

**10 V.S.A. §§ 6001-6092**

**MEMORANDUM OF DECISION**

RE: McLean Enterprises Corporation

Land Use Permit  
#2S1147-1-EB

This is an appeal of the District #8 Environmental Commission's (Commission)<sup>1</sup> grant of Land Use Permit #2S1147-1 (Permit) to McLean Enterprises Corporation (Permittee) authorizing the operation of an open face rock quarry; the construction of an access road to Rt. 131; the construction of a 2,280 square foot processing shop with a 0.75 acre storage yard, for up to 20 employees, on a 325 acre parcel (Project). This parcel is located between Rt. 131 and Tierney Road, west of Cavendish Village in the Town of Cavendish, Vermont.

**I. PROCEDURAL HISTORY**

On February 19, 2003, the Commission issued the Permit for the Project.

On April 21, 2003, the Commission issued a Memorandum of Decision on a Motion to Alter.

On May 1, 2003, Suzanne Meaney, Carol Behrman, Chis Kelly, Sean Fitzpatrick, Terrence O'Brien, Deborah Harrison, George Timko, Robin Timko, Howard W. Merritt, Jr. and Jean Stubelek (Appellants) filed an appeal and request for a preliminary and long-term stay with the Environmental Board (Board).

On May 2, 2003, the Chair issued a Chair's Preliminary Stay Order.

On May 8, 2003, the Chair heard oral argument on the Permittee's motion to dissolve the preliminary stay.

On May 12, 2003, John P. Mills filed a cross appeal.

On May 13, 2003, the Chair issued a Second Preliminary Stay Order which narrowed the stay to the blasting, drilling, and cutting down of trees for the road construction portion of the Project.

---

<sup>1</sup>

District #8 Environmental Commission was assigned this application by the Board Chair due to the en bloc recusal of the District #2 Environmental Commission, precipitated by the participation in this case by District #2 Environmental Commission staff who live in Cavendish.

On May 14, 2003, the Permittee filed a cross appeal.

On May 20, 2003, William A. Hunter filed a cross appeal.

On May 20, 2003 the Appellants amended their appeal and added Edward and Virginia Garrow, Neil and Nancy Corliss, Joannah Lyn Merriman, John and Elizabeth Becker, Temple White, Charles and Joyce Ringhel, Richard and Sally Kiehle, Blake and Gertrude Frost, James and Mary Ellen Wichelhaus, and Dean and Teresa Harrington as additional Appellants.

On May 21, 2003, the Board deliberated on the Appellants' request for a long- term stay and on May 22, 2003 the Board issued a Memorandum of Decision and Stay Order.

On June 5, 2003 the Chair held a prehearing conference and on June 10, 2003, she issued a Prehearing Conference Report and Order.

Between June 5, 2003, and July 14, 2003, the parties submitted petitions for party status and memoranda concerning party status and a noise demonstration.

On July 16, 2003, August 27, 2003, and September 17, 2003, the Board deliberated on the petitions for party status, the request for a noise demonstration in conjunction with the site visit, and the request for sur-rebuttal prefiled testimony.

On August 8, 2003, Virginia and Edward Garrow and Richard and Sally Kiehle withdrew their petition for party status.

## II. DISCUSSION

### 1. Party Status

Petitions for party status are heard *de novo*, which means that the Board hears the petition anew, without reference to evidence or arguments presented to the Commission. *Re: Pico Peak Ski Resort, Inc.*, #1R0265-12-EB (Mar. 2, 1995); *Re: St. Albans Group and Wal\*Mart Stores*, #6F0471-EB, Findings of Fact, Conclusions of Law, and Order at 30 (Altered)(Jun. 27, 1995), *aff'd, In re Wal Mart Stores, Inc.*, 702 A.2d 397 (1997); *Re: Gary Savoie d/b/a WLPL and Eleanor Bemis*, #2W0991-EB, Findings of Fact, Conclusions of Law, and Order (Oct. 11, 1995)(citing *Re: Swain Development Corp.*, #3W0445-2-EB, Memorandum of Decision at 4-7 (Jul. 31, 1989)).

However, a party may only appeal the Criteria on which he or she had party status before the district commission, except that a party may appeal a Criterion on which he or she did not have party status before the district commission if: (a) the party was denied party status on the Criterion by the district commission and can persuade the Board that such status should be granted, or (b) the party can persuade the Board that party status on the Criterion should be granted and that a substantial injustice or inequity would result if the appeal on the Criterion is disallowed. *Re: Okemo Mountain, Inc., #2S0351-30-EB (2 Revision) and 2S0351-25R-EB, Memorandum of Decision (May 22, 2001).* Whether the individual Appellant requesting party status before the Board had party status before the Commission will only be discussed when it is an issue in the Board's determination.

The Board also notes that the large number of individual Appellants petitioning for party status on many Criteria transformed what should be a straightforward and simple preliminary issue into a complex task worthy of a spread sheet. The Board is cognizant of the fact that the Appellants have agreed to work with one common counsel and even offered to work as an ad hoc committee for the purposes of party status. In the future, in the interests of managing the docket and judicial efficiency, the Board may require large groups of individuals with common interests to work together as an organization, regardless of opposition from other parties.

A) Elements for Party Status under the Environmental Board Rules (EBR):

**i. EBR 14(A)(5)**

The elements necessary to show status as an adjoining property owner under EBR 14(A)(5) are: First, that the petitioner has property adjoining the Project; and second, that the Project may have a "direct effect" on petitioner's adjoining property under any of the ten Act 250 criteria. *Re: GHL Construction, Inc. and PAK Construction, Inc., #2S1124-EB, DR #396, Memorandum of Decision (Jan. 5 2001); Re: Stonybrook Condominium Owners Association, DR #385, Memorandum of Decision at 1- 2 (May 19, 2000); Re: McDonald's Corporation, #1R0477-5-EB, Memorandum of Decision at 10 (May 3, 2000).*

**ii. EBR 14(B)(1)**

The Board may grant party status under EBR 14(B)(1) to any person who shows that the proposed Project may affect that person's interest under any of the Act 250 criteria. To make this showing, the petitioner must adequately

demonstrate: First, that the petitioner has a specified interest that may be affected by the proposed Project, *Re: Maple Tree Place Associates, #4C0775-EB* (Interlocutory Appeal), Memorandum of Decision and Order at 6 (Oct. 11, 1996); and second, that the specified interest is different from interests of the general public, *Re: Springfield Hospital, #2S0776-2-EB*, Memorandum of Decision at 5-6 (Aug. 14, 1997), *appeal dismissed, In re Springfield Hospital*, No. 97-369 (October 30, 1997); *see also, Re: Josiah E. Lupton, Quiet River Campground, #3W0819 (Revised)-EB*, Chair's Preliminary Ruling at 4 (Oct. 3, 2000).

iii. ***EBR 14(B)(2)***

A determination that a EBR 14(B)(2) party can materially assist the Board requires more than an assertion that the party can cross-examine witnesses and present experts. The Board considers the following elements. First, that they possess particular expertise with respect to the Project; second, that the Project is complex and that the issues presented by the Project are novel and unfamiliar. *Re: Maple Tree Place Associates*, Memorandum of Decision and Order at 7; *see also, Re: Josiah E. Lupton, Quiet River Campground, #3W0819 (Revised)-EB*, Chair's Preliminary Ruling at 4 (Oct. 3, 2000) and *Re: Northeast Cooperatives and L&S Associates, #2W0434-11-EB*, Memorandum of Decision at 3 (Jan. 29, 1999). Third, the Board also considers whether another party will provide the assistance which a person who seeks EBR 14(B)(2) status may give. *Re: Stonybrook Condominium Owners Association, Declaratory Ruling #385*, Memorandum of Decision at 3 (May 3, 2000) (citing *Re: Circumferential Highway, State of Vermont, Agency of Transportation and Circumferential Highway District, #4C0718-EB*, Memorandum of Decision and Dismissal Order at 2 (Sep. 25, 1989)).

B) General Party Status Issues

Permittee's arguments against the granting of party status to individual Appellants follow several broad themes. These issues will be addressed first before turning to the individual Appellants' petitions for party status.

i) Impacts to Appellants are Speculative

The Permittee argues that many of the individual Appellants live too far away from the operational areas of the Project to be impacted by the Project. For example, the Permittee includes the distance that each individual Appellant resides from the closest operational area of the Project and argues that many of the individual Appellants will not be able to hear the Project.

In their petitions for party status, the individual Appellants petitioning for EBR 14(A)(5) or (B)(1) party status claimed that they have heard prior operations at the Project and that they will hear the Project if it is permitted. As the Appellants correctly point out, the issue is not the distance between an individual Appellant and the Project, but whether the individual Appellant may be impacted by the Project. In *Re: Town of Albany and Florence Beaudry, #7R1042-EB* (Interlocutory), Memorandum of Decision at 3 (Mar. 19, 1998), the Board found:

However, impacts on a person's property interests are not to be evaluated by how far a person's residence is from the proposed development nor how much time that person is in residence at his or her property. While mere ownership of an adjoining property is not sufficient to confer party status upon a party status petitioner, a demonstration that a proposed project may have an impact under any of the Act 250 criteria upon his property interests will give rise to standing as of right pursuant to EBR 14(A)(5).

