



LAND USE PERMIT AMENDMENT

State of Vermont
Natural Resources Board
District 2 Environmental Commission
100 Mineral Street, Suite 305
Springfield, VT 05156
<https://nrb.vermont.gov/>

CASE NO: 2S0214-9(Remanded)
Town of Chester
P.O. Box 370
Chester, VT 05143

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 2 Environmental Commission hereby issues Land Use Permit Amendment 2S0214-9(Remanded), pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 166, Page 61, of the land records of the Town of Chester, Vermont, as the subject of a deed to the Town of Chester.

This permit specifically authorizes the extraction of sand and gravel in a five-acre area exclusively for Town of Chester municipal use; 150,000 cubic yards total and 20,000 cubic yards per year maximum extraction.

The project is located on Route 103 in Chester, Vermont.

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 assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District 2 Environmental Commission (the "Commission") in accordance with the following conditions.

1. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 2S0214-9(Remanded), and (c) 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 G1 - "Scope of Work Plan/Project Description," dated 6/29/20, (Exhibit #052);

Sheet C1 - "Pre-Construction/Present Conditions Site Plan," dated 6/1/20, last revised 8/5/20, (Exhibit #52);

Sheet C2 - "Construction/Operational Plan with EPSC Measures," dated 6/1/20, last revised 8/5/20, (Exhibit #52);

Sheet C3 - "EPSCP Details," dated 6/29/20, (Exhibit #52);

Sheet C4 - "Stabilization/Reclamation Plan," dated 6/29/20, (Exhibit #52).

2. All conditions of Land Use Permit 2S0214 and amendments are in full force and effect except as further amended herein.
3. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permit:
 - a. Multi-Sector General Permit 3-9003, Permit #8375-9003, issued on June 14, 2019 by the Stormwater Management Program. Exhibit 007.
4. Any nonmaterial changes to the permit 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 Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. No subdivision or further alteration or development on the tract of land approved herein shall be permitted without a permit amendment issued by the 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 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 take reasonable precautions at all times to prevent fugitive particulate matter (dust) from becoming airborne from the Project and its operations. Reasonable precautions to be taken shall include, but not be limited to, the following measures or other equally effective measures for Project operations and activities under the Permittee's control or supervision:
 - a. The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;
 - b. Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper
 - c. All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways and when loaded with materials that may generate fugitive dust;
 - d. All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions;
 - e. Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable; and
 - f. The Permittee shall ensure that any dust control measures taken in accordance with the conditions listed above are in compliance with all other state and federal requirements.
12. The Permittee shall not allow the operation of a gravel or stone crushing plant on the premises with a maximum rated capacity (based on the crusher's largest possible setting and maximum throughput, not actual operating rate) of greater than 150 tons per hour, unless said crushing plant has a permit to operate from the District Commission and the Vermont Air Pollution Control Division.
13. Fueling or maintenance of vehicles and mobile equipment and overnight parking of vehicles shall occur in the area designated for that activity on the Project site plan,

Exhibit 052 (site plan C-2) which shall be located outside the immediate area where extraction is occurring. Fueling and maintenance of stationary or semi-stationary equipment in active extraction areas shall be conducted over absorbent pads or with secondary containment.

14. The Permittee shall maintain a three-foot separation zone between extraction activities and the seasonal high groundwater table. If the groundwater table is encountered, the Permittee shall cease operations in that area and contact the Water Resources section of the Drinking Water and Groundwater Protection Division for advice.
15. No hazardous materials or hazardous waste shall be stored onsite.
16. The Permittee shall not blast, drill, or hammer.
17. The maximum annual extraction is 20,000 cubic yards.
18. The maximum extraction for the project is 150,000 cubic yards.
19. General hours of operation including extraction, screening and trucking shall take place on weekdays from 7:00am to 4:30pm with no operations when school is in session or school grounds are in use.
20. The Permittee shall be limited to 10 days of crushing, that may occur only Monday through Friday between 8:00am to 4:30pm during June through September when Green Mountain Union High School is not in session and the school grounds are not in use.
21. The Permittee shall post at the town office and on the town website when crushing will occur at least a week in advance. The Permittee shall directly notify any neighbor who chooses to be notified about crushing at least a week in advance through the communication means of the neighbor's choosing.
22. From April 16 through June 15, and September 1 through December 15, there shall be a maximum of 5 round trip truck trips per day.
23. From December 15 through April 15 there shall be a maximum of 4 round trip truck trips per day and shall include prior approval from the Department of Fish and Wildlife.
24. From June 16 through August 31 there shall be a maximum of 10 round trip truck trips per day except up to 180 round trip truck trips per day may be allowed on no more than 5 operation days during this period, unless prior permission for additional truck trips has been granted by the District Coordinator or District Commission, as applicable.
25. The Permittees shall keep a log of all truck trips, listing the date and time of each trip. Accurate copies of the log shall be submitted to the Commission within 3 business days upon request.
26. All onsite equipment shall use radar activated or broadband backup alarms.

