



State of Vermont

LAND USE PERMIT AMENDMENT

CASE NO: 4C0348-7

University of Vermont
& State Agricultural College
109 South Prospect Street
Burlington, VT 05405

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #4 hereby issues Land Use Permit Amendment #4C0348-7, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 31, Page 168; Book 3, Page 165-166; Book 74, Page 549; and Book 83, Page 570 of the land records of Burlington, Vermont.

This permit specifically authorizes the construction of improvements at the Patrick Forbush Gutterson complex ("PFG complex") including a new 96,681 square foot addition at the east side of the building for use as a multipurpose events center including a 3,000 seat basketball stadium; a 17,331 square foot building addition at the north side of the building for use as a health and wellness activity space; a 5,087 square foot infill of the existing racquetball courts; a 7,909 square foot addition to the south side of the Gutterson Field House for seating and new pedestrian concourse; and utility, landscaping, site and parking modifications (the "Project"). The Project is located at 97 Spear Street in Burlington, Vermont.

Jurisdiction attaches because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the Project as approved by the District Commission in accordance with the following conditions.
2. The Project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law #4C0348-7 and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

Sheet C0100 - "Overall Civil Site Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #005)

Sheet C0101 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #006)

Sheet C0102 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #007)

Sheet C0103 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #008)

Sheet C0104 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #009)

Sheet C0105 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #010)

Sheet C0106 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #011)

Sheet C0107 - "Civil Site & Utility Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #012)

Sheet C0108 - "Post Construction Soil Restoration Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #013)

Sheet C0200 - "Overall Existing Conditions Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #014)

Sheet C0201 - "Existing Conditions Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #015)

Sheet C0202 - "Existing Conditions Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #016)

Sheet C0300 - "Civil Site Demolition Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #017)

Sheet C0301 - "Civil Site Demolition Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #018)

Sheet C0400 - "Erosion Prevention & Sediment Control Plan - Preconstruction," dated August 25, 2017, last revised August 20, 2018 (Exhibit #019)

Sheet C0401 - "Erosion Prevention & Sediment Control Plan - Preconstruction," dated August 25, 2017, last revised August 20, 2018 (Exhibit #020)

Sheet C0402 - "Erosion Prevention & Sediment Control Plan - Stabilization," dated August 25, 2017, last revised August 20, 2018 (Exhibit #021)

Sheet C0600 - "Civil Details," dated August 25, 2017, last revised August 20, 2018 (Exhibit #022)

Sheet C0601 - "Civil Details," dated August 25, 2017, last revised August 20, 2018 (Exhibit #023)

Sheet C0602 - "Civil Details," dated August 25, 2017, last revised August 20, 2018 (Exhibit #024)

Sheet C0603 - "Civil Details," dated August 25, 2017, last revised August 20, 2018 (Exhibit #025)

Sheet C0604 - "Civil Details," dated August 25, 2017, last revised August 20, 2018 (Exhibit #026)

Sheet L0100 - "Overall Layout & Materials Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #027)

Sheet L0200 - "Enlargement Layout & Materials Plan," dated July 19, 2018, last revised August 20, 2018 (Exhibit #028)

Sheet L0300 - "Planting Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #029)

Sheet L0400 - "Landscape Details," dated August 25, 2017, last revised August 20, 2018 (Exhibit #030)

Sheet L0500 - "Site Lighting Plan & Photometric Study," dated August 25, 2017, last revised August 20, 2018 (Exhibit #031)

Sheet L0600 - "Event Circulation Diagram," dated August 25, 2017, last revised August 20, 2018 (Exhibit #032)

Sheet A0105 - "Roof Overall Plan," dated August 25, 2017, last revised August 20, 2018 (Exhibit #033)

Sheet A0305 - "Overall Elevations," dated August 25, 2017, last revised August 20, 2018 (Exhibit #034)

Sheet A0311 - "Exterior Elevations – Events Center," dated August 25, 2017, last revised August 20, 2018 (Exhibit #035)

Sheet A0312 - "Exterior Elevations – Events Center," dated August 25, 2017, last revised August 20, 2018 (Exhibit #036)

Sheet A0313 - "Exterior Elevations – South Concourse," dated July 19, 2018, last revised August 20, 2018 (Exhibit #037)

Sheet A0314 - "Exterior Elevations – Health & Wellness," dated March 23, 2018, last revised August 20, 2018 (Exhibit #038)

Sheet A0315 - "Exterior Elevations – Health & Wellness," dated March 23, 2018, last revised August 20, 2018 (Exhibit #039)

Sheet A0350 - "Building Sections," dated August 25, 2017, last revised August 20, 2018 (Exhibit #040)

Sheet A0351 - "Building Sections," dated August 25, 2017, last revised August 20, 2018 (Exhibit #041)

Sheet A0352 - "Building Sections," dated August 25, 2017, last revised August 20, 2018 (Exhibit #042)

3. All conditions of Land Use Permit #4C0348 and amendments are in full force and effect except as further amended herein.
4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit #WW-4-0079-2 issued on February 5, 2019 by the ANR Drinking Water and Groundwater Protection Division.

- b. Individual Construction Stormwater Permit #3627-INDC.9 issued on November 2, 2018 by the ANR Watershed Management Division.
 - c. Individual Stormwater Discharge Permit #3627-INDS.6 issued on October 18, 2018 by the ANR Watershed Management Division.
5. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
 6. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
 7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
 8. No change shall be made to the design, operation or use of this Project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 9. No further subdivision, alteration, and/or development on the tract of land approved herein shall be permitted without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
 10. Pursuant to 10 V.S.A. § 8005(c), the District Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
 11. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
 12. Site work and construction traffic hours will be limited to 7:00AM to 6:00PM Monday through Friday, 8:00AM to 4:30PM Saturday and Sunday. No construction is authorized on State or Federal Holidays.
 13. Blasting and/or hydraulic hammering shall be limited to 9:00AM to 4:00PM Monday through Friday, with no work on Saturdays, Sundays or State or Federal Holidays.
 14. Blasting activities shall conform to the submitted Blasting Plan and Rock Excavation Plan (Exhibit #082a) and the ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016).
 15. All blast monitoring reports and seismic data shall be made available to the District Commission upon request.
 16. No crushing, screening or sieving activities shall occur on the Project tract.
 17. The building approved herein is not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittee shall apply and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.

18. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
19. The Permittee shall be required to implement the construction site waste reduction plans. Exhibits #047, 049, 055 and 072.
20. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
21. Immediately upon initial grading or excavation, a stabilized construction entrance must be installed and maintained as shown on Exhibits #019, 020 and 025. At a minimum, this entrance must be constructed and maintained in accordance with the specifications as described in the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006). No further clearing or construction may occur until the stabilized construction entrance is complete.
22. The Permittee shall comply with Exhibits #019, 020, 021 and 025 for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
23. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
24. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each work day. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e. no outlet) with a depth of 2 feet or greater (e.g. house foundation excavation, utility trenches).
25. All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 1. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
26. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.

