

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

RE: Barre Granite Quarries, LLC
William and Margaret Dyott
Land Use Permit Application #7C1079(Revised)-EB

MEMORANDUM OF DECISION

This proceeding concerns Land Use Permit #7C1079 (Revised) ("Revised Permit") pertaining to Barre Granite Quarries, LLC and William and Margaret Dyott ("Permittees") authorizing the Permittees to reactivate and expand abandoned granite quarries located on the Dyott, Padula and LeCours properties in the Town of Sheffield, Vermont ("Project"). The Revised Permit has a maximum granite extraction rate of 400,000 cubic feet per year for sale to market. Additionally, the Revised Permit allows for the annual extraction of 400,000 to 800,000 cubic feet of waste granite with on-site storage in grout piles.

This Memorandum of Decision addresses the Residents for Northeast Kingdom Preservation, Ltd.'s ("RNKP") Motion to Alter the Noise Demonstration Protocol.

I. PROCEDURAL SUMMARY

On June 23, 1999, the District #7 Environmental Commission ("Commission") issued Land Use Permit #7C1079 ("Permit") and Findings of Fact and Conclusions of Law and Order ("Decision") authorizing the Project.

On July 23, 1999, RNKP filed a Motion to Alter with the Commission.

On August 9, 1999, in reaction to RNKP's Motion to Alter, the Commission issued the Revised Permit, Revised Findings of Fact and Conclusions of Law and Order ("Revised Decision") and Memorandum of Decision on RNKP's Motion to Alter.

On August 12, 1999, RNKP filed a Notice of Appeal to the Board from the Commission's Revised Decision.

On September 20, 1999, Chair Harding issued a Prehearing Conference Report and Order.

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On January 19 and 26, 2000, the Environmental Board convened a public hearing in this matter. Due to the extraordinary number of witnesses, the Board was unable to finish taking testimony from all witnesses.

During the hearing RNKP offered demonstrative evidence relating to noise issues in this matter. Barre Granite Quarries, LLC requested, as an alternative to RNKP's videotape demonstration, that the Board conduct a third site visit to listen to the actual quarry operations while physically located at the quarry and at neighboring properties.

In a February 4, 2000 Recess Order, pursuant to Environmental Board Rule 20, the Board recessed this proceeding and ordered that all parties submit dates for which the party is NOT available for the reconvened hearing, that the deadline for filing supplemental findings of fact and conclusions of law be postponed to a future date, and that the parties submit memoranda expressing their positions on noise demonstrations.

On February 11, 2000, Permittee filed its Response to the Recess Order. Permittee's response proposes procedures for conducting noise demonstrations.

On February 14, 2000, RNKP filed its response to the Recess Order. RNKP's response includes its objection to noise demonstrations.

No other parties responded to the Recess Order.

In a February 22, 2000 Memorandum of Decision, the Board set out its proposed Noise Demonstration Protocol.

On March 10, 2000, Permittee filed its response to the Noise Demonstration Protocol.

Also on March 10, 2000, Galway Kinnell filed his response to the Noise Demonstration Protocol.

Also on March 10, 2000, RNKP filed its response to the Noise Demonstration Protocol and proposed different noise demonstration protocol.

On March 22, 2000, Permittee filed its response to RNKP's proposed noise demonstration protocol.

On March 29, 2000, the Board deliberated on the parties' responses and filings concerning the proposed Noise Demonstration Protocol.

In a May 5, 2000 Memorandum of Decision, the Board set forth the final Noise Demonstration Protocol.

On May 16, 2000, RNKP filed a Motion to Alter the Noise Demonstration Protocol.

On May 17, 2000, the Board deliberated on RNKP's Motion to Alter.

II. DISCUSSION

The Board's February 22, 2000 Memorandum of Decision sets forth the Board's Proposed Noise Demonstration protocol. This Memorandum of Decision states that:

On or before **Friday, March 10, 2000, at 12:00 noon**, all parties may file a written response to the Noise Demonstration Protocol set forth above in Section II.

