

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

RE: J.P. Carrara & Sons, Inc. Findings of Fact,
c/o A. Jay Kenlan, Esq. Conclusions of Law and Order
P.O. Box 578 Application #1R0589-EB
Rutland, VT 05701

This decision pertains to an appeal filed with the Environmental Board (Board) on January 9, 1987, by J.P. Carrara & Sons, Inc. (Applicant) from the decision of the District #1 Environmental Commission (District Commission) dated December 22, 1986. The decision denied a Land Use Permit for the operation of a quarry on a **59-acre** tract of land located on the easterly side of Route 103 in Clarendon, Vermont. The Applicant contends that the District Commission erred in finding that the project does not comply with Criteria 8(a), **9(E)**, and 10 of 10 V.S.A. § 6086(a).

On January 28, 1987, former Board Chairman Darby Bradley conducted a prehearing conference, at which time the parties raised a number of preliminary issues, and on February 12 a Prehearing Conference Report and Order was issued. In response to memoranda submitted by the parties on the preliminary issues, on April 3 the full Board issued a Memorandum of Decision and Order. The Board deferred its decision on two of the issues raised by the Applicant - whether the logging that occurred on the project site was a "development" as defined in Act 250, and whether a **deeryard** is a "necessary wildlife habitat" within the meaning of Criterion 8(a) - until after the hearing on the merits. These issues will be addressed in this decision.

On June 10, the Board convened a public hearing in Clarendon, with the following parties participating:

Applicant by James P. W. Goss, Esq.
State of Vermont by Frederic Emigh, Esq.
Town of Shrewsbury by Nancy Bell.
Estate of **Coccia** by Alan Biederman, Esq.
Margie Congdon by Alan George, Esq.

After the Applicant presented an overview of the project, the Board took a site visit and then recessed the hearing.

On August 26, the Board reconvened the hearing and heard testimony from the parties. At the hearing, an issue arose about the applicability of the **Rutland** Regional Plan. On September 28, the Board issued a decision in which it concluded that the **Rutland** Regional Plan does not apply to this project because it expired before the Applicant's Notice of Appeal was filed. That decision is hereby incorporated into this decision.

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On September 30, the Board reconvened the hearing. At the conclusion of the testimony, the Board recessed the hearing pending the submission of proposed findings by the parties and review of the record and deliberation by the Board. On October 15, the Board received proposed Findings of Fact and Conclusions of Law from the Applicant, the Town of Shrewsbury, and Margie Congdon. On January 12, 1988, the Board deliberated on this matter and on February 2 the Board determined the record complete and adjourned the hearing. This matter is now ready for decision. The following findings of fact and conclusions of law are based upon the record developed at the hearing and the observations of the Board during the site visit. To the extent that the Board agreed with and found necessary any findings proposed by the parties, those findings have been incorporated herein; otherwise, said requests to find are hereby denied.

I. ISSUES IN THE APPEAL

The District Commission denied the application because it found that the project would not satisfy the requirements of Criteria 8(a), 9 (E), and 10. Under Criterion 8(a) the District Commission found that the loss of 30 acres of **deer-**yard resulting from the clearcutting of trees at the quarry site significantly imperiled necessary wildlife habitat and that successful mitigation could not now be achieved on this site. The District Commission did not make findings on Criterion 9(E). Under Criterion 10, the District Commission concluded that the project did not conform with the **Rutland** Regional Plan. No town plan was in effect at the time the application was filed.

A. Party Status

The State of Vermont is concerned about the impact of the project on the **deeryard** and it participated on Criterion 8(a).

The Town of Shrewsbury was granted party status on Criterion 8(a) under Board Rule 14(B) (1) and (2) both because of its interest in the deer herd that lives in the watershed area encompassing both Shrewsbury and the project site, and because of its ability to materially assist the Board.

Margie Congdon, an adjoining landowner on the East Road, is concerned about the impact of the project on her property and was granted party status pursuant to Board Rule 14(A) on Criteria 1 (air and water), 3 (water supply), 5 (traffic), 8 (aesthetics), 8(a) (wildlife habitat), 9(E) (extraction of earth resources), and 10 (regional plan).

The Estate of **Coccia**, which abuts the Applicant's property on both sides of the proposed development, is concerned under Criterion 1 about the air pollution caused by blasting and

trucks and the impact of the blasting on underground and surface streams that run onto its property. The Estate was granted party status pursuant to Board Rule 14(B) **under** Criterion 8 (aesthetics), 8(a), 9(E), and 10 pursuant to Board Rule 14(B).