27. Special Events are defined as any event, public or private, outside the University's regular schedule of academic instruction, and include, by way of illustration and not limitation, athletic events, job fairs, both academic and administrative, admissions, concerts, and student government events held on campus. Special Events also include non-university events contracted by an outside organization such as high school athletic events and graduation ceremonies, local community events sponsored by adjacent municipalities or governmental organizations, and commercial events allowable under the *Burlington Comprehensive Development Ordinance* (2018). Exceptional Special Events are defined as Special Events including, but not be limited to, occasions that require additional security, such as an event that features a high-level government official or a person seeking a high-level elected office.
28. Traffic circulation and parking from Special Events and Exceptional Special Events shall be in accordance with the *UVM Special Events Circulation Procedures* in Exhibit #095 and the Event Circulation Diagram in Exhibit #032.
29. Exceptional Special Events may allow some egress onto South Prospect Street only when directed by emergency or higher level security personnel in emergency or high level security situations. Otherwise, egress onto South Prospect Street from the University via Davis Drive is prohibited. The Permittee shall maintain a functional gate at the intersection of Davis Drive and South Prospect Street, to prevent egress from Davis Drive to South Prospect Street at all times except during Exceptional Special Event traffic procedures, where one or more emergency or high-level security personnel shall supervise access to and closure of the gate.
30. Construction traffic for the Project shall enter only via Spear Street and shall exit only via University Heights Road, except tractor trailers and single heavy use vehicles may exit to Spear Street via PFG Road. Tractor trailers may only exit during non-peak hours. Exhibit #099.
31. With the exception of a one-day annual undergraduate commencement ceremony, the Permittee shall not allow the simultaneous use of the Multipurpose Center and Gutterson Field House for spectator events where the combined capacity attendance exceeds 5,000 persons.
32. The Permittee shall assess the PFG complex's parking needs annually and provide a copy of the Joint Institutional Parking Management Plan updates to the District Commission as they become available.
33. The Permittee shall maintain records of spectator capacity at the PFG complex and Virtue Field through ticket sales and/or turnstile counts. This information shall be provided to the District Commission upon request.
34. The District Commission will by permit condition retain jurisdiction on Criterion 5 and reserve the right to evaluate and impose additional conditions and mitigation measures deemed necessary to ameliorate adverse conditions that arise with respect to parking. The Permittee will be responsible for implementing such mitigation measures. The Commission shall retain jurisdiction on Criterion 5 for a period of 5 years from the date of issuance of this decision.

35. Prior to any site work, the Permittee shall install and maintain temporary fencing around the trees to be retained.
36. Any extracted stumps shall be disposed of at a State approved landfill, so as to prevent groundwater pollution.
37. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit #029 and 030 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
38. The installation of exterior light fixtures is limited to those approved in Exhibit #031. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
39. The Permittee is authorized to erect wayfindings signage in accordance with Exhibit #051. The Permittee shall not erect exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary "grand opening" signs.
40. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards ("CBES") and the CBES Stretch Guidelines in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. More information on this update can be found at:
http://publicservice.vermont.gov/energy_efficiency/cbes
<http://nrb.vermont.gov/sites/nrb/files/documents/9fprocedure.pdf>
<http://nrb.vermont.gov/sites/nrb/files/documents/cbesstretch.pdf>
41. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
42. The Permittee, upon completion of the construction of each commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
43. Should the City at any time agree to accept any private utilities being then operated by the Permittee and/or assigns and successors in interest, the Permittee and/or assigns and successors in interest shall be responsible to improve the same to City specifications and shall deed all lands involved with said improvements to the City. Such improvements may require a land use permit amendment.
44. At the completion of the project, and prior to the occupancy of the building additions, the Permittee shall certify by affidavit that the Project has been constructed in accordance with this permit pursuant to Act 250 Rule 32(A).
45. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment and the Findings of Fact before any written contract of sale is entered into.
46. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #4C0348-7 in all deeds, conveyances and leases.

47. Pursuant to 10 V.S.A. § 6090(b)(1) this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three year period in accordance with 10 V.S.A. § 6091(b).
48. All site work and construction of roadways and utilities shall be completed in accordance with the approved plans by **October 1, 2022**, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
49. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of extension of time application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
50. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Essex Junction, Vermont, this 11th day of March 2019.

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

Members participating in this decision:
Monique Gilbert, Kate Purcell

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$265 entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

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Land Use Permit #4C0348-7

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

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**State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #4 ENVIRONMENTAL COMMISSION
111 West Street, Essex Junction, VT 05452**

University of Vermont
& State Agricultural College
109 South Prospect Street
Burlington, VT 05405

Application #4C0348-7
Findings of Fact
Conclusions of Law, and Order
10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On August 30, 2018, University of Vermont & State Agricultural College ("UVM") filed an application for an Act 250 permit for the construction of improvements at the Patrick Forbush Gutterson complex ("PFG complex"). The Project includes a new 96,681 square foot addition at the east side of the existing PFG complex for use as a multipurpose events center including a 3,000 seat basketball stadium; a 17,331 square foot building addition at the north side of the PFG complex for use as a health and wellness activity space; a 5,087 square foot infill of the existing racquetball courts; a 7,909 square foot addition to the south side of the Gutterson Field House for seating and a new pedestrian concourse; and utility, landscaping, site and parking modifications (collectively the "Project"). The Project is located at 97 Spear Street, in Burlington, Vermont. The Applicant's legal interest is ownership in fee simple described in deeds recorded in Book 31, Page 168 of the Burlington land records dated June 3, 1891; Book 3, Page 165-166 of the Burlington land records dated June 23, 1891; Book 74, Page 549 of the Burlington land records dated July 6, 1921; and Book 83, Page 570 of the Burlington land records dated October 24, 1923.

The Commission held a hearing on this application on October 1, 2018. The Commission also conducted a site visit immediately before the hearing and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on February 5, 2019 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

As set forth below and subject to the conditions incorporated into the Commission's Permit decision, the Commission finds that the Project complies with 10 V.S.A. § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. AMENDMENT APPLICATION – RULE 34(E)

The threshold question on an amendment application is "whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit." Act 250 Rule 34(E)(1).

In this application, the applicant does not seek to amend such a critical permit condition, so the Commission may consider the merits of the amendment application without conducting the rest of the Rule 34(E) analysis.

IV. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A. § 6085(c)(1)(A)-(D) who attended the hearing are:

1. The Applicant, by Lani Raven, Claire Forbes and Lisa Kingsbury of UVM Campus Planning Services; Paula Carlaccini, Bruce Barr and Ken Bean of UVM Facilities Design & Construction; Jeff Schulman of UVM Athletics; Robert Vaughan of UVM Capital Planning and Management; John Collins, UVM Deputy General Counsel; Richard Deane of Truex Cullins; Derick Read of Krebs & Lansing Consulting Engineers, Inc.; and Amy Houghton of Wagner Houghton Landscape Architecture.
2. The Agency of Natural Resources (“ANR”) at the October 1, 2018 hearing by Kevin Anderson.
3. The Vermont Agency of Transportation (“VTrans”) through an entry of appearance, dated September 27, 2018, by Christopher Clow.
4. The Chittenden County Regional Planning Commission (“CCRPC”) through an entry of appearance, dated September 28, 2018, by Charlie Baker.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A. § 6085(c)(1)(E). To obtain party status a person must demonstrate such a particularized interest, that the interest is protected by the Act 250 criteria under which party status is sought, and that there is a reasonable possibility that the District Commission’s decision may affect that interest. The showing of this reasonable possibility must be based on more than speculation or theory.