With respect to noise impacts, the Board frequently relies at a hearing on the merits on sound tests taken at the shared boundary between the Project tract and adjoining properties. See *Re: Black River Valley Rod & Gun Club, Inc., #2S1019-EB*, Findings of Fact, Conclusions of Law, and Order (March 27, 1997). ... Moreover, while it may be true that after a full evidentiary hearing, the fact finder may conclude that there are sufficient facts to reach a positive finding on a given criteria, at the party status stage of the proceedings it is only necessary for the Commission or Board to consider whether impacts may exist.

Under EBR 14(B)(1) and (A)(5), the issue is whether based on the petition for party status, the petitioner has adequately demonstrated that the Project “*may have*” an impact on the Appellants.(emphasis added). Thus, when the Board reviews petitions for party status, it evaluates whether the petitioner adequately demonstrated that the petitioner in the case of EBR 14(B)(1) or the petitioner’s property interest in the case of EBR 14(A)(5), may be impacted by the project under the relevant Criteria. The Board assumes that the statements in the petition for party status are “well grounded in fact.”<sup>2</sup>

---

2

The Environmental Board notes that in *Re: CCH Stormwater Discharge Permits, WQ-02-11*, Memorandum of Decision (Mar. 21, 2003), the Water Resource Board held that it presumes pleadings signed by the parties are

In sum, party status determinations should not set the bar so high that a petitioner must prove that the petitioner will likely prevail on the merits of its case. The relevant inquiry is whether the petitioner or the petitioner's property interest may be impacted by the project. Therefore, the Board does not need to undertake a preliminary determination on the merits of a petitioner's case. The Board does, however, consider opposing memoranda that raise legal issues involved in the party status determinations.

When an opponent to a party status petition raises a factual dispute, the Board still attempts to make party status determinations based on an assumption of veracity in the petition for party status. While holding an evidentiary hearing on party status petitions would enable the Board to make more precise rulings, the Board believes that, in most situations, the delay such a hearing causes generally outweighs its benefit. However, an applicant, aware of such potential for delay, may choose to contest a factual issue in a party status petition beyond submitting opposing memoranda, by requesting an evidentiary hearing and asking the Board to weigh the evidence and testimony on party status before making its final determinations.

ii) Impacts to the Appellants Are No Different than Those to the General Public

The Permittee argues that many of the individual Appellants' petitions for party status should be denied because the alleged impacts to the Appellants are no different than those to the general public. Appellants respond that the issue is not whether the Appellants and the Appellants alone will be impacted. They assert that the issue is whether the Appellants may be adversely impacted by the Project, even if other nearby residents may also be similarly impacted.

In *Re: Chittenden Solid Waste District*, Certification #EJ99-0197-WFP Memorandum of Decision (Apr. 29, 2003), the Waste Facility Panel quoted *CCCH Stormwater Discharge Permits*, where the Water Resources Board distinguished impacts to the general public versus particularized impacts to

---

truthful. The Water Resources Board stated: "The Board has always assumed that the signer of a pleading incorporating a petition or memorandum in support of standing has read the document and that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, the statements contained in that document are well grounded in fact." *Id* at 7. The Environmental Board adopts the same position.

individuals. Although the Water Resources Board rules are slightly different, the same general principles apply.

Mere speculation about the impact of some generalized grievance, however, is not a sufficient basis to find standing. *Re: Town of Cavendish v. Vermont Pub. Power Supply Auth.*, 141 Vt. 144, 147 (1982). Moreover, the “injury” to the appellant’s interest must be concrete and particularized, not an injury affecting the common rights of all persons. *Parker v. Town of Milton*, 169 Vt. 74, 78 (1998). This is why the Board has previously found that the alleged “injury” to an appellant’s interest *must* be something more than a generalized complaint about the secretary’s favored approach to approving a specific activity or project involving public waters. This is also why individuals who have alleged to be acting on behalf of the public, or who have sought to prevent unnecessary environmental degradation *generally*, have been found to lack standing. *Re: Appeals of Nathan Wallace-Senft and Anita Bellin-Senft*, Docket Nos. WQ-99-04, Dismissal Order (Aug. 19, 1999) (hereinafter, *Wallace-Senft Dismissal*). In sum, while the bar for establishing standing is not high, some level of injury greater than harm to the general public must be shown by appellants. *Re: Village of Ludlow*, Docket No. WQ-01-08, Memorandum of Decision at 11 (Apr. 5, 2002) (hereinafter, *Village of Ludlow MOD*).

*Re: CCCH Stormwater Discharge Permits*, at 5 – 6 (internal footnotes omitted)

The Appellants are correct that it is irrelevant if other individuals may also be impacted from a development as long as the impacts to the petitioners are particular to them, concrete, and not an impact affecting the common rights of all persons.

iii) Other Parties Are Already Representing the Appellants’ Interests

The Permittee argues that the Appellants should be denied party status in instances where statutory parties are already representing their interests. For example, for Criterion 10, the Permittee argues that the Town of Cavendish and the Cavendish Planning Commission are representing the Appellants’ interests and as a result the residents of the Town of Cavendish should be denied party status. Appellants correctly point out that if that was true, no private party could raise any issue that was relevant to a public agency that was participating in the hearing. Moreover, there is no guarantee that the statutory party would take the same position at the hearing or represent that position with the same zeal.

Permittee's argument is only correct for EBR14(B)(2) party status where the Board looks to whether other parties will provide the same information.

C) Individual Petitions for Party Status

*John Mills*

John Mills requested party status pursuant to EBR 14(A)(5) on Criteria 1,2,3,5,8,9, and 10. His petition for party status stated that his property is adjacent to the Project site; the Permittee has already permanently altered the vista from his personal residence; his property is in the direct path of the prevailing wind; that he has a recorded right to a spring on the Project site; that a seasonal brook whose headwaters are on the Project site flows through his property on its way to the Black River; and that the Mills family compound has areas of frequent human use as well as residences within close proximity to the Project site. Mr. Mills also argues that his property is located on the same system of curves as the Project access road on Route 131 and that there have been several accidents nearby.

The Permittee did not take a position with regard to Mr. Mills' request for party status on Criteria 1 (air and water), 2, 3, 8 (aesthetics), and 9(E). With respect to Criteria 5, 8 (historic sites and rare and irreplaceable natural areas), the balance of Criterion 9, and 10, the Permittee argues that this request for party status should be denied because Mr. Mills has not demonstrated a direct affect on his property and an interest which is different than the general public.

Criterion 1 (air and water)

The Permittee did not oppose Mr. Mills petition for party status for Criterion 1. Therefore, Mr. Mills retains his party status on Criterion 1 (air and water).

Criteria 2 and 3<sup>3</sup>

---

3

Petitions for party status for Criteria 2 and 3 will be considered in this instance together because of the connection between the Project's water supply and the potential burden on the Appellants if the water supply is insufficient. There may be other instances where they should be considered separately.

The Permittee did not oppose Mr. Mills' petition for party status for Criteria 2 and 3. Therefore, Mr. Mills retains his party status on Criteria 2 and 3.

#### Criterion 5

The Board notes that Mr. Mills' property is adjacent to both the Project and Scenic Highway 131. In addition, Mr. Mill's property is located in the same system of curves as the Project. Therefore, the Board grants Mr. Mills party status on Criterion 5.

#### Criterion 8 (aesthetics)<sup>4</sup>

The Permittee did not oppose Mr. Mills petition for party status for Criterion 8 (aesthetics). Therefore, Mr. Mills retains his party status on Criterion 8 (aesthetics).

#### Criterion 8 (historic sites)

Mr. Mills requested party status as an adjoining landowner pursuant to EBR 14(A)(5); therefore he must demonstrate how the Project may have a direct affect on any historic sites on his property. Mr. Mills did not make the requisite showing. He relies upon the historic sites on an adjacent property but those historic sites are the subject of another individual Appellants' petition for party status. As an EBR 14(A)(5) petitioner they are not grounds for Mr. Mills party status on Criterion 8 (historic sites), even if Mr. Mills alleges that the two properties are somehow entwined.

#### Criterion 9 (A-L) and 10

Mr. Mills requested party status on Criterion 9 and 10. Criterion 9 requires a development to comply with a duly adopted capability and development plan which the legislature ultimately passed as Act 85 of 1973. The Capability and Development Plan has been incorporated into Act 250 through the subcriteria under Criterion 9, (A) through (L). Therefore, the Board will interpret Mr. Mills' request for party status under Criterion 9 as a request for party status under the

---

4

Some of the parties treated noise as a separate sub-Criterion under Criterion 8 (aesthetics). The Board considers noise to be a part of Criterion 8 (aesthetics).

relevant subcriteria, some of which he specifically listed in his party status petition.

However, the Board notes that there is no indication that Mr. Mills requested party status before the Commission on Criterion 9(A-L) or 10. Mr. Mills requested and was granted party status before the Commission on Criteria 1, 2, 3, 5, 8, and 8(A). An appellant who did not request party status before the district commission, and seeks party status for the first time before the Board, bears a heavy burden.

To appeal a criterion to the Board, an . . . EBR 14(B) party must obtain party status on that criterion before the district commission, or have been denied party status on that criterion by the district commission, appealed to the Board, and then been granted party status on that criterion by the Board. . . . It is possible for a petitioner to overcome this impediment if he can persuade the Board that party status on the criterion should be granted and that a substantial injustice or inequity will occur if the appeal on the criterion is disallowed.

