



LAND USE PERMIT AMENDMENT

State of Vermont
Natural Resources Board
District 8 Environmental Commission
440 Asa Bloomer State Office Building
88 Merchants Row, 4th Floor
Rutland, VT 05701-5903
<https://nrb.vermont.gov/>

CASE NO: 8B0623-1

Jeffrey O. Nyweide
PO Box 1426
Manchester Center, VT 05255

LAW/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 – 6111 (Act 250)

The District 8 Environmental Commission ("Commission") hereby issues Land Use Permit ("LUP") amendment 8B0623-1, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in (and recorded as set forth in Exhibit 133): (PARCEL #1) BK 344/PG 670, BK 59/PG 519, BK 41/PG 279; (PARCEL #2) BK 344/PG 670, BK 65/PG 153; (PARCEL 3) BK 344/PG 670, BK 96/PG 403 of the land records of the Town of Manchester, Vermont as the subject of deeds to Jeffrey O. Nyweide, the Permittee.

This permit specifically authorizes the development of a 46-bed (92-person maximum occupancy), four-season, experiential and educational eco-retreat, wedding and cultural event venue, and corporate conference center, with both new construction and conversion of existing structures to include: 43 four-season camp/guest shelters with utilities; converted farmhouse with three guest rooms; lodge with 60-seat restaurant; two 30-seat restaurants; 20-seat conference/assembly area; convenience store with deli; pavilions; sauna hut; equipment rental shed; maintenance garage; storage sheds; onsite employee housing; recreational improvements; parking; and related utilities and infrastructure.

The project is located at 507 Benson Road (aka Boorn Brook Farm), in Manchester, VT.

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.

The Permittee and his assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District Commission (the "Commission") in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with the conditions of this permit, Findings of Fact and Conclusions of Law 8B0623-1, the permit application, plans, and exhibits on file with the Commission, and other material representations. In the

event of any conflict, the terms and conditions of this permit and the conclusions in the findings shall supersede the approved plans and exhibits.

The approved plans are:

Sheet A101 – “Elevations of Proposed Buildings”, dated 9/5/2020 (Exhibit 016);

Sheet A102 – “Elevations of Proposed Buildings”, dated 5/13/2020, last revised 7/22/2020 (Exhibit 017);

Sheet A103 - “Camp Shelter Design - Revised”, dated 4/15/21 (Exhibit #119); and

Sheet SD101 – “Proposed Master Site Plan”, dated 9/5/2020, last revised 8/3/2021 (Exhibit 161).

2. All conditions of Land Use Permit 8B0623 and amendments are in full force and effect except as further amended herein.
3. 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.
4. A copy of this permit and plans shall be on the site at all times throughout the construction process.
5. **The Project parcels contain archaeologically sensitive areas.** As such, no further subdivision, alteration, and/or development on the tract/tracts of land approved herein shall be permitted **without prior consultation with the Vermont Division of Historic Preservation (“VDHP”)** and a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
6. No change shall be made to the design, operation or use of this project **without prior consultation with the Vermont Division of Historic Preservation (“VDHP”)** and a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
7. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board 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.
9. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits. The Project shall be implemented in accordance with these permits and shall not deviate from the representations made and information provided during the ANR review process, as well as the final plans on file and approved by each ANR program for issuance of the resultant permits.
 - a. Wastewater System and Potable Water Supply Permit WW-8-0556-1 issued on March 10, 2021, by the ANR Drinking Water and Groundwater Protection Division;
 - b. Public Transient Non-Community Water System Source Permit #S-3748-19.0 issued on February 2, 2021, by the ANR;

- c. Public Transient Non-Community Water System Construction Permit #C-3748-20.0 issued on July 9, 2021, by the ANR;
 - d. Authorization to Discharge Permit #9118-9050 under General Permit 3-9050 (Stormwater Discharge General Permit), issued on September 20, 2021, by the ANR Watershed Management Division;
 - e. Individual Stormwater Discharge Permit #9118-INDC issued on January 25, 2022, by the ANR Watershed Management Division; and
 - f. Individual Wetland Permit #2020-553 issued on January 14, 2021, by the ANR Watershed Management Division.
10. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
 11. Construction hours shall be limited to 7:00 AM to 6:00 PM Monday through Friday and 8:00 AM to 5:00 PM on Saturday, with no construction activity on Sundays or federal holidays.
 12. Prior to commencement of the construction approved herein, the Permittee shall: clearly delineate the construction limits, storage and staging areas, trees/tree lines, buffers, and site features to be retained with temporary flagging or snow fencing; place diversion ditches on the uphill limits of the construction area; and place temporary siltation controls on the downhill limits of construction.
 13. The Permittee shall be obligated to implement the Construction Site Waste Reduction Plan included as Exhibit 030. Any inert waste (soil, rock, extracted stumps) shall be disposed of at a state-certified stump and inert waste disposal facility or on-site above the seasonal high-water table, and not in any wetland or surface water, so as to prevent groundwater pollution.
 14. There shall be no onsite burning of forest or construction debris related to the Project.
 15. There shall be no exterior trash, recyclable, and compost storage at the resort, and staff shall collect wastes daily from all resort structures and activity areas to be transported to the centrally located onsite waste management area and composting station at the farmhouse. The central trash storage and recycling area shall be enclosed, situated on a hard surface, provide for adequate size (to allow all waste to be contained within containers, fitted with covers, and able to close), maintenance, and pick-up, compatible with buildings served, covered and secured. No exterior storage of wastes shall occur at any other location on the Project parcel.
 16. The Permittee shall contract with a waste hauler with recycling capabilities.
 17. The buildings approved herein are 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 existing floor drain shall be permanently plugged, abandoned, and closed in a manner that assures compliance with the ANR Underground Injection Control Program. The Permittee shall submit evidence of closure to the ANR Underground Injection Control Program and District Commission certifying conformance to this condition. No new floor

