



LAND USE PERMIT AMENDMENT

State of Vermont

Natural Resources Board

District 7 Environmental Commission

374 Emerson Falls Road, Suite 4

St Johnsbury, VT 05819

<https://nrb.vermont.gov/>

[phone] 802-751-0120

CASE NO: 7R1042-2

LAWS/REGULATIONS INVOLVED

Town of Albany

PO Box 284

Albany, VT 05820

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 7 Environmental Commission hereby issues Land Use Permit Amendment 7R1042-2, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the ± 20 acre tract of land identified in Book 44, Page 84-85 of the land records of the Town of Albany, Vermont as the subject of a deed to the Town of Albany, the Permittee as Grantee.

This permit specifically authorizes continued operation of the existing sand and gravel pit, subject to all terms and conditions of permit #7R1042 (as amended), including (i) maximum annual extraction rate of 10,000 cubic yards per year (unchanged), (ii) total maximum remaining extraction of ± 97,000 cubic yards, (iii) updated hours including winter access and (iv) new deadline to close and complete all reclamation by October 15, 2043. The project does not include blasting and is located on Delano Road in the Town of Albany, Vermont.

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



Land Use Permit 7R1042-2

1. The Permittees and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 7 Environmental Commission (the "Commission") in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 7R1042-2, and (c) the permit application, plans, and exhibits on file with the Commission and other material representations. In the event of any conflict, the terms and conditions of this permit and the conclusions in the findings shall supersede the approved plans and exhibits.
3. All conditions of Land Use Permit 7R1042 and amendments are in full force and effect except as further amended herein.
4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. A copy of this permit and plans shall be on the site at all times throughout the construction process.
6. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
7. No further subdivision, alteration, and/or development on the tract of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. Pursuant to 10 V.S.A. § 8005(c), the Commission or the Natural Resources Board may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
9. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and its successors and assigns.

Following condition 10 replaces conditions 7 and 8 of permit 7R1042:

10. The Permittee shall take reasonable precautions at all times to prevent fugitive particulate matter (dust) from becoming airborne from the Project and its operations. Reasonable precautions to be taken shall include, but not be limited to, the following

measures or other equally effective measures for Project operations and activities under the Permittee's control or supervision:

- a. The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;
 - b. Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper;
 - c. All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways when loaded;
 - d. All rock drills operated at the Project shall be equipped and operated with either an effective wet or dry dust control system;
 - e. All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions;
 - f. Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable; and
 - g. The Permittee shall ensure that any dust control measures taken in accordance with the conditions listed above are in compliance with all other state and federal requirements.
11. Fueling or maintenance of mobile vehicles (as opposed to stationary or semi-stationary equipment) shall not occur on the pit floor. Overnight parking of such vehicles shall be outside of the pit floor. Fueling and maintenance of stationary or semi-stationary equipment on the quarry/pit floor shall be conducted over absorbent pads or with secondary containment.
 12. The sand and gravel extraction shall remain at least three feet above the seasonal high groundwater table.

13. The project shall be operated in a manner that prevents off-site tracking of soils onto area roadways. All vehicles entering or exiting the site shall be kept clean from rubble or other debris that could be hazardous to other motorists.
14. Vehicle idling (e.g. before or after the operating hours) is strictly prohibited.
15. Maximum 4 acres of open un-reclaimed pit area (not including haul roads and stockpiles) shall be maintained at all times.
16. The annual rate of extraction shall not exceed 10,000 cubic yards (CY) per year of sand or gravel removed from the Project site. Written approval from the District Commission shall be obtained prior to any increase in the rate of extraction.

Following condition 17 replaces conditions 6 and 11 of permit 7R1042:

17. For the months of May through October hours of operation (i.e. when trucking or undertaking activities having potential to generate noise off-site) shall not exceed 6:00 AM to 4:30 PM Monday to Friday, and for the months of November through April hours of operation (i.e. when trucking or undertaking activities having potential to generate noise off-site) shall not exceed 6:00 AM to 6:00 PM Monday to Friday, with no operation on national holidays.

In addition to the operating hours above, crushing and/or screening equipment may be operated for not more than total 10 days per calendar year, and the hours of operation of crushing and/or screening equipment shall not exceed 7:00 AM to 5:00 PM, Monday to Friday.

These operating hours may be exceeded only by permit amendment, or to meet emergency situations or town road safety needs; in the event of such an emergency or safety-related occurrence, the Town shall record the incident, to include the nature of the emergency and the time period that the pit was accessed to meet the emergency, in a written Road Crew Emergency Log Report. A copy of this Log Report shall be submitted to the District Commission within 10 calendar days of any request from the District Commission via the Coordinator.

The District Commission reserves the right to review operating hours and impose additional conditions governing operating hours.

18. Dust from crushing and screening operations shall be controlled by applications of water from a portable water tank to be supplied by the crushing contractor. The Permittee shall not allow the operation of a gravel or stone crushing plant on the premises with a maximum rated capacity (based on the crusher's largest possible setting

and maximum throughput, not actual operating rate) of greater than 150 tons per hour, unless said crushing plant has a permit to operate from the District Commission and the Vermont Air Quality and Climate Division.

19. At a minimum, the reclaimed slopes will be stabilized and seeded in accordance with the Agency of Natural Resources' Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
20. The Permittee shall ensure that finished (reclaimed) slopes are not steeper than one-vertical to two-horizontal (1V:2H).

Following condition 21 replaces condition 27 of permit 7R1042:

21. Permittee shall submit a written annual report, due in the month of December of each year, specifying the cubic yards of product excavated and the acreage involved. In addition, the report shall provide details and acreage of completed reclamation, and details concerning the reclamation plantings if any.
22. The Permittees shall not erect exterior lighting or signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
23. Permittee shall apply calcium chloride for dust suppression on Delano Road for a minimum distance of 1000 feet in front of the Aoun residence located at 724 Delano Road, measured 500 feet in each direction from the Aoun driveway, within ± 7 days of the commencement of trucking from the Project to stockpile sand or gravel at the Town garage located elsewhere on Delano Road; Permittee shall monitor the effectiveness and re-treat if needed during such trucking event if any.
24. Permittee shall install and maintain standard Advisory Speed Limit Traffic Signs, identifying 35 MPH speed, posted for visibility from both directions for the segment of Delano Road in proximity of the Ms. Aoun residence located at 724 Delano Road. This new signage shall be installed on or before July 1, 2022 unless an extension is authorized in writing by the District Commission.
25. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the approved plan and the Land Use Permit amendment before any written contract of sale is entered into.
26. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #7R1042-2 in all deeds of conveyance and leases.

