

September 10, 2013

***By Hand Delivery and Electronic Mail***

Jacalyn Fletcher, Clerk  
Vermont Superior Court, Environmental Division  
2418 Airport Road, Suite 1  
Barre, Vermont 05641

**Re: Docket No. 68-5-12—Champlain Parkway, Act 250 (Fortieth Burlington, LLC)**

Dear Ms. Fletcher,

Enclosed for filing please find the City of Burlington's *Stipulation and Joint Motion for Order Memorializing Terms of Agreement to Settle and Dismiss Action* in the above-referenced matter.

Please contact us if you have any questions.

Sincerely,



Brian S. Dunkiel  
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Encl.

cc: Service List

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 68-5-12 Vtec

In re: Champlain Parkway Act 250  
(Fortieth Burlington, LLC)

**CERTIFICATE OF SERVICE**

I, Kate Fetrow, certify that on September 10, 2013, I forwarded copies of the City of Burlington's *Stipulation and Joint Motion for Order Memorializing Terms of Agreement to Settle and Dismiss Action* by the method indicated below to the following individuals:

**By Hand Delivery and Electronic Mail:**

Jacalyn Fletcher, Clerk  
Vermont Environmental Court  
2418 Airport Road  
Barre, VT 05641  
[Jud.environmentaldivision@state.vt.us](mailto:Jud.environmentaldivision@state.vt.us)

**By Electronic Mail:**

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Fortieth Burlington, LLC and GP Burlington  
South, LLC  
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Dated at Burlington, Vermont, September 10, 2013.

By:

  
\_\_\_\_\_  
Kate Fetrow

SUPERIOR COURT

STATE OF VERMONT

ENVIRONMENTAL DIVISION

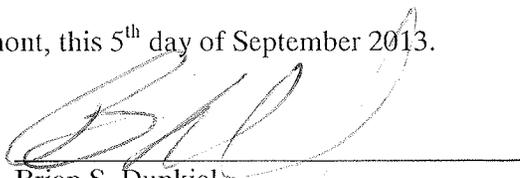
In re: Champlain Parkway Act 250 )  
(Fortieth Burlington, LLC) )

Docket No. 68-5-12 Vtec

**STIPULATION AND JOINT MOTION FOR ORDER MEMORIALIZING TERMS OF  
AGREEMENT TO SETTLE AND DISMISS ACTION**

The Vermont Agency of Transportation (VTrans) and the City of Burlington (City), (collectively Applicants), by and through their attorneys of record in this matter, and Vermont Railway, Inc. (VTR) by and through its attorney Eric R. Benson, Esq., pursuant to Vermont Rule of Civil Procedure 41(a)(2) and in consideration of their agreement to settle VTR's appeal, jointly move for expedited review for the Court to enter the attached proposed Order memorializing conditions necessary to implement the parties' agreement, and subject to entry of final judgment in this matter, hereby stipulate to dismissal with prejudice of VTR's appeal in this matter.

DATED at Burlington, Vermont, this 5<sup>th</sup> day of September 2013.



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*Attorney for Vermont Railway, Inc.*

STATE OF VERMONT

SUPERIOR COURT ENVIRONMENTAL DIVISION

In re: Champlain Parkway Act 250    )  
(Fortieth Burlington, LLC)         )

Docket No. 68-5-12 Vtec

**ORDER**

By stipulation and joint motion of Appellant Vermont Railway, Inc. (VTR), and Applicants, the Vermont Agency of Transportation (VTrans) and the City of Burlington (City), any final order in this case affirming the District #4 Environmental Commission’s decision under appeal in this matter will contain, among others, for the benefit of VTR, the following conditions:

1. At the time of commencement of construction of the Champlain Parkway and thereafter so long as the Champlain Parkway crosses over the Englesby Brook and VTR operates over the railroad lines crossing Englesby Brook, in the event of damage or failure of the culvert that carries the Englesby Brook under the rail line, which is not the result of negligence in the maintenance or repair of the culvert by VTR, its successors, assigns, or agents, VTrans shall be solely responsible for any and all costs of repair or replacement of the culvert; and
2. A railroad crossing diagnostic for the at-grade railroad crossings in the City of Burlington, generally west of the proposed Champlain Parkway, at Home Avenue, Flynn Avenue, Maple Street, and King Street, shall be completed prior to the Champlain Parkway being open to traffic. Vermont Railway, Inc. shall be invited to be a participating member of the diagnostic team.

The Court further finds and decrees that:

3. VTR stipulates that with the foregoing conditions and mitigation, all Act 250 criteria with respect to which VTR has party status, or would be entitled to party status concerning the Champlain Parkway, are met to VTR's satisfaction, and with the foregoing conditions VTR withdraws any opposition to, and will make no further efforts to condition or oppose any permits or approvals with respect to, the Champlain Parkway, including, but not limited to, any opposition or efforts to condition any Act 250 permit that the District Commission may issue and any stormwater permits issued for the Champlain Parkway project. Subject to a decision from this Court and subsequent issuance of an Act 250 permit for Applicants for the Champlain Parkway project containing each of the above conditions, or conditions reasonably equivalent or more favorable to VTR, and entry of final judgment, VTR's appeal is hereby dismissed with prejudice.
4. Each party to this stipulation shall bear its own costs and attorney fees.
5. The parties waive their rights to appeal this Judgment Order, provided that the Court issues an Order substantially similar to that attached to the Stipulation.

So ORDERED on September \_\_\_\_\_, 2013 in Berlin, Vermont.

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Thomas G. Walsh, Judge