27. The maximum noise levels from operations on the site, including crushing, shall not exceed 55 dBA Lmax at any existing residences or outdoor areas of frequent human use, such as the school grounds.
28. The Permittee is prohibited from driving trucks at the site or on the access road while the crusher is in use to achieve the 55 dBA Lmax maximum noise level.
29. No extraction, crushing, or screening activities shall occur in the pit between December 15th and April 15th each year. Periodic access by town trucks may occur to gravel and sand stockpiles in the pit during this period, provided that such access is approved in writing by the Department of Fish & Wildlife.
30. Extraction shall proceed initially in the 4.2-acre shown on Exhibit 052. Extraction in the second 3-acre area shown on the foregoing Plans may proceed only after completion of extraction in the initial 4.2-acre area and upon receipt of an amendment to this Permit. In the event that an Application is filed for the second 3-acre phase, the first 4.2-acre phase shall be reclaimed to the maximum extent feasible before extraction of the second phase proceeds. Nothing in this paragraph shall be interpreted to entitle the Permittee to Department approval for the second 3-acre phase. The Department will assess the proposal for the second 3-acre phase based on the circumstances at that time, in accordance with the Grant of Development Rights, Conservation Restrictions, recorded in Volume 185, page 209, of the Town of Chester land records on July 10, 2018.
31. The width of the road and the boundary of the initial clearing for the 4.2-acre phase shall be clearly marked on the ground prior to commencement. No clearing, site preparation, processing, extraction or other encroachment shall be allowed outside of this boundary without the permission of the District Coordinator or the District Commission, as appropriate.
32. The Permittee shall develop and implement a Habitat and Forest Management Plan consistent with the terms and conditions of Conservation Easement Section 5, which shall provide for the re-establishment of deer wintering area in the old and presently closed 9.3 acre pit on the property as shown on the mylar referenced in the Conservation Easement. Said Plan shall be prepared by a qualified forester and shall be subject to the review and reasonable approval by the Department.
33. Upon completion of all extraction contemplated in this Permit, including potential future extraction from the second 3-acre phase following issuance of an appropriate amendment by the District Commission, the Town shall develop and implement a Plan for the reestablishment of deer wintering area in the initial 4.2-acre extraction area in accordance with a Plan prepared by a qualified forester subject to the review and approval of the Department.

34. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snow fencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
35. A copy of the approved erosion prevention and sediment control plan shall be on the site at all times during construction.
36. 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.
37. The Permittee shall maintain an undisturbed, naturally vegetated buffer zone on the Project Tract within 50 feet of any wetlands as depicted on Exhibit #052. The term "undisturbed" means that there shall be 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 or mowing.
38. All wetland buffers and the ephemeral stream shall be marked with a continuous line of flagging prior to site preparation and construction and shall remain for the duration of the life of this permit. Additionally, these areas shall be marked with reinforced silt fencing or other physical barrier during construction.
39. The Permittee shall install EPSC measures: silt fence shall be installed on the downhill side of topsoil stockpiles and the downhill side of construction activities. Diversion ditches shall be installed as necessary.
40. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
41. 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 any written contract of sale is entered into.
42. This permit amendment shall expire on **December 15, 2041**, unless that date is extended in writing by the Commission.
43. Act 250 jurisdiction over the Project Tract shall not be lifted until the following requirements have been met:

- a. The Permittee must submit a report from a Professional Engineer specifically documenting how the required reclamation work has been completed in accordance with (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 2S0214-9(Remanded), and (c) the permit application, plans, and exhibits, including but not limited to Exhibit 052.
- b. The District Coordinator must issue a written opinion, determining that all required reclamation has been successfully completed, and formally lifting jurisdiction over the Project Tract.

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

Dated this 5th day of April 2021.

By 
Thomas J. Fitzgerald, Chair
District 2 Commission

Members participating in this decision: Cheryl Cox and Julia H. Schmitz

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.

Page 8

Land Use Permit 2S0214-9(Remanded)

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.

E-Notification CERTIFICATE OF SERVICE # 2S0214-9(Remanded)

I hereby certify that I, the undersigned, sent a copy of the foregoing Land Use Permit, Findings of Fact and Conclusions of Law and Order on April 5, 2021 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.Act250Springfield@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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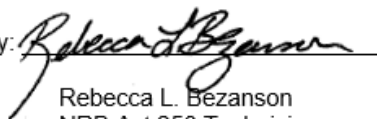
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Natural Resources Board
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CASE NO: 2S0214-9(Remanded)

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LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

The Town of Chester filed an application for an Act 250 permit for a project to extract sand and gravel in a five-acre area exclusively for Town of Chester municipal use, 150,000 cubic yards total with 20,000 cubic yards per year maximum extraction. The tract of land consists of 139.57 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on January 5, 2016 in the land records of Chester, Vermont.

The application, first submitted on December 16, 2019, was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated January 8, 2020. The application was deemed complete on January 23, 2020 upon receipt of the required supplemental information.

The Commission conducted a site visit and held a hearing on this application on February 27, 2020. The Commission heard arguments on the Successive Application Doctrine and Act 250 Rule 34(E) and reserved judgment on those matters while also hearing evidence on the merits. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on September 17, 2020, after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

The Commission issued a decision in this matter on September 18, 2020, dismissing the application based on the Successive Application Doctrine and Act 250 Rule 34(E).

That decision was appealed to the Superior Court, Environmental Division. In its decision dated January 4, 2021, the Court accepted an agreement between the Natural Resources Board and the Applicant and remanded to the Commission to consider the application on the merits. See *Town of Chester Sand Gravel Pit, Stipulated Judgment and Order of Remand*, Docket No. 20-ENV-0008 (“Court Order”). The Commission adjourned deliberations on the Remanded 2S0214-9 application on March 30, 2021.

