



State of Vermont

LAND USE PERMIT AMENDMENT

CASE NO: [3R0779-6](#)

L&M Holdings, LLC
c/o Ryan Morse
100 Alden Road
Lebanon, NH 03766

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

District #3 Environmental Commission hereby issues Land Use Permit Amendment #3R0779-6, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 160, Page 513, of the land records of Thetford, Vermont, as the subject of a deed to L&M Holdings, LLC, the Permittee.

Land Use Permit #3R0779 authorized the extraction of 10,000 cubic yards of gravel per year from the former "Towle pit." This permit specifically authorizes construction of an expanded area for equipment material storage at the existing gravel pit, with no change in operations. The project also includes constructing a new access off US Route 5 and closing the access on to Rabbit Road.

The project is located off US Route 5 in Thetford, Vermont.

The application documents can be accessed on the Act 250 database at <https://anrweb.vt.gov/anr/vtanr/Act250.aspx>, enter 3R0779-6 as the Project Number and follow the prompts.

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

The Permittee, and its assigns and successors in interest, is obligated by this permit to complete, operate and maintain the project as approved by the District Commission in accordance with the following conditions.

1. 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 #3R0779-6, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission, and other material representations.

The approved plans are:

"Land Use Permitting Plan Set," Cover Sheet, dated Jan. 16, 2019 (Exhibit 004);

Sheets C1.0 and C1.1 - "Existing Conditions Plan," dated Jan. 15, 2019 (Exhibits 005 and 006); and

Sheet C1.2 - "Proposed Conditions Plan," dated Jan. 15, 2019 (Exhibit 007).

Sheet 1 - "Wetland Replanting Plan," dated Jan. 30, 2020, last revision March 25, 2020 (Exhibit 035);

Sheet 2 of 6 - "Proposed Access Road," dated June 24, 2020, last revision Sept. 4, 2020 (Exhibit 042);

"Record Tree Planting Plan," dated Sept. 4, 2020 (Exhibit 044);

2. All conditions of Land Use Permit #3R0779 and amendments are in full force and effect except as further amended herein.
3. The Permittee shall comply with all the conditions of the Authorization to Discharge Stormwater under Multi-Sector General Permit ("MSGP") 3-9003, Permit #9165-9003, issued on February 12, 2021 by the Agency of Natural Resources, Watershed Management Division (Exhibit 050). Any nonmaterial changes to the MSGP shall be automatically incorporated herein upon issuance by the ANR.
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. No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
6. Pursuant to 10 V.S.A. § 8005(c), the District Commission 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.
7. 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 their successors and assigns.
8. The days and hours of the operation of the Project shall be limited to Monday through Friday 7:00 AM to 5:00 PM. There shall be no operation of the pit on holidays. Reading or maintaining equipment for operation may be allowed outside of these hours provided there is no noise. There shall be no loading or unloading of trucks outside of these hours.
9. The screening plant is limited to operating a maximum of four weeks per year. A portable crusher is limited to operating a maximum of three weeks per year. There shall be no screening and/or crushing on weekends or holidays.
10. The Permittee shall take reasonable precautions at all times to prevent and control fugitive particulate matter (dust) emissions from the Project, its operations and activities under the Permittee's control or supervision. Reasonable precautions taken shall include, but may not be limited to, the following measures or other equally effective measures:
 - a. The paved 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. The 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 with materials that may generate fugitive dust;
 - 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 nozzles at appropriate locations and shall be operated as necessary; 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
 - f. 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. 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 Pollution Control Division.
12. At a minimum, the Permittee shall comply with the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
13. In addition to conformance with all erosion prevention and sediment 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. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
14. The Permittee shall implement the approved restoration plan as described in Exhibits 034-036.
15. The Permittee shall monitor the restored wetland/wetland buffer areas in August 2021. Any dead or dying trees shall be replanted in fall 2021 and a report with narrative and photos shall be filed with the District Wetlands Ecologist and the Act 250 Coordinator within 30 days of monitoring. The restoration area shall be monitored again in August 2024. If a live stem count reveals that there are less than the originally planted number of trees (including new tree recruitment) then the difference shall be replanted in early fall 2024. Photos and a narrative report of findings shall be submitted to the District Wetlands Ecologist and the Act 250 Coordinator within 30 days of monitoring.
16. The Permittee shall maintain the Class 2 wetlands as undisturbed and shall maintain an undisturbed, naturally vegetated, unmowed 50-foot buffer from the edge of the Class 2 wetlands and any disturbed areas except for any replanting activities identified in the wetland restoration plan. Snowplowing or storage of materials within these buffers is prohibited.

17. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a State approved landfill, so as to prevent groundwater pollution.
18. All conditions of the Vermont Agency of Transportation's permit to work within the highway right-of-way is incorporated herein. See Letter-of-Intent, Exhibit 047.
19. The proposed access off US Route 5 shall be the sole source of ingress and egress to the Project site. The existing access off Rabbit Road to the Project site shall be closed to all traffic. Truck traffic associated with the operation of the gravel pit is prohibited from using Rabbit Road and Stevens Road to access the Project site or for deliveries off site.
20. This permit amendment shall expire on **October 1, 2026** unless extended in writing by the District Environmental Commission.
21. Act 250 jurisdiction over the Project Tract shall not be lifted until the following requirements have been met:
 - a. The Permittee must submit a report from a Professional Engineer specifically documenting precisely 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 #3W0779-6, and (c) the permit application, plans, and exhibits, including but not limited to the wetland restoration plan (Exhibits 034-036) and the reclamation plan (Exhibit 007).
 - b. The District Coordinator must issue a written opinion, determining that all required reclamation has been successfully completed, and formally lifting jurisdiction over the Project Tract.
22. All construction of the new access road shall be completed in accordance with the approved plans by **October 1, 2021** unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Springfield, Vermont, this 17th day of March, 2021.

By 

Tim Taylor, Chair
District #3 Environmental Commission

Members participating in this decision: Roderick J. Maclay and Suzanne Butterfield

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.

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.

E-Notification CERTIFICATE OF SERVICE #3R0779-6

I hereby certify that I, the undersigned, sent a copy of the foregoing Act 250 land Use Permit and Findings of Fact and Conclusions of Law and Order on March 17, 2021 by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Springfield@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB 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 the District Office of any email address changes.**

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RE: L&M Holdings, LLC
c/o Ryan Morse
100 Alden Road
Lebanon, NH 03766

Application [#3R0779-6](#)
Findings of Fact
Conclusions of Law, and Order
10 V.S.A. §§ 6001-6111 (Act 250)

I. INTRODUCTION

On April 17, 2019, L&M Holdings, LLC, c/o Ryan Morse, filed an application for an Act 250 permit for a project generally described as the construction of an expanded area for equipment staging and material storage at the existing permitted gravel pit, with no change in operations. The tract of land consists of 36 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded on May 8, 2018 in the Thetford, Vermont land records.

The application, first submitted on February 11, 2019, was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated February 14, 2019. The application was deemed complete on April 17, 2019 upon receipt of the required supplemental information.

The Commission held a hearing on this application on May 22, 2019. The Commission also conducted a site visit on May 22, 2019 and placed its observations on the record.

At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information described in a Hearing Recess Order dated July 2, 2019.

On January 29, 2020, pursuant to 10 V.S.A. § 6083(g)(1)(B) and Act 250 Rule 30(B), the Commission issued a Stay of Issuance of a Permit Amendment until such time as the Applicant submits a wetland remediation plan for the Commission to review.

On March 9, 2020, the Commission continued the Stay of Decision until the Agency of Natural Resources approves the remediation plan.

On April 22, 2020, the ANR Wetland Program approved the wetland restoration plan (Exhibits 034, 035 and 036). Restoration plantings were completed in June 2020, with documentation provided to ANR in September 2020 (Exhibits 039, 041, 043, and 044).

On February 12, 2021, the ANR Watershed Management Division, Stormwater Program, authorized the Discharge of Stormwater under Multi-Sector General Permit #9165-9003.

On February 17, 2021, the Commission issued a memo to all parties giving all parties an opportunity to respond to the last evidence submitted by the Applicant.

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.

In response to a request by the LaMountain Farm, LLC, Jurisdictional Opinion #3-202, was issued on April 10, 2020 concluding that “temporary non-compliant use of Stevens Road and subsequent abandonment of that non-compliant use by the Towles and/or L&M Holding does not rise to the level of a material change, therefore, jurisdiction does not attach.”