Following condition number 27 replaces condition 31 of permit #7R1042:

27. This permit amendment shall expire on October 15, 2043, unless that date is extended in writing by the District Commission.
28. Reclamation of all earth extraction areas shall be completed no later than October 15, 2043. Permittee shall submit a written report of completion of reclamation, with photographs, within 30 days of such completion. Permittee's reclamation report must specifically document how the required reclamation work has been completed in accordance with (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 7R1042 and 7R1042-2 and (c) the permit application, plans, and exhibits.
29. Act 250 jurisdiction shall remain in effect until the District Coordinator issues a written jurisdictional opinion which concludes that reclamation has been completed, and that the Project or tract is no longer subject to Act 250 jurisdiction.
30. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at St. Johnsbury, Vermont, this 24th day of February, 2022.

By /s/ Eugene Reid
Eugene Reid, Chair
District #7 Commission

Members participating in this decision:

Keith Johnson
Nicole Davignon

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

CERTIFICATE OF SERVICE

I hereby certify that I, Gina St Sauveur sent a copy of the foregoing Findings of Fact and Conclusions of Law and Order & Land Use Permit #7R1042-2 for the Town of Albany, Albany VT by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 24th day of February, 2022.

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 e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify our office of any e-mail address changes.

Town of Albany
PO Box 284
Albany, VT 05820
albanytc@gmail.com
wcedar81@gmail.com
csafar@msdvt.com
Jeremy.Matosky@tcevt.com

Town of Albany Planning Commission
c/o Town Clerk
PO Box 284
Albany, VT 05820
albanytct@gmail.com

Northeastern Vermont
Development Association
PO Box 630
St. Johnsbury, VT 05819
dsnedeker@nvda.net
inaigle@nvda.net

Agency of Natural Resources
Office of Planning & Legal Affairs
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901
ANR.Act250@vermont.gov
karin.mcneill@vermont.gov

Mimi Aoun
mimiaoun150@gmail.com
lbrooke@vdmllaw.com

District #7 Environmental Commission
Eugene Reid, Chair
Keith Johnson, Nicole Davignon
374 emerson Falls Road, Suite 4
St. Johnsbury, VT 05819
NRB.act250stj@vermont.gov
kirsten.sultan@vermont.gov



Gina St Sauveur
Natural Resources Board Technician



FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont

Natural Resources Board

District 7 Environmental Commission

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St. Johnsbury, VT 05819

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CASE NO: **7R1042-2**

Town of Albany

P.O. Box 284

Albany, VT 05820

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On February 12, 2020, the Town of Albany filed application #7R1042-2 for a project generally described as continued operation of the existing sand and gravel pit including 20-year extension (expiration date extended to October 2043) and addition of winter operations, December to April. The project is located on Delano Road in the Town of Albany, Vermont. The tract of land consists of 20.04 acres, with the project located on a ± 6 acre portion of the tract. The Applicant's legal interest is ownership in fee simple described in a deed recorded on July 28, 1999, in Book 44, Pages 84-85, in the land records of Albany, Vermont.

The District #7 Environmental Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on February 26, 2020. The Commission distributed a notice and proposed permit establishing a deadline of March 17, 2020 by which parties, or the Commission on its own motion, could request a hearing on this matter. The Commission received a timely request for a public hearing, and a petition for party status, from adjoining property owner, Ms. Aoun, and determined that sufficiently substantive issues had been raised.

A prehearing conference pursuant to Act 250 Rule ("Rule") 16 was held on April 22, 2020 (via remote technology (Skype) due to the Covid-19 pandemic). Chair Eugene Reid explained the purpose of the prehearing conference, identified various issues under the ten Act 250 Criteria, and made preliminary decisions regarding party status. The Commission issued a pre-hearing conference report and order on June 19, 2020, in which the Commission identified its decisions concerning preliminary party status, criteria at issue, in addition to information concerning the the Covid-19 pandemic, and the site visit and hearing which was to be scheduled following notice from the applicant which expressed a preference for an in-person hearing.

On October 14, 2020, the Commission issued a notice of site visit, and the site visit was then held on October 29, 2020.

On October 16, 2020, the Commission received a motion to stay the proceeding from Ms. Mimi Aoun (Exhibit 12), followed by a reply from the Applicant (Exhibit 14), response from Ms. Aoun (Exhibit 15), and further reply from the Applicant (Exhibit 16). The Commission also received a response to the Natural Resources Board's Notice of Alleged Violation, from the Applicant (Exhibit 17) which had been referenced in the motion for stay.

On February 12, 2021, the Commission issued a memorandum of decision concerning the motion, and also concerning the to-be-scheduled merits hearing, in which the Commission declined to grant the stay and identified its intention to schedule and hold the hearing via remote technology (e.g. MS Teams or Zoom) due to the continuing pandemic.

Following notice from the applicant, the Commission scheduled the hearing for June 29, 2021. The Commission then received a request for continuance from preliminary party Ms. Aoun, and rescheduled the hearing for July 13, 2021. The hearing proceeded in-person at the Albany Town Hall, on July 13, 2021. Following the hearing, parties submitted various additional information (Exhibits 077 to 081). The Commission adjourned the hearing on February 9, 2022 after the completion of Commission deliberations.

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

II. JURISDICTION

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

III. OFFICIAL NOTICE

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

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). The Commission takes

official notice of previously issued Act 250 permits 7R1042, 7R1042-A, and 7R1042-1, provided as Exhibits 082, 083, and 084, respectively.

Also the Commission has identified that Exhibit 017 is a response to a Notice of Alleged Violation (NOAV), with related correspondence also found within Exhibit 078. The Commission takes official notice of the NOAV, issued by the Natural Resource Board Compliance & Enforcement Officer, on October 15, 2020, provided as Exhibit 085.

Accordingly, official notice is hereby taken of the previously issued Act 250 permits 7R1042, 7R1042-A, and 7R1042-1, and the noted October 2020 NOAV, subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6

IV. AMENDMENT APPLICATION - RULE 34(E)

The threshold question on an amendment application is “whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1).