As set forth below, the Commission finds that the Project complies with 10 V.S.A § 6086(a) (Act 250).

II. JURISDICTION

Jurisdiction attaches because the Project is a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. OFFICIAL NOTICE

Under 3 V.S.A. § 810(4) of the Administrative Procedure Act (“APA”), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, “[t]he rules of evidence as applied in civil cases . . . shall be followed” in contested cases. Under the Vermont Rules of Evidence, “(a) judicially noticed fact must be one not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b); See *In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). The Commission takes official notice of Land Use Permit 2S0214-6, with an expiration date of October 1, 2030; Findings of Fact and Conclusions of Law and Order 2S0214-6A; and the Chester Town Plan, adopted 2015.

Accordingly, official notice is hereby taken of Land Use Permit 2S0214-6; Findings of Fact and Conclusions of Law and Order 2S0214-6A; and the Chester Town Plan, adopted 2015 subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

IV. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) are:

- The Applicant
- The landowner
- The municipality of Chester
- The Chester Planning Commission
- The Southern Windsor Regional Planning Commission
- The State of Vermont Agency of Natural Resources (ANR)
- The State of Vermont Agency of Transportation

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

Chester-Andover Family Center, represented by Stephanie Mahoney and Derek Suursoo requested and were preliminarily admitted under Criteria 1 Dust and 8 Aesthetics as it relates to noise.

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and found no reason to change its preliminary determinations.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through submittal of the application

- | | |
|---------------------------|---------------------------------------|
| 1(A) - Headwaters | 2 - Water Supply |
| 1(C) - Water Conservation | 3 - Impact on Existing Water Supplies |
| 1(D) - Floodways | 4 - Soil Erosion |
| 1(F) - Shorelines | |

5(B) – Transportation Demand Management	9(C) - Productive Forest Soils
6 - Educational Services	9(F) - Energy Conservation
7 - Municipal Services	9(G) - Private Utility Services
8 – Natural Areas	9(H) - Costs of Scattered Development
8 – Historic Sites	9(J) - Public Utility Services
9(A) - Impact of Growth	9(L) – Settlement Patterns
9(B) – Primary Agricultural Soils	10 - Local and Regional Plans

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits 001 -055, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and the burden is on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. The Court Order requires that the Commission include the following General Finding/Condition:

Because the Project has been substantially changed from prior project in this Permit Series, and because of the alterations in proposed operations recited below from those initially applied for and from those authorized in the -6 Amendment and proposed in the -6A Application in this Permit Series: 1) neither the ‘Successive Application Doctrine’ nor Act 250 Rule 34(E) is a bar to the consideration of Application 2S0214-9 on the merits by the District 2 Environmental Commission, and; 2) Condition 12 of the -6 Amendment and any related Findings are not applicable to the Project.

2. The Court Order did not include any evidence, reasoning, or explanation regarding the above condition about why “Condition 12 of the -6 Amendment and any related Findings are not applicable to the Project” or in what way the Project has been substantially changed regarding previous decisions regarding noise. More specifically, the Court Order does not make reference to any noise levels, past or proposed.

Criterion 1 - Air Pollution:

Findings of Fact

3. Air emission will be primarily dust associated with trucks, the crusher, and other equipment and operations. Exhibit 001.
4. All trucks will be required to cover their loads. Exhibit 001.
5. The portable crusher will be equipped with wet suppression equipment. Exhibit 001.
6. The Applicant will obtain a machine-specific Air Pollution Control Permit for the crusher in the event that its through-put capacity triggers the permit requirement, which is a maximum rated capacity of greater than 150 tons per hour. Exhibit 001 and 030.
7. The project does not include blasting. Exhibit 001.
8. ANR proposes the following conditions which require the Applicant to take reasonable precautions to control and minimize emissions of fugitive particulate matter from operations or activities under the applicant's control or supervision for compliance with Criterion 1 Air Pollution and the *Vermont Air Pollution Control Regulations Section 5-231(4)*:
 - a. The Permittee shall take reasonable precautions to prevent particulate matter (dust) from becoming airborne from the Project. Reasonable precautions to be taken shall include the following measures or other equally effective measures for Project operations and activities under the Permittee's control or supervision:
 - i. The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;
 - ii. Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper;

- iii. All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways and when loaded with materials that may generate fugitive dust;
 - iv. All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions; and
 - v. Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable.
- b. The Permittee shall ensure that any dust control measures taken in accordance with the conditions listed above are in compliance with all other State and Federal requirements.

Exhibit 030.

- 9. The Applicant proposes hours of extraction, screening, trucking, and general operations of Monday through Friday, 7:00am to 4:30pm, except for emergencies. Exhibit 001.
- 10. Screening and extraction are proposed for April 15 to December 15, but loading and hauling material is proposed year-round. Exhibit 046.
- 11. The Applicant proposes hours of crushing Monday through Friday between 8:00am to 4:30pm.
- 12. The Applicant proposes crushing for a three to four week period during June through September when school is not in regular session, weekdays from 8:00 AM to 4:30 PM, except in cases of emergency. Exhibit 046.
- 13. The Court Order includes: Crushing at the Project shall only occur during the months of June, July, August and September on days when the Green Mountain Union High School is not in regular session. Crushing may not occur during any other month. Prior to the commencement of crushing activity at the Project in any calendar year, the Permittee shall consult with Green Mountain Union High School staff to determine which days school will be in regular session. The Town shall not conduct crushing activity at the Project on the days so indicated.

