dec. 31, 2016); see also 10 V.S.A. § 6602(17).
measures are voluntary post-permitting activities. If hazardous waste contamination issues are identified through either of these efforts, those issues will be managed in accordance with the DEC’s Investigation and Remediation of Contaminated Properties Rule (“IRule”).

Burton’s application—which provides that Burton will comply with the IRule with respect to any hazardous waste contamination ultimately discovered on its property—therefore satisfies its burden of production on Criteria 1B, 3, and 9K insofar as they relate to hazardous waste management, including soil contamination. It is not necessary or appropriate for the Commission to require soil testing or pre-characterization results in order to approve Burton’s application under those criteria.

Background

It is worth clarifying at the outset that there are actually two potential categories of “testing” work currently under consideration at Burton’s property. Each is discussed below in turn.

The first category work is a site investigation requested by DEC, and arising out of the 266 Queen City Park Road property’s history as a contaminated site overseen by DEC. Under previous owners (including General Electric, Martin Marietta, and General Dynamics), the property was subject to a variety of investigative and remedial activities under the supervision of DEC. On August 7, 1998 General Dynamics received a Site Management Activity Completed (“SMAC”) designation letter from DEC concluding remediation work and finding that “the site

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3 As discussed below, Criterion 3 addresses water quantity issues, not water quality; therefore the soil characterization work is also irrelevant under that criterion.
does not pose any unacceptable risk to human health or the environment.” *See* Application at 13 & Exhibit 012 (SMAC Designation Letter, Aug. 7, 1998).

Nonetheless, on October 23, 2020, apparently after being contacted by a nearby resident, DEC wrote to Burton requesting further investigation to identify and address any concerns arising out of the property’s historical uses. Importantly, DEC’s request for additional investigation was *not* formerly triggered by or even related to the development contemplated in this application; Burton would still be required to comply with DEC’s investigation if the development had never been proposed, or were not to occur. *See* Correspondence between VHB Director of Site Investigation & Remediation Kurt Muller and DEC Environmental Analyst Lynda Provencher (Feb. 4, 2021) [hereinafter the “VHB Email”] (copy attached as Exhibit 1).

Burton retained the environmental consulting firm VHB to develop the site investigation work plan requested by DEC, which has jurisdiction over Burton’s site investigation efforts. The design of the work plan is not dependent upon the scope of work proposed in this application. VHB already has begun testing, but has not yet completed its investigation. If testing conducted pursuant to the work plan suggests that remediation is necessary, that remediation would be governed by—and proceed according to—the requirements of the IRule, regardless of whether an Act 250 permit amendment is approved in this matter.

The *second category of work* is a voluntary soil “pre-characterization” effort Burton is contemplating in areas of proposed soil disturbance due to the activities proposed by this application. Soil pre-characterization work is a prudent practice to limit construction delays and helps inform soil management protocols prior to construction. *See* VHB Email. It is also a
prerequisite step for pre-approval at receiving landfills, in the event soils need to be discarded.\textsuperscript{4}

\textit{Id.}

Here, Burton has no reason to believe that the areas anticipated to be disturbed will contain contamination, but given the Project’s location and the site history, it has decided to conduct such pre-characterization measures in advance of construction. \textit{Id.} If any impacted soils are discovered as a result of the pre-characterization efforts, Burton will report the results to DEC and manage those soils in a manner consistent with the IRule. \textit{Id.}

\textbf{Discussion}

There is no basis to delay consideration of this application pending the results of the work plan or to require voluntary pre-characterization work to consider the merits of this matter. The law and Burton’s application already provide sufficient assurances that any hazardous waste contamination issues will be addressed appropriately if and when they arise.\textsuperscript{5} Again, hazardous waste contamination issues are subject to the IRule which, again, is designed to protect the environment from “[a] release of hazardous material.” IRule § 35-101(b). Whether Burton should discover contamination through the work plan process or during development activities, the IRule mandates corrective actions that must “to the maximum extent practicable” mitigate any impacts of a release to “sensitive receptors,” such as public water sources. IRule §§ 35-603 (Objectives of Corrective Action), 35-201(49) (defining “sensitive receptor”).

\textsuperscript{4} In our experience, pre-characterization or soil testing activities do not occur prior to permitting. The pre-characterization or soil testing activities are expensive and designed in accordance with the activities authorized by permits. Requiring this work to occur prior to permitting is less efficient, and likely to lead to sampling where it is unnecessary if Project designs change during permitting, permits are not obtained, or the Project fails to proceed to construction for other reasons.