In this application, the applicant does not necessarily seek to amend such a critical permit condition, nonetheless the Commission has conducted the rest of the Rule 34(E) analysis to conservatively determine if the review of the merits of the application may proceed if a permit condition is deemed critical.

The original permit 7R1042 (Exhibit 082) was issued in 1998 for a term of 25 years, expiring December 18, 2023, and authorized extraction at an annual rate of 4,000 cubic yards of gravel and 2,500 cubic yards of sand. Permit 7R1042 included the following permit conditions, emphasis added:

6. *The pit shall operate Monday through Friday 7:00 AM to 4:30 PM from May through November. These hours **may be exceeded only by amendment to this permit** or to meet emergency situation.*
9. *A maximum of 60 round truck trips is authorized per day during the approximate two weeks per year that sand is hauled to the town garage.*
29. *No increase in extraction, further subdivision, or development of any parcels of land approved herein shall be **permitted without an amendment application and approval of the District Commission.***
31. *Pursuant to 10 V.S.A. §6090(b) (effective June 21, 1994), this permit is hereby issued for a term running until December 18, 2023, as long as there is compliance with the conditions herein. All site reclamation must be completed by this expiration date.*

Permit 7R1042 was amended in 2012 to increase the annual rate of extraction from 6,500 cubic yards to 10,000 cubic yards (Exhibit 084, Permit Amendment 7R1042-1).

The Commission will continue with its Rule 34(E) analysis, as set forth below.

The Applicant is seeking a permit renewal (extension of time) because earth resources - needed to maintain its public roads - remain available on the Project site, and the 25 year term of the original 7R1042 permit is approaching its end, and will be insufficient to complete extraction of the available earth resource. The District 7 Commission has reviewed other similar applications for an extension of time to complete earth extraction and reclamation, at other locations with expiring or expired Act 250 permits for earth extraction. The Commission understands that actual extraction rates vary from year to year and over time, at Vermont's municipal (and commercial) sand and gravel pits, based on numerous factors including weather (for example frequency of winter of ice storms necessitating greater or reduced quantities of winter road sand; variation in demand for gravel attributable to flood events causing road and bridge washouts and erosion) and in accordance with general fluctuation of quantities needed for general road repairs, miscellaneous infrastructure projects, and maintenance, etc.

The Commission further notes that the specific language of the original 7R1042 permit, as excerpted above, expressly establishes (and does not prohibit) that the Permittee may seek a permit amendment for other development, including increased extraction rates.

In this instance, the Applicant is not merely seeking to relitigate the permit condition or undermine its purpose and intent. The Applicant has simply not completed extraction of the available earth resource at the Project site, requires additional time to do so, and is seeking the necessary permit amendment via the present application, well in advance of permit expiration in December 2023. The Commission has considered the other factors under Rule 34(E) which requires the Commission to balance the need for flexibility against the need for finality, considering at least the following factors:

- Whether there has been a change in law, regulation or fact beyond the permittee's control.
- Whether there has been a change in technology, construction, or operations which necessitates the amendment.
- Other factors, including innovative or alternative design, which provide a more efficient or effective way to mitigate impacts from the Project.
- Other important policy considerations, including the proposal's furtherance of goals in the municipal plan.
- Whether there was manifest error in issuance of the permit condition.
- The degree of reliance on the permit condition or material representations made in the prior proceeding, by the Commission, Environmental Court or former Environmental Board if applicable, or any other person with a particularized interest in the proposed amendment.

Act 250 Rule 34(E)(4). In this case, the Town simply did not foresee that the materials in the pit would not be fully extracted within the 25 year term of the original 7R1042 permit. It is logical to continue extraction towards depletion of this available and established resource needed by the municipality, before pursuing development of other new locations. Considering all of the factors, the Commission finds that the Applicant is not merely seeking to relitigate the permit condition or undermine its purpose and intent, and flexibility outweighs finality, so the amendment application will be considered on its merits.

V. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

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

- The Applicant (which is also the municipality of Albany) by Claudine Safar, Brian Goodridge, Phillip Beaudry, Normand Inkel, Jeremy Matosky P.E., Paige Horner, Terri Campbell;
- The Regional Planning Commission (NVDA) by David Snedeker;
- The State of Vermont Agency of Natural Resources (ANR) through an entry of appearance by Karin McNeill, dated July 8, 2021;

The Agency of Transportation; the Agency of Agriculture, Food & Markets; the Vermont Division for Historic Preservation; and the Albany municipal Planning Commission – all were not represented.

B. Interested Parties

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

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the prehearing on this application. The following person requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and was either admitted as a preliminary party or denied party status, as indicated below, and as also identified in the Commission's Prehearing Conference Report & Order issued on June 19, 2020:

Mimi Aoun, in attendance at the Prehearing, and represented by Erik Titrud:

- Granted party status under criterion 1 as it relates to air emissions (specifically, airborne dust and noise)
- Denied party status under criterion 1 as it relates to ground and surface waters
- Granted party status under criterion 1(B) as it relates to stormwater runoff
- Denied party status under criterion 4

- Granted party status under criterion 5 as it relates to traffic and pedestrian safety on Delano Road
- Granted party status under criterion 8 as it relates to aesthetics (specifically, air emissions – airborne dust and noise)
- Granted party status under criterion 9(E)

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and revised the status of Ms. Aoun, as follows:

- Granted party status under criterion 1 as it relates to air emissions (specifically, airborne dust and noise)
- Denied party status under criterion 1 as it relates to ground and surface waters
- Denied party status under criterion 1(B) as it relates to stormwater runoff
- Denied party status under criterion 4
- Granted party status under criterion 5 as it relates to traffic and pedestrian safety on Delano Road
- Granted party status under criterion 8 as it relates to aesthetics (specifically, air emissions – airborne dust and noise – and visual aesthetics)
- Granted party status under criterion 9(E)

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The District Commission initiated the review process on this application as a Minor application under Act 250 Rule 51. Pursuant to Act 250 Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or sub-criteria at issue during the hearing. Therefore, the following Findings of Fact are limited to Criteria 1, 1(B), 4, 5, 8, and 9(E).