14. The Applicant estimates that the Project will only operate periodically on an as-needed basis. Exhibit 001.

Conclusions of Law

The Commission concludes that this Project will not result in undue air pollution, however, does not accept the facts above as permit conditions as we explain in more detail below.

Criterion 1 - Water Pollution

Findings of Fact

15. ANR requests the following permit conditions to prevent groundwater contamination:
 - a. Fueling or maintenance of vehicles and mobile equipment and overnight parking of vehicles shall occur in the area designated for that activity on the Project site plan, Exhibit 052 (site plan C-2) which shall be located outside the immediate area where extraction is occurring. Fueling and maintenance of stationary or semi-stationary equipment in active extraction areas shall be conducted over absorbent pads or with secondary containment.
 - b. The Permittee shall maintain a three-foot separation zone between extraction activities and the seasonal high groundwater table. If the groundwater table is encountered, the Permittee shall cease operations in that area and contact the Water Resources section of the Drinking Water and Groundwater Protection Division for advice.

Conclusions of Law

The Commission concludes that the Project will not result in undue water pollution.

Criterion 1(B) - Waste Disposal:

Findings of Fact

16. The total project size is 4.2 acres. Concurrent earth disturbance will be 4.2 acres. Exhibit 052.
17. The sequence of earth disturbance activities: install erosion prevention and sediment control devices; construct access road; perform gravel extraction; reclaim the site. The plans (Exhibit 052) present the maximum work area. Operations may be phased, with each phase following the practices described. Exhibit 052.

18. Extraction depths may be reduced from what is shown on site plans (Exhibit 052) depending on conditions encountered during extraction operations to ensure a minimum three-foot groundwater separation. Exhibit 052.
19. The Stormwater Management Program issued Multi-Sector General Permit 3-9003, Permit #8375-9003, on June 14, 2019. Exhibit 007.

Conclusions of Law

The ANR permit(s) create(s) a presumption pursuant to Act 250 Rule 19 that the disposal of wastes through the installation of wastewater and waste collection, treatment and disposal systems authorized by the permit(s) will not result in undue water pollution. Technical determinations made by ANR in issuing the permit(s) are entitled to substantial deference. 10 V.S.A § 6086(d).

The Project will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal, and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells or cause undue water pollution.

The Project complies with Criterion 1(B) (Waste Disposal).

Criteria 1(E) – Streams and 1(G) - Wetlands:

Findings of Fact

20. An ephemeral stream is located at the southeastern border of the project. Exhibits 052-054.
21. There are several wetlands in the vicinity of the Project. Class II wetlands were delineated by Trudell Consulting and confirmed by ANR Wetlands Ecologist Rebecca Chalmers. Exhibits 037 and 047.
22. The Project extraction area was reconfigured to avoid Class II wetlands and buffers so an ANR Wetlands Permit is not required. Exhibits 036, 037, 047, 52, and 53.
23. ANR accepted the Applicant's revised plans and supplemental narrative (Exhibits 52 and 53) regarding streams. Exhibit 054.
24. The 5-sheet set of plans for the Town of Chester Gravel Pit was revised with a new set of drawings dated June 29, 2020 to avoid impact to an ephemeral stream at the southeastern border of the project. Additional narrative was incorporated in the Site Notes, Operational Plan and the Erosion Control and Sediment Control Measures on August 5, 2020 as documented by the August 5, 2020 revision date on sheets C1 and C2.

These include:

- a. The specific requirements that address the ephemeral stream, which is a drainage between Wetlands R and H, are listed in the notes below that are now contained on sheet C2 as General Notes 5, 6 and 7:
- b. A buffer of 50 ft from Class II wetlands is required to be maintained. No disturbance of the drainage from Wetland R to Wetland H is permitted. A continuous line of flagging is required to be installed to identify the project limits and maintain separation from the protected drainage and buffer area.
- c. Only those areas necessary for construction of the road, extraction area and erosion prevention and sediment control measures shall be disturbed. The limits of disturbance will be marked by flagging, signs or project delineation fencing (pdf). Existing vegetation outside the limits of construction shall be left undisturbed.
- d. Install EPSC measures as shown. Silt fence shall be installed on the downhill side of topsoil stockpiles and the downhill side of construction activities. Diversion ditches shall be installed as shown and as necessary by field conditions to divert runoff from disturbed surfaces. The Operations Plan requires separation from the drainage between Wetlands R and H. If stormwater runoff from the extraction area is flowing to this drainage, the contractor shall install diversion ditches to contain the flow to within the extraction area and direct it to the sediment trap.

Exhibits 052 and 53.

Conclusions of Law

The Project complies with Criterion 1(E) and Criterion 1(G).

Criterion 8 - Aesthetics:

FINDINGS OF FACT

Findings of Fact: Aesthetics, Scenic or Natural Beauty

25. The Court Order requires the Commission to include the following Findings/Conditions with Respect to Criterion 8, Aesthetics:
 1. Truck trips from the Project are approved as follows:
 - a. April 16 through June 15, and September 1 through December 14:
Approximately 5 round truck trips per day.