B. Town and Regional Plans

On October 14, the Board received a letter from the Town of Clarendon that indicated that on April 29, 1986, Clarendon adopted a town plan. No town plan was in effect on March 10, 1986 when the application was filed with the District Commission. According to Smith v. Winhall Planning Commission, 140 Vt. 178 (1981), an application is subject to the laws and regulations in effect at the time a complete application is filed. Since no town plan existed as of the date this application was filed with the District Commission, the Board will not review whether the project conforms with the town plan under Criterion 10.

In a decision issued on September 28, the Board concluded that the **Rutland** Regional Plan does not apply to this project because it expired before the Applicant's notice of appeal was filed.

C. Necessary Wildlife Habitat

The Applicant's position is that a **deeryard** is not necessary wildlife habitat as that term is defined in Act 250 and that the Board therefore may not consider the impact of the project under Criterion 8(a). The Applicant argues that to be necessary wildlife habitat, the area must be decisive to the survival of a species of wildlife, not only to the animals that use the habitat.

The Board believes that "necessary wildlife habitat" as defined in 10 V.S.A. § 6001(12) means habitat that is critical to the survival of the particular wildlife population which is dependent upon that habitat. In Re: Southview Associates, Findings of Fact and Conclusions of Law and Order #2W0634-EB (June 30, 1987), the Board reaffirmed this interpretation as first stated in an earlier decision. Re: White Sands Realty Company, Land Use Permit #3W0630-1-EB (February 25, 1982). The Board therefore concludes that the **deeryard** that encompasses the Applicant's property is necessary wildlife habitat and that Criterion 8(a) is properly at issue in this appeal.

D. Logging as Development

The Applicant contends that the logging that occurred on the property was a legitimate logging operation and not undertaken in preparation for the quarrying operation, and therefore an Act 250 permit was not required prior to the commencement of the logging. The Board deferred a decision on this issue until after the hearing. The Board's decision is included in the Conclusions of Law, below.

II. FINDINGS OF FACT

A. Project Description

1. J.P. Carrara & Sons is a producer and supplier of crushed rock and associated end-products, such as concrete. It operates a processing plant in North Clarendon, Vermont. As corporate secretary of J.P. Carrara & Sons, Richard Carrara is responsible for the crushing activities, including identifying, procuring and supervising all crushable extract and aggregate produced by the company.
2. The project is located on a **59-acre** property on the east side of Route 103 in Clarendon which the Applicant purchased in approximately the summer of 1984. The Applicant proposes to operate a rock quarry on approximately 8 acres of the site. When the Applicant purchased the property, it was forested with a mix of hardwood and softwood trees.
3. An outcropping of ledge runs to the south and interior of the property for some distance. The Applicant purchased the property because of its belief that it would provide a source of rock for crushing in a commercial quarry operation.
4. In June 1984, the Applicant applied to the Town of Clarendon for a zoning permit for an industrial stone quarry on the property. In late 1984, a lumber company contacted the Applicant and offered to buy timber from the property.
5. Between February 1985 and April 1985, the property was logged in accordance with a contract between the Applicant and a lumber company. Approximately 30 acres of the site were **clearcut** in preparation for the quarry operation.
6. After approximately one-third of the timber had been removed, representatives from the Vermont Department of Fish and Wildlife informed the Applicant that the logging activities required State approval. The Applicant continued logging on the site.
7. On March 10, 1986, J.P. Carrara & Sons, Inc. filed an application for an Act 250 permit to operate a rock quarry on the site that had been clearcut.
8. A buffer strip approximately **200** feet wide, consisting of softwood trees, shrubs, and vegetation, was left around the perimeter of the property.
9. The Applicant intends to blast and remove ledge and stone, load it into trucks, and take it off the property to its processing plant in North Clarendon by way of Routes 103

and 7. No manufacturing, assembly, crushing, or processing of any kind will take place on the site.

10. The Applicant intends to operate the quarry from approximately 6:00 a.m. to 6:00 p.m. Monday through Saturday and to conduct blasting only between 7 a.m. and 5 p.m. The quarry will not operate when there is more than a foot of snow on the ground.

