

**ACT 250 NOTICE
MINOR APPLICATION #4C1289
10 V.S.A. §§ 6001 - 6093**

On December 28, 2015, Indian Brook Properties, LLP, P.O. Box 123, Essex Junction, VT 05453 filed application #4C1289 for a project generally described as the creation of a 9-lot subdivision with construction of single family residences on lots #1, #2, #7 and #8. The Project is located on Indian Brook Road in Essex, 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 Essex 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 "4C1289".

No hearing will be held and a permit may be issued unless, on or before **January 26, 2016**, 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 **January 26, 2016**.

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 30th day of **December**, 2015.

By: /s/ Peter E. Keibel
Peter E. Keibel
District #4 Coordinator
Natural Resources Board
111 West Street
Essex Jct., VT 05452
802-879-5658
Peter.Keibel@vermont.gov

w:\nrb\dist4\projects\4c1251-4c1500\4c1289\4c1289 notice.docx

This is a **PROPOSED** permit; please submit any written comments to Peter E. Keibel, District #4 Commission, 111 West Street, Essex Jct., VT 05452 by January 26, 2016.

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

1. Stormwater Discharge Permit issued by the ANR-DEC Watershed Management Division.
2. Erosion Control Plans
3. Reasons for claiming area is Appropriate Circumstances or a Plan showing the on-site preserved primary agricultural soils.
4. Letter from AAFM on the number of acres of impacts to primary agricultural soils

AMENDMENT

Case No: 4C1289

Indian Brook Properties, LLP
P.O. Box 123,
Essex Junction, VT 05453

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #4 hereby issues Land Use Permit Amendment #4C1289, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 816, Page 667, of the land records of Essex, Vermont, as the subject of a deed to Indian Brook Properties, LLP.

This permit specifically authorizes the Permittee to subdivide a 224-acre parcel of land into nine lots and to construct a single family home on lots #1, #2, #7 and #8 of the subdivision. Construction of single family homes on lots #3, #4, #5, #6 and #9 is not authorized until a permit amendment is issued for this purpose. The Permittee proposes to construct the access road for Lots #4 and #5 but will not construct any of the residences nor own the properties during construction. Construction of any homes by Indian Brook Properties, LLP or any entity associated with them is not permitted without a permit amendment. The Project is located on Indian Brook Road in Essex, Vermont.

Jurisdiction attaches because the Project constitutes a subdivision pursuant to 10 V.S.A. § 6001(19) – creation of 10 or more lots within a five year period and within the environmental district. The principal has been involved in other subdivisions within those restraints

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:

Sheet 1 - "Overall Site Plan, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-16-15 (Exhibit #016);

Sheet 2 - "Lots 1, 2, 3, & 6 Site Plan, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-16-15 (Exhibit #017);

Sheet 3 - "Lots 4 & 5 Site Plan, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-16-15 (Exhibit #018);

Sheet 4 - "Lots 7 & 8 Site Plan, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-16-15 (Exhibit #019);

Sheet 5 - "Driveway Profile & Typical Details & Specifications, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 12-9-15 (Exhibit 020);

Sheet 6 - "Wastewater Disposal System Plans, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-16-15 (Exhibit #021);

Sheet 7 - "Typical Details & Specifications On-Site Wastewater Disposal, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-29-15 (Exhibit #022);

Sheet 8 - "Typical Details & Specifications Erosion Prevention & Sediment Control, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 7-1-15, last revision 10-29-15 (Exhibit #023); and

Sheet SM-1 - "Soils Map, Indian Brook Properties, LLP Proposed 9-Lot Conventional Subdivision" dated 11-30-15 (Exhibit #024).

