

**ACT 250 NOTICE
MINOR APPLICATION #4C1275-1
10 V.S.A. §§ 6001 - 6093**

On June 11, 2015, Bayberry, LLC, c/o Patrick O'Brien, P.O. Box 2286, South Burlington, VT 05407 filed application #4C1275-1 for a project generally described as demolition of an existing SD Ireland concrete plant and construction of a 232-unit apartment complex consisting of 19 buildings, a maintenance building and a club house/leasing office. The project includes a boundary line adjustment with 60 Grove Street. The Project is located at 100 Grove Street in Burlington, Vermont.

The District #4 Environmental Commission is reviewing this application under Act 250 Rule 51 -- Minor Applications. Copies of the application and proposed permit are available for review at the Burlington Town Office, Chittenden County Regional Planning Commission Office, and the office listed below. The application and a draft permit may also be viewed on the Natural Resources Board's web site (www.nrb.state.vt.us/lup) by clicking on "Act 250 Database" and entering the project number "4C1275-1".

No hearing will be held and a permit may be issued unless, on or before **July 29, 2015**, a person notifies the Commission of an issue or issues requiring the presentation of evidence at a hearing or the Commission sets the matter for hearing on its own motion. Any hearing request must be in writing to the address below, must state the criteria or subcriteria at issue, why a hearing is required and what additional evidence will be presented at the hearing. Any hearing request by an adjoining property owner or other interested person must include a petition for party status. Prior to submitting a request for a hearing, please contact the district coordinator at the telephone number listed below for more information. Prior to convening a hearing, the Commission must determine that substantive issues requiring a hearing have been raised. Findings of Fact and Conclusions of Law will not be prepared unless the Commission holds a public hearing.

If you feel that any of the District Commission members listed on the attached Certificate of Service under "For Your Information" may have a conflict of interest, or if there is any other reason a member should be disqualified from sitting on this case, please contact the district coordinator as soon as possible, no later than prior to the response date listed above.

Should a hearing be held on this Project and you have a disability for which you are going to need accommodation, please notify us by **July 29, 2015**.

Parties entitled to participate are the Municipality, the Municipal Planning Commission, the Regional Planning Commission, affected state agencies, and adjoining property owners and other persons to the extent they have a particularized interest that may be affected by the proposed project under the 10 criteria. Non-party participants may also be allowed under 10 V.S.A. Section 6085(c)(5).

Dated at **Essex Junction**, Vermont this 2nd day of July, 2015.

By: /s/Stephanie H. Monaghan
Stephanie H. Monaghan
District #4 Coordinator
Natural Resources Board
111 West Street
Essex Jct., VT 05452
802-879-5662
stephanie.monaghan@state.vt.us

This is a **PROPOSED** permit; please submit any written comments to Stephanie H. Monaghan, District #4 Commission, 111 West Street, Essex Jct., VT 05452 by July 29, 2015.

A permit will NOT be issued until the District Commission receives and reviews the following information:

1. Wastewater System and Potable Water Supply Permit issued by the ANR-DEC Wastewater Management Division.
2. Sign Typical
3. What is the maximum mounting height for proposed exterior lighting fixtures?

AMENDMENT

Case No: 4C1275-1
Bayberry, LLC
c/o Patrick O'Brien
P.O. Box 2286
South Burlington, VT 05407

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #4 hereby issues Land Use Permit Amendment #4C1275-1, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 1274, Pages 349-352, of the land records of Burlington, Vermont, as the subject of a deed to Bayberry, LLC.

This permit specifically authorizes the demolition of an existing SD Ireland concrete plant and construction of a 232-unit apartment complex consisting of 19 buildings, a maintenance building and a club house/leasing office. The project includes a boundary line adjustment with 60 Grove Street. The Project is located at 100 Grove Street in Burlington, Vermont.

Jurisdiction attaches because the Project constitutes a development pursuant to 10 V.S.A. § 6001(3)(A)(iv).