- b. December 15 through April 15:
Trucks may occasionally access the Project during this period in accordance with the Conservation Easement between Permittee and the Department of Fish and Wildlife, (Exhibit 009) and with prior approval of the Department, and in any event, no more than approximately 4 round truck trips per day.
 - c. June 16 through August 31:
 - i. Approximately 10 round truck trips per day.
 - ii. Notwithstanding (1)(c)(i) above, up to 180 round truck trips per day may be allowed on no more than 5 operation days during this period, unless prior permission for additional truck trips has been granted by the District Coordinator or District Commission, as applicable.
 - d. Permittee shall always make its best effort to minimize the impact resulting from the operation of the Project on the Green Mountain Union High School and areas used for outdoor recreation and education, by considering, at a minimum, the Green Mountain Union High School's operating hours and days. Regarding (1)(c)(ii), above, Permittee shall consult with Green Mountain Union High School prior to any day(s) that it intends to use more than 10 round truck trips per day.
2. No extraction, crushing, or screening is allowed December 15 through April 15.
3. Crushing at the Project shall only occur during the months of June, July, August and September on days when the Green Mountain Union High School is not in regular session. Crushing may not occur during any other month. Prior to the commencement of crushing activity at the Project in any calendar year, the Permittee shall consult with Green Mountain Union High School staff to determine which days school will be in regular session. The Town shall not conduct crushing activity at the Project on the days so indicated.
26. The project site is adjacent to the Green Mountain Union High School and close to several residential neighborhoods.

27. Operations from the Project include: excavating, crushing, screening, loading trucks, and hauling material. Exhibit 046.
28. The Applicant proposes crushing for a three to four week period during June through September when school is not in regular session, weekdays from 8:00 AM to 4:30 PM, except in cases of emergency. Exhibit 046.
29. Drilling, blasting, and hammering is not being proposed at the site. Exhibit 046.
30. All on-site equipment will use radar activated or broadband backup alarms. Exhibit 046.
31. General operations including extraction, screening and trucking will take place on weekdays from 7:00 AM to 4:30 PM. Exhibit 046.
32. The use of truck engine brakes is not necessary at the site. Exhibit 046.
33. The noise study submitted with the application is dated July 30, 2019. The noise study was updated because the extraction area was shifted and is dated June 1, 2020. Exhibits 012 and 046.
34. "The noise limit applied to this type of project through Act 250 is 55 dBA Lmax at homes and areas of frequent human use during the day, known as the Barre-Granite standard. In some cases, a 70 dBA Lmax property line limit has also been set. These precedents were set by the Environmental Board and have generally been upheld by the Environmental Court to evaluate whether or not a project would be considered shocking and offensive to the average person. However, the Vermont Superior Court Environmental Division, and the Vermont Supreme Court have made it clear that the Barre-Granite standard is a flexible standard depending on the context of the project and is not a hard and fast limit." Exhibit 046.
35. Sound propagation modeling was conducted to predict the maximum sound pressure levels (Lmax) from four operational scenarios. These operation scenarios are: "initial with crushing; initial with excavation; final with crushing; and final with excavation." Exhibit 046.
36. Model results indicate that all modeled receptors will experience sound levels of 56 dBA Lmax or below. The maximum modeled sound level at the property line was 70 dBA which occurs when a truck is passing by the closest point between the access road and the property line. Exhibit 046.

37. There is a forested area containing a network of trails on the Green Mountain Union High School property between the school building and the shared boundary, including a trail that runs along the property line. This trail network is used for educational and recreational purposes by Green Mountain Union High School, and it is used for recreational purposes by the public. Exhibit 039.
38. At 716 Route 103, Green Mountain Union High School, Sound Model Results for the four operation scenarios are: 56 dBA; 53 dBA; 55 dBA; and 52 dBA. Exhibit 046.
39. At 985 Route 103, Multi-Family Dwelling, Sound Model Results for the four operation scenarios are: 56 dBA; 51 dBA; 56 dBA; and 51 dBA. Exhibit 046.
40. When a truck is not driving on the access road, the Lmax at 985 Route 103 would be 55 dBA or less even when crushing is occurring at the site. Exhibit 046.
41. Six more homes will have noise levels at or above 50 dBA for at least one operational scenario. Exhibit 046.
42. An additional 146 more residences, one educational establishment, and one inn/B&B will have noise levels in the 40s dBA (most in the mid to high 40s) for at least one operational scenario. Exhibit 046.
43. Background noise sources at the school monitor were listed as: bird calls, wind in the trees, people playing in nearby fields, aircraft flyovers, distant traffic noise, and water flow. Exhibit 046.
44. The noise report recommends laying out a circular route for trucks loading in extraction area and inform drivers of the route. This will reduce the use of backup alarms by trucks on the site. It also recommends maintaining the forest on the site, such that line-of-sight remains blocked between the extraction area and the closest residences on Route 103. Exhibit 046.

CONCLUSIONS OF LAW

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A § 6086(a)(8). This Project involves concerns under Criterion 8 related to noise.

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether

the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Envtl. Ct. May 17, 2010)* (citations omitted); see also, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Envtl. Bd. Nov. 4, 1985); In re Halnon, 174 Vt. 514 (mem.)* (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Envtl. Ct. May 17, 2010)* (citing *Re: Susan Dollenmaier, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt Envtl. Bd. Feb. 7, 2005); In re Eastview at Middlebury, Inc., No. 256-11-06 Vtec, slip op. at 5 (Vt. Envtl. Ct. Feb. 15, 2008), aff'd, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ."* *In re McShinsky, 153 Vt. 586, 589 (1990)* (quoting *In re Quechee Lakes Corp., 154 Vt. 543, 553-54 (1990)*).

