



LAND USE PERMIT AMENDMENT

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

CASE NO: 4C1274-1

A & C Realty, LLC
31 Commerce Ave.
South Burlington, VT 05403

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 4 Environmental Commission hereby issues Land Use Permit Amendment 4C1274-1, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the lands identified in Book 439, Page 532, of the land records of the Town of Essex, Vermont.

This permit specifically authorizes the blasting, removal and processing of 150,000 cubic yards of rock over a 5-year period and the construction of two additional 20,000 sf buildings, for a total of three 20,000 sf buildings to be constructed on the site with access roads and associated site improvements (the "Project"). The Project is located on 123 Old Colchester Road in Essex, Vermont.

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.

1. 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 4 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 4C1274-1, 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.

The approved plans are:

Sheet 1 - "Overall Plan," dated 9/18/14, last revision 1/20/21 (Exhibit #018);

Sheet 2 - "Site Plan," dated 9/18/14, last revision 3/19/21 (Exhibit #019);

Sheet 3 - "Landscaping Plan," dated 9/18/14, last revision 3/19/21 (Exhibit #020);

Sheet 4 - "Lighting Plan," dated 9/18/14, last revision 3/19/21 (Exhibit #021);

Sheet 5 - "Roadway Details," dated 9/18/14, last revision 3/19/21 (Exhibit #022);

Sheet 6 - "Water Details," dated 9/18/14, last revision 3/19/21 (Exhibit #023);

Sheet 7 - "Sewer Details," dated 9/18/14, last revision 3/19/21 (Exhibit #024);

Sheet 8 - "Pump Station Details," dated 1/20/21, last revision 3/19/21 (Exhibit #025);

Sheet E1 - "EPSC Plan – Pre-Construction," dated 9/18/14, last revision 3/19/21 (Exhibit #026);

Sheet E2 - "EPSC Plan – Construction Phase I," dated 9/18/14, last revision 3/19/21 (Exhibit #027);

Sheet E3 - "EPSC Plan – Construction Phase II," dated 9/18/14, last revision 3/19/21 (Exhibit #028);

Sheet E4 - "EPSC Plan – Post Construction," dated 9/18/14, last revision 3/19/21 (Exhibit #029);

Sheet E5 - "EPSC Plan – Erosion Control Details," dated 9/18/14, last revision 3/19/21 (Exhibit #030);

Sheet ST1 - "Storm Management," dated 1/20/21, last revision 3/19/21 (Exhibit #031);

Sheet ST2 - "Stormwater Details," dated 9/18/14, last revision 3/19/21 (Exhibit #032);

Sheet AG - "Prime Agricultural Soil Impacts," dated 5/7/14, last revision 5/20/21 (Exhibit #033);

Sheet A200 - "Building A Elevations," undated (Exhibit #034);

Sheet A201 - "Building B Elevations," undated (Exhibit #035);

Sheet A202 - "Building C Elevations," undated (Exhibit #036);

Sheet 2A - "Existing Conditions," dated 6/18/21 (Exhibit #038);

Sheet EX1 - "Excavation Plan – Pre-Construction" dated 5/27/16, last revision 6/29/21 (Exhibit #039);

Sheet EX2 - "Excavation Plan – X-Sections," dated 5/27/16, last revision 6/29/21 (Exhibit #040); and

Sheet EX3 - "Excavation Plan – Processing," dated 5/27/16, last revision 6/29/21 (Exhibit #041).

3. All conditions of Land Use Permit #4C1274 are in full force and effect except as further amended herein.
4. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:
 - a. Wastewater System and Potable Water Supply Permit #WW-4-4205-1 issued on September 3, 2021 by the ANR Drinking Water and Groundwater Protection Division;
 - b. A Permit to Construct a Water Line Extension #C-3949-21.0 issued on September 1, 2021 by the ANR Drinking Water and Groundwater Protection Division;
 - c. Authorization of Notice of Intent #7167-9020.2 under Construction General Permit 3-9020 issued on July 30, 2021 by the ANR Watershed Management Division;
 - d. Authorization to Discharge #7167-9003 under Multi-Sector General Permit 3-9003 issued on December 22, 2015 by the ANR Watershed Management Division;
 - e. Authorization to Discharge #7167-9050.A under General Permit 3-9050 (3-Acre General Permit), issued on July 8, 2021 by the ANR Watershed Management Division;
 - f. Air Pollution Control Permit #AP-018-013 issued on April 19, 2018 by the ANR Air Pollution Control Division; and
 - g. Air Pollution Control Permit #AP-016-014 issued on July 1, 2016 by the ANR Air Pollution Control Division.
5. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
6. 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.
7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
8. 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.
9. 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.