*Re: Old Vermonter Wood Products and Richard Atwood, #5W1305-EB, Memorandum of Decision at 2 (Feb. 3, 1999) (citing Re: Okemo Mountain, Inc., #2S0351-10B-EB, Memorandum of Decision at 3 (Jan. 15, 1993) and Re: Gary Savoie, supra, at 6-7.)*

The “substantial injustice or inequity” standard from EBR 40(E) applies because a request for initial party status effectively seeks to expand the scope of the appeal. Mills has not demonstrated to the Board that a substantial injustice or inequity would occur if his appeal on Criteria 9 (A-L) and 10 was disallowed. Therefore, the Board denies his request for party status on Criteria 9 (A-L) and 10.

*Suzanne Meaney*

Suzanne Meaney requested party status pursuant to EBR 14(B)(1) on Criteria 1, 8, 9(E), and 10. Her primary residence is less than a half mile away from the Project. She has raised concerns about undue air and water pollution from the Project, especially dust and diesel fumes. She also asserts that the Project will cause undue noise pollution which will interfere with enjoying quiet time at home and taking walks. She argues that the reclamation plan is insufficient and that it will not restore the beauty of the natural land. She references several portions of the town plan which she claims are intended to

maintain the rural character of the town without objectionable noises or a high volume of traffic.

The Permittee responds that Suzanne Meaney's residence is located 3,600 feet from the closest operational or disturbed area of the Project. The Permittee continues that Suzanne Meaney cannot see any portion of the operational or disturbed portion of the Project site from her house and that no traffic from the Project will pass by her home. The Permittee specifically argues that her request for party status on Criterion 1 should be denied because she did not demonstrate how any water, noise or air pollution such as dust or diesel fumes could impact her at that great a distance. The Permittee argues that her request for party status should be denied on Criterion 8 because her interests are no different than the general public. The Permittee also argues that Suzanne Meaney's request for party status on Criterion 9(E) should be denied since she cannot see or perceive any portion of the Project from her house and the Reclamation Plan has no impact on any specific interest she holds. Finally, the Permittee argues that her request for party status should be denied on Criterion 10 because her interest with respect to the town and regional plan is no different than any other resident of the town.

#### Criterion 1 (air)

Ms. Meaney has demonstrated that the Project may impact her interests under Criterion 1(air), specifically from diesel and dust fumes from the Project. Therefore, the Board grants her party status for Criterion 1 (air).

#### Criterion 1 (water)

Twenty Mile Stream runs through the Project site and then through Ms. Meaney's property before it reaches the Black River. Therefore, Ms. Meaney has demonstrated that her interests may be impacted under Criterion 1 (water) and the Board grants her party status under Criterion 1 (water).

#### Criterion 8 (aesthetics)

Ms. Meaney enjoys walking in the area near the Project and asserts that the noise from the Project would be disturbing and out of character with its setting. Accordingly, the Board concludes that her interests under Criterion 8 (aesthetics) may be impacted and grants her party status.

#### Criterion 8 (historic sites)

Ms. Meaney has not demonstrated that any particular interest of hers concerning historic sites may be impacted. Therefore, the Board denies her request for party status under Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

Ms. Meaney has not demonstrated that any particular interest of hers concerning rare and irreplaceable natural areas may be impacted. Therefore, the Board denies her request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 9(E)

Ms. Meaney has raised interests concerning the Project's site rehabilitation and the impacts to the surrounding environment. Therefore, she has demonstrated interests that may be impacted and the Board grants her party status on Criterion 9(E).<sup>5</sup>

Criterion 10

Ms. Meaney is a resident of the Town of Cavendish who has an interest in ensuring that the provisions of the Town Plan concerning noise, traffic, and the preservation of the rural character of the town are upheld. As discussed before, although statutory parties from the Town of Cavendish are also participating, there is no guarantee that they will have the same position. Therefore, the Board grants Ms. Meaney party status on Criterion 10.

*Carol Behrman*

Carol Behrman requested party status pursuant to EBR 14(A)(5) on Criteria 1,2,3,8(A), 9(D), and 9(E). She states that she enjoys outdoor activities on her property and is concerned about the dust and other pollutants from the Project. She asserts that the Project may impact her water supply and contaminate her well. She adds that the Project may destroy necessary wildlife habitat for black bear who travel through a wildlife corridor on her property. She

---

5

Although the Board grants her party status on Criterion 9(E), the Board notes that this petition for party status, as well as many others on Criterion 9(E), barely met the requirements of EBR 14(B).

also claims that the extraction and processing from the Project could result in the disposal of waste that would unduly harm the environment.

The Permittee responds that Carol Behrman owns a residence 1,900 feet away from the closest Project operational or disturbed area. The Permittee adds that she cannot see any portion of the Project improvements or disturbed areas from her residence and that no Project traffic will pass by her house.

The Permittee argues that her request for party status on Criterion 1 should be denied because it is purely speculative; denied on Criterion 2 and 3 because the distances are so extensive that any impacts are highly unlikely; denied on Criterion 8(A) because there is no documentation of black bear habitat or denning site on the Project site and that the claim is speculative and redundant because of ANR's participation; denied on Criterion 9(D) because the language of Criterion 9(D) protects subsequent extraction of earth; and denied on Criterion 9(E) because of the distance.

#### Criterion 1 (air)

Ms Behrman's residence is adjacent to the Project and her property interests concerning Criterion 1 (air) may be impacted. Therefore, the Board grants her party status on Criterion 1 (air).

#### Criterion 1 (water)

As an adjoining landowner, Ms Behrman's property also may be impacted by any water pollution. Therefore, the Board grants her request for party status on Criterion 1 (water).

#### Criterion 2 and 3

Criteria 2 and 3 concern whether the Project will have sufficient water and whether it will cause an unreasonable burden on the existing water supply. As an adjoining landowner, Ms. Behrman's water supply may be impacted should the Project have an insufficient water supply. Therefore, the Board grants her request for party status on Criteria 2 and 3.

#### Criterion 8(A)

Ms. Behrman has adequately demonstrated that the Project may impact a possible wildlife corridor used by bear on her property. Therefore, the Board grants her party status on Criterion 8(A).

Criterion 9(D)

Criterion 9(D) protects lands with high potential for extraction of earth or mineral resources from development that might interfere with the subsequent extraction of the minerals or earth resources. Since the Project involves the extraction of earth resources, the only interest at issue concerns the possibility that the Project's extraction of earth resources would interfere with the subsequent extraction of additional earth resources in the future. Therefore, Ms. Behrman did not demonstrate how her property interest may be impacted under Criterion 9(D) and the Board denies her party status.

Criterion 9(E)

Ms. Behrman has raised interests concerning the Project's site rehabilitation and the impacts to her property and the surrounding environment. Therefore she has demonstrated interests that may be impacted and the Board grants her party status on Criterion 9(E).

*Chris Kelly and Sean Fitzpatrick*

Chris Kelly and Sean Fitzpatrick requested party status pursuant to EBR 14(A)(5) on Criteria 2, 3, 5, and 8. Their residence is adjacent to the Project and they assert that the Project is directly visible from their property. They add that the Project site does not have sufficient water and that it may cause an unreasonable burden on their drinking water supply.

They also claim the Project may cause unreasonable congestion or unsafe conditions on Scenic Highway 131. They use Scenic Highway 131 not only to drive, but to bike and access the Black River for fly fishing. They claim their residence is also an historic site and they argue the Project will have an adverse affect on historic sites as well as the scenic and natural beauty of the area.

The Permittee responds that Chris Kelly and Sean Fitzpatrick are part-time residents and that their home is located 400 feet away from the Project access road and adjacent to Route 131. The Permittee adds that since their home is located around a curve from the Project access road, no portion of the Project operational area, including the access road can be seen from their home.

The Permittee did not object to Chris Kelly and Sean Fitzpatrick's request for party status on Criteria 2 and 3; but argues that their request for party status on Criterion 5 should be denied because there is no indication how the minimal

truck traffic generated from the Project will have any different impact than the rest of the traffic using the road; and denied on Criterion 8 because they cannot see the Project access road or any operational areas from their house, any noise would be drowned out and indistinguishable from roadside noise, and their house was not listed on the State or Federal Historic Registers at the time the Project application was filed.

#### Criterion 2 and 3

The Permittee did not oppose Chris Kelly and Sean Fitzpatrick's petition for party status for Criteria 2 and 3. Therefore, Chris Kelly and Sean Fitzpatrick retain their party status on Criteria 2 and 3.

#### Criterion 5

Chris Kelly and Sean Fitzpatrick's residence is located adjacent to the Project and adjacent to Scenic Highway 131. At this point in the proceeding, the Board has a limited record concerning the current traffic on Scenic Highway 131, any hazardous areas, and the amount of traffic the Project will generate. However, the record does demonstrate at least the potential for a dangerous intersection given that heavy trucks would be traveling on a steep access road which leads to a curvy section of Scenic Highway 131. Therefore, their property interests on Criterion 5 may be impacted by the Project's traffic and the Board grants them party status.

#### Criterion 8 (aesthetics)

Chris Kelly and Sean Fitzpatrick reside adjacent to the Project where they enjoy the tranquility of their property, bike on the roads adjacent to the Project, and fish in the Black River near the Project. Chris Kelly and Sean Fitzpatrick requested party status pursuant to EBR 14(A)(5), and therefore the Board only considers the impacts to their property, not the surrounding areas where they may engage in activities. Nevertheless, they have an interest in the aesthetics of their property that may be impacted by the Project. The Board grants them party status on Criterion 8 (aesthetics).

#### Criterion 8 (historic sites)

Chris Kelly and Sean Fitzpatrick own a circa 1906 house which is currently being investigated for inclusion on the State Register of Historic Sites and Structures. Regardless of the fact that the home is not yet listed, they have a potential property interest in a historical site which may be impacted by the

Project. Accordingly, the Board grants them party status on Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

Chris Kelly and Sean Fitzpatrick have not demonstrated that any particular interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status under Criterion 8 (rare and irreplaceable natural areas).