drains shall be installed without prior written approval from the Commission or District Coordinator, whichever is appropriate under Act 250 Rules.

19. The number and duration of events shall not exceed or operate outside the conditional exemption in the ANR Chapter 1 Environmental Protection Rules, as follows, without prior written approval from the Commission or the District Coordinator, whichever is appropriate under the Act 250 Rules.

1-304 Permit Exemptions

The following actions are exempt from the permitting requirements of this Subchapter, provided no other action is taken or caused to be taken that under these Rules requires the issuance of a permit or permit amendment:

- 1-304(26) A periodic and temporary change in use of a building or structure for events, provided:
 - (A) the building or structure is served by a potable water supply and wastewater system;
 - (B) each event lasts no more than 4 consecutive days;
 - (C) there are no more than 12 days of events per year;
 - (D) the owner of the building or structure retains records of the dates of each event for at least 3 years following each event and provides them to the Secretary if requested by the Secretary.
20. The Permittee shall provide portable sanitary facilities adequate to accommodate everyone onsite for all events exceeding resort lodging capacity.
21. This permit shall be amended prior to expanding: 1) the size, number of days, and length/consecutive days of events that exceed the resort lodging capacity; 2) types of events (e.g., standalone concerts); and/or 3) the hours of events, exterior lighting, and/or amplified sound or music. The Permittee shall provide evidence that the operation has been successful at not causing aesthetic issues for the residential neighbors and surrounding area.
22. Pursuant to Stowe Club Doctrine and Act 250 Rule 34, the onsite food and beverage facilities shall only serve as accessory uses to the resort. Diners in the restaurants shall be registered guests of the resort in some capacity that avail themselves of the uses of the resort. The restaurants and/or bar shall not be marketed or utilized as standalone facilities open to the public at large.
23. The Permittee shall maintain an undisturbed naturally vegetated river corridor/riparian zone along Boorn Brook. The river corridor/riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the top-of-bank/slope, and extend to the water's edge as identified by the RC line on Exhibit 161. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing and mowing. Existing trails within this area may continue to be used provided there is no removal of vegetation.

24. The Permittee shall secure a Stream Alteration General Permit or written confirmation from that ANR that a permit is not required for the installation of a headwall on one or both ends of the existing culvert if material volumes exceed 10 cubic yards.
25. The Permittee shall comply with the stormwater permits in condition 9 and Exhibit 002 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 inspected on a daily basis during ground disturbance activities, and prior to and after all rain events, and periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas.
26. A copy of the approved erosion prevention and sediment control plan shall be on the site at all times during construction.
27. 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 or wetlands. 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.
28. The total onsite parking (140) approved herein and depicted in Exhibit 161 shall not be expanded without prior written approval from the Commission or the District Coordinator, whichever is appropriate under the Act 250 Rules. There shall be no parking in unapproved locations on the Project parcel.
29. The grass overflow parking area (40 spaces) shall only be used for events.
30. A shuttle service and an offsite parking location shall be employed by the Permittee to reduce traffic and parking impacts created by events that exceed resort lodging capacity. Guests of the resort and attendees of events shall not park along the access roads to the Project parcel.
31. Traffic control shall be procured by the Permittee and provided for events that exceed the resort lodging capacity, including parking management by staff, and a traffic control officer at the intersection of Glen and East Manchester Roads for special events over 400 persons.
32. The Permittee shall adhere to the Road Maintenance Agreement incorporated herein as Exhibit 155, including the installation of drainage improvements in the vicinity of 1 and 81 Benson Road.
33. The Permittee shall ensure that the upgrades to Benson Road are completed before the Project opens for business.
34. A short gravel drive shall be constructed adjacent to the fire pond for emergency service access and a shuttle bus turn-around area.
35. The Permittee shall ensure road grading and application and maintenance of calcium chloride and/or other agents approved by the Watershed Management Division on all roadways or disturbed areas within the project to mitigate dust as a result of construction traffic for the resort prior to completion of paving and establishment of vegetation.

