



**State of Vermont
Department of Environmental Conservation**

Water Quality Division
River Management Program
103 Main St., Building 10N
Waterbury, VT 05671

[phone] 802-241-3770
[fax] 802-241-4537

MEMORANDUM

TO: Jeannine McCrumb, Elizabeth Lord
FROM: Kari Dolan
DATE: June 2, 2010
RE: Act 250 Case #5W1527
CC: Rebecca Pfeiffer, Rich Kim, Pat Ross

The reach of Mad River at the Clay Brook confluence and the downstream most reach of Clay Brook pose very significant fluvial erosion hazards. The State of Vermont has geomorphic data that show both Reach 16 of the Mad River main stem and Reach 9.01 of Clay Brook to be significantly incised, unstable, and in poor physical condition due to historic channel straightening. These reaches have undergone significant departure from natural variability, and are experiencing on-going channel adjustment. M16 is the same reach of river that experienced catastrophic channel adjustment during the 1998 flood. The channel avulsed and damaged homes which is now Riverside Park, just upstream of this location. Moreover, tributary reaches at confluences, such as Clay Brook Reach 9.01, are, by nature, highly sensitive to channel adjustment. Reach 9.01 is significantly incised, lost access to its historic floodplain, and is now undergoing widening as a process to restore floodplain function.

The State of Vermont has mapped the fluvial erosion hazards for the Mad River, and proposed location is within the mapped fluvial erosion hazard area. Please see the attached map.

Bridges, by their very definition, must cross streams, which means that occasionally, crossings are located in fluvial erosion hazard areas. The proposed bridge is for pedestrian-friendly recreational uses, will span the FEMA floodway, *and* the applicant agreed to a condition that there will be no channelization (e.g., dredging, berming, rock armoring, or straightening) of the Mad River or Clay Brook at this location associated with protecting this bridge and foot path. The applicant understands and agrees that any future channel adjustment that occurs along these Mad River or Clay Brook reaches would involve moving the bridge and path rather than installing rock armor. Statewide geomorphic assessment data show that channelization practices modify the hydraulics of streams, trigger further channel bed incision, cause instability downstream and at adjacent properties, are counter to stream processes, require ongoing maintenance, and lead to the systemic channelization of stream networks.

This condition not to involve channelization practices is aligned with Condition No. Five of the State of Vermont Stream Alteration Permit No. SA-4-1008_Warren, issued on 4/5/2010, which states: "There is no in-stream work or channel work proposed as part of this project and none permitted."

Therefore, the application to locate the bridge and trail at the currently proposed location with the condition that there will be no channelization of the Mad River or Clay Brook at this location associated with protecting this bridge and foot path now or in the future, has addressed our concerns with respect to fluvial erosion hazards.

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **Entry of Appearance and Comments from the Agency of Natural Resources** dated June 2, 2010 regarding #5W1527 by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail, to the following with email addresses as indicated:

Mad River Path Association
Attn: Autumn Foushee
4061 Main Street
Waitsfield Vermont 05673
path@madriver.com

Golden Lion Inn
c/o Michael & Melinda Carr
731 VT Route 100
Warren Vermont 05647

Mac Rood
Bast & Rood Architects
PO Box 220
Hinesburg Vermont 05461
rood@madriver.com

Warren Select Board
c/o Andrew Cunningham,
Chair
PO Box 337
Warren Vermont 05674
selectboard@warrenvt.org

Warren Planning
Commission
c/o Mike Ketchel, Chair
PO Box 337
Warren Vermont 05674
planning@warrenvt.org

Central Vermont Regional
Planning Commission
29 Main Street Suite 4
Montpelier Vermont 05602

Dated June 2, 2010

By: /s/ Elizabeth Lord
Elizabeth Lord, Esq.
Agency of Natural Resources

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **NOTICE OF ACT 250 MINOR APPLICATION 5W1527 (MAD RIVER PATH ASSOCIATION)** by U.S. Mail, postage prepaid, on this 19th day of May, 2010, to the individuals without email addresses and by electronic mail, to the following with email addresses:

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.