The Applicant(s) has met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|---------------------------|--|
| 1 - Water Pollution | 3 - Impact on Existing Water Supplies |
| 1(A) - Headwaters | 6 - Educational Services |
| 1(C) - Water Conservation | 7 - Municipal Services |
| 1(D) - Floodways | 8 – Natural Areas |
| 1(E) - Streams | 8 – Historic Sites |
| 1(F) - Shorelines | 8(A) - Wildlife Habitat & Endangered Species |
| 1(G) - Wetlands | 9(A) - Impact of Growth |
| 2 - Water Supply | |

9(B) – Primary Agricultural Soils
9(C) - Productive Forest Soils
9(D) - Earth Resources
9(F) - Energy Conservation
9(G) - Private Utility Services

9(H) - Costs of Scattered Development
9(J) - Public Utility Services
9(K) - Effects on Public Investments
9(L) – Settlement Patterns
10 - Local and Regional Plans

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

The findings of fact are based on the application, Exhibits 001 -085, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

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

General Findings:

1. Act 250 Land Use Permit 7R1042 (Exhibit 082) was issued on December 18, 1998, to Co-Permittees the Town of Albany and Florence Beaudry, authorizing a commercial sand and gravel pit on six acres of a twenty acre tract of with an annual extraction rate of 6,500 cubic yards (4,000 cubic yards of gravel and 2,000 cubic yards of sand) to be operated for the sole use of the Town of Albany. The pit is located off of Delano Road in the Town of Albany.
2. Application 7R1042 was processed as a Major application, the Commission held a site visit and hearing, and issued Findings of Fact and Conclusions of Law and Order under all of the Act 250 criteria (Exhibit 082). Parties to the 7R1042 application included owners of three adjoining properties (Rudy Brow, James Levin and Connie Katz, and Edward Mateo), who gained party status under Criteria 1, 3, and 8 as further identified in Exhibit 082.
3. The 7R1042 permit (Exhibit 082) includes the following excerpted conditions, emphasis added (in addition to others):

5. *A 50' naturally vegetated undisturbed buffer shall be field marked prior to excavation and strictly maintained along all property lines throughout the life of the project.*
6. *The pit shall operate Monday through Friday 7:00 A.M to 4:30 P.M. from May through November. These hours may be exceeded only by amendment to this permit or to meet emergency situations.*
7. *Dust on the haul road shall be controlled by applications of calcium chloride and/or water as necessary.*
8. *Loaded trucks shall either be covered or shall have their load kept below the rim.*
9. *A maximum of 60 round truck trips is authorized per day during the approximate two weeks per year that sand is hauled to the town garage.*
10. *Permittees shall advise adjoining parties every year regarding which days that year town trucks are scheduled to haul sand to the town garage.*
11. *Crushing and screening equipment shall be operated simultaneously during weekdays for approximately two weeks per year. Dust from crushing and screening operations shall be controlled by applications of water from a portable water tank to be supplied by the crushing contractor. During crushing and screening the hours of operation shall be increased from 7:00 A.M. To 5:30 P.M. The crusher utilized shall have a capacity of less than 150 tons per hour. No crusher exceeding this capacity is permitted unless the crusher has a permit from the Vermont Air Pollution Control Division.*
12. *Permittees shall advise adjoining parties each year of which days the crushing/screening operation is scheduled each year.*
13. *Trees logged from the site shall be removed off-site. Stumps shall be buried in the stump dump. No tops or branches shall be buried anywhere on site.*
14. *The permittees shall comply with all exhibits for erosion control. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. The Commission reserves the right to schedule hearings, and site inspections to review erosion control, and to evaluate and impose additional conditions with respect to erosion control, as it deems necessary. The District Commission shall retain specific ongoing jurisdiction over erosion control practices along the pit access road and reserves its right to impose additional conditions to ensure that unreasonable erosion does not result.*

15. *In addition to conformance with erosion control conditions, the permittee shall not cause, permit or allow the discharge of waste material into any surface waters. compliance with the requirements of this condition does not absolve the permittee from compliance with 10 V.S.A., Chapter 47, Vermont's Water Pollution Control Law.*
16. *A minimum of three feet of separation distance between the overburden at the bottom of the excavation and the high seasonal groundwater table shall be maintained in order to protect the groundwater resources.*
17. *The current open pit face shall be reclaimed by September, 1999 to a slope of one on two as described in the Findings of Fact and Conclusions of Law, and Order.*
18. *A 50' wide area along the western boundary shall be left open to excavate sand. The "western excavation limit" depicted on the site plan shall be field marked prior to the continuance of sand excavation. Sand excavation shall not exceed the delineated western excavation limit; it shall continue to progress northeast.*
19. *A new pit face shall be opened on the eastern side of the pit to access the gravel. The "eastern extraction limit" depicted on the site plan shall be field marked prior to excavation. The excavation shall not exceed the eastern excavation limit. The new pit face shall be oriented to the east. Excavation shall proceed north for approximately three years and then west at approximately 50' per year, for approximately 8 to 10 years, at which point the top shelf will be reclaimed.*
20. *Once the top shelf has been exhausted and reclaimed, the excavation shall commence on the current floor level. A new pit face, approximately 50' x 100', shall be opened on the south side of the pit and excavation will proceed northwest, creating a face with an eastern exposure.*
21. *Topsoil shall be stockpiled within the pit area for use in reclamation. The topsoil stockpile shall be graded, seeded and mulched and its base ringed with haybales. The stockpile shall be regularly inspected, especially before storms and after hard rains so that any rills and gullies can be repaired. Topsoil shall not be sold or removed off site.*
22. *Reclamation shall be ongoing as excavation progresses, utilizing a series of terraces 40' x 10' deep. The terraces shall be sloped inward and left slightly higher in the center to direct water off the slopes and into the center of the pit where it will percolate into the soils. A diversion berm will be constructed as depicted in the exhibits to direct stormwater runoff away from the terraced slopes. Slopes shall be graded to a maximum slope of one on two.*