*Terrence O'Brien and Deborah Harrison*

Terrence O'Brien and Deborah Harrison requested party status pursuant to EBR 14(A)(5) on Criteria 1, 2, 3, 5, 8, 8(A), 9(D), and 9(E). Their residence is located adjacent to the Project. They claim that they participate in a variety of outdoor activities on their property and the nearby environs including swimming in Twenty Mile Stream. They assert that the Project would cause undue air, water, and noise pollution on their property. They specifically argue that Terrence sleeps during the day and that the Project's noise would inhibit his ability to sleep.

They claim the Project may impact the wetlands on their property, Twenty Mile Stream, and the Black River. They also are concerned that the Project may impact their water supply, a single 147 foot water well that is 30 years old and drilled into bedrock. They are also concerned about the Project's impacts on Tierney Road and Scenic Highway 131 and claim they would stop running and biking on Scenic Highway 131 if the Project was built due to safety concerns. They state that they have observed bear and deer on their property and fear the Project may impact necessary wildlife habitat. They also assert that the extraction of the earth resources may unduly impact the environment.

The Permittee responds that Terrence O'Brien and Deborah Harrison's house is located 1,300 feet away from the closest operational or disturbed area of the Project. The Permittee takes no position with respect to the request for party status on Criterion 1, 2, 3, 8 (Aesthetics), and 9(E). However, the Permittee argues that the request for party status on Criterion 5 should be denied because no trucks from the Project will pass their home; denied on Criterion 8 for historic sites and rare or irreplaceable natural areas because no claim has been made that such places are located on their property that will be impacted by the Project; and denied on Criterion 8(A) because a claim about seeing a bear on their property is too speculative and that no bear habitat has been identified.

Criterion 1 (air)

The Permittee did not oppose Terrence O'Brien and Deborah Harrison's petition for party status for Criteria 1 (air). Therefore, Terrence O'Brien and Deborah Harrison retain their party status on Criterion 1 (air).

Criterion 1 (water)

The Permittee did not oppose Terrence O'Brien and Deborah Harrison's petition for party status for Criterion 1 (water). Therefore, Terrence O'Brien and Deborah Harrison retain their party status on Criterion 1 (water).

Criterion 2 and 3

The Permittee did not oppose Terrence O'Brien and Deborah Harrison's petition for party status for Criterion 2 and 3. Therefore, Terrence O'Brien and Deborah Harrison retain their party status on Criteria 2 and 3.

Criterion 5

Terrence O'Brien and Deborah Harrison's residence is far removed from Scenic Highway 131 and the traffic that the Project will generate. Since they requested party status pursuant to EBR 14(A)(5), the Board did not consider other activities they pursued outside their property. Therefore, their property interests under Criterion 5 are not impacted by the Project and the Board denies their request for party status.

Criterion 8 (aesthetics)

The Permittee did not oppose Terrence O'Brien and Deborah Harrison's petition for party status for Criterion 8 (aesthetics). Therefore, Terrence O'Brien and Deborah Harrison retain their party status on Criterion 8 (aesthetics).

Criterion 8 (historic sites)

Terrence O'Brien and Deborah Harrison have not demonstrated that any particular property interest of theirs concerning historic sites may be impacted. Therefore, the Board denies their request for party status under Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

Terrence O'Brien and Deborah Harrison have not demonstrated that any particular property interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 8(A)

Terrence O'Brien and Deborah Harrison have observed bear and deer on their property and assert that the Project may impact a possible necessary wildlife habitat. Accordingly, the Board grants them party status on Criterion 8(A).

Criterion 9(D)

As discussed before, Criterion 9(D) concerns whether the Project may interfere with the subsequent extraction of earth resources. Terrence O'Brien and Deborah Harrison have not made a sufficient showing in a property interest concerning this Criterion. Accordingly, their request for party status is denied.

Criterion 9(E)

The Permittee did not oppose Terrence O'Brien and Deborah Harrison's petition for party status for Criterion 9(E). Terrence O'Brien and Deborah Harrison retain their party status on Criterion 9(E).

*George and Robin Timko*

George and Robin Timko requested party status pursuant to EBR 14(A)(5) on Criterion 8 and Mr. Timko requested EBR 14(B)(2) party status on Criterion 10. Their residence is located adjacent to the Project on a 17.5 acre tract that includes woodlands, wetlands, and meadows. They state that their property is utilized for gardening, walking, biking, enjoying nature, hosting Native American sweat lodges, and hosting group retreats. Further, because they operate a bakery, the Timkos often sleep during the day on their back deck and claim the noises from the Project will keep them awake.

They claim that the Project will have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites and rare and irreplaceable natural areas. In particular, they are concerned about protecting a historic graveyard on their property from air pollution. Finally, they assert that George Timko's participation will materially assist the Board on Criterion 10 because of his experience in local planning as a former member of the Cavendish Town Planning Commission.

The Permittee responds that the Timko's house is located 3,000 feet away and on the opposite side of the mountain from the closest Project operational or disturbed area and that they live on a different road from the Project.

The Permittee argues that their request for party status on Criterion 8 should be denied because they are too geographically and topographically isolated from the operational areas of the Project to have any aesthetic concerns. The Permittee adds that no trucks will pass their property, they cannot see any portion of the Project operational area, and that the prevailing winds will keep dust or fumes from reaching their property. The Permittee also questions how the Project could impact a graveyard on their property because of the distance involved. The Permittee is also opposed to George Timko's request for EBR 14(B)(2) party status on Criterion 10 because he has not demonstrated an expertise in land use planning and the Planning Commission already has party status in this matter.

#### Criterion 8 (aesthetics)

As adjoining landowners, the Timko's aesthetic interests to their property may be impacted, notwithstanding the distance between their residence and the operational area of the Project. Therefore, the Board grants them party status on Criterion 8 (aesthetics).

#### Criterion 8 (historic sites)

Air pollution from the Project may damage the historic graveyard on the Timko's property. Therefore, the Board grants the Timko's request for party status on Criterion 8 (historic sites).

#### Criterion 8 (rare and irreplaceable natural areas)

The Timkos have not demonstrated that any particular property interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status under Criterion 8 (rare and irreplaceable natural areas).

#### Criterion 10

The factual and legal determinations the Board must make under Criterion 10 do not require the material assistance of Mr. Timko. First, the town plan is the best evidence and the Board can make its own determinations of whether the Project conforms to the plan. *Re: J. Philip Gerbode, #6F0396R-EB-1, Findings of*

Fact, Conclusions of Law, and Order (Jan. 19, 1992). Second, the Board regularly makes such determinations without the need for material assistance by an expert. Third, statutory parties are participating and can provide any other information that may be relevant. For the above reasons, the Board denies Mr. Timko's request for party status under EBR 14 (B)(2) for Criterion 10.

*Howard Merritt, Jr.*

Howard Merritt, Jr. requested party status pursuant to EBR 14(B)(1) on Criteria 2, 3, and 8. Mr. Merritt works and resides on property adjacent to the Project. He is employed as a caretaker for a historic property of his employer, Jean Stubelek. Mr. Merritt asserts that the Project will have an undue adverse effect on the scenic or natural beauty of the area, historic sites or rare and irreplaceable natural areas. In particular, he cites concern over the Joshua Parker house, a popular historic landmark, which is on the property. He also claims that the quarrying activities (including trucks) disrupt his peaceful enjoyment of the property where he works and lives.

Mr. Merritt also claims that the proposed Project does not have a sufficient water supply available to meet the needs of the Project as well as existing water supply needs. His water supply source is a 100-foot drilled bedrock well and he is concerned that the proposed Project may impact or contaminate his water supply because of fractures, bedrock disruption or just decreased production.

The Permittee notes that while Mr. Merritt lives in a camper set on concrete blocks adjacent to both the Project access road and Route 131, he can easily ameliorate any impacts from the Project by moving. The Permittee argues that his request for party status on Criteria 2, 3 and 8 should be denied because he does not own his water supply and his structure is temporary in nature.

Criterion 2 and 3

Mr. Merritt works and resides on property adjacent to the Project and therefore his water supply may be impacted by the Project's consumption of its water supply. Contrary to the Permittee's urging, the Board does not limit party status to property owners or people who live in fixed dwellings. Therefore, the Board grants Mr. Merritt party status on Criteria 2 and 3 pursuant to EBR 14(B)(1).

Criteria 8 (aesthetics)

Mr. Merritt lives in close proximity to the Project and just 100 yards from the access road to the Project. Therefore, his interests concerning the aesthetics of the Project may be impacted and the Board grants him party status for Criterion 8 (aesthetics).

Criterion 8 (historic sites)

Mr. Merritt's only interest in an historic structure is his job as caretaker of the Joshua Parker house. However, Criterion 8 (historic sites) protects the historic sites, not his employment. In addition, the owner of the Joshua Parker house, Jean Stubelek, has also requested party status because of her interest in protecting the house. Therefore, Mr. Merritt has not demonstrated an interest protected by Criterion 8 (historic sites) and the Board denies him party status.

Criterion 8 (rare and irreplaceable natural areas)

Mr. Merritt has not demonstrated that any particular interest of his concerning rare and irreplaceable natural areas that may be impacted by the Project. Therefore, the Board denies his request for party status under Criterion 8 (rare and irreplaceable natural areas).