\textsuperscript{5} Application at 13.
Therefore, Burton, through its application materials, has already satisfied its burden under Criteria 1(B), 3, and 9(K) insofar as hazardous waste contamination issues are relevant to those criteria:

**Burton has met its burden of production on Criterion 1(B)** in showing that the development will comply with “Environmental Conservation Department regulations regarding the disposal of wastes,” 10 V.S.A. § 6086(a)(1)(B), including the IRule, which is designed to identify, isolate, and remediate any hazardous or toxic substances at the site. IRule § 35-101.

**Burton has met its burden of production on Criterion 3**, which is concerned with the *quantity*, not *quality* of existing water supplies. See In re Pion Sand and Gravel Pit, Docket No. 245-12-09, slip op. at 11–12 (Vt. Super. Ct. Envtl. Div. July 2, 2010) (Durkin, J.) (“Criterion 3 does not govern possible contamination of existing water supplies. Rather, criterion 3 is concerned with 'impacts on the ability to meet demand of neighboring wells or water sources if those other wells or water sources share the same basic source of water.’” (quoting Re: MBL Assocs., No. 4C0948-EB (Altered), Findings of Fact, Conclusions of Law, and Order, at 28 (Vt. Envtl. Bd. May 2, 1995))). As discussed in the application, Burton’s buildings are served by Burlington City water and therefore do not impact the demand on the neighboring water supply. Application at 15–16. Even if water quality and contamination were relevant under Criterion 3, Burton would still meet its burden of production without the soil tests, as under Criteria 1(B) and 9(K), because no evidence of water supply impacts exists and the IRule requires responsible parties to protect sensitive receptors such as public water sources.

**Burton has met its burden of production on Criterion 9(K)** regarding the public water supply maintained by the Fire District, especially as there is no evidence of any impact to that supply, now or as a result of this Project.Criterion 9(K) prohibits projects that “unreasonably
endanger the public [] investment” in a public facility or “materially jeopardize” its operation. Affirmative findings can be made under this criterion because again there is no evidence the proposed development will result in any release; even if it did, appropriate corrective actions would safeguard the water supply by operation of the IRule process.

Finally, requiring an applicant to conduct soil testing prior to considering the merits of an application would set an unwise precedent, both in this proceeding and as matter of general policy. Soil testing is time-consuming and expensive, and is a response to concerns wholly separate from the application process. Thus, those efforts are typically undertaken only after a project is permitted—as Burton proposes in its application. See VHB Email.

In fact, Act 250 itself exempts from the definition of “development” the “management of ‘development soils,’” and exempts most other activities related to hazardous waste abatement, remediation, and site-characterization work. 10 V.S.A. § 6001(3)(D)(vi)(I)(ff). In addition, DEC—and not the Natural Resources Board or the District Environmental Commissions—has primary responsibility to oversee hazardous waste management and brownfield redevelopment, and numerous other laws and programs encourage redevelopment and reuse of these properties through collaboration with the Vermont Agency of Commerce, regional planning commissions, and municipalities.6

As a matter of policy, conditioning Act 250 review of a brownfield redevelopment on the completion of soil characterization and testing could upset that carefully designed regulatory

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process—see 10 V.S.A. § 6616 (exempting from the “release” prohibition those “releases of hazardous materials pursuant to and in compliance with the conditions of a State or federal permit”)—and serve primarily to discourage the beneficial reuse of brownfields. The Commission should not set such a precedent in requiring soil testing or pre-characterization here.

For all these reasons, it is neither necessary nor appropriate for the Commission to require soil testing or pre-characterization results in connection with this Act 250 application prior to hearing the merits of this matter.

**Soil Testing Schedule**

The Commission’s Prehearing Order also asked that Burton provide an estimated timeline for reporting the results of soil testing. Prehearing Order at 7. As noted above, the soil characterization work is not contemplated to occur until after the proposed development is fully permitted. The DEC approved workplan is currently being implemented, but it involves focused soil testing and is not designed to evaluate areas proposed to be disturbed under the current Act 250 permit amendment application.

