

ACT 250 NOTICE
MINOR APPLICATION #4C1326
10 V.S.A. §§ 6001 - 6093

On October 17, 2019, State of Vermont Agency of Transportation, 1 National Life Drive, Montpelier, VT 05633 filed application number #4C1326 for a project generally described as improvements to existing I-89 interchange at Exit 17 including reconstruction of highway overpass and reconfiguration of on and off-ramps. The Project is located on I-89 at Exit 17 in Colchester, Vermont.

The District 4 Environmental Commission is reviewing this application under Act 250 Rule 51—Minor Applications. A copy of the application and proposed permit are available for review at the office listed below. The application and a draft permit may also be viewed on the Natural Resources Board's web site (<http://nrb.vermont.gov>) by clicking on "Act 250 Database" and entering the project number "4C1326."

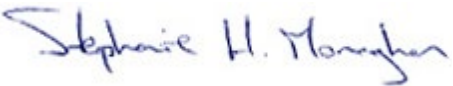
No hearing will be held and a permit may be issued unless, on or before December 6, 2019, a person notifies the Commission of an issue or issues requiring the presentation of evidence at a hearing, or the Commission sets the matter for a hearing on its own motion. Any person as defined in 10 V.S.A. § 6085(c)(1) may request a hearing. Any hearing request must be in writing to the address below, must state the criteria or sub-criteria 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 person eligible for party status under 10 V.S.A. § 6085(c)(1)(E) must include a petition for party status under the Act 250 Rules. 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 may 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, and by no later than December 6, 2019.

If you have a disability for which you need accommodation in order to participate in this process (including participating in a public hearing, if one is held), please notify us as soon as possible, in order to allow us as much time as possible to accommodate your needs.

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 that they have a particularized interest that may be affected by the proposed project under the Act 250 criteria. Non-party participants may also be allowed under 10 V.S.A. Section 6085(c)(5).

Dated at Essex Junction, Vermont this 6th day of November, 2019.

By: 

Stephanie H. Monaghan
District 4 Coordinator
111 West Street
Essex Jct., VT 05452
802-879-5662
stephanie.monaghan@vermont.gov



State of Vermont

LAND USE PERMIT

This is a PROPOSED permit; please submit any written comments to Stephanie H. Monaghan, 111 West Street, Essex Junction, VT 05452 by December 6, 2019.

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

- 1. Vermont Wetland Permit issued by the ANR-DEC Watershed Management Division.
2. Stormwater Discharge Permit issued by the ANR-DEC Watershed Management Division.
3. Construction General Permit issued by the ANR-DEC Watershed Management Division.
4. Blasting Plan. Blasting is not currently anticipated, so this plan will not be needed.
5. Construction Site Waste Reduction Plan and approval of the Plan by ANR Solid Waste. There is no building demolition, so this plan will not be needed.

CASE NO: 4C1326

State of Vermont Agency of Transportation
1 National Life Drive
Montpelier, VT 05633

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #4 hereby issues Land Use Permit Amendment #4C1326, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 505, Pages 349-354; Book 379, Pages 447-449; Book 129, Pages 355-356; Book 247, Pages 630-632; and Book 380, Page 422 of the land records of Colchester, Vermont, as the subject of various deeds in the Town of Colchester, Vermont.

This permit specifically authorizes improvements to the existing I-89 interchange at Exit 17 including reconstruction of a highway overpass and reconfiguration of on and off-ramps. The project is located on I-89 at Exit 17 in Colchester, Vermont.

Jurisdiction attaches because the Project constitutes construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county or State purposes, pursuant to 10 V.S.A. § 6001 3(A)(v).

This judgment for jurisdiction is incorrect. The measure of 10 acres should not be used for a pre-existing development that was built prior to 1970

- 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 the conditions of this permit and the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

This permit should not reference the requirement to comply with other permits. Compliance with other permits is required by law and it is duplicative to list them here.

Sheets 1-17 of 17 - "Layout Plan (17)," dated October 16, 2019 (Exhibit #004-020);
Sheets 4-6 of 61 - "EPSC Narrative Sheet (3)," dated September 20, 2019 (Exhibit #022-024);
Sheets 24-40 of 61 - "EPSC Construction Site Plan (17)," dated September 20, 2019 (Exhibit #025-041); and
Sheets 58-61 of 61 - "EPSC Details (4)," dated September 20, 2019 (Exhibit #042-045).

The State of Vermont owns and is constructing this project and will therefore have access at all times. This condition is basically saying that you have to give yourself access at all times.

The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:

- a. Authorization of Notice of Intent # _____ under Construction General Permit #3-9020 issued on **(date)** by the ANR Watershed Management Division;
- b. Authorization of Notice of Intent # _____ under General Permit #3-9015 (Stormwater Discharge General Permit), issued on **(date)** by the ANR Watershed Management Division; and
- c. Individual Wetland Permit #(permit #) issued on (date) by the ANR Watershed Management Division.

4. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.

5. 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.

6. A copy of this permit and plans shall be on the site at all times throughout the construction process.

7. 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.

This is public highway right-of-way. The allowable uses are already defined by statute.

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.

8. 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.

10. 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.

~~11. The Permittee shall comply with the Construction Site Waste Reduction Plan that has been approved by the Agency of Natural Resources Solid Waste Management Program. The contractor shall be obligated to implement the approved Plan. Exhibits # _____ (Construction Site Waste Reduction Plan; and ANR Solid Waste's approval)~~

This condition is duplicative with the construction stormwater permitting. If it is a requirement of the construction stormwater permit it should not be duplicated here as well.