B. Criterion 1 - Air

11. Blasting will take place one or two times per day. The maximum noise level from the blasting will be 85 decibels at the property lines.
12. U.S. Bureau of Mines safety standards will be observed. The explosive charges will be placed in drilled holes; the blasts will create little dust, which would not go beyond the project area. Any dust that is created will be eliminated by using a tank truck to spray the access road to the site and the exposed rock face with water three or four times per day.
13. The blasting will be implemented in phases in accordance with a blast plan entitled "Blasting Design and Vibration Control Plan for Joseph P. Carrara & Sons," dated June 1, 1987, and prepared by Dunn Geoscience Corporation (Board Exhibit #11).
14. The maximum charge size will be 250 pounds per delay, with an eight millisecond delay between each charge. There will be no vibration or effect from the blasts beyond a 200 foot radius from the charge location.

C Criterion 1 - Water pollution

15. The ledge will be extracted in dry bedrock and will not affect any ground or surface water. No disposal of wastes or injection of waste materials or harmful or toxic substances into groundwater or wells or into the ground will occur.
16. A small stream runs through the property. The Applicant will leave a 30-foot wide buffer strip of vegetation on either side of the stream to slow the velocity of runoff from the site and to prevent erosion.
17. Hay bale dams will be placed at the point where the access road intersects the small stream on the site to further control runoff from the extraction area. The quarry floor will be trenched to divert stormwater runoff to the

northeast corner of the site, where a small settlement sump, approximately 1 foot deep, will interrupt the flow of runoff and allow sediment to settle.

D. Criterion 3 - Existing Water Supply

18. The blasts will occur a minimum distance of 1,000 feet from any water supply. No existing water supplies will be used as part of the quarry operation.

D. Criterion 5 - Traffic

19. The property is located between Route 103 and the East Road. The only access to the property is gained from Route 103. Trucks arriving at the site will turn left from the southbound lane onto the project access road. Trucks leaving the site will turn right onto the northbound lane and Route 103.
20. Route 103 is a Class I, category A state highway, which is the highest level of service with minimal delays. In order to reduce the level of service to a B level, there would have to be five to six trucks every 10 minutes. The Applicant intends to limit the number of trucks to an average of 70 per day over the course of a week and a maximum of loaded trucks per day of 120, or a maximum of one truck every 12 minutes.
21. Route 103 is level for long distances in both directions; sight distances are more than 2000 feet to the south and 1000 feet to the north. The Applicant will place "Trucks Entering" and "Trucks Exiting" signs adjacent to the appropriate lanes on Route 103.
22. The VAOT will issue an access permit after an Act 250 permit is obtained. The access permit will require that the access road be constructed in accordance with VAOT Standard B-71, Detail C.

E. Criterion 8 - Aesthetics

23. A buffer strip 200 feet wide, consisting of softwoods, hardwoods, and other vegetation, extends around the perimeter of the property and will be maintained. The quarry site is located in the middle of the property and cannot be seen by the public off-site. The curve of the access road prevents a view of the quarry site from Route 103.

F. Criterion 8(a) - Wildlife Habitat

24. The site of the quarry is within the Winooski dolomite formation, which contains high quality raw material that is sufficiently hard to meet state standards and sufficiently soft to be crushed to usable sized aggregate.
25. This site possesses characteristics that indicate its suitability for a quarrying operation. These include the above-ground location of the rock formation, the close proximity of the site to two major first class highways, the remoteness of the site from populated areas, the absence of primary agricultural soils on the site, and the close proximity of the quarry to the Applicant's processing plant.
26. The resources for sand and gravel in **Rutland** County are almost depleted, while the demand for high quality, economically priced aggregates for concrete, asphalt, septic systems, and drainage construction remains high. This quarry would provide a significant amount of the aggregate needed in the area at a reasonable price.
27. The 59 acre site is part of a **deeryard** of approximately 600 acres located in both the Towns of Shrewsbury and Clarendon. The Applicant destroyed 30 acres of the **deeryard** when it **clearcut** the area.
28. The entire property has been used historically for winter shelter by a deer herd that lives in a 13.5 square mile watershed area.
29. The thirty acres that were **clearcut** by the Applicant contained mature softwood trees that provided excellent shelter for the deer. Without that cover, any deer that attempt to winter there will be more exposed to the cold, snow, winds, and predators, with the resulting weakening and possible death that occurs when deer are subject to stress in the wintertime.
30. The remaining 200 foot buffer around the perimeter of the property is not of sufficient size to provide significant winter shelter. The majority of the trees are pine, which provide cover inferior to hemlock.
31. Intensive management would be required to re-establish the mature softwood cover that existed on the site before it was cut. Even if it could be re-established, it would take approximately 40 years. Mitigation of the wildlife habitat on this site, therefore, is not feasible.