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following person requested party status pursuant to 10 V.S.A. § 6085(c)(1)(E), and were granted preliminary party status, as indicated below:

5. Barbara Hedrick of 282 South Prospect Street, through entries of appearance dated September 28, 2018 and November 9, 2018, and at the October 1, 2018 hearing, under Criterion 5 for traffic and Criterion 10 for local and regional plans.

ii. Final Party Status Determinations

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

6. Barbara Hedrick was granted Preliminary Party Status on Criterion 5 for traffic and was also granted Final Party Status on Criterion 5, as she has shown a particularized interest in regard to traffic. Although Ms. Hedrick’s residence is not directly adjacent to the UVM campus, she lives along South Prospect Street and UVM event and commercial traffic

passes her residence to travel to and from the campus entrance at South Prospect and Davis Drive. The Commission grants Ms. Hedrick Final Party Status on Criterion 5.

7. Barbara Hedrick was granted Preliminary Party Status on Criterion 10 for compliance with local plans; however, after careful consideration of the testimony and other evidence, and arguments presented at and subsequent to the hearings, the Commission concludes that it must deny Ms. Hedrick Final Party Status on Criterion 10 as she has failed to demonstrate the type of particularized interest that is required under Criterion 10. The Commission notes that it has given due consideration to that part of Ms. Hedrick's argument under Criterion 10 related to traffic and parking. Where appropriate, the Commission has incorporated and addressed these arguments under Criterion 5 for which Ms. Hedrick has been granted Final Party Status.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application. Therefore, the application shall serve as the Findings of Fact on these criteria:

Water Pollution	9(B) - Agricultural Soils
1(A) - Headwaters	9(C) - Productive Forest Soils
1(C) - Water Conservation	9(D) - Earth Resources
1(D) - Floodways	9(E) - Extraction of Earth Resources
1(E) - Streams	9(F) - Energy Conservation
1(F) - Shorelines	9(G) - Private Utility Services
1(G) - Wetlands	9(H) - Costs of Scattered
6 - Educational Services	Development
7 - Municipal Services	9(J) - Public Utility Services
8 - Natural Areas	9(K) - Effects on Public Investments
8 - Historic Sites	9(L) - Settlement Patterns
8(A) - Wildlife Habitat & Endangered Species	10 - Local and Regional Plans
9(A) - Impact of Growth	

The findings of fact are based on the application, exhibits, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear and may apply to other sections of the decision.

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

Criterion 1 - Air Pollution:

Findings of Fact

1. There will be no air pollutant emissions, noxious odors or noise pollution from operation of the Project.

2. No ANR Air Pollution Control Permit is required for the Project, as the Project does not trigger jurisdictional thresholds.
3. During construction, the Applicant will control dust through the use of stabilized construction entrances and through the application of water and/or other dust control agents as approved by the ANR.
4. The City of Burlington has limited construction activity, including truck traffic, to 7:00AM to 6:00PM Monday through Friday, and 8:00AM to 4:30PM Saturdays and Sundays. Exhibit #111. In addition to these restrictions, the Commission will by permit condition restrict construction activity on State and Federal Holidays.
5. Blasting or hydraulic drilling and hammering will be required for the installation of underground utility lines. It is anticipated that no more than 5,000 cubic yards of material would need to be removed.
6. Blasting and/or hydraulic drilling and hammering shall be limited to 9:00AM to 4:00PM Monday through Friday, with no construction on Saturdays, Sundays or Holidays.
7. Blasting activities shall conform to the submitted Blasting Plan and Rock Excavation Plan and the ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016). Exhibit #082a.
8. No crushing, screening or sieving activities are proposed for the Project. By permit condition, the Commission shall prohibit crushing, screening and sieving operations at the Project tract.

Conclusions of Law

The Commission concludes that the Project complies with Criterion 1(air).

Criterion 1(B) - Waste Disposal:

Findings of Fact

9. Waste generated by the Project will include waste generated from construction, sewage, stormwater runoff and stumps generated by site clearing.
10. The Project will comply with the Construction Site Waste Reduction Plans as approved by the ANR Solid Waste Management Program. Exhibits #047, 049, 055 and 072.
11. The ANR Drinking Water and Groundwater Protection Division issued Wastewater System and Potable Water Supply Permit #WW-4-0079-2 on February 5, 2019. ¹ Exhibit #112.
12. The Project will generate 47,624 gallons per day ("gpd") of wastewater (a 3,920 gpd increase over existing conditions) that will be disposed of through a connection to the City of Burlington municipal wastewater system. The City of Burlington Public Works Department has indicated that there is sufficient capacity available for the Project and that the Project would not cause an unreasonable burden on the municipal wastewater system. Exhibit #050.

¹ Other Wastewater System and Potable Water Supply Permits that apply to the PFG complex and associated exterior athletic facilities include series #4C0348, #WW-4-2097, #WW-4-3476, #WW-4-4397 and series #WW-4-0079.

13. The ANR Watershed Management Division has issued coverage under Construction Individual Permit #3627-INDC.9 for the construction phase of the Project. Exhibit #108.
14. The Applicant will use erosion prevention and sediment control ("EPSC") measures contained in site-specific EPSC Plans to control stormwater runoff during construction. Exhibits #019, 020, 021 and 025.
15. The ANR Watershed Management Division has issued coverage under Individual Discharge Permit #3627-INDS.6 for the operational phase of the Project. Exhibit #068.
16. Stormwater runoff from the completed Project will be directed to the east campus stormwater treatment facility. Stormwater is ultimately discharged to an unnamed tributary of the Centennial Brook.
17. The Applicant will dispose of any extracted stumps on-site above the seasonal high groundwater table or at a State approved disposal site, to prevent groundwater pollution.
18. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Conclusions of Law

The ANR permits create a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of wastewater and waste collection, treatment and disposal systems authorized by the permits will not result in undue water pollution. These technical determinations made by ANR are entitled to substantial deference. 10 V.S.A. § 6086(d). No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Project will meet all applicable ANR regulations on waste disposal and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

The Project complies with Criterion 1(B).

Criteria 2 and 3 – Water Availability and Impact on Existing Water Supply:

Findings of Fact

19. This Project will use 59,007 gpd of water (9,840 gpd increase over existing conditions), which will be supplied by the Burlington municipal water system. The City of Burlington Water Department has indicated that there is sufficient capacity available for the Project and that the Project would not cause an unreasonable burden on the municipal water system. Exhibit #050.
20. The ANR Drinking Water and Groundwater Protection Division issued Wastewater System and Potable Water Supply Permit #WW-4-0079-2 on February 5, 2019. Exhibit #112.
21. The ANR Drinking Water Groundwater Protection Division issued Public Water System Permit to Construct #C-3621-18.0 on February 4, 2019.

Conclusions of Law

The ANR permits create a presumption pursuant to Act 250 Rule 19 that the Project has sufficient water available for its reasonably foreseeable needs and complies with Criterion 2. The Commission concludes that the Project will not place an unreasonable burden on an existing supply. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that the Project complies with Criteria 2 and 3.