Mad River Path Association
Attn: Autumn Foushee
4061 Main Street
Waitsfield Vermont 05673
path@madriver.com

Golden Lion Inn
c/o Michael & Melinda Carr
731 VT Route 100
Warren Vermont 05647

Mac Rood
Bast & Rood Architects
PO Box 220
Hinesburg Vermont 05461
rood@madriver.com

Warren Select Board
c/o Andrew Cunningham,
Chair
PO Box 337
Warren Vermont 05674
selectboard@warrenvt.org

Warren Planning
Commission
c/o Mike Ketchel, Chair
PO Box 337
Warren Vermont 05674
planning@warrenvt.org

Central Vermont Regional
Planning Commission
29 Main Street Suite 4
Montpelier Vermont 05602

Elizabeth Lord
Land Use Attorney
Planning Division ANR
103 South Main Street
Waterbury Vermont 05671-
0301
anr.act250@state.vt.us

FOR INFORMATION ONLY

Reta Goss, Town Clerk
PO Box 337
Warren Vermont 05674
clerk@warrenvt.org

Anna Whiteside
VARE Real Estate
Warren Vermont 05674

Ruth & Laura Murphy
300 Bank Street
Seymour Connecticut 06483

Brian Leskowicz
PO Box 172
Albertson New York 11507

Robert Konuch & Karen
Hewitt
176 South Main Street
Northfield Vermont 05663

Richard Saltzman Trustee
Box 365
Warren Vermont 05674

VT North Ski Shops
48 Sugarbush Access Road
Warren Vermont 05674

Red Deer Company NV
c/o Dennis Bache
PO Box 785
Waitsfield Vermont 05673

Elwin, Crystal, Liza & Debra
Pierce
34 Powderhound Road
Warren Vermont 05674

Sugarbush Service Station
899 VT Route 100
Warren Vermont 05674

Albert & Valeria Gadouas
160 McKinnel Road
Highgate Center Vermont
05459

John Austin
Wildlife Biologist
5 Perry Street Suite 40
Barre Vermont 05641

Rich Kim
Fisheries Biologist
Vermont Fish & Wildlife Dept.
3902 Roxbury Road
Roxbury Vermont 05669
rich.kim@state.vt.us

Russell Barrett
Washington County Forester
5 Perry Street Suite 20
Barre Vermont 05641
russ.barrett@state.vt.us

Louise Waterman and
Brendan O'Shea
Agency of Agriculture Food
and Markets
116 State Street Drawer 20
Montpelier Vermont 05620
louise.waterman@state.vt
brendan.oshea@state.vt.us

Michael Kundrath
Energy Efficiency Division
Department of Public Service
112 State Street Drawer 20
Montpelier Vermont 05620-
2601
michael.kundrath@state.vt.us

Scott Dillon and Devin
Colman
Division for Historic
Preservation
National Life Building Drawer
20
Montpelier Vermont 05620-
0501
scott.dillon@state.vt.us
devin.colman@state.vt.us

Craig Keller, Utilities and
Permits
Agency of Transportation
One National Life Drive
Drawer 33
Montpelier Vermont 05633
craig.keller@state.vt.us

District 5 Environmental
Commission
5 Perry Street Suite 60
Barre Vermont 05641
nrb-Act250Barre@state.vt.us

BY/s/ Lori Grenier
Lori Grenier
Nat. Res. Board Tech.

**ACT 250 NOTICE
MINOR APPLICATION
10 V.S.A., SECTIONS 6001 - 6092**

On April 21, 2010, the Mad River Path Association filed application #5W1527 for a project generally described as the construction and use of approximately 1,000 feet of recreation path, including a footbridge over Clay Brook, to be located within a corridor running from Riverside Park and passing through the Golden Lion Inn tract situated off VT Route 100 in the Town of Warren, Vermont.

The District 5 Environmental Commission will review this application under Act 250 Rule 51 -- Minor Applications. Copies of the application and proposed permit are available for review at the Warren Town Office, Central Vermont Regional Planning Commission located at 29 Main Street in Montpelier, and the office listed below. The application and proposed 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 case number above.

No hearing will be held unless, on or before **June 2, 2010**, a party notifies the District 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 shall be in writing to the address below, shall 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 District 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.

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 **June 2, 2010**.

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 Barre, Vermont this 19th day of May, 2010

By Edward Stanak, Coordinator
District 5 Environmental Commission
5 Perry Street Suite 60
Barre Vermont 05641
(802) 476-0185

PROPOSED

CASE NO	5W1527	LAWS/REGULATIONS INVOLVED
APPLICANT	Mad River Path Association	10 V.S.A., §§ 6001 - 6093
ADDRESS	4061 Main Street Waitsfield Vermont 05673	(Act 250)

The District 5 Environmental Commission **PROPOSES TO ISSUE** Land Use Permit #5W1527, pursuant to the authority vested in it by 10 V.S.A., §§ 6001-6093. This permit applies to the lands identified in the land records of the Town of Warren, Vermont, as the subject of deeds to the Town of Warren and Michael and Melinda Carr (Golden Lion Inn), the Permittee as Grantee.