Dated at Burlington, Vermont this 10th day of February, 2021.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

By: ________________________________
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**Attorneys for the Applicant**
From: Provencher, Lynda <Lynda.Provencher@vermont.gov>
Sent: Thursday, February 4, 2021 1:31 PM
To: Muller, Kurt <kmuller@vhb.com>
Subject: RE: [External] RE: Follow-up summary - Call re: 266 QCPR investigations [Filed 04 Feb 2021 13:34]

Yes – that looks about right. Thanks!
-Lynda

Due to the coronavirus (COVID-19), the Agency of Natural Resources is taking additional safety measures to protect our employees, partners and customers. We are now working remotely and focused on keeping our normal business processes fully functional. We encourage you to communicate electronically or via phone to the greatest extent possible. Thank you for your patience and understanding that responses may occasionally be delayed.

Lynda Provencher | Environmental Analyst (she/her)
Vermont Department of Environmental Conservation
Waste Management and Prevention Division | Sites Management Section
Davis 1, 1 National Life Drive | Montpelier, VT 05620-3704
(802)249-5562
https://dec.vermont.gov/waste-management/contaminated-sites

From: Muller, Kurt <kmuller@vhb.com>
Sent: Thursday, February 4, 2021 11:56 AM
To: Provencher, Lynda <Lynda.Provencher@vermont.gov>
Subject: RE: [External] RE: Follow-up summary - Call re: 266 QCPR investigations

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hi Lynda,

Thanks for your time this morning to discuss the current investigation and proposed soil pre-characterization effort at the former General Dynamics facility located at 266 Queen City Park Rd in Burlington. Specifically, I am writing to follow-up on the conversation we had regarding the 1/8/21 DEC approved Workplan and potential soil pre-characterization effort in the context of their applicability to the IRule and the Act 250 process. The following provides a general summary of our discussion, as I recall it. Please note, that I have expanded on several of our discussion points to provide some context and further clarification.

As you are well aware, the IRULE is promulgated to adhere to the requirements of 10 V.S.A. chapters 47, 59, and 159, which set strict standards to protect human health and the environment, and to prohibit the discharge and release of hazardous substances, including into groundwater.

Workplan

- This Workplan was developed in accordance with the IRule and Burton is under DEC jurisdiction for this investigation.
- Since receiving the 10/23/20 letter from DEC, Burton and their environmental consultant (VHB) have kept DEC informed and collaborated regularly.
- The proposed investigation approach is iterative, in that if deemed necessary, supplemental assessment would be performed in order to comply with the IRule.
- The Workplan was not triggered by Burton’s proposed “development” which is the subject of its Act 250 application and this investigation would have still been required by the IRule regardless of the proposed development. Furthermore, if the proposed development were not to occur, Burton (or others) would still be responsible to comply with the IRule to perform the investigation and any subsequent corrective action (if warranted).
- If corrective action is warranted, an IRule compliant CAP would be developed in a manner that would allow remediation to occur concurrently with construction. The CAP requires the approval of DEC. Under the CAP any contaminated materials would be disposed of according to the IRule.

Soil Pre-characterization

- Burton is considering initiating a soil pre-characterization effort in areas of proposed disturbance for the development project considered by the Act 250 application. This work would be done proactively for project planning purposes only. Soil pre-characterization is a prudent pre-construction practice that is commonly employed in any area with a history of development and/or industry.
- The sample density, representativeness, and list of proposed analyses are dictated by the landfill requirements, not DEC.
- Currently, there are no specific areas of concern within the proposed “development” areas; however, given the sample density (~65 locations), if soil is impacted the pre-characterization effort would likely capture those residually impacted soils and identify specific areas of concern.
- Burton is taking it upon itself to proactively perform this pre-construction planning effort in order to limit surprises, and proactively develop a plan to appropriately manage soils that may be impacted at concentrations exceeding the applicable standards.
Should contaminants be identified in soils at concentrations that exceed the applicable standards, Burton will report the results to DEC and continue to collaborate with DEC to further investigate those impacts in manner that is compliant with the iRule. Ultimately, if impacts are identified above applicable standards, either a soil management plan or corrective action plan will be prepared for DEC review and approval.

It is typical for this pre-characterization work to occur before ground disturbing activities, but only after a development project is fully permitted. Incurring the pre-characterization expense prior to the issuance of a permit is unnecessary and could result in discouraging brownfield redevelopment, which is counter to the state policy to encourage and promote redevelopment.

Thanks again for your time and kindly let me know if you concur with this summary.