Criterion 4 - Soil Erosion:

Findings of Fact

22. The ANR Watershed Management Division has issued coverage under Construction Individual Permit #3627-INDC.9 for the construction phase of the Project. Exhibit #108.
23. The Applicant will use EPSC measures contained in site-specific EPSC Plans to control stormwater runoff during construction. Exhibits #019, 020, 021 and 025.
24. Temporary erosion control measures include the use of stabilized construction entrances, silt fencing, inlet protection, erosion control matting, directing runoff to the stormwater ponds, and periodic site inspections.
25. Permanent erosion controls measures include pavement, establishing vegetation and directing runoff to the stormwater detention infrastructure.
26. The Project will not affect the capacity of the soils on the Project site to hold water.

Conclusions of Law

The Construction General Permit creates a presumption under Rule 19 that stormwater runoff during construction authorized by the permit will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. These technical determinations made by ANR are entitled to substantial deference. 10 V.S.A. § 6086(d). No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The Commission concludes that the Project complies with Criterion 4.

Criterion 5 - Traffic:

Findings of Fact

27. Previous relevant Findings of Fact are included herein.
28. Traffic circulation within the UVM campus south of Main Street was discussed and approved in the review of LUP #4C0384-4 issued on October 30, 2006. The Applicant is not proposing to alter these traffic circulation patterns. The #4C0384-4 Findings of Fact state, in part:

“There will be multiple points of access to this Project, including the traditional access of Spear Street and access to or from Main Street through the newly constructed internal University Heights Road north and west of the Project. The University, in conjunction with Burlington’s Public Works Department and the neighbors, has agreed to implement Alternative 2 recommended in the Resource Systems Group (RSG) Draft UVM South Campus Master Plan – Burlington and South Burlington, Vermont, dated May 2003 traffic study and subsequent RSG/City of Burlington and South Burlington consultant memos. Access Alternative 2 provides a combination of one way and two way flows. In Alternative 2, only the lower tier of parking and the parking at Harris-Mills and Marsh-Austin-Tupper Residential complexes will be allowed to also exit onto Spear Street. All others will be required to exit through University Heights Road to Main Street. This will reduce the existing vehicular trips by approximately 40% from current conditions. The majority of exiting vehicles will have to bypass the abutting

residential streets (South Prospect Street in Burlington and Spear Street in South Burlington) and use Main Street in Burlington. In addition, in collaboration with the Spear Street neighbors, the Project will construct traffic calming mitigation elements on Spear Street, including three new crosswalks."

29. "Special Events" are defined by the Applicant as (Exhibit #095)²:

"Any event public or private, outside the University's regular schedule of academic instruction to include athletic events, job fairs, both academic and administrative, admissions, concerts, and student government events held on campus. Special events also include non-university events contracted by an outside organization such as high school athletic events and graduation ceremonies, local community events sponsored by adjacent municipalities or governmental organizations."

30. "Exceptional Special Events" are defined by the Applicant as (Exhibit #095)³:

"Exceptional Special Events may include, but not be limited to, occasions that require additional security, such as an event that features a high-level government official."

31. The Commission will by permit condition clarify that an "Exceptional Special Event" will include Special Events featuring elected government officials but also events that feature a person seeking a high-level elected office with exceptional security requirements.

32. Ms. Hedrick stated concerns regarding the use the PFG complex for commercial, non-UVM focused events, such as trade shows and conventions that would increase traffic and parking concerns. Exhibit #065. The Commission acknowledges these concerns. We note that the Project has been determined by the City of Burlington Development Review Board to comply with the *Burlington Comprehensive Development Ordinance* (2018) and its specified uses within the Project's designated zoning district. The Commission will modify the definition of Special Events to include commercial events allowable under the *Burlington Comprehensive Development Ordinance* (2018). However, the Commission will review the traffic and parking concerns raised by Ms. Hedrick regardless of the nature of the events held at the PFG complex.

33. Traffic circulation for traffic exiting the PFG complex from Special Events was discussed and approved in the review of LUP #4C0384-6, issued on July 22, 2015. The Applicant is not proposing to alter these traffic circulation procedures. LUP #4C0384-6 states, in part:

"...Traffic from Special Events may egress from the PFG by either University Heights Road or onto Spear Street. Exceptional Special Events can allow some egress onto Prospect Street only when directed by emergency or higher level security personnel in emergency or high level security situations, otherwise egress onto Prospect Street from the University is prohibited."

34. The Commission will impose a permit condition prohibiting egress from Davis Drive onto South Prospect Street at all times except during Exceptional Special Events where one or more emergency or high-level security personnel shall supervise access to and closure of the gate.

² Land Use Permit #4C0348-6 issued on July 22, 2015 authorized the definition of "Special Events."

³ Land Use Permit #4C0348-6 issued on July 22, 2015 authorized traffic egress patterns from "Exceptional Special Events."

35. VTrans has no concerns relative to the impact of the Project on local traffic congestion, traffic generation or safety, provided that the Applicant adheres to the established traffic circulation patterns and special events protocols. Additionally, VTrans does not recommend payment of a transportation impact fee pursuant to Act 145. Exhibit #063.
36. Ms. Hedrick requested a functional gate at Davis Drive to be kept closed, except when opening for an authorized eastbound vehicle. Ms. Hedrick also requested that when the gate is open, a UVM official must control traffic at the intersection. Exhibits #065, 066 and 102-107.
37. Traffic egressing UVM via Davis Drive onto South Prospect Street is prohibited under the *UVM South Campus Master Plan* (RSG, 2003) except in Exceptional Special Events when that egress would be directed by emergency or high-level security personnel in emergency or high-level security situations. Exhibit #095. The Applicant has installed a gate to prevent egress from Davis Drive, but this gate has not always been functional for one reason or another. The Commission will impose a permit condition requiring the Applicant to maintain a functional gate, in good working order, at the intersection of Davis Drive and South Prospect Street, to prevent egress from Davis Drive to South Prospect Street at all times except during Exceptional Special Event traffic procedures, where one or more emergency or high-level security personnel shall supervise access to and closure of the gate.
38. Ms. Hedrick has requested that UVM agree to not use South Prospect Street, south of Maple Street, for any truck, large delivery vehicle or on-campus shuttle traffic, arguing that these vehicles present a safety risk to pedestrians and that large heavy vehicles do not belong on a city street that is not a city-designated truck route. Exhibits #065, 066 and 102-107. The Commission acknowledges Ms. Hedrick's concern; however, the on-campus shuttle traffic which regularly proceeds along South Prospect Street is beyond the scope of the current Project and the Commission cannot further review this aspect of Ms. Hedrick's concerns at this time. Traffic entering UVM via Davis Drive from South Prospect Street is allowable under the *UVM South Campus Master Plan* (RSG, 2003). However, the Applicant has stated that it discourages construction and delivery vehicles from using South Prospect Street as a point of access to campus. Exhibit #096. The evidence indicates that the shuttle busses used to ferry spectators to and from PFG complex to the overflow parking lots in accordance with the *UVM Special Events Circulation Procedures*. (Exhibit #095), will not use South Prospect Street.
39. During Special Events the access road to the east of the PFG complex will be designated as a controlled pedestrian space from Davis Drive to the PFG loading dock entrance, where only vehicles adapted to serve persons with disabilities and shuttle busses will be allowed through. Exhibit #001 and 032.
40. The Applicant states that construction traffic for the Project will not be able to comply with the prescribed traffic circulation procedures included in the *UVM South Campus Master Plan* (RSG, 2003). The Applicant states that right turns from University Heights onto Main Street are unfeasible for tractor-trailer trucks (approximately 53 feet in length). Exhibit #096. The same right turn is feasible for single heavy use vehicles (approximately 40 feet in length), but those vehicles typically have significant blind spots. Exhibits #096 and 097. In addition, pedestrian traffic volume along Main Street and at its intersection with University Heights is very high, especially when school is in regular session. Exhibit #096.