10. 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.
11. 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.
12. Construction hours for the building and extraction will be limited to 7:00AM to 7:00PM weekdays and 8:00AM to 5:00PM on Saturday.
13. Hours of operation for blasting will be limited to 8:30AM to 4:00PM weekdays. Blasting will only occur once a week.
14. Hours of operation for rock crushing and processing will be limited to 8:30AM to 4:00PM weekdays and 8:00AM to 5:00PM on Saturday.
15. The rock crushers will be shutdown December 21 to March 21, each year.
16. The Applicant has developed an *Operation, Processing and Reclamation Plan* (July 2021) for the Project. Exhibit #042.
17. The Permittee shall implement the Vermont Department of Environmental Conservation's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016).
18. Fueling or maintenance of vehicles and equipment shall not occur in the active earth extraction area. Overnight parking of vehicles shall be outside of the active earth extraction area. "Active extraction area," for the purpose of this permit condition, is the area within the feature identified as "Approx. Blast Boundary" in Exhibit #041.
19. The Permittee shall maintain a three-foot separation zone between extraction activities and the seasonal high groundwater table.
20. The Permittee shall take reasonable precautions to prevent and control fugitive particulate matter (dust) emissions from the Project. Reasonable precautions to be taken shall include 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 and 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 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.
21. The buildings approved herein are not approved for any manufacturing use or the on-site disposal of any process wastes. The Permittee shall apply and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
 22. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
 23. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
 24. The Permittee shall implement the Construction Site Waste Reduction Plan included as Exhibit #006.
 25. Immediately upon initial clearing, grading or excavation a stabilized construction entrance must be installed and maintained as shown on Exhibits #026, 027, 028, 029 and 030. At a minimum, this entrance must be constructed and maintained in accordance with the specifications as described in the Vermont Department of Environmental

Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020). No further clearing or construction may occur until the stabilized construction entrance is complete.

26. The Permittee shall comply with Exhibits #026, 027, 028, 029, 030, 039, 040, 041, 048, 049 and 060 for erosion prevention and sediment control. The Permittee shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas.
27. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
28. All areas of disturbance must have temporary or permanent stabilization within 14 days of the initial disturbance. After this time, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site. The following exceptions apply: i) Stabilization is not required if the work is occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches).
29. All disturbed areas of the site shall be stabilized, seeded, and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 15. Between the periods of October 15 to April 15, all earth disturbing work shall conform with the "Requirements for Winter Construction" standards and specifications of the Vermont Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (February 2020).
30. 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.
31. The Permittee shall maintain an undisturbed, naturally vegetated wetland and buffer zone on the Project Tract within 50 feet of any wetlands as depicted on Exhibit #019. The term "undisturbed" means that there shall be no activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to construction, earth-moving activities, storage of materials, tree trimming or canopy

removal, tree, shrub or groundcover removal; plowing or disposal of snow, grazing or mowing.

32. The Permittee shall pay a proportional transportation impact fee toward the VT 289/VT 2A/Susie Wilson Road project, the Essex Crescent Connector project, the VT 2A/Industrial Avenue/Mountain View Drive project, and the VT 2A/James Brown Drive project pursuant to Act 145 – Transportation Impact Fees (2014). The transportation impact fees are \$241 per PM peak hour trip for the VT 289/VT 2A/Susie Wilson Road project, \$2,788 per PM peak hour trip for the Essex Crescent Connector project, \$252 per PM peak hour trip for the VT 2A/Industrial Avenue/Mountain View Drive project, and \$189 per PM peak hour trip for the VT 2A/James Brown Drive project. The Project will result in 8 PM peak hour trips through the VT 289/VT 2A/Susie Wilson Road project, and 3 PM peak hour trips through the Essex Crescent Connector project, the VT 2A/Industrial Avenue/Mountain View Drive project, and the VT 2A/James Brown Drive project. The transportation fee is calculated as follows: $[(\$241 \text{ per PM peak hour trip} \times 8 \text{ PM peak trips}) + (\$2,788 \text{ per PM peak hour trip} \times 3 \text{ PM peak trips}) + (\$252 \text{ per PM peak hour trip} \times 3 \text{ PM peak trips}) + (\$189 \text{ per PM peak hour trip} \times 3 \text{ PM peak trips})] = \$11,615.00$. The Permittee shall pay a total transportation impact fee of **\$11,615.00** to the Vermont Agency of Transportation before commencement of construction (payment should be remitted to the Vermont Agency of Transportation Development Review and Permitting Services Section, Barre City Place, 219 North Main Street, Barre, VT 05641, Attn: Christopher Clow). Exhibit #054.
33. The Permittee shall, prior to commencement of construction, submit the calculated off-site mitigation fee payment of **\$12,345.76** to the Vermont Housing and Conservation Board (VHCB, General Counsel, 58 East State Street, Montpelier, VT 05602). The off-site mitigation fee is calculated as follows: $3.02 \text{ acres (number of acres of Primary Agricultural Soils to be impacted)} \times 1 \text{ (multiplier)} \times \$4,088 \text{ (cost to acquire conservation easements for primary agricultural soils in the same geographic region)} = \$12,345.76$. If the mitigation fee is not paid within one year from the date that a Land Use Permit is issued, the amount of the fee will be subject to a simple interest annual inflation factor increase of 2.8% and the fee will increase each year on the anniversary of the Land Use Permit to an amount equal to 102.8% of the previous year's amount, rounded to the nearest dollar.
34. The Permittee shall implement the following measures regarding historic sites:
 - a. The Permittee will identify the significant portion of VT-CH-1180 as not-to-be-disturbed buffer zone on the overall site plan and all other relevant site plans. Copies of the revised site plans shall be submitted to the District #4 Environmental Commission and the Vermont Division for Historic Preservation.