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 the Two Rivers-Ottawaquechee Regional Plan.

Accordingly, official notice is hereby taken of previous Land Use Permit #3R0779 and amendments and the Two Rivers-Ottawaquechee Regional Plan 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) Balancing Flexibility and Finality of Permit Conditions (Stowe Club Highlands Analysis)

This Rule requires that, in reviewing any amendment application, the Commission must first determine whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit. Without the critical condition the Project would not comply with one or more Act 250 criteria.

In this case, Land Use Permit (LUP) #3R0779, issued on September 17, 1996 specifically authorized the Permittee to extract 10,000 cubic yards of gravel per year. LUP #3R0799 includes the following conditions:

Condition #1, in relevant part states: “The project shall be completed as set forth in Finding of Fact and Conclusions of Law #3R0779 . . .”

Condition #11 states that “a maximum of 50 round trip truck trips are permitted per day with an average of 18 round trips.”

Condition #13 states: “Gravel trucks shall not enter Stevens Road during the morning and afternoon school bus runs.”

Finding of Fact and Conclusions of Law #3R0779, page 4, under Criterion 5 relating to congestion or unsafe conditions with respect to highways includes the following finding:

3. *The majority of trucks will turn left onto Rabbit Lane, and left again, at Route 5 traveling to the north. Sight distances are adequate at that intersection. The right turn at the intersection of Rabbit Lane and Route 5 is too tight for a gravel truck to make safely. Southbound trucks will turn right on Rabbit Lane and enter onto Stevens Road. This is a narrow gravel road that is a bus route. Gravel trucks will not operate during the morning and afternoon bus runs. The intersection of Route 5 and Stevens Road does have adequate sight distances. Exhibit 16 and Testimony. [Emphasis added].*

The Applicant is proposing to increase the size of the existing permitted pit by 0.4 acres. The operation of the pit will remain as has been previously permitted. The number of truck trips will not exceed 50 round trips per day, the annual extraction will not exceed 10,000 cubic yards, and the truck travel routes will not change. The Applicant is not proposing to amend a critical condition.

As was mentioned at the hearing, the Applicant is working with the Natural Resources Board's Enforcement Officer, Michaela Stickney, to address compliance with the Act 250 permit.

The Commission concludes that the Applicant is not seeking to amend a critical condition, therefore, the Stowe Club Highlands Analysis (Act 250 Rule 34E) is not applicable.

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) are:

1. The Applicants, by Nicholas Low, Esq., Ryan Morse and Ian MacKenzie, P.E.
2. The State of Vermont Agency of Natural Resources (ANR), through an entry of appearance dated May 21, 2019, by Jennifer Mojo, Senior Planner, Office of Planning.
3. The Two Rivers-Ottawquechee Regional Commission, by Peter G. Gregory.
4. The municipality of Thetford, by Stuart Rogers.
5. The Thetford Planning Commission.

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 hearing on this application. The following persons requested party status pursuant to 10 V.S.A. § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

1. LaMountain Farm, LLC and Bret Ryan, represented by Jason Crance, Esq. and David Grayck, Esq. through a "Petition for Party Status by LaMountain Farm, LLC and Richard

Bret Ryan and Request for Rule 34(E) Review of Land Use Permit Series #3R0779” dated May 9, 2019 (Exhibit 009), requested party status under Criteria 5 Traffic, 8 Aesthetics, 9(E) Extraction of Earth Resources, 9(K) Public Investment, and 10 Conformance with the Regional Plan. The Commission granted preliminary party status under Criteria 5, 8, 9(E), 9(K) and 10. The Applicant objects to granting party status under Criteria 5 and 9(K) as argued in Exhibit 015.

2. Lynne A. Miller resides at 759 Stevens Road, East Thetford, VT 05043, and through a “Party Status Petition” dated May 13, 2019 (Exhibit 010), requested party status under Criteria 5 Traffic and 8 Aesthetics. Her property abuts the Project. Removal of the trees between the gravel pit and her property has reduced the noise barrier and visual screen of the former “Towle Pit” from her property. The Commission granted preliminary party status under Criteria 5 and 8.
3. Joel Teenyanoff and Jill Glassman reside at 299 Rabbit Road, East Thetford, VT 05043, and through a “Party Status Petition” dated May 13, 2019 (Exhibit 011), requested party status under Criteria 3 Burden on Existing Water Supply, 5 Traffic, and 8 Aesthetics. The Commission granted preliminary party status under Criteria 3, 5 and 8.