3. 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-4-4538 issued on November 6, 2015 by the ANR Drinking Water and Groundwater Protection Division;
 - b. Authorization of Notice of Intent #7475-9020 under Construction General Permit #3-9020 issued on October 16, 2015 by the ANR Watershed Management Division;
 - c. Individual Stormwater Discharge Permit #7485-INDS issued on **date** by the ANR Watershed Management Division;
 - d. Individual Wetland Permit #2015-324 issued on December 1, 2015 by the ANR Watershed Management Division;
 - e. Stream Alteration Permit SA-NW-059-2015, issued on November 4, 2015 by the ANR-DEC 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.
8. No further subdivision, alteration, and/or development on the tract/tracts 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.
9. 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.
10. 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.
11. 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.
12. Immediately upon initial roadway clearing, a stabilized construction entrance must be installed and maintained as shown on Sheets 8 and #X (Exhibits #023 and #X) at the proposed access onto Indian Brook 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 beyond the stabilized construction entrance may occur until the stabilized construction entrance is complete.
13. 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 that involves the storage or handling of any regulated substances or the generation of hazardous wastes.
14. 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.
15. 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.
16. At a minimum, the Permittee shall comply with the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
17. The Permittee shall comply with Exhibits #023 and #X (Sheets 8 and X) 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.
18. 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.
 19. 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).
 20. 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 to 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).
 21. 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.
 22. Starting at the commencement of construction a Professional Engineer or other soil erosion expert approved in writing by the District Commission, shall inspect the site at least once per week/month and at critical times until the project is completed to ensure that the erosion prevention and sediment control plans are being followed. He or she shall certify by submitting a site inspection report weekly/monthly to the District Environmental Commission that all erosion prevention and sediment controls as specified and approved herein, are in place, properly maintained and effective. Any corrective measures noted by the Professional Engineer shall be implemented immediately.
 23. 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.
 24. The Permittee shall not clear, cut, mow, or otherwise disturb the land along the tributary of the Indian Brook, from the water's edge to the top of bank or top of slope, and in the adjacent riparian buffer, which is 50 or other feet wide as measured inland and perpendicular from top of bank or top of slope, except for work authorized under Stream

Alteration Permit SA-NW-059-2015. The Permittee shall keep this land as undisturbed and naturally vegetated. Snowplowing or storage of any materials within this buffer is prohibited.

25. The Permittee shall maintain an undisturbed, naturally vegetated, unmowed 50-foot buffer from the edge of wetlands and any disturbed areas, other than what has been approved by Individual Wetlands Permit 2015-324 (Exhibit #003). Snowplowing or storage of materials within this buffer is prohibited.
26. The Permittee shall protect 27.78 acres of primary agricultural soils through on-site mitigation, as depicted on Exhibit #X, in order to compensate for the acreage of primary agricultural soils whose agricultural potential has been reduced or eliminated as a result of the project.
27. The protected primary agricultural soils shall be maintained in a manner that will ensure they will be available for economic or commercial agriculture, in perpetuity. Activities, structures, or other non-agricultural improvements that might in any way prevent or reduce the use of the protected soils for economic or commercial agriculture shall be prohibited. If, at any time, open protected soils are not used for an economic or commercial agricultural purpose, the Permittee shall ensure that the soils remain open and unobstructed through accepted practices such as haying or brush hogging a minimum of once every two years.
28. Pursuant to 10 V.S.A. § 6081(s), no permit amendment is required for farming that will occur on primary agricultural soils preserved in accordance with 10 V.S.A. § 6093 or will not conflict with any condition in this permit.
29. Farming is permitted on lands exempt from amendment jurisdiction pursuant to 10 V.S.A. § 6081(s).
30. The following "right to farm" covenant shall be included in any declaration of covenants for the project and in each deed conveying any portion of the project tract:

Notice is given of the existence of preserved agricultural lands located in the vicinity of the lands conveyed herein. Current or future agricultural operations on these lands may include, without limitation: plowing; planting; fertilizing; spraying; the use of agricultural chemicals, pesticides and herbicides in the course of cultivating, harvesting, storing and transporting agricultural products; and the raising, feeding and management of livestock. Consistent with this notice, the lands are conveyed subject to a perpetual easement for any noise, odors, dust, and/or byproducts and impacts that may occur in the course of conducting accepted agricultural and best-management practices on these nearby agricultural lands. Grantees, by the acceptance of this deed, waive any objection to impacts arising from accepted agricultural and best-management practices, and are further notified that existing agricultural activities which are consistent with accepted agricultural and best-management practices do not constitute a nuisance or a trespass.