36. The Permittee shall provide written notification to all abutting landowners at least 48 hours in advance of all events exceeding the resort's lodging capacity.
37. The duration of events shall be limited and shall end no later than 11:00 PM and shall begin no earlier than 7:00 AM.
38. Concerts shall not be held as a 'standalone' type of event. Music shall only be allowed ancillary to other events.
39. Sound levels shall be limited to a maximum of 60 dB measured at any point on the Project Tract boundary to mitigate noise impacts from amplified sound, voices and/or music (recorded or live). The resort shall own and control its own sound system that shall be programmed by an acoustical engineer to ensure this level is not exceeded. All events at the resort shall utilize the programmed sound system and no third-party sound systems shall be allowed. An acoustical engineer shall calibrate the sound system prior to each event to account for the weather and physical effects on sound attenuation from activities at the resort that generate outdoor sound and shall set the system to not exceed the dB level.
40. There shall be no amplified sound (voices and/or music, recorded or live), before 9:00 AM or after 11:00 PM.
41. The existing fire pit located by the farmhouse shall be managed and monitored/overseen by resort staff.
42. Pursuant to Stowe Club Doctrine and Act 250 Rule 34, there shall be no fire pit, electricity, plumbing, music, artificial lighting (excepting flashlights), or planned resort activities or events at the "summit outpost pavilion".
43. Pursuant to Stowe Club Doctrine and Act 250 Rule 34, fireworks displays are prohibited.
44. 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. Exterior lighting shall be LED, direct cut-off, mounted no higher than 12 feet above grade. All exterior site lights shall be controlled by timer and extinguished by no later than 11:00 PM each night, except during events that exceed the resort lodging capacity, wherein exterior site lights may remain on until 11:30 PM in order to accommodate attendees leaving the premises. The ground-mounted flood lights directed into the tree canopy by the pond shall be disconnected and shall not be functional or used. The paths shall not be lighted; only the road access and parking areas may be lighted.
45. 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.
46. **The Permittee shall, prior to commencement of construction, submit the calculated off-site mitigation fee payment of \$13,199.49 to the Vermont Housing and Conservation Board (VHCB, General Counsel, 58 East State Street, Montpelier, VT 05602).** The off-site mitigation fee is calculated as follows: $[1.7 \text{ acres (number of acres of Primary Agricultural Soils to be impacted)} \times 2.5 \text{ (multiplier)}] + [2.06 \text{ acres} \times (\text{number of acres of Statewide Agricultural Soils to be impacted}) \times 2.0 \text{ (multiplier)}] \times \$1,577.00$ (cost to acquire conservation easements for

primary agricultural soils in the same geographic region) = \$13,199.49. If the mitigation fee is not paid within one year from the date that a Land Use Permit is issued, the amount of the fee will be subject to a simple interest annual inflation factor increase of 2.8% and the fee will increase each year on the anniversary of the Land Use Permit to an amount equal to 102.8% of the previous year's amount, rounded to the nearest dollar.

47. Pursuant to 30 V.S.A. Section 51(e) and/or 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Residential Building Energy Standards (RBES) Stretch Code and/or Vermont's Commercial Building Energy Standards (CBES) in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this subject can be found at http://publicservice.vermont.gov/energy_efficiency/cbes and https://nrb.vermont.gov/documents/9f-procedure_2020-09-01.)
48. 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. Section 51(e) and/or 30 V.S.A. § 53.
49. The installation and/or use of electric resistance space heat is specifically prohibited unless (i) it is approved in writing by the District Commission and/or (ii) it specifically qualifies as an exception to the prohibition of electric resistance building heating, pursuant to Section R404.2 of the 2020 Vermont Residential Building Energy Standards OR Section C403.2.3 of the 2020 Vermont Commercial Building Energy Standards.
50. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings and the energy and/or water conservation measures represented in Exhibits 002, 027, 028, 037, and 131. Any failed energy and/or water conservation measures shall be promptly replaced with products of equal or better performance.
51. Electric vehicle charging stations shall be installed as represented in Exhibit 161.
52. 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 entering into any written contract of sale.
53. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 8B0623-1 in all deeds of conveyance and leases.
54. 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).
55. **All site work and construction shall be completed in accordance with the approved plans by October 15, 2025, 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 a public hearing.

56. **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. 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.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated in Rutland, Vermont this 21st day of October 2022.

By /s/ Richard Kobik
Richard Kobik, Chair
District 8 Commission

Members participating in this decision: Don Miller and Michael McDonough

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.

CERTIFICATE OF SERVICE

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit and Findings of Fact, Conclusions of Law, on October 21, 2022, by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Rutland@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB 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 the District Office of any email address changes.**

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FOR INFORMATION ONLY

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