- b. Topsoil removal, grading, scraping, cutting, stockpiling, logging or any other type of ground disturbance is prohibited within the archeological buffer zone without the written approval of the District Commission and VDHP.
- c. Exclusionary fences constructed of snow fencing or other structural barrier shall be erected between any construction area and the VT-CH-1180 archeological buffer zone prior to the start of construction and during all construction activity adjacent to the buffer zone limits.
- d. To ensure long-term protection of the archaeological buffer zone, two concrete markers with inserted brass plaques bearing the site number VT-CH-1180, an archaeological grid coordinate, and the phrase "no ground disturbance permitted" shall be placed within the protected area. Placement of the markers may occur prior to the start of construction but must be in place before construction is completed.
- e. In the event that maintenance of all or part of the VT-CH-1180 archaeological buffer zone is no longer desirable, or improvements requiring ground disturbance are proposed in the buffer zone, an archaeological study to further evaluate or mitigate any impact to the affected areas will be carried out by a qualified consulting archaeologist prior to any disturbance.
- f. All archaeological studies must be conducted by a qualified consulting archaeologist and should follow VDHP's Guidelines for Conducting Archaeological Studies in Vermont. The Permittee's archaeological consultant should submit any scope of work to VDHP for review and approval.
- g. Any part of the archaeological buffer zone will not be impacted until any necessary mitigation measures have been carried out. Mitigation may include but is not limited to further site identification, evaluation, data recovery, redesign of one or more proposed project components, or modifications of the buffer zone boundaries or the specific conditions that refer to the same.
- h. Mitigation measures will be discussed with and approved by the VDHP prior to implementation and a copy of all mitigation proposals will be filed with the District Commission. The archaeological studies implemented as part of this project will result in one or more final reports, as appropriate, that meet the VDHP's Guidelines for Conduction Archaeological Studies in Vermont. A digital copy of any final report will be submitted to the VDHP.
- i. The Permittee will draw up and execute covenants identifying the VT-CH-1180 archaeological buffer zone and enter them in the deed for the property. The covenants shall reference all the above restrictions and copies shall be filed with the District Commission and the VDHP.

35. Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree line to be retained as depicted on Exhibits #039, 040 and 041.
36. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
37. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit #020 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.
38. The installation of exterior light fixtures is limited to those approved in Exhibit #021, and shall be mounted no higher than 15 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
39. The installation of exterior signage is limited to those approved in Exhibits #019 and 053. The Permittee shall not erect additional exterior 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.
40. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards (CBES) in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this subject can be found at http://publicservice.vermont.gov/energy_efficiency/cbes and https://nrb.vermont.gov/documents/9f-procedure_2020-09-01.)
41. The installation and/or use of electric resistance space heat is specifically prohibited unless (i) it is approved in writing by the District Commission and/or (ii) it specifically qualifies as an exception to the prohibition of electric-resistance building heating, pursuant to Section R404.2 of the 2020 Vermont Residential Building Energy Standards OR Section C403.2.3 of the 2020 Vermont Commercial Building Energy Standards.
42. The Permittee, upon completion of the construction of each commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
43. Should the Town at any time agree to accept any private utilities being then operated by the Permittee and/or its assigns and successors in interest, the Permittee and/or its assigns and successors in interest shall be responsible to improve the same to Town specifications and shall deed all lands involved with said improvements to the Town. Such improvements may require a land use permit amendment.

44. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment and the Findings of Fact before any written contract of sale is entered into.
45. The Permittee shall reference the requirements and conditions imposed by Land Use Permit 4C1274-1 in all deeds of conveyance and leases.
46. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
47. All site work and construction shall be completed in accordance with the approved plans by **October 1, 2029**, 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 a public hearing.
48. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
49. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 27th day of September, 2021.

By /s/Parker Riehle, Vice Chair
Parker Riehle, Vice Chair
District 4 Commission

Members participating in this decision:

Kate Purcell

Pam Loranger

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.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont
Natural Resources Board
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CASE NO: 4C1274-1

A & C Realty, LLC
31 Commerce Ave.
South Burlington, VT 05403

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

I. INTRODUCTION

On June 18, 2021, A & C Realty, LLC filed an application for an Act 250 permit for a project generally described as the blasting, removal and processing of 150,000 cubic yards of rock over a 5-year period and the construction of two additional 20,000 sf buildings, for a total of three 20,000 sf buildings to be constructed on the site with access roads and associated site improvements (the "Project"). The Project is located at 123 Old Colchester Road in Essex, Vermont. The Applicant's legal interest is ownership in fee simple described in Book 439, Page 532 of the land records of Essex, Vermont.