*Jean Stubelek*

Jean Stubelek requested party status pursuant to EBR 14(A)(5) on Criteria 1, 2, 3, 4, 5, 8, 8(A), 9(D) and 9(E). Her property is adjacent to the Project and is used by family and friends for short-term rentals. She claims that the Project will cause unreasonable congestion and unsafe traffic conditions on Scenic Highway 131. This highway is used not only for access to her residence, but also for biking and access to the Black River for recreational activities in which she and her guests partake. Further, she claims that the Project will destroy or imperil necessary wildlife habitat.

She also claims that the Project will result in undue water and air pollution, and that the Project will not have sufficient water available for the Project and existing needs. Her property contains Class III wetlands, and she is concerned about contamination from storm water runoff into the wetlands. In addition, she claims that her family will be very susceptible to any noise, fumes, or contaminated air from the Project, because their residence is less than 1000 feet from the Project site. Additionally, she asserts that the Project will cause unreasonable soil erosion or reduction in the capacity of the land to hold water.

Finally, she claims that the Project will have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. Her home, the Joshua Parker house, is a popular historic landmark because of its sensitive Sneaked Ashler construction and overall beauty according to Ms. Stubelek.

The Permittee responds that Jean Stubelek owns a dilapidated and uninhabitable structure located adjacent to the Project access road and a habitable stone house located 700 feet away from the Project access road and adjacent to Route 131. The Permittee adds that Ms. Stubelek is a part-time resident and that she cannot see any portion of the Project from her house.

The Permittee argues that Jean Stubelek's request for party status on Criterion 1 (air) should be denied because she lives too far away and the prevailing winds will blow fumes, dust, and noise away from her house; denied on Criterion 1 (water), 2, and 3 because her water supply is located 1,000 feet away from the closest Project quarry hole and 700 feet away from the Project access road; denied on Criterion 4 because no erosion will take place on her lands; denied on Criterion 5 because any additional traffic is inconsequential and there is no claim of inadequate sight distances; denied on Criterion 8(A) because there is no indication the Project would disturb wildlife on her land and the claim is too speculative; denied on Criterion 8 (aesthetics) because she cannot see any portion of the Project site from her home and it is doubtful she would be able to hear or distinguish Project noise from Route 131 noise; denied on Criterion 8 (irreplaceable natural areas) because there is no indication of such areas on or adjacent to her property; and denied on Criterion 9(D) because it is not at issue in this matter.

#### Criterion 1 (air)

Ms. Stubelek's house is located adjacent to the Project. The parties disagree over whether any air pollution from the Project will blow over Ms. Stubelek's property. Ultimately, the Board will make such a determination at the merits hearing. For the purposes of party status, Ms. Stubelek has made a showing that her property interests may be impacted by the Project and the Board grants her party status on Criterion 1 (air).<sup>6</sup>

---

6

The Board notes that In Re: Putney Paper Co., the Supreme Court upheld the Waste Facility Panel's granting of party status and its refusal to revoke it from a party once it was determined that the groundwater flowed away from his

Criterion 1 (water)

Ms. Stubelek has raised concerns about water pollution from the Project reaching her property. Given the fact that her property adjoins the Project site, the Board grants her party status on Criterion 1 (water).

Criterion 2 and 3

As an adjoining landowner, Ms. Stubelek's water supply may be impacted should the Project have an insufficient water supply. Therefore, the Board grants her request for party status on Criteria 2 and 3.

Criterion 4

Ms Stubelek's property is adjacent to and downhill from the Project site. Therefore, her property interests may be impacted from any soil erosion from the Project and the Board grants her party status for Criterion 4.

Criterion 5

Ms. Stubelek's house is located adjacent to the Project and Scenic Highway 131. Any traffic generated from the Project will pass by her property. Therefore, her property interests on Criterion 5 may be impacted by the Project's traffic and the Board grants her party status.

Criterion 8 (aesthetics)

Given the proximity of Ms. Stubelek's residence to the Project, in particular the Project access road, her property interests may be impacted and the Board grants her party status under Criterion 8 (aesthetics).

Criterion 8 (historic sites)

Ms. Stubelek owns the historic Joshua Parker house which is located on her property, adjacent to the Project site. The Joshua Parker house is on the

---

property and would not impact it. The Supreme Court held that "enough uncertainty existed" that the Waste Facility Panel required monitoring wells. In the instant case, enough uncertainty exists concerning the nature of the Project's air pollution, the prevailing winds, and any localized conditions that may play a role in determining the direction any air pollution from the Project would travel.

State Register of Historic Sites and Structures because of its sensitive Sneaked Ashler construction. Therefore, she has property interests which may be impacted under Criterion 8 (historic sites) and the Board grants her party status.

Criterion 8 (rare and irreplaceable natural areas)

Ms. Stubelek has not demonstrated that any particular property interest of hers concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies her request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 8(A)

Ms. Stubelek claimed that she and her guests enjoy observing wildlife on her property and the surrounding area. She asserts that the Project may impact a possible necessary wildlife habitat on her property. Therefore, the Board grants her petition for party status on Criterion 8(A).

Criterion 9(D)

Ms. Stubelek has not demonstrated an interest concerning the future extraction of earth resources. Therefore, the Board denies her request for party status on Criterion 9(D).

Criterion 9(E)

As an adjoining property owner, Ms. Stubelek has raised interests concerning the Project's site reclamation. Therefore she has demonstrated property interests that may be impacted and the Board grants her party status on Criterion 9(E).

*Neil and Nancy Corliss, John W. and Elizabeth Becker, and Blake and Gertrude A. Frost.*

The above Appellants all reside in the same subdivision and have requested EBR 14(B)(1) party status on the same Criteria. Therefore, their request for party status can be considered together.

The above Appellants requested party status pursuant to EBR 14(B)(1) on Criteria 1, 8, 9(E) and 10. Their residences are all located a little less than one-half mile from the Project. They assert that the Project will result in undue water pollution, including runoff entering into the Black River which they claim they use

and enjoy. They assert that the Project will cause undue air pollution and that some of the above Appellants are especially sensitive to air pollution because of medical issues. They are also concerned that the noise pollution from the Project will interfere with the quiet use and enjoyment of their property.

They claim that the Project will have an undue adverse effect on the scenic and natural beauty of the area and aesthetics. They also claim that the Project's reclamation plan is insufficient to reinstate the natural beauty of the area. Finally, they claim that the Project is not in conformance with the town and regional plan, specifically noting the desire of the people of Cavendish to maintain the rural character of the community with a low volume of traffic and a lack of objectionable noises.

The Permittee asserts that the above Appellants live in a subdivision adjacent to Route 131 and between 1,700 and 2,300 feet away from the closest disturbed or operational area of the Project. The Permittee claims that none of the subdivision residents can see any portion of the Project operational area from their residences. The Permittee argues that their requests for party status on all Criteria should be denied because their interests are no different than the general public due to the distance from the Project and the proximity to Route 131.

#### Criterion 1 (air)

Even though the above Appellants do not reside immediately adjacent to the Project, they may be impacted by air pollution from the Project near their homes or while engaging in other activities in the area surrounding the Project. This is especially true for the above Appellants who are sensitive to air pollution due to medical conditions. Therefore, the Board grants the above Appellants party status on Criterion 1 (air).

#### Criterion 1 (water)

The above Appellants claim that they are concerned about runoff into the Black River which they use and enjoy. Accordingly, the Board has determined that the above parties interests in water pollution may be impacted. Therefore, the Board grants them party status on Criterion 1 (water).

#### Criterion 8 (aesthetics)

The above Appellants have not demonstrated that their interests are any different than the general public who simply pass by the Project. *Alpine Pipeline*

*Company*, Declaratory Ruling #415, Memorandum of Decision at 4 (Jan. 3, 2003). Therefore, the Board denies them party status on Criterion 8 (aesthetics).

Criterion 8 (historic sites)

The above Appellants have not demonstrated any particular interest in historic sites that may be impacted by the Project. Therefore, the Board denies them party status on Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

The above Appellants have not demonstrated that any particular interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 9(E)

The above Appellants have raised interests concerning the Project's site reclamation and the impacts to the surrounding environment. Therefore, they have demonstrated interests that may be impacted and the Board grants their party status on Criterion 9(E).

Criterion 10

The above Appellants are residents of the Town of Cavendish who have an interest in ensuring that the provisions of the Town Plan concerning noise, traffic, and the preservation of the rural character of the town are upheld. Therefore, the Board grants the above Appellants party status on Criterion 10.

*Joannah Lyn Merriman*

Joannah Lyn Merriman requested party status pursuant to EBR 14(B)(1) on Criteria 1, 8, 9(E) and 10. She resides approximately half a mile from the Project at a site listed on the State Register of Historic Sites and Structures, and claims to have an interest in protecting the irreplaceable structure from damage that may occur from the Project. She claims that the Project will result in undue air, water, and noise pollution; specifically she claims that the air pollution will impact her family's health, and that noise pollution will diminish her use of her property as a fund raising tool for charities. She also asserts that the site reclamation plans are insufficient to restore the natural beauty of the area. In addition, she references several portions of the town plan and states that her

interests are impacted because the Project does not conform with the town and regional plans.

The Permittee responds that Joannah Lyn Merriman's residence is located 3,900 feet away from the closest Project operational area and that no traffic from the Project passes her home. The Permittee argues that her request for party status on all Criteria should be denied because the impacts are speculative, no different than the general public, and that her participation would be redundant.