32. The Applicant owns no other property suitable for this type of rock quarry.
33. The Applicant has entered into a Stipulation and a Confidential Development Rights Agreement with the State and the Town of Shrewsbury (See Board Exhibits #31 and 34). Through these documents, the Applicant has agreed to purchase the development and timber rights on approximately 300 acres of land in the Town of Shrewsbury (referred to as "mitigation lands"). The landowners will convey these rights to the State of Vermont pursuant to 10 V.S.A. § 6301 et seq.
34. The 300 acres of land are located within three miles of the project site and are in the same Department of Fish and Wildlife deer management unit.
35. The State will hold the development rights for the exclusive purpose to manage and enhance the lands as a **deeryard** or deer wintering area.
36. The Agreement establishes a mechanism by which the Applicant will initially deposit a sum of money equal to one-half of the total sum into an escrow account, for the purpose of paying certain landowners for the development rights to their properties. The remaining money for acquiring the development rights will be paid to the Town in the future. The Agreement also provides a means by which the landowners will convey their development rights to the State.
37. At the September 30 hearing, letters of landowners' intent to convey development rights on approximately 120 contiguous acres of land to the State were presented to the Board. Additional landowners in the area have expressed interest in similarly protecting their land.
- 8 The mitigation lands contain substantial areas of hemlock, which provide excellent winter cover and a primary food source. These lands are comparable to the project site before it was cleared in terms of the quality of food and winter shelter for deer, and are located in relatively remote areas that are likely to experience less intense development pressures.
39. The majority of the existing deer wintering area adjacent to the Applicant's property is in an area that is experiencing development and fragmentation of ownership. It is also forested largely with white pine, which is inferior to hemlock as winter cover. These facts decrease the desirability of attempting to provide mitigation in that area.

40. Deer travel approximately nine miles to get from summer range to winter range. It is likely that the deer that used the Applicant's property will winter on the mitigation land.

G. Criterion 9(E) - Extraction of Earth Resources

- II 41. The area to be excavated consists primarily of bedrock with a very thin layer of topsoil. Extraction of the aggregate will be accomplished by removing the rock face and will not require excavation down into the ground. The rock face on the hillside will be brought down to the level of the access road and no open pit or other scarring will occur. When the extraction is completed, the site will consist of a flat surface. At that time, the Applicant will determine whether additional rock exists at the site that could be extracted, or whether an alternative use of the site is more desirable.
42. The site blast plan for the project site includes a preblast structural survey of all buildings within a 1000 foot radius with monitoring and analysis of six subsequent blasts, and a multispectral vibration analysis to ensure that no adverse effects on adjoining properties will occur. Frequency response spectra in the 3-18 hertz range will be used to control the magnitude of vibration. The blast designer or his representative will supervise the loading and monitoring of the first six shots and will assist the Applicant as necessary thereafter to ensure a safe blasting operation.
43. The nearest residence is more than 800 feet from the quarry site.

H. Criterion 10 - Conformance with Local and Regional Plan

44. No town plan was in effect on the date that this application was filed and the regional plan expired before the date of the appeal.

III. CONCLUSIONS OF LAW

A. Logging as Development

10 V.S.A. § 6081(a) requires that a permit be secured prior to the "commencement of development." Exemptions from the definition of "development" listed in 10 V.S.A. § 6001(3) include construction for logging or forestry purposes below the elevation of 2500 feet. Logging **activites** undertaken preparatory to a development, however, do not fall within the exemption, but are considered "commencement of construction" of a development. "Commencement of construction" is defined by Board Rule 2(C) as:

[T]he construction of the first improvement on the land or to any structure or facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease, partition, or otherwise transfer an interest in the land.