This permit specifically authorizes the construction and use of approximately 1,000 feet of recreation path, including a footbridge over Clay Brook, to be located within a corridor running from Riverside Park and passing through the Golden Lion Inn tract situated off VT Route 100 in the Town of Warren, Vermont.

The project is subject to Act 250 jurisdiction pursuant to 10 V.S.A. 6001(3)(A)(i). Pursuant to Environmental Board Declaratory Ruling #385 (Stonybrook Condominium Owners Association), the District Commission limited jurisdiction to the portion of the tracts through which the recreation path passes.

The Permittee, and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District Environmental Commission in accordance with the following conditions:

1. 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.
2. The project shall be completed, operated and maintained in accordance with exhibits 1-___ on file with the District Environmental Commission and the conditions of this permit.
3. No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Natural Resources Board Rules.
4. The District Environmental Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holder file an affidavit certifying that the project is being completed, operated and maintained in accordance with the terms of the permit, as provided by 10 V.S.A., Chapter 151 and the rules of the Natural Resources Board.

5. 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/s and all assigns and successors in interest.
6. This permit hereby incorporates all of the conditions of Stream Alteration Permit #SA-4-1008 issued on April 5, 2010 by the Department of Environmental Conservation, Agency of Natural Resources.
8. The Permittee, and all assigns and successors in interest, shall comply with the exhibits for erosion control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. The Commission reserves the right to schedule hearings and site inspections to review erosion control and to evaluate and impose additional conditions with respect to erosion control as it deems necessary.
9. Pursuant to 10 V.S.A. § 6090(b), this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein.
10. 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. Section 6091(b).
11. All site work and construction, including landscaping shall be completed in accordance with the approved plans by October 15, 2010, unless an extension of this date is approved in writing by the District Environmental Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
12. 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 Barre, Vermont, this day of 2010.

By _____
Karl Johnson, Chair
District 5 Environmental Commission

Members participating in this decision:

Burt McIntire
Brad Towne

The Permittee and/or any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Natural Resources Board Rule 31(A). Decisions on minor applications may be appealed only if a hearing was held by the District Environmental Commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k). Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220.

The Notice of Appeal must include all information required by Rule 5(b)(3) of the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Drawer 20, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the VRECP. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701 (Tel: 802-828-1660)

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES**

RE: Mad River Path Association) DISTRICT ENVIRONMENTAL
) COMMISSION # 5
)
) APPLICATION # 5W1527
)
) June 2, 2010

ENTRY OF APPEARANCE

Please enter the appearance of the Agency of Natural Resources (“Agency”), State of Vermont, by and through its attorney, Elizabeth Lord, in the above-captioned matter.

COMMENTS

Criterion 1D – Floodways

Fluvial Erosion Hazard

The Applicant’s proposal includes construction of a footbridge over Clay Brook. As discussed further in the attached June 2, 2010 memorandum from Kari Dolan, the location of the proposed footbridge is within the mapped fluvial erosion hazard (FEH). In order to avoid further destabilization of the river within this FEH zone, the River Management Program discourages maintenance activities such as dredging, rock armoring or the placement of berms. Ms. Dolan has discussed the project with the Applicant’s representative, Mac Rood. The Applicant has agreed that it will not conduct any future in-stream work or channelization activities for purposes of protecting the bridge structure.

Consistent with Condition Number 5 of the Stream Alteration Permit issued April 5, 2010, the Agency requests inclusion of a permit condition in the land use permit that contains the following language: “No in-stream work or channel work (including dredging, berming, rock armoring or straightening) is permitted for this project.”