23. *A minimum of 3" to 4" of topsoil shall cap all reclaimed areas. Topsoil shall be spread with a crawler running parallel to the slope. Seeding, fertilizer and mulching shall be accomplished according to the representations herein.*
 24. *In order to screen the project, a 200' long, staggered double row of evergreens, approximately 8' to 12' tall, will be planted eight to ten feet apart on the ridge located southwest of the Beaudry property. The trees will be planted as soon as seasonable possible.*
 25. *No hazardous wastes shall be stored on site. No materials other than gravel, sand and topsoil shall be stored on site.*
 26. *Permittees shall comply with the representations herein regarding construction, repair and maintenance of the haul/access road.*
 27. *Permittees shall submit a written annual report, due on December 1st of each year, specifying the cubic yards of gravel and sand excavated and the acreage involved. In addition, the report shall provide details regarding the reclamation plantings completed and the acreage reclaimed.*
 29. *No increase in extraction, further subdivision, or development of any parcels of land approved herein shall be permitted without an amendment application and approval of the District Commission.*
 30. *Each prospective purchaser of this tract shall be shown a copy of the site plan and the Land Use Permit before any written contract of sale is entered into.*
 31. *Pursuant to 10 V.S.A. § 6090(b) (effective June 21, 1994), this permit is hereby issued for a term running until December 18, 2023, as long as there is compliance with the conditions herein. All site reclamation must be completed by this expiration date.*
4. As identified in Finding 3 above, pursuant to condition 31 of Permit 7R1042, Permit 7R1042 remains in effect authorizing continued extraction of sand and gravel until December 18, 2023 (subject to permit compliance) and all reclamation must be completed by this expiration date (absent a permit amendment to authorize an extension). Notwithstanding this provision, pursuant to condition 29, an increase in extraction, further subdivision or development could be authorized - only with an amendment application and approval of the District Commission.
 5. Act 250 Land Use Permit 7R1042-1 (Exhibit 084) was issued on May 30, 2012 to the Town of Albany, authorizing an increase in the maximum annual rate of extraction, from 6,500

cubic yards per year to 10,000 cubic yards per year. Permit 7R1042-1 also expires on December 18, 2023 pursuant to condition 1 which provides that “*All conditions of Land Use Permit #7R1042 and amendments are in full force and effect except as amended herein*”, whereby the December 18, 2023 expiration date also applies to Permit 7R1042-1 (unless otherwise extended via permit amendment).

6. The subject sand and gravel pit has remained in operation, for use by the Town. Permit 7R1042 stated that “[j]urisdiction is conferred by 10 V.S.A. Section 6068(a) and Environmental Board Rule 2(A)(2) as the project is a commercial development on more than one acre of land.” Permit 7R1042 indicated that the project would last a total of twenty-five years, expiring on December 18, 2023.
7. The Town seeks to extend the period of crushing on the property from two weeks in total to three. The Town seeks to clarify that the 10,000 cu yards is a total volume of material extracted from the pit- sand and gravel can be in various combinations that total 10,000 cu yards, and seeks to define “extraction” to mean the quantity sand and gravel that is hauled out of the Project property (material is not “extracted” if it remains on site). This is consistent with computation of application fees, by volume, for commercial earth extraction projects.
8. The Town seeks to amend the existing permit to allow for year- around access to the Project, with new standard operational hours from Monday- Friday at 6:00 AM to 6:00 PM. The Town also seeks authority to access the Project outside of these times for repairs and road maintenance, particularly from November to May.
9. The Town has not fully reclaimed the pit, and the Town seeks to have reclamation requirements extended until November 1, 2043. Trudell Consulting Engineers has prepared plans that indicate progressive reclamation of the pit face starting with the uppermost portion as final 2:1 (H:V) grades are achieved and limiting the total amount of open extraction to less than 5 acres at any one time consistent with the Vermont Agency Of Natural Resources, *Vermont Geological Survey Practice For Review Of Sand and Gravel Extraction Activities, Under Act 250 Criteria 9D And 9E*, December 2016. In addition, the floor of the pit will be lowered approximately 25’ and monitoring wells installed to ensure that the floor of the pit remains at least 3 feet above the seasonal high-water table.
10. Ms. Aoun owns and resides in a farmhouse located at 724 Delano Rd. in Albany, Vermont. Her property abuts the Town Gravel Pit, sharing a common boundary that she reports is over 1,650 feet. The access road to the Project, from Delano Road, is located approximately ¼ mile from her home. Ms. Aoun’s home is located in close proximity to Delano Road; she reports that her home is located 37 feet from Delano Road, which divides her property. Truck traffic proceeding from the Project to the Town garage (located elsewhere on Delano Road) travels back and forth directly past her home. The

pit is offensive to Ms. Aoun and she feels that extending its operation will continue to diminish the scenic quality of her property and the surrounding area. Ms. Aoun reports that the heavy truck traffic from hauling back and forth on Delano Road is particularly intense as experienced by her from the existing pit operation, and has been detrimental to her health, safety and overall welfare as well as the quiet enjoyment of her property.

Criterion 1 - Air Pollution:

Findings of Fact

11. The Commission will include the following permit condition to restrict hours of operation, thus limiting noise and air pollutant emissions resulting from operation of the Project. The operating hours below reflect the Commission's consideration of the previously established hours of operation as identified in conditions 6 and 11 of Permit 7R1042 (Exhibit 082), together with all of the subject 7R1042-2 evidence and testimony, with the following changes noted (i) for consistency and consideration of other District 7 earth extraction permits, no operations on national holidays, (ii) crushing and/or screening may occur for not more than 10 days per calendar year, (iii) extension of hours to allow for winter operations e.g. to salt and sand roadways via a stockpile located at the Project site, and (iv) requirement to maintain a record if hours are exceeded due to emergency situations, as follows:

For the months of May through October hours of operation (i.e. when trucking or undertaking activities having potential to generate noise off-site) shall not exceed 6:00 AM to 4:30 PM Monday to Friday, and for the months of November through April hours of operation (i.e. when trucking or undertaking activities having potential to generate noise off-site) shall not exceed 6:00 AM to 6:00 PM Monday to Friday, with no operation on national holidays.

In addition to the operating hours above, crushing and/or screening equipment may be operated, for not more than total 10 days per calendar year, and the hours of operation of crushing and/or screening equipment shall not exceed 7:00 AM to 5:00 PM, Monday to Friday.

These operating hours may be exceeded only by permit amendment, or to meet emergency situations or town road safety needs; in the event of such an emergency or safety-related occurrence, the Town shall record the incident, to include the nature of the emergency and the time period that the pit was accessed to meet the emergency, in a written Road Crew Emergency Log Report. A copy of this Log Report shall be submitted to the District Commission within 10 calendar days of any request from the District Commission via the Coordinator.

The District Commission reserves the right to review operating hours and impose additional conditions governing operating hours.