41. The Applicant proposes that construction traffic proceed via the routes designated in Exhibit #099.
42. The City of Burlington has authorized construction traffic to enter only via Spear Street and exit only via University Heights Road. However, tractor trailers and single heavy use vehicles may exit to Spear Street via PFG Road. Tractor trailers may only exit during non-peak hours. Exhibit #099 and 111.
43. The typical construction workday will start before the AM peak hour and end after the PM peak hour. The Main Street and Spear Street peak hours are approximately 7:45-9:00AM and 4:30-5:45PM. Exhibit #096.
44. The *Joint Institution Parking Management Plan, 2018 Annual Update* ("2018 JIPMP"; March 2018) indicates that the total parking spaces on the UVM campus is 5,272 spaces,⁴ with approximately 363 surplus parking spaces across campus during peak demand. Exhibit #093.
45. Under LUP #4C0348-4, the Applicant constructed an open-sided, three tiered parking structure at the PFG complex to provide approximately 550 new parking spaces. In total, the PFG parking area is designed to accommodate 1,323 parking spaces.⁵ Exhibit #093.
46. The Project will reduce parking within the PFG parking area by approximately 134 parking spaces. Exhibit #056 and 085. However, the Applicant leases approximately 133 parking spaces within the PFG parking area to the UVM Medical Center. Exhibit #093. Under the Project, the Applicant will reclaim all parking spaces from the UVM Medical Center by terminating the lease agreement.
47. The Applicant states that the majority of athletic events are held during evening hours, typically starting after 7:00PM. The Applicant also represents that daytime events occur less often, as there is less parking availability during the day which coincides with peak parking demand periods. Exhibit #087.
48. On average, 600 – 800 parking spaces are available within the PFG parking area during evening events. Exhibit #095.
49. If events require more parking than the PFG parking area can handle, UVM Parking & Transportation Services ("T&PS") directs traffic to the Jeffords Center parking lot located to the north of Main Street in accordance with the *UVM Special Events Circulation Procedures*. Exhibits #094 and 095. The *UVM Special Events Circulation Procedures* specifies the following (Exhibit #095):

"If and when the lead T&PS officer estimates that the number of vehicles may exceed the number of available parking spaces at the Gutterson Garage, s/he will redirect traffic to alternate sites and ensure that CATS shuttle buses transport spectators to and from the overflow parking lots. Larger events such as large concerts and games such as Men's Basketball and Men's Ice Hockey can be expected to require CATS shuttle buses and access to overflow parking lots."

⁴ This number excludes the parking spaces located at the UVM Farm and Bio-Research complexes on Spear Street. Exhibit #093.

⁵ Land Use Permit #4C0348-4 indicated that the PFG parking area contained 1,315 parking spaces and Exhibit #086 indicates that the PFG parking area contains 1,320 parking spaces. The origin of the discrepancy in the number of parking spaces is unknown.

50. The Jeffords Center parking lot contains approximately 400 parking spaces. However, 100 of those spaces are leased to the UVM Medical Center. Exhibit #093. On average, 250 - 300 parking spaces are available at the Jeffords Center parking lot during evening events. Exhibits #094 and 095.
51. The Applicant has stated that the number and size of events are limited by existing schedules for the PFG complex, availability of parking and availability of space at the PFG complex. Exhibit #087. The Applicant has stated that they do not anticipate or propose an increase in the scope of events that can be held at the PFG complex as a result of the Project. Exhibit #087.
52. The Applicant has stated that with the exception of a one-day undergraduate commencement ceremony held each year, the maximum capacity of the PFG complex is 7,300 people at any one time, based on building egress capabilities. Exhibits #056 and 085.
53. The Applicant has stated that the Multipurpose Center and Gutterson Field House shall not be used simultaneously for spectator events where the combined attendance exceeds 5,000 persons. Exhibit #115. In addition, the Applicant has stated that the Patrick Gymnasium will no longer be used for spectator events but will be used only as a practice space. Exhibit #056.
54. The *Burlington Comprehensive Development Ordinance* (2018) requires off-street parking for indoor recreational facilities using a ratio of one parking space per four seats.⁶ Exhibits #089 and 093. Using this ratio and a maximum capacity of 5,000 the parking demand would be 1,250 parking spaces. On average, however, between 850 - 1,100 parking spaces are available at the PFG parking area and the Jeffords parking lot for evening events if the *UVM Special Events Circulation Procedures* are implemented.
55. The *2009-2014 Joint Institution Parking Management Plan* ("2009-2014 JIPMP") was approved by the City of Burlington Development Review Board on September 28, 2009.⁷ The *JIPMP 2018 Update* ("2018 JIPMP") dated March 12, 2018 is the most recent annual update to the 2009-2014 JIPMP. The purpose of the JIPMP is to reduce parking demand through the use of transportation demand management ("TDM") strategies rather than simply adding parking supply to meet demand. Exhibit #089.
56. The 2009-2014 JIPMP and the 2018 JIPMP incorporate the following TDM strategies as part of the Chittenden Area Transportation Management Association ("CATMA"; Exhibits #089, 093 and 094):
 - a. Encouraging the use of alternate modes of transportation including bicycling and walking through a bike/walk rewards program for employees. In addition, the Project will include the construction of 78 new bike parking spaces at the PFG complex.

⁶ Burlington Comprehensive Development Ordinance (2018), Table 8.1.8-1 for indoor recreational facilities and performing arts centers.

⁷ A *2014-2019 Joint Institution Parking Management Plan* was approved by City of Burlington Development Review Board on May 19, 2014. That plan was not made available as an exhibit to this application.