NFIP Regulations

The Applicant has also agreed to implement the measures contained in the March 22, 2010 letter from Rebecca Pfeiffer of the River Management Program as follows:

- The concrete blocks will be anchored together and anchored to the ground so that the blocks will not move independently during times of flooding;
- The I-beams will be anchored to the concrete blocks; and

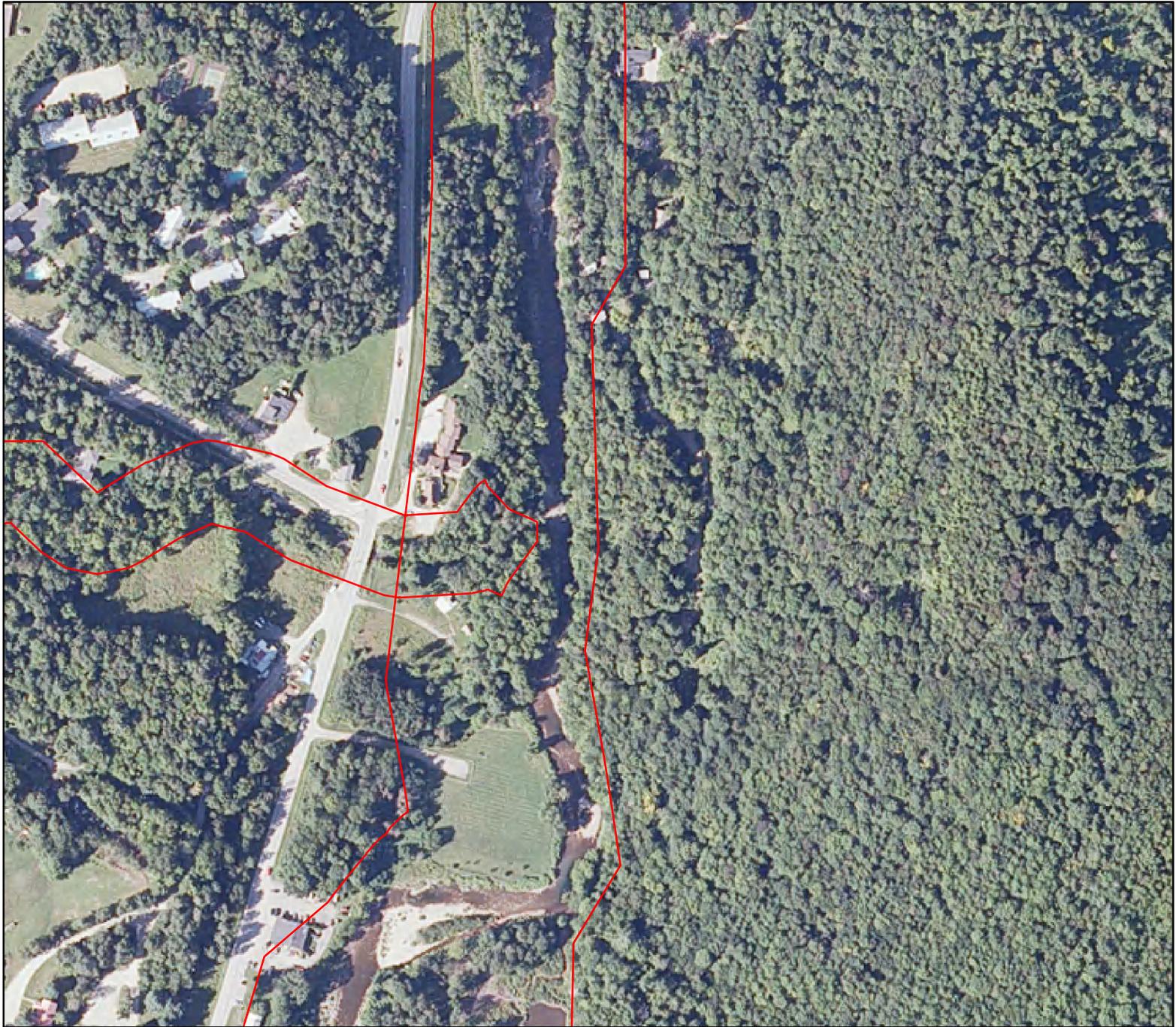
-
- The final bridge location will be confirmed with as-built location information to ensure that the bridge has been located outside of the Mad River floodway.

Dated June 2, 2010, at Waterbury, Vermont.

Respectfully submitted,

State of Vermont
Agency of Natural Resources

By: Elizabeth Lord
Elizabeth Lord, Esq.
Agency of Natural Resources
(802) 241-3620



Act 250 #5W1527, Warren, VT

Map created on 6/01/2010
2009 NAIP Orthophotography

Legend

 Fluvial Erosion Hazard Area

300 150 0 300 Feet