12. Normal operations include heavy equipment operation at the Project site, to strip overburden, managed piles of material, and load dump trucks, and dump trucks entering and exiting the site. Other activities which are not a daily occurrence will be periodic crushing and screening of rock product (not to exceed 10 operating days per year, which may occur in non-consecutive days).
13. The Commission will include the following updated “standard” permit condition to ensure control of dust emissions that may otherwise result from crushing and screening operations:

Dust from crushing and screening operations shall be controlled by applications of water from a portable water tank to be supplied by the crushing contractor. The Permittee shall not allow the operation of a gravel or stone crushing plant on the premises with a maximum rated capacity (based on the crusher’s largest possible setting and maximum throughput, not actual operating rate) of greater than 150 tons per hour, unless said crushing plant has a permit to operate from the District Commission and the Vermont Air Quality and Climate Division.

14. The Commission will include the following updated “standard” permit conditions to ensure control of dust emissions that may otherwise result from Project operations:

The Permittee shall take reasonable precautions at all times to prevent fugitive particulate matter (dust) from becoming airborne from the Project and its operations. Reasonable precautions to be taken shall include, but not be limited to, the following measures or other equally effective measures for Project operations and activities under the Permittee’s control or supervision:

- a. *The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;*
- b. *Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper;*
- c. *All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways when loaded;*
- d. *All rock drills operated at the Project shall be equipped and operated with either an effective wet or dry dust control system;*

- e. All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions;*
 - f. Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable; and*
 - g. The Permittee shall ensure that any dust control measures taken in accordance with the conditions listed above are in compliance with all other state and federal requirements.*
15. Neighbor Ms. Mimi Aoun owns and occupies a home located on Delano Road and is concerned with noise and air emissions (e.g. dust, particulate matter) which may result from Project operation. A primary location of concern to Ms. Aoun corresponds to the public road (Delano Road), in particularly where located in proximity of her home. Ms. Aoun's home is located in very close proximity to Delano Road, as observed by the Commission during its site visit, and as also presented in numerous videos and photos provided by Ms. Aoun (Exhibits 040 to 069). Ms. Aoun reports that her home is located 37 feet from Delano Road.
16. Trucks and other vehicles traveling on Delano Road may generate dust emissions, as evidenced by some of the videos and photos provided by Ms. Aoun (Exhibits 040 to 069). Delano Road is a public town-maintained unpaved road. Not all of the vehicles traveling on Delano Road are attributable to the Project, and the segment of Delano Road in front of Ms. Aoun's home is not a dead-end segment of road. All traffic has potential to generate dust emissions dispersing from the area where the vehicle wheels come into contact with the road surface, as vehicle travel occurs. Additionally, uncovered trucks loaded with dry earthen material which may become airborne, has potential to generate dust.
17. As noted above, following condition 7 of permit 7R1042 is in effect to control dust emissions on the haul road (i.e. the Project access road located between Delano Road and the Project), and will remain in effect for the Project:
 - 7. Dust on the haul road shall be controlled by applications of calcium chloride and/or water as necessary*
18. For approximately two weeks per year, the Town hauls sand to the Town garage which is located elsewhere on Delano Road, to establish a stockpile of sand (for winter road treatment) at the centrally located Town garage. Testimony of Phil Beaudry. When this occurs, the trucks travel on the segment of road in front of Ms. Aoun's home. Winter operations authorized at the Project will enable the Town to access a stockpile of sand located at the Project site, in winter months when the sand is needed, thereby potentially

significantly reducing the truck travel on Delano Road of concern to Ms. Aoun attributable to the transport of sand to the Town garage.

19. In addition to application of calcium chloride on the Project access road, the Town of Albany treats Delano Road with calcium chloride annually, typically around 3 times per summer, and sometimes more, including before the 2-week period when trucks haul sand to the Town garage located elsewhere on Delano Road. Application of calcium chloride to Town roads including Delano Road, for dust control, will continue. Testimony of Philip Beaudry.
20. The Town does not want to be obligated to cover every loaded truck under its control or operated by the Town, as indicated in the Commission's draft permit, citing that low hanging branches along travelled roads may damage the truck cover.
21. Concerning dust suppression, concerned neighbor Ms. Aoun states as follows:

This is most important mitigation measure necessary to reduce the effects of fugitive dust from the road. Calcium Chloride MUST be applied to Delano Road for a distance of 1000 feet in front of the Aoun residence at 724 Delano Road, measured 500 feet either direction from the Aoun driveway. Such applications must be monthly during the months of May through October. In addition, an application of Calcium Chloride MUST immediately precede the stockpile hauling period to ensure sufficient dust suppression during that high traffic event. The pre-stockpile/hauling application can be one of the regular monthly applications, so long as it is applied no more than 3 days before the commencement of stockpile hauling. Furthermore, the application of Calcium Chloride must be done in a thorough and robust professional workmanlike manner and, if ineffective during any of the stockpile haul period, it shall be reapplied immediately to mitigate any undue adverse impacts from fugitive dust.

22. The Commission will include the following additional condition in its permit:

Permittee shall apply calcium chloride for dust suppression on Delano Road for a minimum distance of 1000 feet in front of the Aoun residence located at 724 Delano Road, measured 500 feet in each direction from the Aoun driveway, within \pm 7 days of the commencement of trucking from the Project to stockpile sand or gravel at the Town garage located elsewhere on Delano Road; Permittee shall monitor the effectiveness and re-treat if needed during such trucking event if any.

23. As noted above in finding 3, following conditions 8 and 10 of permit 7R1042 are in effect and will remain in effect for the Project:

8. *Loaded trucks shall either be covered or shall have their load kept below the rim.*

10. *Permittees shall advise adjoining parties every year regarding which days that year town trucks are scheduled to haul sand to the town garage.*
24. As noted above in finding 9, The Commission will include substantive updated “standard” permit conditions to ensure control of dust emissions that may otherwise result from Project operations, including the following:
 - c. *All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways when loaded;*
25. Operating hours are an effective tool to mitigate operational impacts such as noise and potential dust.
26. The Project does not include blasting, hence does not include noise attributable to blasting.
27. Although the Commission is not specifically prohibiting trucking of sand to the Town garage, the Project is expected to reduce traffic on Delano Road in front of Ms. Aoun’s home, as outlined in Finding 18.

Conclusions of Law

With the inclusion of numerous permit conditions as identified in the Commission’s Findings, the Commission concludes that this Project will not result in undue air pollution.