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) Partial Findings of Fact and Conclusions of Law #4C1275, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

[Plans to be added]

3. All conditions of Partial Findings of Fact, Conclusions of Law and Order #4C1275 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 #(permit #) issued on **date** by the ANR Drinking Water and Groundwater Protection Division;

- b. Authorization of Notice of Intent #4773-9020 under Construction General Permit #3-9020 issued on April 8, 2015 by the ANR Watershed Management Division;
 - c. Individual Stormwater Discharge Permit #4773-INDS issued on January 20, 2015 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. Construction hours shall be limited to weekdays from 7AM to 7PM and Saturdays from 8AM to 5PM. **On the northern portion of the site, construction hours shall be limited to weekdays from 7AM to 5PM and Saturdays from 9AM to 3PM.** There shall be no construction on Sundays or holidays.
 13. The Permittee shall apply and maintain water and/or other agents approved by the Watershed Management Division in the Project's Erosion Prevention and Control Plan on all roadways or disturbed areas within the project during construction and until pavement and/or vegetation is fully established to control dust.
 14. A stabilized construction entrance must be installed and maintained as shown on Exhibits #28 and 29 at the intersection of Grove Street and the Project entrance road. 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.
 15. There shall be no floor drains installed at the Project without first acquiring the required permit from the ANR Drinking Water and Groundwater Protection Division and/or the Wastewater Management Division.

16. 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.
17. The Permittee shall comply with the approved Construction Site Waste Reduction Plan. The contractor shall be obligated to implement the Plan. Exhibit #9.
18. The Permittee shall comply with Exhibits #4 and 28-34 (Schedule B; and Erosion Control Plans) 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.
19. 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.
20. 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).
21. 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).
22. The Commission reserves the right to review erosion prevention and sediment control and to evaluate and impose additional conditions with respect to erosion prevention and sediment control as it deems necessary.
23. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snowfencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
24. A copy of the approved erosion prevention and sediment control plan shall be on the site at all times during construction.
25. 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.
26. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits #39-49 (Landscape, Grading and Planting Plans) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
 27. Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree line to be retained as depicted on Exhibit #39 (Overall Landscape Site Plan).
 28. The Permittee shall pay two proportional fair-share monetary contributions based on the percent increase in peak hour traffic from the proposed Project and the estimated cost of the overall improvements at the Colchester Avenue/Riverside Avenue/Barrett Street intersection triangle in Burlington (\$6,000) and at the US Route 2/White Street intersection in South Burlington (\$16,000). The \$6,000 and \$16,000 contributions shall be paid to the Vermont Agency of Transportation (or respective municipality) before commencement of construction. #4C1275 Findings of Fact, Conclusions of Law under Criterion 5.
 29. The Permittee shall construct the following off-site traffic-calming and pedestrian improvements along the Grove Street corridor: 1) the existing parking lot serving Schmanska Park will be upgraded with a new layout, and new curbing and lighting; 2) a handicap access to the Park will be created and a crosswalk on Grove Street leading from the parking lot to the Park will be formalized with lighting and signage; 3) a solar-powered speed feedback display will be installed on Grove Street; and 4) a sidewalk network will be created along Grove Street, fronting the Project, the Schmanska Park parking lot, and the Park itself. #4C1275 Finding of Fact #21.
 30. The Permittee shall install advance intersection warning signs on both the eastbound and westbound White Street approaches to the White Street/Patchen Road intersection.
 31. The Permittee shall upgrade the existing pedestrian warning signs on Grove Street at the Schmanska Park parking lot midblock crosswalk (north of the Project access) and at the existing crosswalk closest to 60 Grove Street (at the north end of the park) to Rectangular Rapid Flashing Beacons (RRFB), along with new fluorescent yellow warning signs and diagonal arrows indicating the crossing location. These signs shall be gate-posted for both northbound and southbound traffic prior to the first certificate of occupancy for the Project.
 32. The Permittee, due to the tight turning radius for the southbound right-turn from Barrett Street onto Grove Street, shall relocate the "No Parking Here to Corner" sign as indicated by O'Leary-Burke Civil Associates, provided that Burlington Public Works will accept the associated reduction in parking.
 33. The Permittee shall install conduit infrastructure for future vehicle charging stations within the underground parking garages and the surface parking lots.
 34. The installation of exterior light fixtures is limited to those approved in Exhibits #11, 40 and 50 (Lighting Cut Sheets; Landscape Lighting Plan; and Site Lighting Layout Plan), and shall be mounted no higher than 20 (or other height limit) feet above grade level. 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.