OR

31. The Permittee shall, prior to commencement of construction, submit the calculated off-site mitigation fee payment of \$X 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: 13.89 acres (number of acres of Primary Agricultural Soils to be impacted) x 2 (multiplier) x \$2002 (cost to acquire conservation easements for primary agricultural soils in the same geographic region) = \$55,615.56. 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.
32. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a State approved landfill, so as to prevent groundwater pollution.
33. Permittee and their assigns shall adhere to the Forest Management Plan (Exhibit #012).
34. Prior to construction of any homes on the single family lots by Indian Brook Properties LLP or a related entity, which have not been previously approved, the Permittee shall submit an application for an Administrative Amendment to include an application fee based on the estimated construction cost associated with these lots.
35. No exterior light fixtures have been proposed or approved by this permit amendment. All residential 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.
36. 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.
37. Pursuant to 30 V.S.A. Section 51, the Permittee and/or subsequent lot owner, at a minimum, shall construct the single family home in accordance with Vermont's Residential Building Energy Standards (RBES).
38. The installation and/or use of electric resistance space heaters are specifically prohibited without prior written approval from the District Environmental Commission.
39. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the approved plot plan, Wastewater System and Potable Water Supply Permit, Stormwater permit and the Land Use Permit any written contract of sale is entered into.
40. The permit does not authorize the construction of single family homes on Lots #3, #4, #5, #6 and #9 of the approved subdivision.
41. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 4C1289 in all deeds of conveyance and leases.
42. 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).

43. All site work and construction of roadways and utilities for the access driveway shall be completed in accordance with the approved plans by **October 31, 2018**, 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.
44. Upon completion of the construction of each building and prior to occupancy, the Permittee shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 51(f).
45. 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.
46. 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 January, 2016.

By _____
Marcy Harding, Vice Chair
District #4 Commission

Members participating in
this decision:

James McNamara
Anthony Stamper

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.

Land Use Permit #4C1289

Page 8 of 8

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

w:\nrb\dist4\projects\4c1251-4c1500\4c1289\4c1289 draft permit.docx

DRAFT

CERTIFICATE OF SERVICE

I hereby certify on this 30th day of December, 2015, a copy of the foregoing **ACT 250 NOTICE MINOR APPLICATION #4C1289**, 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 Please note you can now fill out and submit the Act 250 survey online at: <http://permits.vermont.gov/act250-survey> instead of printing and mailing the attached pdf version.

Indian Brook Properties, LLP

c/o Stephen Unsworth
PO Box 123
Essex Jct., VT 05453
Stephen@unsworthlaw.vt

Lamoureux & Dickinson Engineers

c/o Doug Goulette
14 Morse Drive
Essex, VT 05452
dougg@ldengineering.com

Cheryl Moomey, Town Clerk
Chair, Selectboard/Chair Planning Directory

Town of Essex

81 Main Street
Essex Jct., VT 05452

Charlie Baker, Executive Director
Regina Mahony, Senior Planner
Chittenden County Reg Plann Commission

110 West Canal Street, Suite 202
Winooski, VT 05404
cbaker@ccrpcvt.org
rmahony@ccrpcvt.org

Elizabeth Lord, Land Use Attorney
Agency of Natural Resources

National Life Drive, Davis 2
Montpelier, VT 05602
anr.act250@vermont.gov

Barry Murphy

VT. Dept. of Public Service

112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov

Craig Keller/John Gruchac/Jeff Ramsey
VTrans Policy Plann. & Res. Bureau
One National Life Drive, Drawer 33
Montpelier, VT 05633
craig.keller@vermont.gov
john.gruchacz@vermont.gov
jeff.ramsey@vermont.gov

Lauren Masseria, Act 250 Devel Coord
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@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

White River NRCO Office

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

County Forester/**ANR**

111 West Street
Essex Jct., VT 05452
Keith.thompson@vermont.gov

John Gobeille/**ANR**

Dept. of Fish and Wildlife

111 West Street
Essex Jct., VT 05452
John.gobeille@vermont.gov
patty.malenfant@vermont.gov

Seven Days/Classified Ad Section

c/o Ashley Brunelle
255 South Champlain St., PO Box 1164
Burlington, VT 05402
classifieds@sevendaysvt.com

Green Mountain Power Corporation

163 Acorn Lane
Colchester, VT 05446
allen@greenmountainpower.com

Brian Gray

Vermont Gas Systems

PO Box 467
Burlington, VT 05402
bgray@vermontgas.com

Project Intake Coordinator

Efficiency Vermont
128 Lakeside Ave, Suite 401
Burlington, VT 05401
pics@veic.org

Michael Barsotti, Water Quality Director
Champlain Water District

403 Queen City Park Road
South Burlington, VT 05403
mikeb@cwd-h20.org

FOR YOUR INFORMATION

District #4 Environmental Commission

Marcy Harding, Vice Chair
James McNamara/Anthony Stamper
111 West Street
Essex Junction, VT 05452

ADJOINING LANDOWNERS

On File at District Commission Office

Dated at Essex Junction, Vermont, this 30th day of December, 2015.

/s/ Barbara J. Cady
Barbara.cady@vermont.gov
879-5614