Kind regards,

Kurt

Kurt Muller, P.E.
Vermont Director of Site Investigation & Remediation

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CERTIFICATE OF SERVICE

I, Grace Grundhauser, certify that on February 10, 2021, I served copies of the Memorandum of Law Regarding Consideration of Soil Testing Results and associated exhibit and cover letter on behalf of the Burton Corporation to the service list below by the delivery method noted:

By Email:

Thomas A. Little, Chair
District 4 Environmental Commission
111 West Street
Essex Junction, VT 05452
NRB.Act250Essex@vermont.gov
aaron.brondyke@vermont.gov

Katherine Schad, Town Clerk
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By Email and First Class Mail

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Susan Molzon, Senior Engineer
Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
smolzon@burlingtonvt.gov
Dated at Burlington, Vermont, this 10th day of February, 2021.

By:  /s/ Grace Grundhauser  
Grace Grundhauser  
Paralegal
February 16, 2021

David S. Marshall, P.E.
Civil Engineering Associates, Inc.
10 Mansfield View Lane
South Burlington, VT 05403

Subject: Act 250 Land Use Permit Application #4C0116-21H
Incomplete Letter

Dear Dave:

I have reviewed the above-referenced application submitted on February 11, 2021. Pursuant to Act 250 Rule 10(D), the application will not be deemed complete until the following items are addressed and provided to the District 4 Commission. Therefore, the time and notice requirements pursuant to 10 V.S.A. Chapter 151 (Act 250) will not be initiated.

1) A Project Review Sheet completed by the Agency of Natural Resources Permit Specialist as required under Act 250 Rule 22(D)(1).

2) A revised application including one of the following:
   a. An easement over the parking garage located at 45 Cherry Street benefitting the proposed project; or
   b. The property owner of the parking garage located at 45 Cherry Street should sign the application as a co-applicant and Schedule E should be revised to include the parking garage at 45 Cherry Street as part of the project area.

3) A revised Schedule E, at a minimum, including the property at 70 Cherry Street.

4) A revised application indicating if floor drains will be used by the project. If yes, please indicate the floor drain discharge location.

5) A floor plan depicting the proposed changes.
6) A plan or map depicting the area that will accommodate the vehicle and bicycle parking for the project.

Please complete your submission as follows:

- Attach the above required documents to an email addressed to the Act 250 regional email in-box (NRB.Act250Essex@vermont.gov) and copy the relevant statutory parties listed in 10 V.S.A. § 6084(a) (the Town, Town Planning Commission, Regional Planning Commission, and Agency of Natural Resources) and the “Downtown Agencies” listed in 10 V.S.A. § 6086b(3).

- If the required documents are larger than 3 MB in size, please upload them to the NRB FTP site. You can find instructions on how to do so online in the Act 250 Application Guide under “Act 250 Application: Electronic Submission Procedures” (page 47): (https://nrb.vermont.gov/documents/application-guide-act-250). After you have uploaded documents to the NRB FTP site, email the Act 250 regional email in-box (NRB.Act250Essex@vermont.gov) and the District Coordinator (Rachel.lomonaco@vermont.gov) to inform them that the files have been uploaded.

- Please attach a certificate of service to each of your emails that identifies how, when, and to whom the supplemental materials were distributed as required by statute.

Application review will continue after the application has been revised with the additional information requested.

Please contact me if you have any questions.

Sincerely,

Rachel Lomonaco
District 4 Coordinator
Rachel.Lomonaco@vermont.gov
802-879-5658

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the District Coordinator at the above address. Any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) 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 (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is $295.00. The appellant also must 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.
CERTIFICATE OF SERVICE

I hereby certify on this 16th day of February, 2021, a copy of the foregoing ACT 250 INCOMPLETE LETTER #4C0116-21H, 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

Burlington School District
150 Colchester Avenue
Burlington, VT 05401
mspauldi@bsdvt.org

Devonwood Cherry Street Associates, LLC
101 Cherry Street, Suite 440
Burlington, VT 05401
dave@btvspaces.com

David Farrington, Jr.
4724 Spear Street
Shelburne, VT 05482
dave@btvspaces.com

David Marshall
Civil Engineering Associates
10 Mansfield View Lane
South Burlington, VT 05403
dmarshall@cea-vt.com

Katherine Schad, Town Clerk
Chair, Selectboard/Chair, Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401
burlingtontownclerk@burlingtonvt.gov;
lolberg@burlingtonvt.gov

Chittenden County Regional Planning Commission
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
ANR.Act250@vermont.gov

Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov; PSD.VTDPS@vermont.gov

VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@vermont.gov; james.duggan@vermont.gov
ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
Parker Riehle, Vice Chair
Monique Gilbert/Pam Loranger
111 West Street
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 16th day of February, 2021.

Jessica Mason
Natural Resources Board Technician
802-879-5614
Jessica.Mason@vermont.gov

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