The application, first submitted on June 18, 2021, 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 June 25, 2021. The application was deemed complete on July 27, 2021 upon receipt of the required supplemental information.

The Commission held a hearing on this application on August 24, 2021. The Commission also conducted a site visit on August 24, 2021 and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on September 24, 2021 after receipt of the additional information, an opportunity for parties to respond to that information, and 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 constitutes 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).

Accordingly, official notice is hereby taken of the *Chittenden County ECOS Plan* (2018), the *Essex Town Plan* (2016) and the *Town of Essex Official Zoning Regulations* (amended 2017) 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 seek to amend such a critical permit condition, so the Commission may consider the merits of the amendment application without conducting the rest of the Rule 34(E) analysis.

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 **Applicant**, by Al Senecal and Brian Bertsch of A & C Realty and Omega Excavating and Bryan Currier of O’Leary Burke Civil Associates.

2. The **Vermont Agency of Natural Resources (“ANR”)** through an entry of appearance dated August 19, 2021, by Kevin Anderson.
3. The **Vermont Agency of Transportation (“VTrans”)** through an entry of appearance dated August 12, 2021, by Christopher Clow.
4. The **Chittenden County Regional Planning Commission (“CCRPC”)** through an entry of appearance dated August 16, 2021, by Charlie Baker.

B. Interested Parties

No other persons were present at the Hearing and no requests for party status or Friends of the Commission status were made.

Prior to the close of Hearing, 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 found no reason to change its preliminary determinations.

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

- | | |
|---------------------------------------|----------------------------------------------|
| 1 - Water Pollution | 8(A) - Wildlife Habitat & Endangered Species |
| 1(A) - Headwaters | 9(A) - Impact of Growth |
| 1(C) - Water Conservation | 9(C) - Productive Forest Soils |
| 1(D) - Floodways | 9(D) - Earth Resources |
| 1(E) - Streams | 9(F) - Energy Conservation |
| 1(F) - Shorelines | 9(G) - Private Utility Services |
| 1(G) - Wetlands | 9(H) - Costs of Scattered Development |
| 2 - Water Supply | 9(J) - Public Utility Services |
| 3 - Impact on Existing Water Supplies | 9(K) - Effects on Public Investments |
| 6 - Educational Services | 9(L) - Settlement Patterns |
| 7 - Municipal Services | 10 - Local and Regional Plans |
| 8 - Natural Areas | |

The findings of fact are based on the application, exhibits 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. Land Use Permit #4C1274 authorized the removal of 90,000 cubic yards of rock over a 5-year period, processing the excavated rock utilizing an on-site crusher at a rate of 50 cy per hour, the construction of one 20,000 sf building to include 22 full time employees for the headquarters of Omega Excavating served by an on-site drilled well and on-site wastewater disposal system, and the construction of 1,500 feet of access road.
2. Land Use Permit #4C1274 was issued on June 28, 2016. The removal of rock and rock processing was approved for a five-year period. The construction completion date for Land Use Permit #4C1274 is October 31, 2024. To date, the vast majority of the 90,000 cubic yards of rock have been removed and processed, the temporary access road and stormwater treatment features have been constructed, but the 20,000 sf building, final access road and associated infrastructure has not been constructed.
3. The Project site is 57.8 acres in size.
4. The current Project includes the blasting, removal and processing of 150,000 cubic yards of rock over a 5-year period and the construction of two additional 20,000 sf buildings, for a total of three 20,000 sf buildings to be constructed on the Project site with access roads and associated site improvements. There will be 60 employees associated with the operation of the buildings.

Criterion 1 - Air Pollution; and Criterion 9(E) – Extraction of Earth Resources:

Findings of Fact

5. The Project includes the blasting, excavation and processing of approximately 150,000 cubic yards of rock over a 5-year period.
6. Blasting activities will conform to the Applicant's *Blasting Plan* and ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016). Exhibit #012.

