

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

RE: Barre Granite Quarries, LLC
William and Margaret Dyott
Land Use Permit Application #7C1079-EB (Revised)
Docket #739

MEMORANDUM OF DECISION

This proceeding concerns Land Use Permit #7C1079 (Revised) ("Revised Permit") pertaining to Barre Granite Quarries, LLC and William and Margaret Dyott ("Permittees") authorizing the Permittees to reactivate and expand abandoned granite quarries located on the Dyott, Padula and LeCours properties in the Town of Sheffield, Vermont ("Project"). The Revised Permit has a maximum granite extraction rate of 400,000 cubic feet per year for sale to market. Additionally, the Revised Permit allows for the annual extraction of 400,000 to 800,000 cubic feet of waste granite with on-site storage in grout piles.

This Memorandum of Decision addresses Residents for Northeast Kingdom Preservation, Ltd.'s ("RNKP") Motion for a Long-Term Stay. For the reasons stated below, RNKP's Motion for a Long-Term Stay is denied except as specified in Section IV. below.

This Memorandum of Decision also addresses Permittees' Petition for Relief from Stay.

I. PROCEDURAL SUMMARY

On June 23, 1999, the District #7 Environmental Commission ("Commission") issued Land Use Permit #7C1079 ("Permit") and Findings of Fact and Conclusions of Law and Order ("Decision") to Permittees authorizing the Project.

On July 23, 1999, RNKP filed a Motion to Alter the Permit with the Commission.

On July 28, 1999, RNKP filed a Motion for Preliminary Stay with Chair Harding and a Motion for Long-Term Stay with the Board.

On August 4, 1999, the Permittees filed their Response to RNKP's Motions for Preliminary and Long-Term Stay.

In an August 5, 1999 Memorandum of Decision, the Board Chair denied RNKP's Motion for a Preliminary Stay because no appeal had been filed from the Commission's

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Decision and Permit to the Board (thereby transferring jurisdiction to the Board), RNKP was not an "aggrieved party," and there had been no "final order" issued by the Commission from which relief could be sought by means of a stay.

On August 9, 1999, in reaction to RNKP's Motion to Alter the Permit, the Commission issued the Revised Permit, Revised Findings of Fact and Conclusions of Law and Order ("Revised Decision") and a Memorandum of Decision on RNKP's Motion to Alter.

On August 12, 1999, RNKP filed a Notice of Appeal with the Board from the Commission's Revised Decision contending that the Commission erred by finding that the Project complies with 10 V.S.A. § 6086(a)(1), (1)(A), (1)(B), (1)(E), (2), (3), (4), (5), (7), (8), (8)(A)(i)-(iii), (9)(E), (9)(K), (10) ("Criteria 1, 1(A), 1(B), 1(E), 2, 3, 4, 5, 7, 8, 8(A)(i)-(iii), 9(E), 9(K), and 10"). RNKP also appealed the Commission's denial of RNKP's party status under Environmental Board Rule ("EBR") 14(B)(1). The Notice of Appeal was filed on behalf of RNKP by Stephanie J. Kaplan, Esq.

On August 18, 1999, Permittees filed a reply in opposition to RNKP's Motion for Long-Term Stay.

On August 18 and September 8, 1999, the Board deliberated on RNKP's Motion for Long-Term Stay.

In a September 8, 1999 Memorandum of Decision, the Board denied RNKP's Motion for a Long-Term Stay.

On October 8, 1999, RNKP filed a Motion to Alter the Board's Denial of its Request for Stay of Permit ("Motion to Alter").

On November 1, 1999, Permittees filed its Response to RNKP's Motion to Alter.

On November 3, 1999, the Board deliberated on the Motion to Alter.

In a November 8, 1999 Memorandum of Decision, the Board denied RNKP's Motion to Alter.

On January 19 and 26, and March 15, 2000, the Environmental Board convened a public hearing in this matter.

On April 3, 2000, RNKP filed another Motion for Preliminary and Long-Term Stay.

On April 11, 2000, Permittees' counsel filed a letter explaining that counsel did not receive RNKP's Motion for Preliminary and Long-Term Stay. Permittees' counsel requested an extension to file a reply to RNKP's motion.

On April 12, 2000, RNKP filed a letter objecting to Permittees' extension request.

In an April 13, 2000 Chair's Ruling on Preliminary Stay and Chair's Preliminary Ruling ("April 13th Ruling"), RNKP's Motion for Preliminary Stay was granted in part and denied in part. The Chair's Preliminary Ruling set Permittees' deadline to file a reply to RNKP's Motion for Long-Term Stay for Friday, April 28, 2000, at 12:00 noon.

On April 14, 2000, Permittees filed an executed amendment to the Quarry Reclamation Escrow Agreement and documentation evidencing reclamation escrow funds totaling \$45,000.