The Board concludes that the Applicant's logging activities constituted commencement of development that required an Act 250 permit prior to commencing the construction, rather than a bona fide logging operation as the Applicant claims. The Applicant is in the business of producing and supplying crushed rock and associated end-products, and it operates a processing plant in North Clarendon, not far from this site. The Applicant's admitted interest in the property was as a source of rock to crush for commercial purposes. Around the time that the Applicant purchased the property, it applied to the Town of Clarendon for a zoning permit to operate an industrial stone quarry on the property. It was not until after the Applicant had purchased the property and filed for a local permit to operate a quarry that the Applicant **clearcut** the area of the property in which the outcropping of ledge was located. These circumstances are strikingly different from those in Capital Heights Associates and Snowfall, Inc., Declaratory Ruling #167 (March 27, 1985), in which the Board ruled that a logging operation initiated nine months before there was any indication of a plan to develop the property, by a prospective purchaser, was a bona fide logging operation.

The Applicant's intention for the use of the property in this case was clear from the beginning. Although the clearcutting was done by a professional lumber company that paid value for the timber, the primary usefulness of the logging to the Applicant was to clear the trees off that portion of the property that was going to be used for extraction of rock. Since that activity was undertaken in preparation for the quarry operation, it constituted commencement of construction for which an Act 250 permit should have been obtained. The Board therefore concludes that it has jurisdiction to review the impacts that resulted from the cutting of trees as a part of the proposed project.

B. Criterion 1 - Air Pollution

The Board concludes that the quarry operation will not cause undue air pollution. Any dust that results from the blasting or loading of rock onto trucks will be controlled by spraying the exposed rock face and access road with water three or four times a day. Since blasting will take place usually

only once per day, and no more than twice per **day**, and not at all in the winter when snow is on the ground, and since the noise level will be limited to 85 decibels at the property lines, no undue noise pollution will result.

c. Criteria 1 and 3 - Water Pollution

The Applicant has met its burden with regard to the potential impacts on surface water, ground water, and wells. The Applicant will not be discharging sewage or other wastes at the site, nor will the project involve the injection of waste materials or any harmful or toxic substances into groundwater or wells, assuming that any on-site servicing of equipment will be done without spilling of oil or other materials to the environment. The Applicant intends to take appropriate measures to control runoff and erosion at the site. No existing water supply will be used as a part of the project, and the blasting will not harm any off-site water supplies, as they are located too far away from the site of the blasting to be affected. The Board therefore concludes that no undue water pollution will result, nor will the project cause an unreasonable burden on existing water supplies.

D. Criterion 5 - Traffic Safety

The burden of proof on Criterion 5 is on the parties opposing the project. 10 V.S.A. § 6088(b). The Applicant, however, always has the burden of production and must therefore provide sufficient evidence for the Board to make a positive finding with regard to traffic safety. See Re: Pratt's Propane, Application #3R0486-EB, Findings of Fact and Conclusions of Law and Order (January 27, 1987). The Applicant's testimony indicated that the project will have a minimal effect on traffic flow. The Board observed at its site visit the clear sight distances in both directions on Route 103. The Applicant will place signs that warn of trucks entering and leaving the site adjacent to the appropriate lanes of Route 103, and will limit the number of trucks going in and out of the site. The Board concludes that the project as proposed satisfies Criterion 5.

E. Criterion 8 - Aesthetics

The burden of proof on Criterion 8 is also upon parties opposing the project. Since the quarry is located in approximately the center of the property, the buffer strip around the perimeter of the property screens the project site from any view **offsite**. No credible evidence to the contrary was produced by any opposing parties. The Board therefore concludes that the project will not have an undue adverse effect upon the scenic or natural beauty of the area or upon aesthetics.

F. Criterion 8(a) - Necessary Wildlife Habitat

Under 10 V.S.A. § 6086(a) (8) (a), a permit will not be granted if any party opposing an application demonstrates that the project will destroy or significantly imperil necessary wildlife habitat or any endangered species, and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species, or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied, or

(iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

"Necessary wildlife habitat" is defined at 10 V.S.A. § 6001(12) as "concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods."

As stated above, the Board has concluded that the **deeryard** which encompasses the Applicant's property is a "necessary wildlife habitat" within the meaning of the Act, and that this project must be reviewed for compliance with Criterion 8(a).

The Board believes that the cutting of approximately 30 acres of trees in preparation for the quarry operation resulted in the destruction or imperilment of the part of the **deeryard** located on the Applicant's property. The evidence was undisputed that a **deerherd** located in the watershed area has used this property as a wintering area, and that the hemlock that grew there provided an excellent source of both shelter and food. It is also not disputed that there is only a **200-foot** wide strip of softwoods around the perimeter of the site and that these remaining pines provide inferior shelter. Any deer that return to this **area** to try to survive the winter will be subject to the stress of the lack of protection from wind and cold and snow.

