



District #5 Environmental Commission

5 Perry Street, Suite 60
Barre, VT 05641

October 11, 2016

Karen L. Bouffard
327 VT Route 214
Plainfield, Vermont 05667

Re: Jurisdictional Opinion #5-37
Goddard College
Act 250 Land Use Permit 5W0042 series

Dear Ms. Bouffard:

Pursuant to Act 250 Rule 3(A) – Jurisdictional Opinion –you have requested a jurisdictional opinion to determine whether a blasting plan constitutes a material change pursuant to Act 250 Rules 2(C)(6) and 34.

Specifically, you allege that the blasting plan constitutes a material change and that you're concerned that your home and water supply will be adversely affected by blasting for the foundation of the biomass plant at Goddard College.

Procedural History and Statement of Facts

1. On December 12, 2012, the District Environmental Commission #5 (Commission) issued Act 250 Land Use Permit 5W0042-4(Altered) to Goddard College (Permit), and Findings of Fact and Conclusions of Law (Findings). The construction completion date was set at October 15, 2016.
2. The Permit was appealed to the Environmental Court, and the Environmental Court affirmed the Commission's decision on January 6, 2014.
3. The Environmental Court's ruling was appealed to the Vermont Supreme Court, and the decision was affirmed on November 21, 2014.
4. On September 14, 2016, Goddard College filed a timely request (application) for an extension of the construction completion date regarding 5W0042-4(Altered).
5. The application states:
 - Project was delayed by appeals of the Act 250 and local zoning permits (permit upheld by Environmental Court 1/6/2014) and by appeal to the Vermont Supreme Court (permit upheld by ruling dated 11/21/2014). Contractor bidding process on hold until October 18, 2016. Construction has started but general contract work expected to start May 2017. Goddard College will require the contractor to follow the Agency



of Natural Resources' 2014 Best Management Practices for Blasting to Avoid Environmental Contamination, if blasting is necessary.

6. On October 6, 2016, Goddard College filed supplemental documents:
 - Goddard Bidding Documents dated 12/6/2013;
 - Geotechnical Report dated 10/24/2011; and
 - An email stating “With respect to your clarifying question on the blasting, we confirm that we are not requesting permission for conducting any blasting at this time under the existing permit. If we determine at a later time that some blasting needs to occur, we will discuss with you then if any additional approval is necessary before blasting.”

Jurisdictional Analysis

As a general rule, the Vermont Supreme Court has held that once Act 250 jurisdiction is triggered and a permit obtained, subsequent events will not lift such jurisdiction, nor can jurisdiction be waived. *In Re John Rusin*, 162 Vt.185, 189 (1994), affirming, *Re: John Rusin*, #8B0393-EB, FCO at 5 (6/10/93) [EB#560]. Similarly, once jurisdiction is established, 10 V.S.A. §6081(a) mandates a land-use permit before commencement of any construction on a development. *Rusin* at 189.

In the present case, Act 250 Land Use Permit 5W0042 established jurisdiction over the development at Goddard College.

Furthermore, the jurisdictional analysis in this case is guided by Act 250 Rules 2(C)(6) and 34, as follows:

Pursuant to Act 250 Rule 2(C)(6) a “material change” means any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project’s permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).

Pursuant to Act 250 Rule 34(A), a permit amendment shall be required for any material changes to a permitted development or subdivision, or administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.

1. According to the revised application, no blasting is proposed or requested as part of the construction completion request.
2. The project – aside from the 18-month extension –shall be completed, operated and maintained in accordance with Findings of Fact and Conclusions of Law 5W0042-4, the



plans and exhibits on file with the District Environmental Commission, and the conditions of this permit.

As required by Act 250 Rule 2(C)(6), the Project will be evaluated to determine if it has a significant impact on any finding, conclusion, term or condition of the project's permit or *may result in significant impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10)*.

No blasting is proposed or requested as part of the extension request and, therefore, does not a material change to a permitted development under Act 250 Rules 2(C)(6) and 34.

Thus, if blasting is proposed at a later date, Goddard College will seek a jurisdictional opinion.

CONCLUSION

Since there is no blasting proposed, the scope of the extension request does not constitute a material change under Act 250 Rules 2(C)(6) and 34. Jurisdictional Opinion 5-37 will accompany the issuance of the extension request 5W0042-4(Altered)-A.

Sincerely,



Clancy DeSmet
District 5 Coordinator

cc: Brice Simon, Esq. via email
Geoff Hand, Esq. via email
Goddard College COS List

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Senate Bill 123 (Act number pending), Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.



CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **JURISDICTIONAL OPINION 5-37 (KAREN L. BOUFFARD)** by U.S. Mail, postage prepaid, on this 11th day of October, 2016, to the following individuals without email addresses and by electronic mail, to the following with email addresses:

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.

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BY /s/ Lori Grenier
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Nat. Res. Board Tech.