In an April 17, 2000 Chair's Preliminary Ruling, Chair Harding approved the amended Quarry Reclamation Escrow Agreement.

On April 17, 2000, Permittees filed an Objection to the Chair's Preliminary Ruling with Regard to Additional Time to Reply to RNKP's Motion. Permittees requested that the deadline for them to reply to RNKP's Motion for Long-Term Stay be extended.

On April 17, 2000, Permittees filed a letter with the Board setting forth the Permittees' interpretation of Section IV.2.D of the April 13th Ruling. Permittees' interpretation was that the only truck traffic that was stayed under the Chair's ruling relates specifically to granite hauling.

On April 18, 2000, Alice Sessions filed a letter with the Board arguing her belief that "related trucking activities" addressed by the April 13th Ruling includes truck traffic other than granite hauling trucks.

On April 18, 2000, RNKP filed a letter with the Board requesting that the April 13th Ruling be clarified with respect to "related traffic."

On April 18, 2000, Permittees filed a letter with the Board specifying truck traffic, other than granite hauling, which is "necessary for the minimal operation of the quarry."

In an April 21, 2000 Chair's Second Ruling on Preliminary Stay, Chair Harding reaffirmed and further clarified the April 13th Ruling.

In an April 24, 2000 Memorandum of Decision, the Board ordered that Permittees' deadline to file a reply to RNKP's Motion for Long-Term Stay was extended to May 4, 2000.

On May 4, 2000, Permittees filed their Response to RNKP's Motion for Long-Term Stay, Permittees' Response to Chair's Request for Permittee to Address the Speed Limit Posting Issue, and a Petition for Relief from Stay, and Permittees' Response to RNKP's "Appendix A" accompanied by Exhibits A, B, C, D, and E.

On May 9, 2000, Permittees filed a truck log for March, April and early May 2000.

On May 10, 2000, the Board deliberated on the Motion for Long-Term Stay and the Petition for Relief from Stay.

II. DISCUSSION

A. RNKP's Request for Long-Term Stay

EBR 42 states the circumstances under which a stay of a commission decision may be requested:

No decision of the board or district commission is automatically stayed by the filing of an appeal. Any party aggrieved by a final order of the board or a district commission may request a stay by written motion filed with the board identifying the order or portion thereof for which a stay is sought and stating in detail the grounds for the request.

EBR 42 then states the factors which the Board must weigh when determining whether to grant a stay. First, the Board must consider the hardship to the parties. Second, the impact, if any, on the values sought to be protected by Act 250 must be evaluated. Third, the effect on the public health, safety or general welfare is considered.

RNKP has the burden in this case to prove that a stay is necessary, *Re: Stokes Communication Corp.*, 3R0703-EB, Supplemental Memorandum of Decision at 1 (Feb. 26, 1993)[EB# 562M2]. Consequently, RNKP must prove that the above three factors weigh in favor of granting a stay.

On April 2, 2000, RNKP filed a 14 page Motion for Preliminary and Long-Term Stay with a 9 page Appendix and 24 pages of exhibits. This is the third time RNKP has requested that the Board issue a stay of Permittees' Revised Permit. On the two prior occasions, the Board denied the stay requests concluding that RNKP failed to meet its burden of showing that a stay was necessary.

RNKP filed this new motion for stay pursuant to EBR 42 requesting that the Board grant both preliminary and long-term stays of "any activity associated with the quarry on the quarry site or involving any of the roads that lead to the quarry site." RNKP states that a stay is now warranted based upon the new evidentiary record on which the Board can base its decision, including prefiled testimony, three days of public hearings and two site visits.

1. Hardship

In its motion, RNKP alleges hardship to its members including traffic nuisances, unsafe traffic conditions and noise. A noise demonstration is scheduled for May 24, 2000 for the Board to observe noise from the Project. Furthermore, the Revised Permit and Revised Decision set maximum noise levels at which the Project can currently operate. *See Revised Permit # 7C1079, condition #49.* Accordingly, this decision and order does not further address noise issues. RNKP has alleged traffic nuisances and unsafe truck traffic conditions due to the fact that road improvements required by the Revised Permit and Revised Decision have not been completed. RNKP alleges that while some improvements were begun last fall, substantial work remains to be done. RNKP alleges that the roads in their current state are unsafe for the quarry truck traffic. For instance, RNKP alleges that the roads are not wide enough and the shoulders are too soft for a vehicle to pass an oncoming granite truck. RNKP also argues that Permittees have not complied with Revised Permit Condition Number 55 requiring involved roads to be posted with a maximum speed limit of 20 m.p.h. for truck traffic.