7. The Applicant has developed an *Operation, Processing and Reclamation Plan* (July 2021) for the Project. Exhibit #042. A plan has been developed to show the areas of the site that will be used for rock processing and stockpiling. Exhibit #041.
8. The Applicant has developed a *Hydrogeologic Assessment* (July 2021) for the Project. Exhibit #044. The Applicant concludes that the drinking water sources and natural water resources in the vicinity are unlikely to be impacted by blasting. Exhibit #044. The ANR Drinking Water and Groundwater Protection Division concurred with the Applicant's conclusions and found that water quality monitoring is not required for the Project. Exhibit #045.
9. The Applicant represents that two rock crushers will be used to process rock into aggregate. The Applicant represents that the aggregate will be sold and trucked off-site. Exhibit #001 and 042.
10. Construction hours for the building and extraction will be limited to 7:00AM to 7:00PM weekdays and 8:00AM to 5:00PM on Saturday.
11. Hours of operation for blasting will be limited to 8:30AM to 4:00PM weekdays. Blasting will only occur once a week.
12. Hours of operation for rock crushing and processing will be limited to 8:30AM to 4:00PM weekdays and 8:00AM to 5:00PM on Saturday.
13. The rock crushers will be shut down December 21 to March 21, each year.
14. The ANR Air Pollution Control Division issued Air Pollution Control Permit #AP-018-013 on April 19, 2018 and Air Pollution Control Permit #AP-016-014 on July 1, 2016 authorizing operation of the rock crushers to be used on the Project site. Exhibit #009.
15. During blasting, rock removal, rock processing and construction, the Applicant will control dust through the application of water and/or other dust control agents as approved by ANR. ANR requests and the Commission approves the following permit condition related to Criterion 1 for Air Pollution (Exhibit #056):
 - a. The Permittee shall take reasonable precautions to prevent and control fugitive particulate matter (dust) emissions from the Project. Reasonable precautions to be taken shall include the following measures or other equally effective measures for Project operations and activities under the Permittee's control or supervision:
 - i. 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;
- ii. 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;
 - iii. 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;
 - iv. All rock drills operated at the Project shall be equipped and operated with either an effective wet or dry dust control system;
 - v. 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;
 - vi. 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
 - vii. 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.
16. After blasting, rock removal and rock processing are completed, the Project site will be developed with a total of three 20,000 sf buildings with associated site improvements. This construction is considered to be the Reclamation Plan for the Project site. Exhibits #019 and 042.
 17. All commercial or industrial buildings constructed as part of the Project will have high efficiency oil or gas furnaces.

Conclusions of Law

Under Criterion 1 (Air Pollution), a permit will be granted if the subdivision or development will not result in undue air pollution.

Under Criterion 9(E), a permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material: (i) when it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and (ii) upon approval by the District Commission of a site rehabilitation plan which insures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the State, except that the gravel, silt and sediment may be removed pursuant to the rules of the Agency of Natural Resources, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resource board.

The ANR Air Pollution Control Permits #AP-018-013 and #AP-016-014 create a presumption pursuant to Act 250 Rule 19 that the Project will not result in undue air pollution. Technical determinations made by ANR are entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR. Additionally, the Applicant has agreed to mitigating conditions regarding the control of fugitive particulate matter. Lastly, the commercial or industrial buildings will use high efficiency oil or gas furnaces and will not result in undue air pollution.

In addition, the Project will comply with ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016), the Applicant's *Blasting Plan* (Exhibit #012) and the Applicant's *Operation, Processing and Reclamation Plan* (Exhibit #042). The Project site will be reclaimed with the construction of three 20,000 sf buildings and associated improvements.

As conditioned herein, the Commission concludes that the Project complies with Criterion 1(Air Pollution) and Criterion 9(E).

Criterion 1(B) - Waste Disposal; and Criterion 4 - Soil Erosion:

Findings of Fact

18. The Applicant has developed an *Operation, Processing and Reclamation Plan* (July 2021) for the Project. Exhibit #042. A plan has been developed to show the areas of the site that will be used for material processing and stockpiling. Exhibit #041.

19. Authorization of Notice of Intent #7167-9020.2 under Construction General Permit 3-9020 was issued on July 30, 2021 by the ANR Watershed Management Division. Exhibit #060.
20. Authorization to Discharge #7167-9050.A under General Permit 3-9050 was issued on July 8, 2021 by the ANR Watershed Management Division. Exhibit #047.
21. The Project's Standard Industrial Classification ("SIC") codes are 1411, 1422-1429, 1481 and 1499. The applicant has prepared a Stormwater Pollution Prevention Plan ("SWPPP") and will implement Best Management Practices ("BMPs") to prevent contaminated runoff from the industrial activity including periodic facility inspections, monitoring and reporting. Exhibit #049.
22. Authorization to Discharge #7167-9003 under Multi-Sector General Permit 3-9003 was issued on December 22, 2015 by the ANR Watershed Management Division. Exhibit #048.
23. Proposed erosion control measures to be used during construction are shown on the site-specific erosion prevention and sediment control plans. Exhibits #026, 027, 028, 029, 030, 039, 040 and 041. The Project will include a total authorized disturbance of 10.59 acres, where no more than 5 acres of land may be disturbed at any one time. Exhibit #060.
24. ANR requests and the Commission approves the following permit condition related to Criterion 1(B) for Waste Disposal (Exhibit #056):
 - a. Blasting activities will conform to the Blasting Plan and Rock Excavation Plan and ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016).
 - b. Fueling or maintenance of vehicles and equipment shall not occur in the active earth extraction area. Overnight parking of vehicles shall be outside of the active earth extraction area. "Active extraction area," for the purpose of this permit condition, is the area within the feature identified as "Approx. Blast Boundary" in Exhibit #041.
 - c. The Permittee shall maintain a three-foot separation zone between extraction activities and the seasonal high groundwater table.
25. Permanent erosion controls consist of the construction of three 20,000 sf buildings, access roads and other associated site improvements including grass channels and stormwater detention features.
26. The wastewater from the three 20,000 sf buildings will be disposed of through a connection to the municipal wastewater treatment system.