- b. The use of free on campus shuttles, and subsidies for the use of public transportation services including Green Mountain Transit ("GMT") local and LINK express.
 - c. Encouraging the use of carpooling, rideshare and carshare services.
 - d. Implementing policies to restrict bringing vehicles to the University.
 - e. The use of warnings, citations and towing to ensure parking across campus is in accordance with the JIPMP and authorized parking permits. Parking enforcement officers are on campus during posted hours of all parking lots and UVM Police takes over parking enforcement during nighttime hours.
57. The Commission finds that the parking deficit when 5,000 spectators are at the Multipurpose Center and Gutterson Field House simultaneously is adverse but not undue provided that by permit condition the Applicant will assess the PFG complex's parking needs annually and provide a copy of the JIPMP updates to the Commission as they become available; and provided that the Applicant will maintain a record of spectator attendance at the PFG complex, and Virtue Field, through ticket and/or turnstile counts and provide these records to the Commission upon request. Additionally, the Commission will by permit condition retain jurisdiction on Criterion 5 and reserve the right to evaluate and impose additional conditions and mitigation measures deemed necessary to ameliorate adverse conditions that arise with respect to parking. The Applicant will be responsible for implementing such mitigation measures. The Commission shall retain jurisdiction on Criterion 5 for a period of 5 years from the date of issuance of this decision.
58. Ms. Hedrick requested that the Applicant commit to not building or expanding any periphery parking lots or garages on the South Prospect Street side of campus. Exhibits #065, 066 and 102-107. The Commission acknowledges Ms. Hedrick's concern, but no parking areas are proposed at this time near the South Prospect Street side of campus. The Commission finds that any potential future development of parking areas is too speculative to consider at this time.
59. Ms. Hedrick also expressed concerns that the lack of readily available parking at the PFG complex encourages visitors to park off-campus on side streets. Exhibits #065, 066 and 102-107. The Commission acknowledges Ms. Hedrick's concern; however, Henderson Terrace, Robinson Parkway, University Terrace and a segment of South Prospect Street between the intersection with Henderson Terrace and the northern intersection with Robinson Parkway currently are restricted as residential-only parking areas throughout the year. Ms. Hedrick lives at 282 South Prospect Street which is located within this restricted residential-only parking area.

Conclusions of Law

Prior to granting a permit, the Commission must find that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of the highways. Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens.

Provided that the Project will follow the conditions set forth above, the Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use

of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

The Project complies with Criterion 5(A) and Criterion 5(B)

Criterion 8 – Aesthetics, Scenic or Natural Beauty:

Findings of Fact

60. The Project is located within the University of Vermont's Athletic Campus between Spear Street, South Prospect Street and Main Street in Burlington, Vermont.
61. The Project is located within the PFG complex which is currently comprised of the Patrick Gymnasium, Forbush Natatorium, Gutterson Field House (including the ice hockey rink and Gardner-Collins Cage indoor track), Gucciardi Fitness Center, multipurpose areas and PFG parking area.
62. The Project is located in an area with a mixture of educational, commercial and residential uses. The Project is surrounded by the Archie Post Athletic Complex and the Burlington Country Club to the south; UVM dormitories (Harris/Millis, Marsh/Austin/Tupper, Living and Learning, and University Heights) and UVM Central Campus to the north; an off-campus residential neighborhood to the east; and the UVM Redstone Campus and off-campus residential neighborhoods to the west.
63. The Project includes the construction of a new 96,681 sf multipurpose events center and basketball stadium, situated in an existing parking lot between the Gutterson Field House and Patrick Gymnasium facilities on the east side of the existing PFG complex. The maximum height of the addition will be approximately 60 feet above grade, comparable in height to many of the student residence structures. The curved roofline of the proposed addition mimics that of the existing Gutterson Field House. Although large in scale, the addition will infill the existing structure, concealing the mass of the addition. In addition, the existing Gutterson parking garage is located to the east of the addition which provides some screening of the addition from Spear Street and surrounding residences. Although the east wall of the new addition will be primarily constructed of glass, the remaining building materials have been chosen to blend with the existing structure. Exhibits #035, 036, 044, 045 and 074.
64. The Project also includes a 17,331 sf renovation along the northern side of the existing complex for a new health and wellness activity space. The northern building addition also includes a new pitched roofline, entryway and awning. The maximum height of the new pitched roof is approximately 50 feet above grade. The new sloping roofline replaces existing flat roofs and conceals much of the existing rooftop mechanical equipment. The building materials for the new addition have been selected to integrate with the existing building. Exhibits #038, 039, 043 and 074.
65. The Project also includes a 7,909 sf addition to the south side of the Gutterson Field House and east of the Gucciardi Fitness Center. The addition accommodates seating and a new pedestrian concourse. Exhibit #037.
66. Parts of the Project will be visible from off-campus, including from off-campus residences, during both day and night, and from public roadways.

67. The Project also includes new pedestrian pathways, upgrades to the existing access road located to the east of the PFG complex, and parking modifications. Exhibits #027.
68. The exterior lighting of the facility will utilize the University's adopted lighting policies and standards. Exterior lighting will consist of pole-mounted street lights and building mounted light fixtures. Exhibit #031. All light fixtures will have concealed light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
69. The Project includes standard university wayfinding signs that will not be illuminated. Exhibit #051. No other signage is proposed at this time.
70. The City of Burlington has limited construction activity including truck traffic to 7:00AM to 6:00PM Monday through Friday, and 8:00AM to 4:30PM Saturdays and Sundays. Exhibit #111. In addition to these restrictions, the Commission will by permit condition restrict construction activity on State and Federal Holidays.
71. The trees to be retained are depicted on Exhibits #017, 018 and 029 will be protected by barrier fencing during construction.
72. The Project will be landscaped as outlined on Exhibits #029 and 030. Landscaping includes a combination of street trees, deciduous trees, shrubs, perennials and groundcover. The Commission will by permit condition require the Applicant to maintain the landscaping as approved.
73. The existing tree line along Spear Street provides additional screening of the Project from residences located to the east of the Project site.
74. Utility lines will be located underground, and utility pedestals, cabinets and features will be screened with fencing or vegetation. The refuse facilities will be concealed near the loading dock area.
75. The municipal plan that applies to this Project is the *Burlington Municipal Development Plan* (2014). A key vision statement of the *Burlington Municipal Development Plan* (2014) is that:

"Development of academic and medical campuses, including additional housing, [should be] concentrated on core campuses in order to minimize impacts on adjoining residential neighborhoods."
76. The *Burlington Comprehensive Development Ordinance* (2018) also applies to the Project. The Ordinance indicates the Project is located within the Institutional district and within the Institutional Core Campus Overlay ("ICCO") district. The *Burlington Comprehensive Development Ordinance* (2018) states that:

"UVM South of Main Street [Institutional Core Campus Overlay district] is intended to provide reasonable future use of the UVM residential and athletic campuses south of Main Street without further intrusion into the surrounding residential neighborhoods. This district allows for an increased development scale and intensity than would typically be found in the adjoining and underlying districts to support continued growth and expansion of the state's flagship academic institution. This core campus would be expected to be dominantly pedestrian-oriented, with all but the most essential parking provided off-site. Development within this core campus should reflect the institution's core educational values in both design and quality."

77. The City of Burlington Development Review Board found affirmative findings for the Project. Exhibit #073. According to the Burlington Development Review Board Findings of Fact (Exhibit #073):

"The University of Vermont is an educational institution and, therefore, is subject to only limited zoning review per 24 VSA, Sec. 4413, Limitations on municipal bylaws. This application may be reviewed only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements."

78. The regional plan that applies to this application is the *Chittenden County ECOS Plan* (2018).

Conclusions of Law

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 will not have an undue adverse effect on the aesthetics, scenic or natural beauty of the area. 10 V.S.A. § 6086(a)(8).