Pursuant to 10 V.S.A. § 6085(c)(6), the 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 found no reason to change its preliminary determinations.

C. The District Commission allowed the following nonparties to participate as Friends of the Commission pursuant to 10 V.S.A. § 6085(c)(5). Unless otherwise noted below, each was granted the rights of full participation allowed under 10 V.S.A. § 6085(c)(5):

1. Alice LaMountain resides at 1060 Stevens Road, East Thetford;
2. Julia Logan resides at 692 Stevens Road, East Thetford;
3. Melinda Ferriot resides at 1299B Stevens Road, East Thetford;
4. Don and Jan Longwell reside at 1530 Stevens Road, East Thetford;
5. Wayne Jerome resides at 653 Stevens Road, East Thetford; and
6. Richard Towle owns adjacent undeveloped land to the Project site and lives in North Thetford. Mr. Towle formerly owned and operated the gravel pit.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

- | | |
|---------------------------|--|
| 1 - Water Pollution | 6 - Educational Services |
| 1(A) - Headwaters | 7 - Municipal Services |
| 1(C) - Water Conservation | 8(A) - Wildlife Habitat & Endangered Species |
| 1(D) - Floodways | 9(A) - Impact of Growth |
| 1(E) - Streams | 9(B) - Agricultural Soils |
| 1(F) - Shorelines | 9(C) - Productive Forest Soils |
| 2 - Water Supply | |

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(L) – Settlement Patterns

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

The findings of fact are based on the application, Exhibits # 001 - 050, and other evidence in the record.

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 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. This permit application is to operate the existing gravel pit in the same manner as was previously permitted. There will not be an increase in the number of truck trips and the annual extraction rate will remain at 10,000 cubic yards per year. There will be an increase in the permitted area of operation by 0.4 acres to be used for material storage. Exhibits 001, 015, and Testimony.
2. Land Use Permit #3R0779, issued on September 17, 1996, to the Towles authorized the extraction of 10,000 cubic yards (cyds) of gravel per year on 5.79 acres of a 36-acre parcel.
3. The extraction rate at this gravel pit shall not exceed 10,000 cyds per year with a maximum round trip truck trips of 50 per day and an average of 18 round trips per day. Official Notice, LUP #3R0779-1, condition #7.
4. LUP #3R0779-2, issued on March 13, 2006, authorized municipal trucks to back out of the existing pit entrance 185 feet down Rabbit Road, to a turnout on the shoulder of Route 5, during emergency situations only. Official Notice, LUP #3R0779-2.
5. LUP #3R0779-3, issued on March 31, 2009, in part, allowed year-round gravel extraction. Official Notice, LUP #3R0779-3.
6. LUP #3R0779-5, issued on June 14, 2016, extended the construction expiration date from October 1, 2016 to October 1, 2026 with no change in the operation or reclamation of the pit. Official Notice, LUP #3R0779-5.
7. In response to the Commission's recess order, the Applicant has revised the project description and submitted a design to and received approval from the Vermont Agency of Transportation (VTrans) to construct an access into the sand and gravel pit directly onto Route 5. Exhibits 042 and 047.

Criterion 1 – Air Pollution:

8. No changes to LUP #3R0779 are proposed. The hours of operation will continue to be from 7:00 AM until 5:00 PM. The screening plant will continue to operate a maximum of four

weeks per year and a portable crusher will continue to operate a maximum of three weeks per year. A crusher with less than 150 tons per hour capacity will continue to be used. Exhibit 001.