27. Wastewater System and Potable Water Supply Permit #WW-4-4205-1 was issued on September 3, 2021, by the ANR Drinking Water and Groundwater Protection Division. Exhibit #058.
28. The Permittee shall implement the Construction Site Waste Reduction Plan included as Exhibit #006.
29. The Project will not have any floor drains.
30. The buildings approved herein are not approved for any manufacturing use or the on-site disposal of any process wastes. By permit condition the Commission will require that the Applicant shall apply and receive amended approval from the District Commission for any change in the use of the buildings which involves the storage or handling of any regulated substances or the generation of hazardous wastes.
31. The Project will not affect the capacity of soil on the Project site to hold water.
32. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells.

Conclusions of Law

Under Criterion 1(B), a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the project will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

Under Criterion 4, a permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The ANR wastewater permit creates a presumption under 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 will not result in undue water pollution. Technical determinations made by ANR are entitled to substantial deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

The ANR stormwater permits create a presumption under Act 250 Rule 19 that stormwater runoff authorized by these permits will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. Technical determinations made by ANR are entitled to substantial

deference. No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

Given the nature of the Project, it is imperative that construction of the Project is undertaken in strict compliance with the Stormwater Discharge Permit #7167-9050.A (Exhibit #047), Multi-Sector General Permit #7167-9003 (Exhibit #048), Construction General Permit #7167-9020.2 (Exhibit #060), the site-specific erosion prevention and sediment control plans (Exhibits #026, 027, 028, 029, 030, 039, 040 and 041.), the *Blasting Plan* (Exhibit #012), the *Operation, Processing and Reclamation Plan* (Exhibit #042) and ANR's *Best Management Practices for Blasting Activities to Avoid Environmental Contamination* (2016). The Commission will by permit condition require the Project to comply with these permits and plans.

As conditioned herein, the Project will meet all applicable Department of Environmental Conservation regulations on waste disposal and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Therefore, the Project complies with Criterion 1(B).

As conditioned herein, 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. Therefore, the Project complies with Criterion 4.

Criterion 5 - Transportation:

Findings of Fact

33. The Project is not located in a Transportation Improvement District ("TID").
34. The Project site has an existing peak hour traffic allocation of 29 AM peak hour trips and 30 PM peak hour trips as authorized under Land Use Permit #4C1274. Exhibit #054.
35. The construction phase of the Project, including blasting, excavation and processing of rock, will result in a peak hour trip generation of 10 PM peak hour trips. Exhibit #010.
36. The operation of the three 20,000 sf buildings will include approximately 60 employees and will result in a peak hour trip generation of 41 AM peak hour trips and 45 PM peak hour trips. Exhibit #054.
37. The net peak hour trip generation for the Project is 12 AM peak hour trips and 15 PM peak hour trips. Exhibit #054.
38. The Project entrance off Old Colchester Road is approximately 285 feet north of the Old Colchester Road/VT Route 2A intersection. Old Colchester Road is currently posted at 25

- MPH. An at-grade railroad crossing currently exists just west of the intersection of the Project entrance with Old Colchester Road. Exhibit #010.
39. Sight distances at the Project entrance are greater than 300 feet onto Old Colchester Road. This exceeds the State recommendation of 275 feet. Exhibit #010.
 40. Currently, the Project site is accessed with an existing gravel access road. The existing gravel road will be utilized during the construction phase of the Project, including blasting, excavation and processing of rock. Following construction, a 30-foot-wide access road will be constructed, paved, and a 100-foot-wide cul-de-sac will be constructed at the northern end of the road. Exhibit #019. The on-going maintenance of the access road will be completed in accordance with Exhibit #062.
 41. The Project does not incorporate new transportation demand management strategies. Exhibit #001. However, there is a 10-foot-wide pedestrian path that runs along Old Colchester Road and connects the site to the Essex Junction Village Center and to the newly constructed Pinecrest Drive sidewalk. Exhibit #017.
 42. The Town of Essex has determined that 87 parking spaces are adequate for the demands of the Project. Exhibit #017.
 43. VTrans has not raised any concerns relative to the impact of the Project on local traffic congestion or safety. Exhibit #054. However, VTrans requests that the Applicant pay a proportional transportation impact fee toward the VT 289/VT 2A/Susie Wilson Road project, the Essex Crescent Connector project, the VT 2A/Industrial Avenue/Mountain View Drive project, and the VT 2A/James Brown Drive project pursuant to Act 145 – Transportation Impact Fees (2014). The transportation impact fees are \$241 per PM peak hour trip for the VT 289/VT 2A/Susie Wilson Road project, \$2,788 per PM peak hour trip for the Essex Crescent Connector project, \$252 per PM peak hour trip for the VT 2A/Industrial Avenue/Mountain View Drive project, and \$189 per PM peak hour trip for the VT 2A/James Brown Drive project. The Project will result in 8 PM peak hour trips through the VT 289/VT 2A/Susie Wilson Road project, and 3 PM peak hour trips through the Essex Crescent Connector project, the VT 2A/Industrial Avenue/Mountain View Drive project, and the VT 2A/James Brown Drive project. The transportation fee is calculated as follows: $[(\$241 \text{ per PM peak hour trip} \times 8 \text{ PM peak trips}) + (\$2,788 \text{ per PM peak hour trip} \times 3 \text{ PM peak trips}) + (\$252 \text{ per PM peak hour trip} \times 3 \text{ PM peak trips}) + (\$189 \text{ per PM peak hour trip} \times 3 \text{ PM peak trips})] = \$11,615.00$. The Applicant shall pay a total transportation impact fee of \$11,615.00 to the Vermont Agency of Transportation before commencement of construction (payment should be remitted to the Vermont Agency of Transportation Development Review and Permitting Services Section, Barre City Place, 219 North Main Street, Barre, VT 05641, Attn: Christopher Clow). Exhibit #054.