#### Criterion 1 (air)

Even though Ms. Merriman does not reside immediately adjacent to the Project, she may be impacted by air pollution from the Project near her home or while engaged in other activities in the area surrounding the Project. Therefore, the Board grants her party status on Criterion 1 (air).

#### Criterion 1 (water)

Ms Merriman has claimed that she is concerned about water pollution but has not demonstrated how the Project may impact her interests under Criterion 1 (water). Accordingly, the Board denies her petition for party status under Criterion 1 (water).

#### Criterion 8 (aesthetics)

Ms. Merriman is concerned that the Project is out of context with the area and will negatively impact the aesthetics of the area and the use of her historic home for charitable events. Therefore, since her interests under Criterion 8 (aesthetics) may be impacted, the Board grants her party status.

#### Criterion 8 (historic sites)

Ms. Merriman's home is listed on the State Register of Historic Sites and Structures. She is concerned that the Project may impact her historic home. The Board grants her party status on Criterion 8 (historic sites).

#### Criterion 8 (rare and irreplaceable natural resources)

Ms. Merriman has not demonstrated that any particular interest of hers concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies her request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 9(E)

Ms. Merriman has raised interests concerning the Project's site reclamation and the impacts to the surrounding environment. Therefore she has demonstrated interests that may be impacted and the Board grants her party status on Criterion 9(E).

Criterion 10

Ms. Merriman is a resident of the Town of Cavendish and has an interest in ensuring that the provisions of the town plan concerning noise, traffic, and the preservation of the rural character of the town are upheld. The Board grants her party status on Criterion 10.

*Temple White*

Temple White requested party status pursuant to EBR 14(B)(1) on Criteria 1, 8, 9(E) and 10. She resides approximately half a mile from the Project, and claims that the air, water, and noise pollution will all impair her use and enjoyment of her property, the Black River, and Twenty Mile Stream. She also asserts that there is no assurance that the Project will be restored to its natural condition upon completion of the Project. Finally, she claims that the Project is inconsistent with many of the goals and objectives of the Town Plan.

The Permittee responds that Ms. White's residence is located 3,400 feet away from the closest Project operational area. The Permittee adds that she cannot see any portion of the Project from her house and that no Project traffic will pass her house. The Permittee argues that her request for party status should be denied on all Criteria because there has been no demonstration of an impact on the use and enjoyment of her house and that the claimed impacts are speculative.

Criterion 1 (air)

Even though Ms. White does not reside immediately adjacent to the Project, she may be impacted by air pollution from the Project near her home or while engaged in other activities in the area surrounding the Project. Therefore, the Board grants her party status on Criterion 1 (air).

Criterion 1 (water)

The Board finds that her use and enjoyment of the Black River and Twenty Mile Stream may be impacted and therefore grants her party status under Criterion 1 (water).

Criterion 8 (aesthetics)

Ms. White asserted that noise pollution from the Project will be disruptive to her because it is out of context with the rural setting. Accordingly, the Board grants her party status on Criterion 8 (aesthetics).

Criterion 8 (historic sites)

Ms. White has not demonstrated any particular interest to historic sites that may be impacted by the Project. Therefore, the Board denies her party status on Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

Ms. White has not demonstrated that any particular interest of hers concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies her request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 9(E)

Ms. White has raised concerns about how the Project site will be restored and therefore qualifies for party status on Criterion 9(E).

Criterion 10

Ms. White is a resident of the Town of Cavendish and claims the Project is inconsistent with many of the provisions in the town plan. The Board grants her party status on Criterion 10.

*Charles and Joyce Ringhel*

Charles and Joyce Ringhel requested party status pursuant to EBR 14(B)(1) on Criteria 1, 8, 9(E) and 10. They are concerned about undue water pollution from the quarrying activities, which they claim could contaminate the bedrock wells on their property. They state that they enjoy the area for walking, biking, fishing, and observing wildlife. They also claim that the Project is not in conformance with the town and regional plans. Specifically, they claim to have

an interest in maintaining the rural atmosphere of the community, in protecting natural and historic features of the Vermont landscape, and maintaining or improving the quality of their communities' resources.

The Permittee responds that Charles and Joyce Ringhel own a vacation home located 4,100 feet away from the closest developed or operational area of the Project. The Permittee argues that their request for party status should be denied on all Criteria because they cannot see the Project from their home, no traffic from the Project passes their home, and the claims of impacts are too speculative.

#### Criterion 1 (air)

Even though the Ringhels do not reside immediately adjacent to the Project, they may be impacted by air pollution from the Project near their home or while engaged in other activities in the area surrounding the Project. Therefore, the Board grants them party status on Criterion 1 (air).

#### Criterion 1 (water)

The Ringhel's have raised concerns about water pollution from the Project adversely impacting their bedrock wells. Therefore, the Board grants them party status on Criterion 1 (water).

#### Criterion 8 (aesthetics)

The Ringhels assert that the Project is out of context with the surrounding area and impact their enjoyment of hiking, biking, and fishing in the area. Accordingly, the Board grants them party status on Criterion 8 (aesthetics).

#### Criterion 8 (historic sites)

The Ringhels have not demonstrated any particular interest to historic sites that may be impacted by the Project. Therefore, the Board denies them party status on Criterion 8 (historic sites).

#### Criterion 8 (rare and irreplaceable natural areas)

The Ringhels have not demonstrated that any particular interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 9(E)

The Ringhels have raised concerns about the site reclamation plans and the impact of the Project to the surrounding environment. The Board grants them party status on Criterion 9(E).

Criterion 10

The Ringhels are property owners in the Town of Cavendish and have raised several concerns about whether the Project complies with the town plan. Therefore, the Board grants them party status on Criterion 10.

*James and Mary Ellen Wichelhouse*

James and Mary Ellen Wichelhouse requested party status pursuant to EBR 14(B)(1) on Criteria 1, 2, 3, 8 and 8(A). They claim that the Project would result in undue air pollution, which would adversely affect a medical condition. They also assert that there is not sufficient water available for the Project and existing uses.

They further claim that the Project would destroy or imperil necessary wildlife habitat or endangered species and that they enjoy viewing wildlife on their land such as black bear, great horned owls, foxes and deer. In addition, they claim that the Project would have an undue adverse affect on the natural beauty of the area by further destroying the scenic and natural beauty along Scenic Highway 131 where they like to bike and fish.

The Permittee responds that James and Mary Ellen Wichelhouse live 2,400 feet away from the closest Project disturbed area or operation area. The Permittee adds that the intervening terrain is heavily wooded, they cannot see the Project operational areas from their home, and that no traffic from the Project passes their home.

The Permittee argues that their request for party status be denied on all Criteria because they live too far away to receive dust and fumes under Criterion 1; their water supply is too far removed to justify party status for Criteria 1 (water), 2, or 3; their claims about enjoying the wildlife on their land is too speculative for Criterion 8(A); and that their claims are no different than the general public for Criterion 8.

Criterion 1 (air)

The Wichelhauses live near the Project and participate in activities in the surrounding area. Therefore, the Board finds that they may be impacted by air pollution from the Project. This is especially true in light of the fact that one of them has a medical condition and is more sensitive to dust and diesel fumes. The Board grants them party status on Criterion 1 (air).

Criterion 1 (water)

The Wichelhauses have raised concerns about water pollution from the Project but have not demonstrated how the Project may impact their interests under Criterion 1 (water). Therefore, the Board denies them party status on Criterion 1 (water).

Criteria 2 and 3

The Wichelhauses are concerned that there is not sufficient water for the Project and existing uses. In light of their close proximity to the Project and the Project's potential impact on their drilled bedrock well, the Board grants them party status on Criteria 2 and 3.

Criterion 8 (aesthetics)

Given the Wichelhauses close proximity to the Project and their participation in activities in the surrounding area, the Board finds that their interests under Criterion 8 (aesthetics) may be impacted. Accordingly, the Board grants them party status.

Criterion 8 (historic sites)

The Wichelhauses have not demonstrated any particular interest to historic sites that may be impacted by the Project. Therefore, the Board denies them party status on Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

The Wichelhauses have not demonstrated that any particular interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status under Criterion 8 (rare and irreplaceable natural areas).

Criterion 8(A)

The Wichelhauses claim the Project may destroy or significantly imperil possible necessary wildlife habitat or endangered species. They claim that they have enjoyed observing wildlife on their property such as bear, deer, and owls. Therefore, the Board grants their request for party status on Criterion 8(A)

*Dean E. and Teresa M. Harrington*

Dean E. and Teresa M. Harrington requested party status pursuant to EBR 14(B)(1) on Criterion 8. They are concerned that the Project will have an undue adverse effect on the scenic and natural beauty of the area because the increased traffic will impact their enjoyment of the aesthetics of the area.

The Permittee responds that Dean E. and Teresa M. Harrington's property is located 2,200 feet away from the closest disturbed or operational area of the Project, that they cannot see any developed portion of the Project site, and that no Project traffic passes their property. As a result, the Permittee argues that their request for party status on Criterion 8 should be denied, except that the Permittee takes no position with respect to noise.

Criterion 8 (aesthetics)

The Harringtons live in close proximity to the Project and have raised concerns about the aesthetic impacts of the Project. The Board finds that their interests under Criterion 8 (aesthetics) may be impacted by the Project. Accordingly, the Board grants them party status for Criterion 8 (aesthetics).

Criterion 8 (historic sites)

The Harringtons have not demonstrated any particular interest to historic sites that may be impacted by the Project. Therefore, the Board denies them party status on Criterion 8 (historic sites).