On May 4, 2000, Permittees filed their response to RNKP's motion. Permittee argues that there is no new evidence with regard to any of the impacts or alleged hardships raised by RNKP and that the testimony RNKP relied on is the same testimony, from the same witnesses, who testified before the Commission. Having argued this,

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however, Permittees have affirmed that they will not haul granite until all road improvements required under the Revised Permit and Revised Decision are completed. Permittees also state their intention to "expeditiously hire a crew or crews to complete the final road upgrades which were started last fall" and to "complete the final road upgrades this spring" which the Board interprets to mean complete by June 21, 2000.

These improvements do not include the posting of speed limits. Condition number 55 of the Revised Permit states "[a]ll involved roads shall be posted for trucks to a limit of 20 mph. (subject to considerations in permit findings under criterion 5.)..." The Commission's Findings of Fact and Conclusions of Law under Criterion 5, at page 27, states that "...we will require that the applicant work with Glover and Sheffield to have all impacted roads posted for a maximum speed of 20 mph. This effort notwithstanding, we will require that the applicant include language in every trucking contract clearly stating that a condition of the contract is that any truck traveling between Route 16 and the quarry access not travel at a speed in excess of 20 mph."

Reading these provisions together, it is clear that truck traffic speed is to be limited. There are three means to limit the speed of quarry related truck traffic:

1. the roadways can be posted with speed limit signs,
2. conditions limiting speed can be included in trucking contracts, and
3. orders can require speed limits.

First, there are legal and practical problems with posting speed limits at 20 miles per hour in this case. Second, the Revised Permit requires conditions limiting the speed of trucks in the trucking contracts. Third, this decision and order, at Section IV below, orders a maximum speed limit for trucks of 20 miles per hour.

Furthermore, Permittees have filed "Permittee's Response to the Board Chair's Request for Permittee to Address the Speed Posting Issue." Therein, Permittees affirm that they have entered into a trucking agreement that establishes a maximum speed of 20 m.p.h., that the Town of Sheffield has already posted Quarry Road and Town Highway No. 2 at 25 m.p.h., and that Permittees have requested the Town of Glover to review the speed posting issue. It is further noted that contrary to Permittees' assertion that it was the Commission who developed the 20 m.p.h. speed limit for trucks, it was Permittees expert who recommended this speed limit.

Permittees have petitioned the Board to allow the following truck traffic:

1. One flatbed truck for delivery of wire-saws;
2. Two flatbed trucks for delivery of power-packs to operate the wire-saws;
3. Two flatbed trucks for the delivery of the CAT D350 dump-trucks;
4. Three flatbed trucks for delivery of the machine loaders;
5. One flatbed truck of miscellaneous support tools and equipment;
6. One pickup truck with trailer for delivery of a D-4 bulldozer; and
7. Gravel trucks (short-wheel base) for the delivery of gravel, as necessary, for the completion of the internal road between the quarry hole and the grout pile for the noise demonstration.

Permittees state that this equipment and related trucking activity is necessary to operate the quarry for the May 24, 2000 noise demonstration.

Permittees also petition the Board to allow service vehicles and delivery vehicles without restrictions. Permittees argue that this is warranted based on the fact that the only conditions related to truck traffic contained in the Commission's Revised Permit and Revised Decision relate to granite hauling trucks. Furthermore, Permittees point out that service vehicles of these types normally operate on these roads to service all citizens.

The Board concludes that balancing the hardships relating to traffic issues tips in favor of granting a stay of granite hauling until the Board's decision on the issues on appeal in this matter becomes final or all road improvements required by the Revised Permit and Revised Decision are completed. All other trucking activities are not stayed, however, some trucking activities are conditioned. Section IV. Order below further specifies the trucking activities that are stayed and those that are approved with conditions.

2. Impacts on the Values Protected by Act 250

RNKP alleges impacts on the values sought to be protected by Act 250 including traffic and noise impacts. These appear to be the same concerns that RNKP raises in its balancing of the hardships argument. Accordingly, this decision and order does not further address these issues.

3. Public Health, Safety and General Welfare

With respect to public health, safety and general welfare, RNKP alleges that the public good would suffer if a stay is not granted because under the terms of the Revised Permit, the Permittees could cut trees at the Project that have not been cleared to date and

could strip more land to prepare it for mining. RNKP argues that these activities would result in irreparable harm. RNKP also alleges that there is insufficient money in the escrow account to cover the costs of restoring the site and that the escrow account is not under the sole control of the Commission as required in Revised Permit condition number 68. RNKP argues that both of these issues will make it more difficult for the Commission to successfully complete restoration should there be a need.

Permittees' reply states that they have no plans to cut additional trees or open additional lands at this time, although these activities will ultimately need to occur for full quarry operation. Permittees affirm that the Quarry Reclamation Escrow Agreement has been amended and approved by the Board Chair.¹ On April 17, 2000, in accordance with the April 13, 2000 Chair's Ruling on Preliminary stay, Permittees filed documentation evidencing \$45,000 as the total amount of funds within the Quarry Reclamation Escrow.²

The Board concludes that it is in the best interest of public health, safety and general welfare that no tree cutting, timber harvesting or land be cleared until the Board's final decision in this matter becomes final.