The Commission concludes that this Project complies with Criterion 1(Air Pollution).

Criterion 1(B) - Waste Disposal:

Findings of Fact

28. Waste generated by the Project will include stormwater runoff. The Project does not necessitate any additional clearing not previously permitted via permit 7R1042, hence no additional stumps will be generated by site clearing.
29. The applicant has prepared a Stormwater Pollution Prevention Plan (SWPPP, Exhibit 073). The SWPPP describes the facility and its operations, develops an inventory of potential pollutant sources, identifies control and Best Management Practices (BMPs) for reducing the discharge of pollutants in stormwater runoff, and outlines measures for implementing and reviewing the plan, all to prevent contaminated runoff from the industrial activity.
30. The Agency of Natural Resources Department of Environmental Conservation has issued coverage under General Permit 3-9003 (Multi-Sector General Permit 9140-9003) for the Project (Exhibit 075).
31. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Conclusions of Law

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

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

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

Criterion 4 - Soil Erosion:

Findings of Fact

32. The continuation of the previously permitted earth extraction may affect the capacity of soil on the Project site to hold water attributable to the prolonged exposure of unreclaimed areas. No evidence was received suggesting that the previously reviewed and approved operational practices are insufficient to prevent erosion.
33. The Project does not have nor require coverage under the Agency of Natural Resources (ANR) Construction General Permit, however erosion prevention and sediment control for reclamation activities are addressed as a component of the ANR Multi-Sector General Permit (MSGP) issued for the Project (number 9140-9003, Exhibit 075).
34. In addition to the requirements in effect via the ANR MSGP Permit, the Commission will include the following condition in its permit:

At a minimum, the reclaimed slopes will be stabilized and seeded in accordance with the Agency of Natural Resources' Vermont Department of Environmental Conservation's Low Risk Site Handbook for Erosion Prevention and Sediment Control (February 2020).
35. Condition 14 of permit 7R1042 will remain in effect:
 14. *The permittees shall comply with all exhibits for erosion control. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. The Commission reserves the right to schedule hearings, and site inspections to review erosion control, and to evaluate and impose additional conditions with respect to erosion control, as it deems necessary. The District Commission shall retain specific ongoing jurisdiction over erosion control*

practices along the pit access road and reserves its right to impose additional condition to ensure that unreasonable erosion does not result.

Conclusions of Law

The ANR MSGP Permit establishes that stormwater runoff during the activity authorized by the Permit will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. Technical determinations are entitled to substantial deference. No evidence was presented to rebut the MSGP Permit or to challenge the technical determinations made by ANR.

The Commission concludes that the Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The Project complies with Criterion 4.

Criterion 5 - Transportation:

Findings of Fact

36. The Project access road, and its intersection with Delano Road, are existing and will remain unchanged.
37. The General Findings and the Criterion 1 Findings are incorporated by reference.
38. The continuation of operation for the requested permit duration will extend the duration of traffic impacts from the Project, for which operating hours have been established, and as modified with the Commission's consideration of input from concerned neighbor Ms. Aoun, as further identified in the Criterion 1 Finding, notably Finding 11.
39. The site grading plan has been updated and retains the horizontal limits of the existing project permitted via 7R1042 and prior amendment, and encompasses updated grading design which yields an updated remaining estimated volume of approximately 97,000 cubic yards (CY). The proposed maximum annual rate of extraction is unchanged (10,000 CY), and the average rate calculated by the Commission for the proposed extended and remaining \pm 20-year life of the Project is roughly half this rate (90,000 CY over 20 years equals 4,850 CY or approximately 5,000 CY).
40. Neighbor Ms. Aoun is concerned with her safety and feels that it is dangerous to cross Delano Road in front of her home, for example so that she can access her land and trails located on the opposite side of Delano Road, particularly when peak Project truck traffic occurs, as may occur when the Town hauls sand from the Project to the Town garage.
41. Neighbor Mimi Aoun requests that the Town establish a reduced speed limit on Delano Road to help mitigate her pedestrian safety concern.

42. In response to Mimi Aoun's concern the Town has agreed to install a new 35 Miles Per Hour Advisory Speed Limit traffic sign, to be installed and remain in effect for, at a minimum, the segment of Delano Road along Mimi Aoun's property. Although this would not be an enforceable speed limit, this should result in some reduction in traffic speed. The Commission will include the following condition in its permit:

Permittee shall install and maintain standard Advisory Speed Limit Traffic Signs, identifying 35 MPH speed, posted for visibility from both directions for the segment of Delano Road in proximity of the Ms. Aoun residence located at 724 Delano Road. This new signage shall be installed on or before July 1, 2022 unless an extension is authorized in writing by the District Commission.

43. There is no formal cross walk to accommodate pedestrian travel across Delano Road, of the type more typically found in more developed areas. In the rural Project setting, to avoid an unsafe condition, drivers must remain vigilant and observant and mindful of vehicle speed, and pedestrian travelers walking across Delano Road must carefully observe and time their movements. This is appropriate in light of the rural location and transportation impacts of the Project
44. Neighbor Mimi Aoun requests that the Town establish a truck route for the Project which would formally route a specific portion (e.g. 50 percent) of the traffic away from Delano Road where located in front of her home. Ms. Aoun requests that truck traffic be routed on an alternate route, travelling via Vermont Route 14 for one way of the two-way truck trips, to reduce the negative effects of trucks traveling on Delano Road past her home. In the case of truck travel between the Project and the Town garage located on Delano Road, this would result in increased travel distance, approximately 8 miles versus 2.5 miles, a significant increase. Testimony of Philip Beaudry.
45. As identified in the 7R1042 decision (Exhibit 082):

Sand is hauled from the pit to the town garage on weekdays for approximately two weeks per year. During this time, approximately 60 round trips per day may be required (Testimony of Mason).

The Commission concludes that as long as the truck traffic is consistent with the representations herein; and as long as the pit road is constructed and maintained as represented herein; and as long as the applicants notify the adjoining parties each year as to when crushing, screening and hauling operations are scheduled, the project will not cause unreasonable congestion or unsafe conditions with respect to the use of existing highways.

So finds the Commission.

46. The Project does not incorporate transportation demand management strategies, as the nature of the project, with most traffic attributable to sand and gravel trucks, does not lend itself to employing such measures.

Conclusions of Law

Criterion 5(A) requires that the Project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways.” See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

Criterion 5(B) requires that a project, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether the measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation.