This condition should not apply as there will be no building's demolished.

There is no current anticipated need for blasting. This condition should be removed.

Conditions 14-18 should be deleted. These matters are all fully/completely covered by the DEC Construction Stormwater permit. Having these conditions here is at best redundant, and at worst creates contradictory and confusing requirements for contractors and VTrans.

12. The Permittee shall comply with the Agency of Natural Resources' *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016).
13. [Additional blasting placeholder]

14. The Permittee shall comply with Exhibits #022-045 (EPSC 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.

15. 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.

16. 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).

17. 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 15. 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).

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.

construction stormwater permit

19. 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.

20. The Permittee shall maintain an undisturbed, naturally vegetated, unmowed 50-foot buffer from the edge of wetlands and any disturbed areas. Snowplowing or storage of materials within this buffer is prohibited.

21. The Project impacts 0.88 of primary agricultural soils (PAS) for which 1.79 acres mitigation are calculated. The Permittee shall mitigate the 0.88 acres of PAS impact if/when the cumulative PAS impacts (from this pending Act 250 Permit application and subsequent amendment impacts on this parcel or involved lands) result in a mitigation

Acres

Coordination for impacts to prime agricultural soils was completed prior to submission of the permit application. Documentation was submitted as an exhibit that no mitigation is required. This condition should be deleted.

There will be impacts to wetlands and wetland buffers. The project is obtaining USACE 404 and Vermont State Wetland permits. This condition should be deleted.

There is no need for this condition as it is already covered by the Clean Water Act and Vermont's Water Pollution Control Law.

This is imposing a condition for something that is fully/completely covered in the EPSC plan through the LOD demarcation, which is duplicative/unnecessary/potentially contradictory.

area of 2.0 or more acres, as further outlined in Exhibit #049 (Letter dated 5/9/2018 from the Vermont Agency of Agriculture, Food & Markets).

Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.

The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit #047 (Natural Resource Assessment Report, pages B-1 – B-3) by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.

Landscaping and planting is already covered by the VTrans standard specifications for construction.

24. Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree line and around trees to be retained as depicted on Exhibit #021 (Area of Disturbance Map).

This is a Federal Aid highway project that will not have any purchaser of an interest in the project.

The installation of exterior light fixtures is limited to streetlights for safety purposes in accordance with the VTrans Lighting Design Guide, and will be similar to existing light fixtures. Exhibit #001a (Revised Schedule A).

This is already the policy of VTrans and should not be restated here.

26. Highway signs shall be installed in accordance with the Manual on Uniform Traffic Control Devices, and will be similar in size, appearance, and configuration to existing signs. Exhibit #001a (Revised Schedule A).

27. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit before any written contract of sale is entered into.

28. 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).

December 15, 2024

This is required by State Statute and also required for Federal Aid Projects.

29. All site work and construction shall be completed in accordance with the approved plans by ~~October 1, 2023~~, 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.

30. 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, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.

VTrans is required to spend their Federal Aid money on a specific schedule. This condition should not apply to VTrans Federal Aid projects.

31. 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 day of December, 2019.

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

Members participating in this decision:
Parker Riehle
James McNamara

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. The appellant must file with the Notice of Appeal the relevant 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, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

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.

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CERTIFICATE OF SERVICE

I hereby certify on this 6th day of November, 2019, a copy of the foregoing ACT 250 MINOR NOTICE #4C1326, 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

Vermont Agency of Transportation
c/o Jeff Ramsey
1 National Life Drive
Montpelier, VT 05633
Jeff.ramsey@vermont.gov

Julie Graeter, Town Clerk
Chair, Selectboard/Chair, Planning Commission
Town of Colchester
781 Blakely Road
Colchester, VT 05446
jgraeter@colchestervt.gov

Chittenden County Regional Planning Commission
c/o Charlie Baker, Exec. Dir.
Regina Mahony, Planning Program Manager
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

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

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

Craig Keller/Jeff Ramsey/Christopher Clow
VTrans Policy, Planning & Research Bureau
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov

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

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

FOR YOUR INFORMATION

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

NRCS, District Conservationist
Natural Resources Conservation Service
68 Catamount Park, Ste. B
Middlebury, VT 05753
marybeth.whitten@vt.usda.gov

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

Ethan Tapper, County Forester/FPR
John Gobeille/Toni Mikula, ANR/Dept. of Fish & Wildlife
111 West Street
Essex Junction, VT 05452
ethan.tapper@vermont.gov
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Seven Days/Classified Ad Section
255 South Champlain Street, PO Box 1164
Burlington, VT 05402
classifieds@sevendaysvt.com

Green Mountain Power Corporation
c/o Kim Jones
163 Acorn Lane
Colchester, VT 05446
kim.jones@greenmountainpower.com

Vermont Gas Systems
PO Box 467
Burlington, VT 05402
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Efficiency Vermont
128 Lakeside Ave., Suite 401
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Michael Barsotti, Water Quality Director
Champlain Water District
403 Queen City Park Road
South Burlington, VT 05403
mike.barsotti@champlainwater.org

ADJOINING LANDOWNERS

Available via:
<https://anrweb.vt.gov/PubDocs/ANR/Planning/4C1326/Application%20Documents/001a%20Application%20Signed%20Revised%2010-23-19.pdf>

Dated at Essex Junction, Vermont, this 6th day of November, 2019.



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

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