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics, scenic and natural beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue.⁸

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: (a) the nature of the project's surroundings; (b) the compatibility of the project's design with those surroundings; (c) the suitability of the colors and materials selected for the project; (d) the locations from which the project can be viewed; and (e) the potential impact of the project on open space.⁹

The Project is located in an area along Spear Street in South Burlington, Vermont that contains a mixture of uses including educational, commercial and residential. The Project is located within the existing PFG complex on the UVM Athletic Campus. The Project includes the construction of several building additions to the existing PFG complex and the construction of roadways, sidewalks and paths. The Project will be visible from neighboring properties, and to passersby on Spear Street, PFG Road and University Heights (i.e. motorists and pedestrians). Although the Project is generally consistent with its surroundings, due to the size and scale of the building additions, the Project is perceived as a significant change to the PFG complex.

The Commission concludes that the Project will have an adverse aesthetic impact. Accordingly, the Commission must determine whether that impact is undue.

⁸ *In re: Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010) (citations omitted); see also, *In re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law.

⁹ *In re: Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985)(cited in *In re: Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (a) the project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (b) the project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (c) the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings.¹⁰

a. Clear, Written Community Standard

The Commission has reviewed relevant portions of *Burlington Municipal Development Plan* (2014). The Commission finds that the plan uses aspirational language (e.g., “may”, “should”, “strongly encouraged”) and not mandatory language (e.g., “shall”, “shall not”). The Courts have long held that aspirational language in a Town Plan serves as an inadequate foundation for regulatory prohibitions. No mandatory language prohibiting the proposed Project was identified in the plan.

The Commission has reviewed relevant portions of the *Burlington Comprehensive Development Ordinance* (2018). The Commission finds that the development regulations use mandatory and not merely aspirational language.

The Project is located within the Institutional district and within the ICCO overlay district, which is specifically planned for increased development scale and intensity than would typically be found in the adjoining and underlying districts to support continued growth and expansion of the state’s flagship academic institution, without further intrusion into the surrounding residential neighborhoods. Additionally, the Project was granted affirmative findings by the City of Burlington Development Review Board on July 5, 2018 in due consideration of the *Burlington Comprehensive Development Ordinance* (2018).

Therefore, the Commission finds that the proposed Project does not violate a clear written community standard.

b. Offensive or Shocking Character

Criterion 8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever. Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. As a threshold matter, the Commission must evaluate if a project is offensive or shocking as viewed from the perspective of an average person.¹¹

The Commission acknowledges that the Project will be significantly different than the present condition of the Project tract. However, the Commission concludes that the Project would not be offensive or shocking to the average person.

¹⁰ *In re: Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

¹¹ *In re: Goddard College Conditional Use*, Nos. 175-12-11 Vtec and 173-12-12 Vtec, slip op. at 14 (Vt. Super. Ct. Envtl. Div. Jan. 6, 2014).

c. Generally Available Mitigating Steps

If a project has an adverse aesthetic effect, the Applicant must take generally available mitigating steps to reduce the negative aesthetic impact of a particular project; failure to take advantage of available alternatives may render an aesthetic impact unduly adverse.¹² A generally available mitigating step is one that is reasonably feasible and does not frustrate either the project's purpose or Act 250's goals.

To mitigate the aesthetic impacts of the Project, the Applicant has designed the buildings to be set back from Spear Street. The architectural style and materials will not cause buildings to stand apart from their surroundings. The size of the proposed buildings is similar to those in the surrounding area. In addition, all proposed lighting will be down-shielded, utilities will be primarily located underground, and utility pedestals and cabinets will be screened with vegetation.

The Applicant has proposed new landscaping and preservation of existing vegetation to aid in screening of the Project from surrounding areas. The Project will be landscaped with street trees deciduous trees, shrubs, perennials and groundcover as outlined on Exhibit #029 and 030. The Commission will by permit condition require the Applicant to maintain the landscaping as approved.

Given all of these considerations, the Commission finds that the Applicant has taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

Based on the above, the Commission concludes that the Project will not have an undue adverse impact on the aesthetics or natural and scenic beauty of the area.

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with in the findings and conclusions of this decision and the conditions of Land Use Permit #4C0348-7, will comply with the Act 250.

VII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #4C0348-7 is hereby issued.

¹² *In re: Stokes Communications Corp.*, 164 Vt. 30, 39 (1995) (quoted in *In re: Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)).

DATED at Essex Junction, Vermont, this 11th day of March 2019.

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

Commissioners participating in this decision:
Monique Gilbert
Kate Purcell

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$295 entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k).

For additional information on filing appeals, see the Court's website at:
<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call 802-951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

Y:\NRB\Essex\DISTRICTS\DIST4\PROJECTS\UVM\4C0348\4C0348-7\Published Documents\District Commission Documents\4C0348-7 findings.docx

Exhibit List

Application #	4C0348-7 (2/8/19)
Applicant(s)	The University of Vermont & State Agricultural College
Landowner(s)	The University of Vermont & State Agricultural College
Project Town(s):	Burlington, Vermont



No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000	8/30/18	000 Exhibit List UVM_Multipurpose_Events_Center	
001	"	001 Act 250 Application UVM_Multipurpose_Events_Center	Applicant
002	"	002 Schedule G UVM_Multipurpose_Events_Center	"
003	"	003 Location and Adjoiners Map UVM_Multipurpose_Events_Center	"
004	"	004 G000.1 COVER SHEET	"
005	"	005 C0100 Overall Civil Site Plan	"
006	"	006 C0101 Civil Site & Utility Plan	"
007	"	007 C0102 Civil Site & Utility Plan	"
008	"	008 C0103 Civil Site & Utility Plan	"
009	"	009 C0104 Civil Site & Utility Plan	"
010	"	010 C0105 Civil Site & Utility Plan	"
011	"	011 C0106 Civil Site & Utility Plan	"
012	"	012 C0107 Civil Site & Utility Plan	"
013	"	013 C0108 Post Construction Soil Restoration Plan	"
014	"	014 C0200 Overall Existing Conditions Plan	"
015	"	015 C0201 Existing Conditions Plan	"
016	"	016 C0202 Existing Conditions Plan	"
017	"	017 C0300 Civil Site Demolition Plan	"
018	"	018 C0301 Civil Site Demolition Plan	"
019	"	019 C0400 Erosion Prevention & Sediment Control Plan Preconstruction	"
020	"	020 C0400 Erosion Prevention & Sediment Control Plan Stabilization	"