IV. ORDER

1. This Order supersedes and replaces both the April 13, 2000 Chair's Ruling on Preliminary Stay and the April 21, 2000 Chair's Second Ruling on Preliminary Stay.
2. RNKP's Motion for Long-Term Stay is **DENIED** to the extent that Permittees can operate the Sheffield quarry, with the exception of the limitations set out

1

In an April 17, 2000 Chair's Preliminary Ruling, Chair Harding approved the revised Quarry Reclamation Escrow Agreement.

2

The Quarry Reclamation Escrow Agreement requires Permittees to have deposited \$15,000 at the time the escrow was established, and thereafter, additional deposits of \$15,000 at the end of each operating year no later than December 15. The \$45,000 in the escrow currently represents the initial \$15,000; \$15,000 for the year 1999; and \$15,000 in advance for the year 2000.

at numbers 3 and 4 below, only in full compliance with the Revised Permit and Revised Decision.³

3. The following activities of the Permittees are stayed:

A. No trees may be cut, timber harvested, or land stripped for quarrying or related activities on the Project until the Board's decision in this matter is final.

B. All hauling of granite from the Sheffield quarry is stayed until the Board's decision on the issues on appeal in this matter becomes final or until all road improvements have been made and a qualified inspector's report is filed with the Commission verifying that all required improvements have been satisfactorily made as required by Revised Permit condition number 59.⁴ This inspectors' report must be filed with the Commission and served on all parties. This inspectors' report must also be filed with the Board and be approved by the Board Chair.

C. The following additional truck traffic may occur only as conditioned below:

3

Permittees are again reminded that if Permittees proceed with their operations during the pendency of RNKP's appeal, they do so at their own peril. In its recent decision denying a stay request in *Re: Winhall/Stratton Fire District #1 and The Stratton Corporation*, #2W0519-6A-EB (July 28, 1999)[EB #730M1], the Board warned the Permittees:

Of course, the Board wishes to make it clear that any construction undertaken by Stratton at this time must only occur with the knowledge that the Board (or Commission on remand) may ultimately find that the permit should not have been granted. Stratton proceeds at its own risk. Stokes Communication Corp.,[#3R0703-EB, Supplemental Memorandum of Decision (February 26, 1993)] ("If, after hearing, the Board denies or modifies the permit, the Applicant will have to restore the site to its pre-construction condition.").

Id. at 4.

4

These improvements do not include the posting of speed limits.

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1. One flatbed truck for delivery of wire-saws;
2. Two flatbed trucks for delivery of power-packs to operate the wire-saws;
3. Two flatbed trucks for the delivery of the CAT D350 dump-trucks;
4. Three flatbed trucks for delivery of the machine loaders;
5. One flatbed truck of miscellaneous support tools and equipment; and
6. One pickup truck with trailer for delivery of a D-4 bulldozer.

Conditions:

- a. The truck trips in 1- 6 above must be specifically approved by the Glover Road Foreman and the Sheffield Road Foreman.
 - b. The truck trips identified by numbers 1 - 6 above must be individually escorted into and out of the quarry, between the quarry and Route 16. The escort vehicle should travel in front of the truck at a distance ensuring the safe warning to oncoming traffic. The escort vehicle must use its hazard lights or other warning lights.
 - c. The trucks identified in 1 - 6 above and all escort vehicles must not exceed a speed of 20 miles per hour.
 - D. No other truck traffic is stayed.
4. The Board suspends the following language in Revised Permit condition number 55: "All involved roads shall be posted for trucks to a limit of 20 m.p.h."
 5. On or before May 23, 2000, Permittees shall advise the Board of the Town of Glover's decision as to whether or not it will post its involved roads with a 25 m.p.h. maximum speed for truck traffic. If the Town of Glover is going to post the roads, Permittees should also advise the Board of the date by which the roads will actually be posted.
 6. The total balance of funds within the Barre Granite Quarries, LLC Quarry Reclamation Escrow account must remain at a minimum of \$45,000 until further deposits are required under the amended Quarry Reclamation Escrow Agreement.

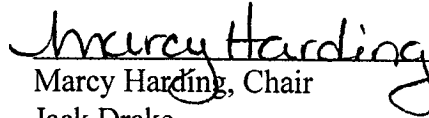
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Dated at Montpelier, Vermont this 11th day of May, 2000.

ENVIRONMENTAL BOARD



Marcy Harding, Chair

Jack Drake

George Holland

Samuel Lloyd

W. William Martinez

Rebecca M. Nawrath

Alice Olenick

Gregory Rainville

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