The Board therefore concludes that the project has already destroyed approximately 30 acres of necessary wildlife habitat and that the remaining areas of **deeryard** on the property are significantly imperiled as a result, since they are not large enough or of sufficiently good quality to support the deer accustomed to wintering in that area.

According to the statute, if the Board finds that the project will destroy or significantly imperil necessary wildlife habitat, it must deny the permit if it makes a positive finding on any of the three subcriteria. Conversely, if it cannot make such a positive finding, then it must grant the permit.

The Board believes that it cannot make a positive finding under either subcriterion **(i)** or **(iii)**. The Applicant presented extensive evidence regarding the lack of a good source for crushed rock in the **Rutland** area and the importance of this quarry to the economic health of the area. Insufficient evidence was presented on the loss to the public from the destruction of this habitat. No evidence was presented that the Applicant owns a reasonably acceptable alternative site for a quarry.

A positive finding would be made under subcriterion **(ii)**, were it not for the Applicant's mitigation proposal. Since it would take approximately 40 years to reestablish a softwood forest of **sufficient size** and quality to constitute a deer wintering area, any attempt to mitigate the loss of the **deeryard** on the same site is not feasible or reasonable. The Board believes that the Applicant's proposal to purchase development and timber rights on 300 acres within the same watershed and deer management units, to be conveyed to the Department of Fish and Wildlife for **deeryard** management, would be a reasonable means of mitigating the destruction of the site. The mitigation lands will contain excellent winter cover, and are likely to be used by the same deer that wintered on the Applicant's land. The Board believes if the Agreement is fulfilled as intended, with 300 acres of contiguous land protected and enhanced for use as a deeryard, that all feasible and reasonable means of lessening the destruction, diminution, or imperilment of the habitat will be applied, and the Applicant has complied with Criterion 8(a).

The Board is cautious, however, about issuing a permit before the development rights have been secured. The Agreement calls for the acquisition of 120 acres now and the remaining 180 acres within two years. The Board will incorporate the development rights agreement into the permit and will condition the permit so that it will not take effect until the development rights on at least 120 acres have been secured, and will require the remaining development

rights to be acquired within 24 months of the effective date of this permit. The Board will also require that the Applicant submit to the District Commission a letter of approval from the Fish & Wildlife Department with regard to the lands to be acquired, and the District Commission will retain jurisdiction to review and approve the location of the mitigation lands.

G. Criterion 9(E) - Extraction of Earth Resources

The blasting plan which the Applicant intends to follow will provide sufficient safeguards so that the blasting will not have an unduly harmful impact upon the environment or surrounding land uses. As stated above, only minimal dust will be created and that will be controlled by water. No wastes will be generated at the site, and stormwater runoff will be diverted from the stream by the use of hay bales and a settlement basin. The nearest neighbor is more than 800 feet from the blasting area and the nearest water supply is over 1000 feet away.

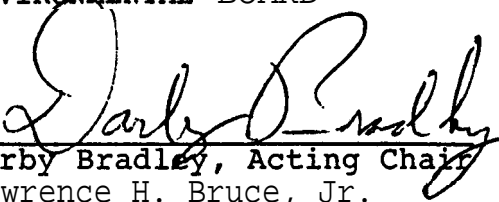
The site will not need to be reclaimed since the operation will consist only of removing the above ground rock face until it is level with the access road. No pit will be created. After the extraction is completed, the site would be suitable for other uses because it will consist of a hard, flat area. Due to these unusual circumstances, the Board believes that no reclamation plan is necessary. The Board-therefore concludes that the Applicant has met its-burden of proof on Criterion 9(E).

IV. ORDER

Land Use Permit #1R0589-EB is hereby issued in accordance with the Findings of Fact and Conclusions of Law herein. Jurisdiction over this matter is returned to the District #1 Environmental Commission.

Dated at Montpelier, Vermont this 17th day of February, 1988.

ENVIRONMENTAL BOARD


Darby Bradley, Acting Chair
Lawrence H. Bruce, Jr.
Elizabeth Courtney
Jan S. Eastman
Arthur Gibb
Samuel Lloyd