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
021	"	021 C0400 Erosion Prevention & Sediment Control Plan Stabilization	"
022	"	022 C0600 Civil Details	"
023	"	023 C0601 Civil Details	"
024	"	024 C0602 Civil Details	"
025	"	025 C0603 Civil Details	"
026	"	026 C0604 Civil Details	"
027	"	027 L100 Layout and Material Plan Illustrative	"
028	"	028 L200 Enlargement Layout and Materials Plan	"
029	"	029 L300 Planting Plan	"
030	"	030 L400 Landscape Details	"
031	"	031 L500 Photometric Plan	"
032	"	032 L600 Circulation Diagram	"
033	"	033 A0105 Roof Overall Plan	"
034	"	034 A0305 Overall Elevations	"
035	"	035 A0311 Exterior Elevations - Event Center	"
036	"	036 A0312 Exterior Elevations - Event Center	"
037	"	037 A0313 Exterior Elevations - South Concourse	"
038	"	038 A0314 Exterior Elevations - Health and Wellness	"
039	"	039 A0315 Exterior Elevations - Health and Wellness	"
040	"	040 A0350 Building Sections	"
041	"	041 A0351 Building Sections	"
042	"	042 A0352 Building Sections	"
043	"	043 Health and Wellness Rendering	"
044	"	044 Event Center Rendering	"
045	"	045 Event Center Close-up Rendering	"
046	"	046 Adjainers and neighbor mailing labels UVM Multipurpose Events Center	"
047	"	047 Construction Waste Management Specifications UVM Multipurpose Events Center	"
048	"	048 Construction Waste Management Plan UVM Multipurpose Events Center	"
049	"	049 Demolition Waste Management Plan UVM Multipurpose Events Center	"
050	"	050 Burlington Water Capacity Letter UVM Multipurpose Events Center	"

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
051	"	051 Wayfinding sign sample UVM Multipurpose Events Center	"
052	"	052 UVM Lighting Cut Sheets UVM Multipurpose Events Center	"
053	"	053 UVM Solar PV Project UVM Multipurpose Events Center	"
054	"	054 Energy Analysis UVM Multipurpose Events Center	"
055	"	055 Waste Reduction Plan UVM Multipurpose Events Center	"
056	"	056 Project Description UVM Multipurpose Events Center	"
057	"	057 NRCS SoilMap 2018.08.27 UVM Multipurpose Events Center	"
058	"	058 Schedule G Signed UVM Multipurpose Events Center	"
059	"	059 Mailing Labels for Envelopes UVM Multipurpose Events Center	"
060	"	060 Signed Application Pages UVM Multipurpose Events Center	"
061	"	061 Schedule A Signed UVM Multipurpose Events Center	"
062	"	062 Cover Letter UVM Multipurpose Events Center	"
063	9/27/18	063 Letter by Christopher Clow, Vtrans re Traffic (9/26/18)	VTrans
064	9/28/18	064 Letter by CCRPC re Review of Project (9/28/18)	Regional Planning Commission
065	"	065 Headrick Letter Dated September 28, 2018	Abutter
066	10/1/18	066 Headrick Supplementary Letter Dated October 1, 2018	"
067	10/26/18	067 Cover Letter to R. Lomonaco, Dist. Coord. re Supplemental Information as Requested in HRO of October 9, 2018 (10/26/18)	Applicant
067a	10/31/17	067a Revised Cover Letter to R. Lomonaco, Dist. Coord. re Supplemental Information as Requested in HRO of October 9, 2018	"
068	10/26/18	068 Stormwater Discharge Permit 3627-INDS.6 Issued October 18, 2018	ANR
069	"	069 State of Vermont ANR DEC Watershed Management Division Draft Discharge Permit 3627-INDC.9	"
069a	11/9/18	069a State of Vermont ANR DEC Watershed Management Division Discharge Permit 2083-3627-INDC.9 Issued November 2, 2018	"
070	10/26/18	070 Email by Buzz Surwilo, Solid Waste Management Program re Construction Waste Management Plan Approval (10/22/18)	"
071	"	071 Section 01 5240 Construction Waste Management (10/3/18)	Applicant
072	"	072 University of Vermont On-Campus Multipurpose Center Construction Waste Management Plan (10/22/18)	"
073	"	073 Burlington Development Review Board Findings of Fact Deliberative Hearing July 5, 2018	Municipality
074	"	074 Act 250 Commission Presentation-V1 (10/1/18)	Applicant
075	"	075 Ability to Serve Letter by Casella (9/26/18)	"
076	"	076 Ability to Serve Letter by Vermont Gas (9/27/18)	"
077	"	077 Ability to Serve by Lianne Tuomey, UVM Police (9/10/18)	"
078	"	078 Ability to Serve by UVM Rescue (10/25/18)	"

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
079	"	079 Hammer PPV--Blasting	"
080	"	080 Hammer PPV Email by Todd Merchant--Blasting (10/17/18)	"
081	"	081 Blasting Procedure	"
082	"	082 UVM Blasting Specification On Campus Multipurpose Center (10/17/18)	"
082a	11/9/18	082a UVM Blasting Specification On Campus Multipurpose Center (Rev. 10/29/17/18)	
083	10/26/18	083 UVM Athletic Total Home Events	"
084	"	084 UVM PFG Non-Athletics Dept. Events w/300 Plus	"
085	"	085 Brief Detailing Maximum Non-Simultaneous Capacities at PFG Athletic Complex	"
086	"	086 Briefing Detailing Parking Spaces at PFG	"
087	"	087 Brief re Number of Events	"
088	"	088 OCMC Lot Counts Current-Fall 2018	"
089	"	089 Joint Institutional Parking Management Plan 2014-2019 Final Plan (5/30/14)	"
090	"	090 2015 Annual Update Joint Institutional Parking Management Plan - Final	"
091	"	091 2016 Annual Update Joint Institutional Parking Management Plan Final - March, 2016	"
092	"	092 2017 Annual Update Joint Institutional Parking Management Plan - Final	"
093	"	093 2018 Annual Update Joint Institutional Parking Management Plan - Final	"
094	"	094 Briefing Detailing Traffic Monitoring at PFG	"
095	"	095 2014 UVM Special Events Procedures	"
096	"	096 M - OCMC Construction Traffic Findings Oct 2018 v2	"
097	"	097 Photo - Heavy Vehicle Blind Zones	"
098	"	098 OCMC Lot Counts Fall17-Spring18	"
099	"	099 Proposed Internal Construction Traffic Flow (10/18/18)	"
100	"	100 UVM-OCMC-Energy Analysis Rev1 - Summary	"
101	11/8/18	101 ANR Office of Planning - ANR Response to Hearing Recess Order re Criterion 1(B) Waste Disposal - Blasting (11/8/18) and	ANR
102	11/9/18	102 Cover Memo for Supplemental Exhibits by Barbara Headrick (11/9/18)	Abutter
103	"	103 Supplemental Exhibit I Max of 7300 Spectators at one Time - B. Headrick (11/9/18)	"
104	"	104 Supplemental Exhibit II UVM Parking Supply and Demand - B. Headrick (11/9/18)	"
105	"	105 Supplemental Exhibit III Seating Capacity Before and After Project - B. Headrick (11/9/18)	"
106	"	106 Supplemental Exhibit IV Number of Events Forecast - B. Headrick (11/9/18)	"
107	"	107 Supplemental Exhibit V Proposed Project Traffic Impacts - B. Headrick (11/9/18)	"

CERTIFICATE OF SERVICE

I hereby certify on this 11th day of March 2019, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER 4C0348-7, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to nrb-act250essex@vermont.gov.

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FOR YOUR INFORMATION

District #4 Environmental Commission
Thomas Little, Chair
Monique Gilbert/Kate Purcell
111 West Street
Essex Junction, VT 05452

Dated at Essex Junction, Vermont, this 11th day of March, 2019.


Natural Resources Board Technician
879-5614
christine.commo@vermont.gov