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including the following: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al. #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Envtl. Bd., Nov. 4, 1985)* (cited in *Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13*).

The Project is next to a school and near several residential neighborhoods. The noise levels from operations will be at or near 55 dBA Lmax at a residence and the school and at 56 dBA Lmax during crushing. Noise levels from operations and crushing will be in the high 40s/low 50s at nearly 100 homes. This Project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its

surroundings. *In re Rinkers*, 302-12-08 Vtec, *Decision and Order at 15* (May 22, 2010) (citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, *Findings of Fact, Conclusions of Law, and Order at 18* (Vt. Envtl. Bd. 4/9/02).

The Chester Town Plan and Southern Windsor Regional Plan do not identify any specific scenic resources in the project area or specific policies to preserve the aesthetic or scenic beauty of the area. They also do not contain a clear written community standard with respect to noise levels.

Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

“In making aesthetics determination, Board need not poll the populace or require vociferous local opposition in order to conclude that an average person would consider the project to be offensive.” *In re McShinsky*, 153 Vt. 586, 592 (1990). “The *Barre Granite* noise standard, 70 dBA (Lmax) at the property line and 55 dBA (Lmax) at surrounding residences and outside areas of frequent human use, has guided Act 250 determinations for over the past decade.” *In re Lathrop L.P.*, 2015 VT 49, ¶ 80 (citations omitted).

The Applicant has presented evidence that the project will not meet the 55 dBA Lmax *Barre Granite* standard. Noise levels at the school and a residence will be 56 dBA Lmax while crushing is occurring, and just under that level during operations. Additionally, evidence was not presented about noise levels at all areas on school grounds, notably the trails. The noise study stated that noise levels would be 70 dBA Lmax at the property line. It is conceivable that noise levels at the school trails would be in that range, which far exceed the 55 dBA Lmax *Barre Granite* standard. Considering the context of the project, near several residential neighborhoods and directly next to a school, the project as proposed would be offensive to the average person and, thus, unduly adverse. While the *Barre Granite* standard is a flexible standard, it is flexible in the sense that a lower noise level might be more appropriate given a project’s particular setting. Industrial noise is a different type of noise, and more intrusive than distant traffic, bird calls, and wind in the trees. The Commission, however, in issuing a permit for the project, will condition the crushing and operations so as to not reach an offensive level, as explained in more detail in the next section.

(c) Generally Available Mitigating Steps

The question under this factor of the aesthetics analysis is whether the Applicant has “failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.” *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must “take generally available mitigating steps to reduce the negative aesthetic impact of a particular project,” otherwise, “[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse.” *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995) (quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)). A generally available mitigating step “is one that is reasonably feasible and does not frustrate [either] the project’s purpose or Act 250’s goals.”

To mitigate the aesthetic impacts of the Project, the Applicant has reduced the daily number of truck trips to: “approximately 5 round truck trips per day from April 16 through June 15, and September 1 through December 14” and “approximately 4 round truck trips per day December 15 through April 15” and “approximately 10 round truck trips per day from June 16 through August 31” except that during this period, the Applicant also proposes a maximum of 180 round truck trips per day on no more than 5 operation days during this period. The Applicant proposes using radar activated or broadband backup alarms onsite.

The Applicant has proposed limiting crushing at the Project to the months of June, July, August and September on days when the Green Mountain Union High School is not in regular session.

“Construction conducted during a time of year when people are likely to be indoors, adequately mitigates any adverse noise impacts from the construction.” *John and Joyce Belter*, #4C0643-6R-EB (5/28/91). [EB # 474]. “Permit conditions limiting earth extraction activities to certain number of days and months mitigated noise and dust.” *John and Marion Gross d/b/a John Gross Sand and Gravel*, #5W1198-EB (4/27/95). [EB #606]

Crushing for this project is proposed for the summer when school is not in session, but when people are likely to have windows open and be enjoying the outside. Crushing activities will impact several residential neighborhoods, with one multi-family residence in particular, 985 Route 103, projected to have noise levels at 56 dBA Lmax. Because the project cannot be conditioned to require crushing to take place during a time of year when people are likely to be indoors with windows closed, the Commission must closely evaluate the number of days that crushing is proposed. The application states that crushing will occur for three to four weeks per year. The maximum annual extraction is 20,000 cubic yards. Comparing the maximum annual extraction rate and length of time requested for crushing, the Commission finds that it is excessive, unreasonable, and shocking and offensive to a reasonable person. Likewise, a

forty-year permit is also excessive and unreasonable. The Commission concludes that there shall be no more than two weeks (10 days) of crushing permitted during the months that the Applicant proposes but the Commission hopes that it will be fewer days than 10. The Applicant must post at the town office and on the town website when crushing will occur at least a week in advance so that neighbors can plan accordingly when the enjoyment of their homes will be disrupted. In addition, the Applicant must directly notify any neighbor who chooses to be notified about crushing at least a week in advance through the communication means of the neighbor's choosing. And the Commission will allow twenty years for operations.