35. The installation of exterior signage is limited to that approved in Exhibits #15 and [REDACTED] (Site Plan; and Sign Typical). The Permittee shall not erect additional 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.
36. Pursuant to 30 V.S.A. Section 51, the Permittee and/or subsequent lot owner, at a minimum, shall construct the multi-family home three stories or less in accordance with Vermont's Residential Building Energy Standards (RBES).
37. The installation and/or use of electric resistance space heaters are specifically prohibited without prior written approval from the District Environmental Commission.
38. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment and the Partial Findings of Fact before any written contract of sale is entered into.
39. 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).
40. All site work and construction 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.
41. 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 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, Dewey Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.
42. Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Essex Junction, Vermont, this day of August, 2015.

By _____
Thomas A. Little, Chair
District #4 Commission

Members participating in this decision:

Parker Riehle
Monique Gilbert

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, Dewey Building, National Life Drive, Montpelier, VT 05620-3201, 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) 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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CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of July 2015, a copy of the foregoing ACT 250 NOTICE OF MINOR APPLICATION #4C1275-1, 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@state.vt.us. You can now fill out and submit the Act 250 survey online at: <http://permits.vermont.gov/act250-survey>.

Bayberry, LLC
c/o Patrick O'Brien
PO Box 2286
South Burlington, VT 05407
pobrien@sdireland.com

Paul O'Leary
O'Leary-Burke Civil Associates
1 Corporate Drive, Suite #1
Essex Jct., VT 05452
poleary@olearyburke.com

Bob Rusten, City Clerk
Chair, City Council/Chair, City Planning Commission
City of Burlington
149 Church Street
Burlington, VT 05401

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

Elizabeth Lord, Land Use Attorney
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
anr.act250@state.vt.us

FOR YOUR INFORMATION

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

Barry Murphy/Vt. Dept. of Public Service
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Montpelier, VT 05620-2601
barry.murphy@state.vt.us

Craig Keller/Utilities & Permits/VTrans
One National Life Drive, Drawer 33
Montpelier, VT 05633
craig.keller@state.vt.us

Vt. Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@state.vt.us

Division for Historic Preservation
National Life Building, Drawer 20
Montpelier, VT 05620
scott.dillon@state.vt.us
james.duggan@state.vt.us

NRCS, District Conservationist
USDA Soils Conservation Service
1193 S. Brownell Road, Suite 35
Williston, VT 05495-7416
john.thurgood@vt.usda.gov

Winooski NRCD Office
617 Comstock Road, Suite 1
Berlin, VT 05602
whiterivernrcd@gmail.com

County Forester/Agency of Natural Resources
111 West Street
Essex Junction, VT 05452

Patty Malenfant/ANR, Dept. of Fish & Wildlife
5 Perry Street, Suite 40
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John Gobeille, Wildlife Biologist
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Seven Days/Classified Ad Section
255 South Champlain Street, PO Box 1164
Burlington, VT 05402
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Green Mountain Power Corporation
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Brian Gray/Vermont Gas Systems
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Michael Barsotti, Water Quality Director
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mikeb@cwd-h20.org

ADJOINING LANDOWNERS

On File at District Commission Office

Dated at Essex Junction, Vermont, this 2nd day of July, 2015.

Christine A. Commo

Natural Resources Board Technician

879-5614

christine.commo@state.vt.us