The Project complies with Criterion 5(A).

The Project incorporates all appropriate transportation measures and complies with Criterion 5(B).

Criterion 8 - Aesthetics

FINDINGS OF FACT

Findings of Fact: Aesthetics, Scenic or Natural Beauty

47. The General Findings and the Criterion 1 Findings are incorporated by reference.
48. The present site is an active sand and gravel pit in a rural setting. The Project proposes to extend operations of this pit for an additional 20 years beyond its current expiration date.
49. The Project does not encompass changes to exterior signage, lighting, landscaping (tree plantings), clearing limits, or the horizontal “footprint” of the previously permitted pit.
50. Neighbor Ms. Aoun is concerned with the aesthetic impact of the Project as viewed from her residence and from her vacant property. In addition to the parcel of land that her home is located on, Ms. Aoun owns vacant land directly opposite her home on Delano

Road, which features a field and wooded area adjacent to the Project site, as illustrated in Exhibit 064. Walking trails are present on this vacant land, and portions of the Project site can be partially viewed from such a trail, through the retained trees and vegetation, as observed by the Commission during its site visit, and as illustrated via the photos in Exhibit 071.

51. The Project site has limited visibility from Delano Road, as viewed by the Commission during its site visit.
52. Visual impact of the Project as viewed from the Ms. Aoun property was assessed under the prior 7R1042 application review, to which reference is made for additional detail (Exhibit 082). Previously required tree plantings located generally between the Project site and the vacant land currently owned by Ms. Aoun have matured, and provide an effective visual buffer or screen, such that only the uppermost portion of the pit can be seen above the treeline, as viewed by the Commission during its site visit, from a location on Delano Road in front of the Aoun residence. With additional tree growth, with continued operations to reduce the height of the active face, and with reclamation activities to return the Project site to vegetation, the Project site has minimal visual effect on the visual aesthetics of the landscape as viewed from Delano Road in front of the Aoun residence, as observed by the Commission during its site visit.
53. The aesthetic impact of Project traffic on Delano Road encompasses potential dust emissions and noise, and these concerns are addressed under Criterion 1 to which reference is made for additional information and related permit conditions.

CONCLUSIONS OF LAW

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

Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc., No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Envtl. Ct. May 17, 2010)* (citations omitted); see also, *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Envtl. Bd. Nov. 4, 1985); In re Halnon, 174 Vt. 514 (mem.)* (applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the project, 10 V.S.A § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative

findings. *In re Rinkers*, No. 302-12-08 *Vtec*, *Decision and Order at 10-11* (Vt. Env'tl. Ct. May 17, 2010) (citing *Re: Susan Dollenmaier*, #3W0125-5-EB, *Findings, Conclusions and Order at 8* (Vt. Env'tl. Bd. Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 *Vtec*, *slip op. at 5* (Vt. Env'tl. Ct. Feb. 15, 2008), *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553-54 (1990)).

1. Adverse Effect

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

The Project's visual effect as described in the Findings, in particular the visual effect of the Project as experienced and viewed from Delano Road, for the additional continuing and limited term of the Project, is not undue, as observed by the Commission during its site visit, and the Commission notes that the visual effect of the existing pit has been mitigated as discussed under the prior 7R1042 decision (Exhibit 082), including successful tree plantings, as observed by the Commission during its site visit.

The Project's effect on aesthetics at the segment of road in proximity of the Aoun residence at 724 Delano Road may be undue, as such the Commission will determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings. *In re Rinkers*, 302-12-08 *Vtec*, *Decision and Order at 15* (May 22, 2010) (citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a

project. *Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. 4/9/02)*. A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. 12/21/00)*.

A plan which states "consideration should be made . . ." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Env'tl. Bd. Dec. 8, 2000)*. There are no clear community standards relevant to the proposed Project's impacts on aesthetics.

There are no clear community standards which pertain to the analysis of aesthetic impact of the Project, with respect to noise and dust.

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

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc. #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986)*.

Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers, No. 302-12-08 Vtec, Decision and Order at 11-12; Horizon Development Corp., #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992)*.

Although Ms. Aoun finds her experience of dust and noise from the existing pit shocking and offensive, in consideration of all factors, including the proximity of the home (reportedly 37 feet) to a maintained public gravel road, and in particular with the inclusion of reasonable and standard operating hours, and conditions to mitigate dust, the effect of noise and dust at this location is not shocking or offensive in character.

Given all of the considerations as discussed more fully in the findings, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating Steps

The question under this factor of the aesthetics analysis is whether the Applicant(s) has/have "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons, 2008 VT 7, ¶ 8*. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an

aesthetic impact unduly adverse.” *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995) (quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010)). A generally available mitigating step “is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals.”

To mitigate the aesthetic impacts of the Project, the Applicant will retain specific tree plantings (see 7R1042, Exhibit 082), has included Advisory Speed Limit Traffic signage at a location of concern to a neighbor and will also provide specific dust control at this road segment, will complete reclamation, and will operate in accordance with reasonable and standard operating hours.

Given all of these considerations, we find that the Applicant has taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty or aesthetics of the area.

(d) Conclusion

Based on the above, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

SUMMARY CONCLUSIONS OF LAW: Aesthetics

The Commission concludes that the Project will not have an undue adverse effect on aesthetics or natural and scenic beauty of the area.

Criterion 9(E) – Extraction of Earth Resources:

54. The Project involves the extraction or processing of mineral or earth resources.
55. The Project site will be reclaimed with suitable grading and vegetation following closure.
56. Reclamation will be assured through the Town of Albany’s annual budget.
57. The Project reflects consideration of impacts on surrounding land uses, including impacts on a concerned neighbor, Ms. Aoun, as addressed under the Commission’s Findings under Criteria 1, 5, and 8. The Project will not have an unduly harmful impact upon the environment or surrounding land uses and development, with the inclusion of substantive permit conditions as identified under Criteria 1, 5, and 8.

Conclusions of Law

The Commission concludes that this Project complies with Criterion 9(E).

VII. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 7R1042-2, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

VIII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 7R1042-2 is hereby issued.

DATED this 24th day of February, 2022.

By /s/ Eugene Reid
Eugene Reid, Chair
District 7 Environmental Commission

Commissioners participating in this decision:

Keith Johnson, Nicole Davignon

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.