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, with payment of the Act 145 fair share fee, 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. Given the type, scale and transportation impacts of this Project, the existing transportation measures including connecting sidewalk and pathways are appropriate for this Project.

As conditions herein, the Commission concludes that the Project complies with Criterion 5(A) and complies with Criterion 5(B).

Criterion 8 - Aesthetics, Scenic or Natural Beauty:

Findings of Fact

44. Presently, the Project tract is used for rock extraction including blasting, excavation and processing of rock as authorized under Land Use Permit #4C1274, or is wooded and undeveloped.
45. Blasting, excavation and processing of rock has occurred on the Project site since 2016. Exhibit #001. To date, the Commission has not received complaints for the blasting, excavation and processing of rock that has already taken place on the Project site
46. The Project is bounded on the north by State-owned undeveloped land and VT 289. The Project is bounded on the south by Old Colchester Road and Town-owned tree farm and park. The Project is bounded to the east by undeveloped land and VT 289. The Project is currently bounded on the west by railroad tracks, a property used for mini storage, and residential homes along Route 2. The Village of Essex Junction is located to the west and south of the Project site.

47. The Project is located within Essex's Industrial district (I1) and the Agricultural Residential (AR) district. However, all development for the Project will take place within the I1 district. Exhibit #017. The intention of the I1 district is to provide employment opportunities in manufacturing, warehousing, and research and development where commercial uses in I1 districts serve the industries and their employees.
48. The regional plan that applies to the Project is the *Chittenden County ECOS Plan* (2018). The CCRPC has indicated that the project is in conformance with the Planning Areas of the *Chittenden County ECOS Plan* (2018). Exhibit #055.
49. The municipal plan that applies to the Project is the *Essex Town Plan* (2016).
50. The Project received approval from the Town of Essex Planning Commission with respect to the *Town of Essex Official Zoning Regulations* (amended 2017). Exhibit #017.
51. The Project includes the blasting, excavation and processing of 150,000 cubic yards of rock over a 5-year period and the construction of two additional 20,000 sf buildings, for a total of three 20,000 sf buildings with access roads and associated site improvements. The buildings will be approximately 30 feet tall. Exhibits #019, 034, 035 and 036.
52. All utilities have been designed to be underground to minimize visibility. Exhibit #001.
53. The trees to be retained as depicted on Exhibit #019 will be protected by a snow fence during construction to prevent root damage as depicted in Exhibit #039, 040 and 041.
54. The Project will be landscaped as outlined on Exhibit #020. The Applicant agrees to continually maintain the landscaping as approved.
55. Exterior lighting will be installed as depicted on Exhibit #021. All fixtures will be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated and shall be mounted 15 feet above ground surface.
56. The sign will be located and constructed as outlined on Exhibits #019 and 053 and will be unlighted.

Conclusions of Law

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. 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. Envtl. Ct. May 17, 2010) (citing Re: Susan Dollenmaier, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt Envtl. Bd. Feb. 7, 2005); In re Eastview at Middlebury, Inc., No. 256-11-06 Vtec, slip op. at 5 (Vt. Envtl. 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. Envtl. Bd., Nov. 4, 1985) (cited in Rinkers, No. 302-12-08 Vtec, Decision and Order at 12-13).*

The Project is in an area zoned by the Town of Essex for industrial and commercial uses. Although the Project will remove open space, the three 20,000 sf buildings are not expected to have an adverse impact under aesthetics. Accordingly, this aspect of the Project complies with Criterion 8.

The Project will include blasting, excavation, and processing of 150,000 cubic yards of rock over a 5-year period. The Project will also include the shipment of processed rock off-site with trucks. Therefore, the Commission concludes that the resource excavation aspect of the Project will have an adverse aesthetic impact. Accordingly, the Commission must 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)*.

The Commission has reviewed relevant portions of the *Essex Town Plan (2016)*. The Plan identified no specific standard relating to the aesthetics of the area in which the Project is located. Therefore, the Commission reviewed portions of the *Town of Essex Official Zoning Regulations (amended 2017)* and did not find that the Project violates a clear community standard. Furthermore, the Project was reviewed and approved by the Essex Planning Commission with respect to the *Town of Essex Official Zoning Regulations (amended 2017)*.