"Failure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995). The Applicant has not proposed mitigation to reduce the noise levels below 56 dBA Lmax for crushing, such as portable barriers, other acoustic screening, or reducing other sound generating operations onsite. Sound levels above 55 dBA Lmax are not acceptable at a multi-family residence, particularly in the summer. The Commission will condition the permit so that noise levels are no higher than 55 dBA Lmax at any residence or outdoor area of frequent human use. The Commission will prohibit trucks driving at the site or on the access road while the crusher is running to achieve the 55 dBA Lmax maximum noise level.

While the Applicant has proposed limiting truck trips during the school year, in very general terms, the Commission does not find this to be adequate mitigation for a gravel pit operation that will introduce industrial noise that is very close to the highest noise level allowed by the *Barre Granite* case and is significantly louder than the background noise levels of distant traffic, bird call, and the like that were monitored. In addition, the Applicant has not met its burden of production or persuasion as it relates to noise levels on the school grounds. Not only did the Applicant fail to include relevant facts about the school trail network, grounds, and their use by the school and the public, but the Applicant failed to consider them in the noise study. It can be logically deduced that because 70 dBA Lmax noise levels were modeled at the property line, that noise levels on school trails or at other parts of the school grounds could be well in excess of 55 dBA Lmax sound levels at outdoor areas of frequent human use. Rather than denying the project because the Applicant has failed to meet its burden of production and persuasion, the Commission will provide the reasonable mitigation that this application lacks through permit conditions. Moreover, because this project has a maximum annual extraction of 20,000 cubic yards any reasonable person would conclude that this project's purpose would not be frustrated by prohibiting operations when the school building and grounds are in use. Prohibiting operations when the school building and grounds are in use is critical to our conclusion that this project is not shocking and offensive and includes reasonable mitigation. The Commission will accept the Applicant's proposed truck trips as the maximum number of truck trips allowed per day during the time periods specified by the Applicant.

Given the considerations and permit conditions that we will include in 2S0214-9(Remanded), we find that the Applicants will be taking the available mitigating steps to minimize the adverse noise impacts of the proposed Project.

(d) Conclusion

Based on the above, the Commission concludes that the Project will not have an undue adverse effect on aesthetics as they relate to noise strictly as conditioned by the permit.

Criterion 8(A) - Wildlife Habitat and Endangered Species:

Findings of Fact

45. The Project site contains Deer Wintering Area. The Department of Fish & Wildlife has agreed to the following proposed conditions proffered by the Applicant in regards to Criterion 8(A). Exhibit 024.
46. The Applicant proposes the following conditions in Exhibit 010:
 - a. No extraction, crushing or screening activities shall occur in the pit between December 15th and April 15th each year. Periodic access by town trucks may occur to gravel and sand stock piles in the pit during this period, provided that such access is approved in writing by the Department of Fish & Wildlife (Department).
 - b. Extraction shall proceed initially in the 5 acre area shown on Exhibit __, Gravel Extraction Site Plan Fig 1 . Extraction in the second 3 acre area shown on the foregoing Plan may proceed only after completion of extraction in the initial 5 acre area and upon receipt of an amendment to this Permit. In the event that an Application is filed for the second 3-acre phase, the first 5 acre phase shall be reclaimed to the maximum extent feasible before extraction of the second phase proceeds. Nothing in this paragraph shall be interpreted to entitle the Permittee to Department approval for the second 3 acre phase. The Department will assess the proposal for the second 3 acre phase based on the circumstances at that time, in accordance with the Grant of Development Rights, Conservation Restrictions, recorded in Volume 185, page 209, of the Town of Chester land records on July 10, 2018.
 - c. The width of the road and the boundary of the initial clearing for the 5 acre phase shall be clearly marked on the ground prior to commencement. No clearing, site preparation, processing, extraction or other encroachment shall be

allowed outside of this boundary without the permission of the District Coordinator or the District Commission, as appropriate.

- d. The Permittee shall develop and implement a Habitat and Forest Management Plan consistent with the terms and conditions of Conservation Easement Section 5, which shall provide for the re-establishment of deer wintering area in the old and presently closed 9.3 acre pit on the property as shown on the mylar referenced in the Conservation Easement. Said Plan shall be prepared by a qualified forester and shall be subject to the review and reasonable approval by the Department.
- e. Upon completion of all extraction contemplated in this Permit, including potential future extraction from the second 5-acre phase following issuance of an appropriate amendment by the District Commission, the Town shall develop and implement a Plan for the reestablishment of deer wintering area in the initial 5 acre extraction area in accordance with a Plan prepared by a qualified forester subject to the review and approval of the Department.

Conclusions of Law

Criterion 8(A) requires that the Commission not grant a permit if it the proposed 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 reasonable acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

10 V.S.A § 6086(a)(8)(A).

Necessary wildlife habitat is defined by Act 250 as “concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species or wildlife at any period in its life including breeding and migratory periods.” 10 V.S.A § 6001(12).

Conclusion

Exhibit 010 appears to contain an inconsistency. Section e, above, references a second 5-acre phase whereas section b, above, references a second 3-acre phase. The Commission will resolve the inconsistency in the permit to eliminate reference to a second 5-acre phase.

The Project complies with Criterion 8A.