Criterion 8 (rare and irreplaceable natural areas)

The Harringtons have not demonstrated that any particular interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status.

*Anthony and Cheryl Jenkins*

Anthony and Cheryl Jenkins requested party status pursuant to EBR 14(B)(1) on Criteria 1, 3, 5, 8, 9(E), 9(K) and 10. They are owners of the historic

Glimmerstone Inn, which they claim to be the finest example of American gothic revival architecture in Vermont. They further claim that the Inn's foundation will be shaken by heavy blasting and other vibrations associated with the Project, which is located only 200 yards from their front door. They also assert that undue water and air pollution will adversely affect them because the Inn relies on two wells to supply water. They also state that they have already noticed a degradation in water quality since the drilling and blasting have occurred. They claim that the Project will cause unreasonable congestion or unsafe conditions on Scenic Route 131 which is the only entrance for their guests. Finally, they assert that the Project is not in conformance with the town and regional plans.

The Permittee argues that the Jenkins did not appeal or cross-appeal the Commission's decision below and therefore should be denied the opportunity to participate in this proceeding. The Permittee argues alternatively that the Glimmerstone Inn is located 1,000 feet away from the closest developed portion of the Project and is adjacent to Route 131. The Permittee adds that no portion of the Project improved or operational areas can be seen from the Glimmerstone Inn.

The Permittee argues that their request for party status should be denied on Criterion 1 because of the distance between the Inn and the closest developed portion of the Project and the fact that the closest blasting will take place 1,600 feet away from the Inn; denied on Criterion 3 due to the distances involved; denied on Criterion 5 because the Project traffic will be indistinguishable from existing Route 131 traffic; denied on Criterion 8 (with the exception of historic sites) due to the proximity of the Inn to Route 131, the fact that no portion of the Project operational areas can be seen from the Inn, and that there were no allegations of rare, irreplaceable natural areas; barred from requesting party status on Criterion 9(K) assuming no other party receives party status on that Criterion or denied because their interest in Route 131 is the same as the general public; and denied on Criterion 10 because their interest is no different than the general public.

The Jenkins were granted party status by the Commission, therefore they did not need to appeal or cross-appeal the Decision to participate before the Board. They only needed to request party status before the Board which they have done. However, they cannot raise Criteria that they did not have party status on before the Commission unless they demonstrate substantial hardship pursuant to EBR 40(E).

Criterion 1 (air)

The Jenkins live in close proximity to the Project and have raised concerns about air pollution from the Project damaging the Glimmerstone Inn. The Glimmerstone Inn is close enough to the blasting that it may be impacted by the blasting as well as other sources of air pollution from the Project. Accordingly, the Board grants them party status on Criterion 1 (air).

Criterion 1 (water)

Likewise, in light of their close proximity to the Project, the Jenkins may be impacted by any water pollution and the Board grants them party status.

Criterion 3

The Jenkins claim to already have noticed an impact to their water supply. Accordingly, their interests may be impacted and the Board grants them party status on Criterion 3.

Criterion 5

The Jenkins are concerned about the Project's impacts on the traffic on Scenic Highway 131 which provides the access to the Glimmerstone Inn. Accordingly, the Board grants them party status on Criterion 5.

Criterion 8 (aesthetics)

The Glimmerstone Inn is located in close proximity to the Project and the Jenkins have raised concerns about noise and other aesthetic impacts from the Project. Accordingly, the Jenkin's' interest in aesthetics may be impacted and the Board grants them party status.

Criterion 8 (historic sites)

The Jenkins retain their party status on Criterion 8 (historic sites) because the Permittee did not object to their request for party status.

Criterion 8 (rare and irreplaceable natural areas)

The Jenkins have not demonstrated that any particular interest of theirs concerning rare and irreplaceable natural areas may be impacted by the Project. Therefore, the Board denies their request for party status.

Criterion 9(E)

The Jenkins have raised concerns about the site reclamation plans and the impact of the Project to the surrounding environment. The Board grants them party status on Criterion 9(E).

Criterion 9(K)

There is no indication in the Commission's Decision that the Jenkins either requested or were granted party status on Criterion 9(K) before the Commission. Therefore, as discussed above, in order to qualify for party status before the Board, they must demonstrate that substantial injustice or inequity would occur if the appeal was disallowed. The Jenkins have not met this heavy burden and the Board denies their request for party status.

Criterion 10

The Jenkins live in the Town of Cavendish and allege that the Project is not in conformance with the town and regional plan. Accordingly, the Board grants them party status on Criterion 10.

*Mary McCallum*

Mary McCallum requested party status pursuant to EBR 14(B)(1) on Criterion 8. She states that her residence sits on a hilltop just opposite a long ridge from the Project and claims that she has been profoundly impacted by the industrial noise from the north quarry. She claims that the noise from the Project operations was extremely annoying and disturbing as well as invasive.

The Permittee responds that Mary McCallum did not file an appeal or cross-appeal in this matter and should be barred from participation. The Permittee adds that her property is located 3,800 feet and on the opposite side of the mountain from the Project. The Permittee argues that her request for party status should be denied because she cannot see or hear the Project from her property and no Project traffic passes by her property.

Ms. McCallum claims the Commission granted her party status on Criterion 8. In support of her assertion, she enclosed her petition for party status on Criterion 8. The Commission's Decision neither grants nor denies her party status. As a result, Ms. McCallum had no reason to believe she needed to appeal any determination concerning her party status request. In light of the circumstances of this case, the Board finds there would be substantial injustice and hardship if her request for party status was not accepted.

Criterion 8 (aesthetics)

Ms. McCallum claims that because she lives high on a ridge opposite the Project the noise generated by the Project is disturbing. The Board grants her party status on Criterion 8 (aesthetics).

*William A. Hunter*

William A. Hunter requested party status pursuant to EBR 14(B)(1) for Criteria 1 (air), 8 (noise), 9(E), 9(K) and 10. Mr. Hunter also requested party status pursuant to EBR 14 (B)(2) for Criteria 1, 8, 8(A), 9(A), 9(K), and 10. Mr. Hunter claims that the noise levels at his residence from the quarry operations exceed the relevant standards established under previous Environmental Board decisions. He claims that the noise levels are high enough to disrupt sleep. He further claims that the noise levels associated with the quarry are so loud and intrusive that his ability to enjoy his property and neighborhood would be unduly impacted. In addition, he asserts that the Project will endanger the public's investment in the Black River and materially jeopardize the public's use and enjoyment of the river by degrading water quality. He also claims that the Project is not in conformance with the town plan.

As an EBR 14(B)(2) party, Mr. Hunter would offer an expert witness with respect to adverse health effects from dust, diesel fumes and noise, and the historic properties in the area. He also would provide testimony with respect to discharges from the Project to the Black River, black bears' use of the Project site, and conformance with town and regional plan policies and objectives.

The Permittee responds that Mr. Hunter resides 4,000 feet away from the closest Project operational area, he cannot see any portion of the Project operational area, and that no Project trucks pass by his house. With respect to Mr. Hunter's request for party status pursuant to EBR 14 (B)(1), Permittee argues that his request for party status should be denied on Criterion 1 because the only impact alleged concerns noise and the only noise impacts relevant under Criterion 1 concern noise that may result in adverse health impacts; denied on Criterion 8 because he is located too far away to have a realistic claim of material impact; denied on Criterion 9(E) because the claims are speculative and remote; denied on Criterion 9(K) because he does not live on Route 131 or adjacent to the Black River and his interest is no different than the general public; and denied on Criterion 10 because his interest is no different than the general public.

With respect to Mr. Hunter's request for party status pursuant to EBR 14 (B)(2), the Permittee argues that his request should be denied on Criterion 1 (air)

because he only offers the testimony of an expert witness; denied on Criterion 1 (water) because he has not demonstrated how his personal testimony will materially assist the Board; denied on Criterion 8(A) because he has not indicated an expertise on wildlife issues and the Board routinely deals with such matters; takes no position with regard to Criterion 8 (historic sites); denied on Criterion 9(A) because the real estate broker offered as a witness has no expertise on how property values might decline town-wide and how that would impact the municipality's ability to provide services; denied on Criterion 9(K) because there is no demonstration of merit; and takes no position on Criterion 10.

Mr Hunter replies that he should be granted party status pursuant to EBR 14 (B)(1) on Criterion 1, 8, and 9(E) because the sound levels from the Project will be sufficiently loud to cause adverse health effects (including psychological effects from noise which causes distress). Mr. Hunter states that despite the fact that the Project may be located 4,000 feet away from his house, the limited operation of the quarry prior to the stay order caused significant noise and was very stressful.

#### EBR 14(B)(1) Party Status Requests

##### Criterion 1 (air)

Mr Hunter claims the Project's noise pollution will be sufficiently high that it will rise beyond mere annoyance and may cause adverse health effects. Mr. Hunter has demonstrated that noise pollution from the Project may cause adverse health affects at his residence and the Board will provide an opportunity for him to prove the merits of his assertions at the hearing. Accordingly, the Board grants him party status on Criterion 1 (air).

##### Criterion 8 (aesthetics)

Mr. Hunter claims the noise from the North Quarry was so loud that it forced his family to stay inside the house. Accordingly, the Board grants him party status on Criterion 8 (aesthetics).

##### Criterion 9(E)

Mr. Hunter has raised concerns about the Project's impact on the environment and the surrounding lands. Therefore, the Board grants him party status under Criterion 9(E).