9. Equipment will continue to be located within the pit at the low point of elevation to contain noise. Exhibit 001.
10. Loaded trucks entering, exiting and operating at the site that may generate fugitive dust will be covered to reduce dust. Exhibit 001.
11. Reasonable precautions will be taken to control fugitive particulate matter (dust) emissions from the site including haul roads, traffic areas, storage piles, exposed surfaces and any site operation such as screening, crushing and processing of materials by applying water or calcium chloride, as necessary. Exhibit 001.
12. There will be no blasting. Exhibit 001.
13. The ANR requested the following conditions be included in any permit that is issued:
 - a. The Permittee shall take reasonable precautions to prevent and control fugitive particulate matter (dust) emissions from the Project, its operations and activities under the Permittee control or supervision. Reasonable precautions taken shall include, but may not be limited to, the following measures or other equally effective measures:

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;

The paved traffic and parking area 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;

All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways and when loaded with materials that may generate fugitive dust;

All rock drills operated at the Project shall be equipped and operated with either an effective wet or dry dust control system;

All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with nozzles at appropriate locations and shall be operated as necessary;

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.

- b. 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.
- c. 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 crushers largest possible setting and maximum throughput, not actual operating rate) of greater than 150 tons per hour, unless said crushing plant has approval to operate from the Vermont Air Quality and Climate Division, ANR.

Conclusions of Law

With the inclusions of the ANR recommended conditions noted above, and conditions limiting the hours of operation, the Commission concludes that the Project complies with Criterion 1 Air Pollution.

Criteria1(B) Waste Disposal and 4 Soil Erosion:

Findings of Fact

14. Waste generated by the Project will include stormwater runoff and stumps generated by site clearing. The Project will not use a wastewater disposal system. Exhibit 001.
15. All stormwater will continue to be retained on-site and drained through the pit floor. The operator of the pit will continue to monitor the site to ensure that gravel extraction does not occur within three feet of the seasonal high-water table. Exhibit 001.
16. The Project's Standard Industrial Classification (SIC) code is 1442. The ANR Department of Environmental Conservation has issued coverage under General Permit #3-9003 (Multi-Sector General Permit #9165-9003) authorizing discharge of stormwater from the Project. Exhibit 050.
17. The operator will continue to dispose of any stumps within the approved dispersal methods. Recently cleared areas southwest of the pit area will have stumps remain on surfaces to decompose naturally. Recently cleared areas northwest of the pit area (outside the proposed materials storage area) will have former overburden materials graded over stumps (not to be removed) to naturally decay in place. Exhibit 001.
18. The gravel pit will continue to have slopes directed towards the center (bottom) of the pit and a gravel infiltration area to be left un-vegetated. Exhibit 001.
19. Long term stockpiles for future topsoil use will continue to be vegetated. Exhibit 001.
20. Prior to October 1 of each year, all slopes will be regraded, seeded, mulched and matted if necessary where extraction is completed. Exhibit 001.
21. Final slopes will be covered with topsoil, seeded, mulched and matted where necessary. The gravel driveways will be for future access or development. The low spot of the pit with

a gravel infiltration area will remain until such time that future development revises the drainage patterns. The proposed swale for the material storage will be seeded, protected with erosion control blanket, and have crushed stone check dams installed as necessary. Exhibit 001.

22. The operator will inspect the gravel pit weekly for erosion or signs of erosion with particular attention to perimeter dikes, and shall install silt control fencing downstream of perimeter dikes if any erosion is evident. Exhibit 001.
23. The Access Permit to be finalized by the VT Agency of Transportation (VTrans) requires that no water shall flow onto the State Highway. The Access Permit will also require an 18-inch culvert be placed under the access and that existing normal drainage flow is undisturbed and ponding is not created. Exhibit 047.
24. The Access Permit approves the connection of the Applicant's stormwater management system to the VTrans stormwater management system. Exhibit 047.
25. The Applicant will, at a minimum, install and maintain erosion prevention and sediment control measures in accordance with the *Low Risk Site Handbook for Erosion Prevention and Sediment Control* published by the Vermont Department of Environmental Conservation. Exhibit 047.
26. The Project will not affect the capacity of soil on the Project site to hold water.
27. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Conclusions of Law

The Project will continue to be operated as previously permitted. The Vermont Agency of Transportation requires that the construction of the new access road, at a minimum, comply with the *Low Risk Site Handbook for Erosion Prevention and Sediment Control* published by the Vermont Department of Environmental Conservation. Gravel excavation will not occur within three feet of the seasonal high-water table.

The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells and 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 Criteria 1(B) and 4.