RNKP filed its response to the proposed Noise Demonstration Protocol on March 10, 2000, but did not raise the issues which it now raises in its Motion to Alter. Subsequently, on May 5, 2000, the Board issued the final Noise Demonstration Protocol. Accordingly, RNKP's Motion to Alter is out of time.

RNKP's Motion to Alter the Noise Demonstration Protocol requests the following:

1. That the Board clarify the meaning of "static".

With regard to quarry operations during the noise demonstration, RNKP states that "the Board... is not even requiring BQG to move its equipment in the quarry." This statement is wrong. Permittees in their March 21, 2000, Response to RNKP's Proposed Noise Demonstration Protocol state that their noise demonstration will "accurately reflect the Board's Order that 'the equipment should be operating under normal conditions'." More specifically, the Board's May 5, 2000, Memorandum of Decision orders that:

Permittee will simultaneously operate the following equipment during the noise demonstrations: ...

The equipment should be operating under normal conditions and should operate in the quarry area, the dressing area, the block storage area, and at or on the Western grout pile. Permittees state that given the limited surface area developed at the quarry to date, only static

demonstrations are possible. The Board orders that Permittees operate the quarry as normally as possible.

Permittees are therefore clearly ordered to operate the quarry normally. The Board concludes that no further clarification is necessary. Accordingly, RNKP's request is denied.

2. That Brian Fowler be allowed as a witness:

RNKP requests that Brian Fowler be called as a witness for RNKP following the completion of the noise demonstration.

The Board's February 22, 2000 Memorandum of Decision sets forth the Board's Proposed Noise Demonstration protocol. At section C. the proposed protocol states:

Accordingly, the public hearing will reconvene at the conclusion of noise demonstrations to take evidence relating to the noise demonstrations only. Witnesses will be limited to the parties' noise experts, Kenneth Kaliski and Les Bloomberg, and the property owners upon which the noise observations were made.

The Board's February 22, 2000 Memorandum of Decision also states that:

On or before **Friday, March 10, 2000, at 12:00 noon**, all parties may file a written response to the Noise Demonstration Protocol set forth above in Section II.

RNKP filed its response to the proposed Noise Demonstration Protocol on March 10, 2000, but did not request that Brian Fowler be allowed to testify. Subsequently, on May 5, 2000, the Board issued the final Noise Demonstration Protocol. Accordingly, RNKP's request is out of time and is therefore denied.

3. That Back-up beepers be required:

RNKP argues that the Board should specifically require that back-up beepers operate during the noise demonstration. Again, RNKP did not raise this issue in its response to the proposed Noise Demonstration Protocol. The Board's May 5, 2000 Order, directs Permittees to operate the quarry normally. If normal operation includes back-up beepers, then Permittees are required to use back-up beepers during the demonstration. Accordingly, RNKP's request is denied.

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4. That 100 pound blasts and warnings be required:

RNKP objects to Permittees' refusal to set off a 100-pound blast. Permittees advised the Board in their March 10, 2000, response to the Noise Demonstration Protocol that a 100 pound blast this early in the development of the quarry "may result in significant damage to a portion of the granite reserve." The Board will not require activities of Permittees that may cause damage to the quarry. Furthermore, the Board's May 5, 2000 noise demonstration order states:

Based upon the noise demonstration, should the Board decide to uphold the permit, the Board may further condition the permit by imposing more stringent maximum noise levels. Accordingly, Permittees should operate and blast at the maximum noise level.

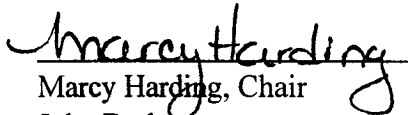
RNKP also raises new issues relating to blast warning signals that RNKP did not timely raise in its response to the proposed Noise Demonstration Protocol. These requests are out of time. Furthermore, Permittees have a blasting procedure, Exhibit P-22, which should be followed during the noise demonstration as this is part of "normal operations." Accordingly, RNKP's objection is overruled.

II. ORDER

1. RNKP's Motion to Alter the Noise Demonstration Protocol is **DENIED**.

Dated at Montpelier, Vermont this 18th day of May, 2000.

ENVIRONMENTAL BOARD



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