Criteria 9(D) and 9(E) – Earth Resources and the Extraction of Earth Resources:

47. The Project involves the extraction and processing of medium gravel, fine sand, some stones, and cobbles. Exhibit 001.
48. The Project was originally proposed as 5-acres but has been redesigned as a 4.2-acre project to avoid a stream and Class II wetlands. Exhibit 052.
49. Equipment used on site will include: one cone crusher; one jaw crusher; one screener; one excavator; two loaders; one haul truck; and occasional fuel and equipment trailer trucks. Exhibit 001.
50. The sand and gravel extracted from this Project are exclusively for the use of the Applicant. Exhibit 001.
51. The maximum annual extraction rate is 20,000 cubic yards. Exhibit 001.
52. Total extraction for the project is 150,000 cubic yards. Exhibit 001.
53. ANR requests the following permit conditions to prevent groundwater contamination:
 - a. Fueling or maintenance of vehicles and mobile equipment and overnight parking of vehicles shall occur in the area designated for that activity on the Project site plan, Exhibit 033 (site plan C-2) which shall be located outside the immediate area where extraction is occurring. Fueling and maintenance of stationary or semi-stationary equipment in active extraction areas shall be conducted over absorbent pads or with secondary containment.
 - b. The Permittee shall maintain a three-foot separation zone between extraction activities and the seasonal high groundwater table. If the groundwater table is encountered, the Permittee shall cease operations in that area and contact the Water Resources section of the Drinking Water and Groundwater Protection Division for advice.

Exhibit 030.

54. Site Plan C-2 was revised after Exhibit 33. The parking/refueling area is now shown on Exhibit 052.

Conclusions of Law

The Commission concludes that this Project complies with Criteria 9(D) and (E).

Criterion 5 – Transportation and Criterion 9(K) – Development Affecting Public Investments:

Findings of Fact

55. The Court Order requires the Commission to include the following Finding/Condition relative to Criterion 9K:

Because the Project has been substantially changed from prior project in this Permit Series, and because of the alterations in proposed operations recited below from those initially applied for and from those authorized in the -6 Amendment and proposed in the -6A Application in this Permit Series: 1) neither the 'Successive Application Doctrine' nor Act 250 Rule 34(E) is a bar to the consideration of Application 2S0214-9 on the merits by the District 2 Environmental Commission, and; 2) Condition 12 of the -6 Amendment and any related Findings are not applicable to the Project.

56. The Court Order requires the Commission to include the following:

2. Truck trips from the Project are approved as follows:

- a. April 16 through June 15, and September 1 through December 14:
Approximately 5 round truck trips per day.
- b. December 15 through April 15:
Trucks may occasionally access the Project during this period in accordance with the Conservation Easement between Permittee and the Department of Fish and Wildlife, (Exhibit 009) and with prior approval of the Department, and in any event, no more than approximately 4 round truck trips per day.
- c. June 16 through August 31:
 - i. Approximately 10 round truck trips per day.

- ii. Notwithstanding (1)(c)(i) above, up to 180 round truck trips per day may be allowed on no more than 5 operation days during this period, unless prior permission for additional truck trips has been granted by the District Coordinator or District Commission, as applicable.
57. VTrans noted that: Last year, as part of VTrans highway project, Southeast Region STPG SIGN (67), the Agency installed the signs "TRUCKS ENTERING" with an advisory sign below "NEXT 750 FEET", in each direction which now frames the accesses for both Drew Organics and the proposed Town sand and gravel pit. These signs negate the need for the "TRUCK" (MUTCD W11-10) warning signs recommended in the July 26, 2019 traffic impact study. Exhibit 031.
58. The access serving the proposed Town sand and gravel pit received a *State Highway Access and Work Permit* (19 VSA Section 1111), VTrans Permit ID 40634, on March 29, 2017. The work required by this permit has been completed. Exhibit 031.
59. Facts from Criterion 8 are incorporated by reference.
60. The Project is adjacent to the Green Mountain Union High School and Vermont State Route 103. Exhibit 001.
61. There is a forested area containing a network of trails on the Green Mountain Union High School property between the school building and the shared boundary, including a trail that runs along the property line. This trail network is used for educational and recreational purposes by Green Mountain Union High School, and it is used for recreational purposes by the public. Exhibit 039.

Conclusions of Law

Criterion 5(A) requires that the Project "will not cause unreasonable congestion or unsafe conditions with respect to use of the highways." See 10 V.S.A § 6086(a)(5)(A).

Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

The Commission concludes that the project complies with Criterion 5.

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the applicant bears the burden of proving that the Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the

function, efficiency, or safety of, or the public's use or enjoyment of, or access to, the facility, service or lands. 10 V.S.A § 6086(a)(9)(K).

The project, as proposed by the Applicant, would materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the Green Mountain Union High School building and grounds. As past decision have noted, and we repeat here: there is an important public policy consideration to protect the public's investment in the Green Mountain Union High School property to ensure the enjoyment and functions of the school, and its facilities, including outdoor education and athletic programs, and use by the public.

The Applicant failed to include relevant information about the school trail network and grounds and their use by the school and the public. The Applicant also failed to consider them in their noise study. Fact #62 above, is a fact from the Environmental Court's 2009 decision. However, as explained in more detail in the conclusions of Criterion 8 above, the permit will be conditioned so that gravel pit operations are not allowed while school is in session or while the school grounds are in use. Because of this condition, we can conclude that the project complies with Criterion 9(K).

VII. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 2S0214-9(Remanded), will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 2S0214-9 is hereby issued.

DATED this 5th day of April 2021.

By 
Thomas J. Fitzgerald, Chair
District 2 Environmental Commission

Commissioners participating in this decision: Cheryl Cox and Julia H. Schmitz

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.