Criterion 1(G) - Wetlands:

Findings of Fact

28. Two Class 2 wetlands and one Class 3 wetland have been delineated along the western property boundary, noted as Wetland A, Wetland B and Wetland C on the "Wetland Replanting Plan." These wetlands are downgradient from the gravel pit. Exhibits 001, 012 and 035.

29. Trees were cleared from the wetlands and wetland buffers in late 2018/early 2019. The area of cleared trees in the wetlands buffers was clearly observed on the site visit. Exhibits 012, 034 and on-the-record by the Commission.
30. The Applicant developed a wetlands remediation plan that was approved by the ANR Wetland Program. The plan included replanting the wetlands buffer with hemlock, red maple and white pine. Exhibits 033, 035, 036 and 049.
31. Restoration plantings were completed in June 2020 with documentation provided to the Wetlands Program in September. Exhibits 39, 41, 43 and 44.
32. The plan requires monitoring of the restored areas in August 2021. Any dead or dying trees will be replanted in fall 2021 and a report with narrative and photos will be filed with the District Wetlands Ecologist and the Act 250 Coordinator within 30 days of monitoring. The restoration area will be monitored again in August 2024. If a live stem count reveals that there are less than the originally planted number of trees (including new tree recruitment) then the difference shall be replanted in early fall 2024. Photos and a narrative report of findings will be submitted to the District Wetlands Ecologist and the Act 250 Coordinator within 30 days of monitoring. Exhibits 35, 041 and 049.
33. Fill placed within the wetland's buffers was removed on or before April 9, 2020. Exhibit 034.
34. With the approval of the restoration plan, the project is currently considered in compliance with the Vermont Wetland Rules (VWRs). Exhibit 049.
35. An after-the-fact Wetland Permit is not required by ANR provided the Wetlands Replanting Plan is fully implemented. Exhibits 036 and 041.
36. ANR requests that a permit condition requiring implementation of the restoration plan as described in Exhibits 034-036 as well as a condition requiring the Class 2 wetland and associated 50-foot buffers to remain undisturbed except for any replanting activities identified in the wetland restoration plan. Exhibit 049.

Conclusions of Law

The Applicant has removed fill from the wetlands buffer and replanted the 50-foot wetlands buffer. The Replanting Plan includes monitoring the planted areas until at least 2024 and submitting reports with photos. Trees will be planted to replace those that have died if the stem count reveals that there are less than originally planted.

With conditions, the Commission concludes that the project will not violate the rules of the Secretary of Natural Resources, relating to significant wetlands.

The Project complies with Criterion 1(G).

Criterion 3 – Impact on Existing Water Supply:

Findings of Fact

37. There will be no potable water required for this Project. Water for dust suppression will be provided by an off-site source. Exhibit 001.

38. Gravel extraction will not go beyond three feet above the seasonal high-water table. Exhibit 001.
39. Two well drillers had problems with locating a source of water for the neighbors across Rabbit Road from the Project. Truckloads of water necessary to lubricate the well drilling bit vanished into the ground between 93-feet to 96-feet. Well drilling was attempted at several locations and the same phenomenon was encountered. A special process was used to insert and protect the drilling tool in order to provide water for these neighbors. Exhibit 011.

Conclusions of Law

This Project does not require a potable water supply.

There was no evidence presented to convince the Commission that the Project has caused or will cause an unreasonable burden on an existing water supply.

The Project will not place an unreasonable burden on an existing supply. The Project complies with Criterion 3.

Criteria 5 Transportation and 9(K) Development Affecting Public Investments:

Findings of Fact

40. The Project is not in a Transportation Improvement District (TID).
41. Sight distances from the proposed new access on to VT Route 5 is 763 feet to the south and 707 feet to the north. The minimum sight distance and stopping sight distance is 450 feet. The posted speed limit is 50 miles per hour. Exhibit 045.
42. Since L&M acquired the gravel pit, the neighbors have experienced an increase in the number of trucks using Stevens Road. Stevens Road is very narrow. The neighbors expressed concerns for the safety of those using the road – children, pedestrians, runners, dogs, bikes – due to the number of large trucks using Stevens Road. Exhibits 009, 014, Testimony.
43. The new access will be directly off Route 5. There will be no access on to Rabbit Road from the pit. The existing access off Rabbit Road will be closed off. Exhibits 042 and 045.
44. The number of round-trip vehicles will remain at 50 per day. Exhibits 001 and 015.
45. Adjacent public investments include US Route 5 and Rabbit Road. Exhibit 001.
46. The Vermont Agency of Transportation (VTrans) has issued a Letter-of-Intent to issue an Access Permit on to Route 5 to construct a new access to serve the gravel pit. Exhibit 047.
47. The Project will not unreasonably or unnecessarily endanger the public or quasi-public investment in the facility, service or lands because the VTrans Access Permit requires erosion control measures on the new access road and requires keeping excess debris and material from tracking onto the road. Exhibit 047.
48. The Project will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service or lands.

