



ACT 250 JURISDICTIONAL OPINION NO. 4-301

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

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

[phone] 802-879-5614

July 2, 2021

John Lewis

28380 North 77th Street

Scottsdale, AZ 85262

Jim Bedell

JA Bedell Excavating, LLC

35 Tupper Road

Underhill, VT 05489

Re: Jurisdictional Opinion #4-301

Dissolution of Act 250 jurisdiction over the Lewis sand and gravel extraction site in Jericho, Vermont.

Facts

This jurisdictional opinion was initiated pursuant to a request made by JA Bedell Excavating, LLC, dated June 28, 2021, to release Act 250 jurisdiction over the Lewis sand and gravel extraction site located on Pratt Road in Jericho, Vermont.

On July 1, 1988, the District #4 Commission issued Land Use Permit ("LUP") #4C0760 for Lewis sand and gravel extraction site. LUP #4C0760 authorized the extraction of approximately 440,000 cubic yards of sand and gravel over a 10-year period from a 20-acre parcel located on Pratt Road in Jericho, Vermont.

According to JA Bedell Excavating, LLC, all extraction activities ceased in the 1990s. After extraction activities ceased the former sand and gravel extraction site was fertilized, seeded and allowed to revegetate. In April 2020, the landowner, John Lewis, directed JA Bedell Excavating, LLC to smooth out rough areas of the site with excavating equipment to prepare the land for sale. This resulted in the removal of trees and vegetation on a portion of the former sand and gravel extraction area. On October 15, 2020, a site visit was made by the District Coordinator to observe



the site. As a result of the site visit, JA Bedell Excavating, LLC mulched, fertilized and reseeded the remaining disturbed areas.

On June 28, 2021, a second site visit to the property was made by the District Coordinator. The District Coordinator observed that all extraction activities have ceased, and the site has been reclaimed consistent with LUP #4C0760.

Decision

Once Act 250 jurisdiction has attached, it does not “detach” from a parcel unless the permit has expired *In re Eustance*, No. 13-1-06 Vtec, Decision at 11 (2/16/07), Judgment Order (3/16/07)(citing *In re Huntley*, 2004 VT 115, ¶12; 177 Vt. 596, 5999 (2004)), *aff’d*, 2007-156 (Vt. S. Ct. 3/13/09). Until 1996 all permits had expiration dates, but amendments were made to 10 V.S.A. 6090 such that expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet) are extended for an indefinite term, as long as there is compliance with the conditions of the permits. Since then, the only expiration date in permits was in projects for extraction of mineral resources. The Environmental Board had often stated that once Act 250 jurisdiction is triggered, subsequent events will not lift such jurisdiction, nor can jurisdiction be waived. *In Re John Rusin*, 162 Vt.185, 189 (1994), affirming, *Re: John Rusin*, #8B0393-EB, Finding of Facts, Conclusions of Law and Order at 5 (Vt. Env’tl. Bd. June 10, 1993). However, the Environmental Division of the Superior Court ruled that Act 250 jurisdiction over sand and gravel extraction project dissolves when the project's permit expires and where tract has been reclaimed under 10 V.S.A. 6086(a)(9)(E)(ii). *In re: Richard and Elinor Huntley*, No. 2004 VT 115 (2004), reversing *Re: Richard and Elinor Huntley*, Declaratory Ruling #419, Memorandum of Decision (7/3/03).

The District Coordinator finds that sand extraction operations have ceased. The District Coordinator also finds that the site has been reclaimed in accordance with LUP #4C0760. Therefore, the District Coordinator concludes that Act 250 jurisdiction associated with LUP #4C0760 dissolves, in total, for the entirety of the former sand extraction facility.

If you have any questions regarding this jurisdictional determination, please contact me at 802-879-5658 or rachel.lomonaco@vermont.gov.

Sincerely,

/s/ Rachel Lomonaco

Rachel Lomonaco

District #4 Coordinator

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. 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 (VRECP). The appellant must file the entry fee required by 32 V.S.A. § 1431 with the Notice of Appeal, which is \$295.00. 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.

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CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of July, 2021, a copy of the foregoing ACT 250 JURISDICTIONAL OPINION #4-301, was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to NRB.Act250Essex@vermont.gov

John Lewis
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Dated at Essex Junction, Vermont, this 2nd day of July, 2021.

Jim Bedell
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FOR YOUR INFORMATION

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