#### Criterion 9(K)

Mr. Hunter has raised issues concerning the Project's impacts to Scenic Highway 131, Davis Road, and the Black River. The Permittee argues that Mr. Hunter's interest is no different than the general public. However, the question is not whether there are other people similarly impacted, the question is whether Mr. Hunter has demonstrated that he is specifically impacted. The Board has regularly granted party status on Criterion 9(K) to persons whose residences are not adjacent to the resource at issue but who use and enjoy the resource. See *Re: Okemo Mountain Inc, Id.* at 12-13. In the instant case, Mr. Hunter has demonstrated that he uses and enjoys these resources that may be impacted by the Project. Accordingly, the Board grants him party status on Criterion 9(K).

#### Criterion 10

Mr. Hunter is a resident of the Town of Cavendish and who has an interest in ensuring that the provisions of the town plan and regional plan are upheld. The Board grants him party status on Criterion 10.

#### EBR 14(B)(2) Party Status Requests

##### Criteria 8 (historic sites) and 10

The Permittee did not object to Mr. Hunter's party status on Criteria 8 (historic sites) and 10. Therefore, Mr. Hunter retains his party status pursuant to EBR 14(B)(2) on Criteria 8 (historic sites) and 10.

##### Criteria 1 (air and water), 8(A), 9(A), and 9(K).

As discussed before, in order to qualify for EBR 14(B)(2) party status, one must offer more than the ability to offer expert testimony. In the instant case, Mr. Hunter has listed several experts and factual witnesses who could provide relevant testimony. However, he has not demonstrated that he possesses a particular expertise with respect to the Project or that the issues involved are novel, complex, and unfamiliar. The Board has heard several appeals concerning quarries in the past several years. See *RE: Barre Granite Quarries, LLC, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order(Dec. 8, 2000)*. Finally, other EBR 14(B)(1) and statutory parties will be presenting evidence on the same issues that he is requesting EBR 14(B)(2) party status. Therefore, the Board denies his request for EBR 14(B)(2) party status on Criteria 1 (air and water), 8(A), 9(A), and 9(K).

3) Site Visit Protocol

The Appellants suggest that the noise demonstration must, to the extent possible, replicate Permittee's intended uses of the Project site at both the North and South Quarries including overburden and production blasting, drilling, extraction, splitting, loading, transporting, crushing, and the movement and operations of all equipment required to perform those activities. The Appellants argue that computer simulations are inadequate because of the different assumptions opposing experts make in preparing their models. Appellants also argue that without testing the noise at the Project site, it will not be possible for the Board to evaluate the pitch of the noise, its duration and its sharpness to determine if the noise is incompatible with the rural setting. Appellant argues that since the Permittee has already conducted quarrying activities at the North Quarry and moved heavy equipment for blasting and drilling to the South Quarry, a realistic sound test should be feasible.

John Mills concurs with the Appellants' request because he argues the Mills' property is likely to be a victim of any faulty computer simulation. To the extent it is necessary, he has offered a temporary license for Permittee to move equipment across his property in order to conduct the site visit and noise test.

The Permittee responds by arguing that opponents to a project cannot dictate what kinds of evidence an applicant should submit to satisfy its burden. The Permittee argues that the Board has approved noise-producing developments without a noise test when the developments were not yet constructed. The Permittee also argues that the protocol suggested by the Appellants is not feasible and would also result in a test overwhelmingly prejudicial to the Permittee.

The Board encourages the parties to continue discussions in an effort to reach a mutually agreeable protocol for the site visit including a noise demonstration. However, the Permittee is correct that it has the burden of production on all Criteria and the burden of persuasion on Criteria 10 which is implicated because the town plan addresses noise nuisances from quarry operations. It is up to the Permittee to choose how to meet its respective burdens under the Criteria at issue.

The Board has heard many cases involving noise pollution, some even involving noise from quarries. See RE: *Barre Granite Quarries, LLC, supra*. In those cases, the Board set standards on noise pollution to protect neighbors from undue impacts. Thus, regardless of a noise test specific to this Project, the Board

has case precedent to rely upon to set appropriate noise limits should the Board issue a permit.

4) Sur-Rebuttal Prefiled Testimony

The Board has scheduled three days to hear this matter. While the Board is aware that the parties intend to present expert testimony which will likely conflict, the Board concludes that two rounds of prefiled testimony plus three days of live testimony at the hearing should be sufficient time for the parties to present their cases. The Appellants request for prefiled sur rebuttal testimony is denied.

III. ORDER

1. John Mills is granted party status pursuant to EBR 14(A)(5) on Criteria 1 (air and water), 2, 3, 5, and 8 (aesthetics). He is denied party status on Criteria 8 (historic sites) 9(D), 9(E), and 10.
2. Suzanne Meaney is granted party status pursuant to EBR 14(B)(1) on Criterion 1(air) and (water), 8 (aesthetics), 9(E), and 10. The Board denies her request for party status on Criteria 8 (historic sites and rare and irreplaceable natural areas).
3. Carol Behrman is granted party status pursuant to EBR 14 (A)(5) on Criteria 1 (air and water), 2, 3, 8(A) and 9(E). The Board denies her request for party status on Criterion 9(D).
4. Chris Kelly and Sean Fitzpatrick are granted party status pursuant to EBR 14(A)(5) on Criteria 2, 3, 5, 8 (aesthetics and historic sites). The Board denies their request for party status for Criterion 8 (rare and irreplaceable natural areas).
5. Terrence O'Brien and Deborah Harrison are granted party status pursuant to EBR 14(A)(5) on Criteria 1 (air and water), 2, 3, 8 (aesthetics), 8(A) and 9(E). The Board denies their request for party status for Criteria 5, 8 (historic sites and rare and irreplaceable natural areas), and 9(D).
6. George and Robin Timko are granted party status pursuant to EBR 14(A)(5) on Criteria 8 (aesthetics and historic sites). The Board denies their request for party status pursuant to EBR 14(A)(5) on Criterion 8 (rare and irreplaceable natural areas). The Board denies

Mr. Timko's request for party status on Criterion 10 pursuant to EBR 14(B)(2).

7. Howard Merritt, Jr. is granted party status pursuant to EBR 14(B)(1) on Criteria 2, 3, 8 (aesthetics). The Board denies his request for party status on Criterion 8 (historic sites and rare and irreplaceable natural areas).
8. Jean Stubelek is granted party status pursuant to EBR 14(A)(5) on Criteria 1 (air and water), 2, 3, 4, 5, 8 (aesthetics and historic sites), 8(A) and 9(E). The Board denies her request for party status on Criteria 8 (rare and irreplaceable natural areas), and 9(D).
9. Neil and Nancy Corliss, John W. and Elizabeth Becker, and Blake and Gertrude A. Frost are granted party status on Criteria 1 (air and water), 8 (aesthetics), 9(E), and 10. The Board denies their request for party status for Criterion 8 (historic sites and rare and irreplaceable natural resources).
10. Joannah Lyn Merriman is granted party status pursuant to EBR 14(B)(1) on Criteria 1 (air), 8 (aesthetics and historic sites), 9(E) and 10. The Board denies her party status on Criteria 1 (water) and 8 (rare and irreplaceable natural areas).
11. Temple White is granted party status pursuant to EBR 14(B)(1) on Criteria 1 (air and water), 8 (aesthetics), 9(E), and 10. The Board denies her party status on Criterion 8 (historic sites and rare and irreplaceable natural areas).
12. Charles and Joyce Ringhel are granted party status pursuant to EBR 14 (B)(1) on Criteria 1 (air and water), 8 (aesthetics), 9(E), and 10. The Board denies their request for party status on Criterion 8 (historic sites and rare and irreplaceable natural areas).
13. James and Mary Ellen Wichelhouse are granted party status pursuant to EBR 14(B)(1) on Criteria 1(air), 2, 3, 8 (aesthetics) and 8(A). The Board denies their request for party status on Criteria 1 (water) and 8 (historic sites and rare and irreplaceable natural areas).
14. Dean E. and Teresa M. Harrington are granted party status pursuant to EBR 14(B)(1) on Criterion 8 (aesthetics). The Board

denies their request for party status on Criterion 8 (historic sites and rare and irreplaceable natural areas).

15. Anthony and Cheryl Jenkins are granted party status pursuant to EBR 14(B)(1) on Criteria 1 (air and water), 3, 5, 8 (aesthetics and historic sites) 9(E) and 10. The Board denies their request for party status on Criteria 8 (rare and irreplaceable natural areas), and 9(K).
16. Mary McCallum is granted party status pursuant to EBR 14(B)(1) on Criterion 8 (aesthetics).
17. William A. Hunter is granted party status pursuant to EBR 14(B)(1) on Criteria 1(air), 8 (aesthetics), 9(E), 9(K) and 10. William A. Hunter is granted party status pursuant to EBR 14(B)(2) on Criteria 8 (historic sites) and 10. The Board denies his request for party status pursuant to EBR 14(B)(2) on Criteria 1 (air and water), 8(A), 9(A), and 9(K).
18. The Board will not dictate to the Permittee how it should meet its burdens under the respective Criteria. Therefore, it is up to the Permittee to decide whether or not to hold a noise demonstration in conjunction with the site visit.
19. The Board will only consider prefiled direct and rebuttal testimony.

Dated at Montpelier, Vermont this 19th day of September, 2003.

Environmental Board

    /s/Patricia Moulton Powden      
Patricia Moulton Powden, Chair  
George Holland  
Sam Lloyd  
Don Marsh  
Alice Olenick  
Richard C. Pembroke Sr.  
Jean Richardson  
Christopher Roy