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 measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The proposed new access directly off Route 5 and closure of the access on to Rabbit Road will greatly relieve the unsafe and adverse conditions that the neighbors expressed experiencing at the hearing. The Commission will include conditions requiring that the access on to Rabbit Road be closed. Trucks shall not use Rabbit Road or Stevens Road to access the project site. 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. On the contrary, congestion and unsafe conditions will be alleviated.

The Project complies with Criterion 5(A).

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

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the applicant bears the burden of proving that the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to the facility, service or lands. 10 V.S.A. § 6086(a)(9)(K).

The Commission concludes that the project complies with Criterion 9(K).

Criterion 8 - Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas:

Findings of Fact

Aesthetics, Scenic or Natural Beauty

49. The present site is an active, permitted gravel pit recessed into a wooded knoll bordering Route 5 and Rabbit Road and undeveloped woods and fields to the south, west and north. Exhibit 001.
50. There will be no change to the noise generated at the site. The crusher and screener will operate as previously permitted.
51. Neighbors experience noise, dust and ground rumblings from trucks using Rabbit Road and Stevens Road. Testimony.

52. Removal of the trees has increased the noise level and visibility of the project site from the Miller property. The continuous noise from the chipper, particularly on weekends and starting at 6:30 AM have adversely impacted Ms. Miller's enjoyment of her property. Exhibit 010.
53. The 0.4 acres that was cleared for increasing the area for material storage is not visible to neighbors or motorists.
54. There are no historic sites or rare and irreplaceable natural areas which will be affected by this Project. Exhibit 001.

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 noise.

AESTHETICS and NATURAL AND SCENIC 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. Env'tl. 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. Env'tl. 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 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 is the continuation of the use of the site as a sand and gravel pit. There is no proposal to change the previously permitted operation of the pit. The closure of the access on to Rabbit Road and the use of Stevens Road will reduce adverse impacts from noise, dust and ground rumblings

associated with the project's truck traffic. Conditions will be included in the permit prohibiting operation of the project on weekends and holidays.

We conclude that the Project is compatible with its surroundings and will have no adverse aesthetic impact. Accordingly, it complies with Criterion 8.

Criterion 9(E) – Extraction of Earth Resources:

55. The project involves the extraction of mineral or earth resources.
56. The hours of operation will continue to be weekdays from 7:00 AM to 5:00 PM. The screening plant will continue to operate a maximum of four weeks per year and a portable crusher will continue to operate a maximum of three weeks per year. Exhibit 001.
57. There will be no blasting or removal of material below the water table. Exhibit 001.
58. There is no proposed change to the previously permitted reclamation plan (See Exhibit 12 of Permit #3R0779-4). Exhibits 001 and 007.

Conclusions of Law

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

Criterion 10 – Town and Regional Plans:

Findings of Fact

59. At the time that the Applicant submitted this application, Thetford did not have a duly adopted Town Plan. Exhibit 001.
60. The Two Rivers-Ottawaquechee Regional Plan applies to this application. The Regional Plan in effect at the time this application was submitted, was adopted on July 26, 2017. Exhibit 001.
61. The Regional Commission has no issues with the project as proposed. Testimony.

Conclusions of Law

The Project complies with Criterion 10.

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 #3R0779-6, 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 #3R0779-6 is hereby issued.

Dated at Springfield, Vermont, this 17th day of March 2021.

By 

Tim Taylor, Chair
District # 3 Environmental Commission

Commissioners participating in this decision: Roderick J. Maclay
Suzanne Butterfield

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 (VRECP). 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. Please note that there are certain limitations on the right to appeal. 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.