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)*.

The Project will include blasting, excavation, and processing of 150,000 cubic yards of rock over a 5-year period. The Project will also include the shipment of processed rock off-site with trucks. The Project is located within the I1 Industrial district in the Town of Essex. Since 2016 the Project site has been used for rock extraction including blasting, excavation, and processing of rock. To

date, the Commission has not received complaints for the blasting, excavation and processing of rock that has already taken place on the Project site.

Therefore, the Commission finds 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 proposes weekly and seasonal limitations on hours of operation for blasting, excavation and processing of rock. Additionally, blasting, excavation and processing of rock is limited to a 5-year period. Furthermore, the Applicant will complete the Project in accordance with the *Blasting Plan* (Exhibit #012), and the *Operation, Processing and Reclamation Plan* (Exhibit #042).

Given all of these considerations, the Commission finds that the Applicant has taken reasonable mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

(d) Conclusion

As conditioned herein, the Commission concludes that the Project will not have an undue adverse effect on the aesthetics, scenic or natural beauty of the area. The Commission concludes that the Project complies with Criterion 8 for aesthetics, scenic and natural beauty.

Criterion 8 - Historic Sites:

Findings of Fact

57. A Phase I archaeology site identification survey and a Phase II archaeology site identification survey were previously completed for the Project site. Exhibits #050 and 051. Archaeological site VT-CH-1180 was designated based on the results of the surveys.

58. The Vermont Division of Historic Preservation (“VDHP”) recommended and the Commission accepts the following conditions to be included in any permit issuance (Exhibit #052):
- a. The Permittee will identify the significant portion of VT-CH-1180 as not-to-be-disturbed buffer zone on the overall site plan and all other relevant site plans. Copies of the revised site plans shall be submitted to the District #4 Environmental Commission and the Vermont Division for Historic Preservation.
 - b. Topsoil removal, grading, scraping, cutting, stockpiling, logging or any other type of ground disturbance is prohibited within the archeological buffer zone without the written approval of the District Commission and VDHP.
 - c. Exclusionary fences constructed of snow fencing or other structural barrier shall be erected between any construction area and the VT-CH-1180 archeological buffer zone prior to the start of construction and during all construction activity adjacent to the buffer zone limits.
 - d. To ensure long-term protection of the archaeological buffer zone, two concrete markers with inserted brass plaques bearing the site number VT-CH-1180, an archaeological grid coordinate, and the phrase “no ground disturbance permitted” shall be placed within the protected area. Placement of the markers may occur prior to the start of construction but must be in place before construction is completed.
 - e. In the event that maintenance of all or part of the VT-CH-1180 archaeological buffer zone is no longer desirable, or improvements requiring ground disturbance are proposed in the buffer zone, an archaeological study to further evaluate or mitigate any impact to the affected areas will be carried out by a qualified consulting archaeologist prior to any disturbance.
 - f. All archaeological studies must be conducted by a qualified consulting archaeologist and should follow VDHP’s *Guidelines for Conducting Archaeological Studies in Vermont*. The Permittee’s archaeological consultant should submit any scope of work to VDHP for review and approval.
 - g. Any part of the archaeological buffer zone will not be impacted until any necessary mitigation measures have been carried out. Mitigation may include but is not limited to further site identification, evaluation, data recovery, redesign of one of more proposed project components, or modifications of the buffer zone boundaries or the specific conditions that refer to the same.

- h. Mitigation measures will be discussed with and approved by the VDHP prior to implementation and a copy of all mitigation proposals will be filed with the District Commission. The archaeological studies implemented as part of this project will result in one or more final reports, as appropriate, that meet the VDHP's *Guidelines for Conducting Archaeological Studies in Vermont*. A digital copy of any final report will be submitted to the VDHP.
- i. The Permittee will draw up and execute covenants identifying the VT-CH-1180 archaeological buffer zone and enter them in the deed for the property. The covenants shall reference all the above restrictions and copies shall be filed with the District Commission and the VDHP.

Conclusions of Law

The Commission uses a three-part test to determine whether the Project meets the portion of Criterion 8 relating to historic sites. The Commission determines: (1) whether the Project site is or contains a historic site; (2) whether the proposed Project will have an adverse effect on the historic site; and (3) whether the adverse effect will be undue. *Re: Steven L. Reynolds and Harold and Eleanor Cadreact, #4C1117-EB, Findings of Fact, Conclusions of Law, and Order at 5 (Vt. Envtl. Bd. May 27, 2004); Re: Manchester Commons Associates, #8B0500-EB Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Envtl. Bd. Sept. 29, 1995).*

1. Whether the proposed project site is or contains a historic site.

"Historic site" is defined as "any site, structure, district or archeological landmark which has been officially included in the National Register of Historic Places and/or the State Register of Historic Places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant." 10 V.S.A § 6001(9).

Listing on the National and State Registers is a question of fact. *Re: Manchester Commons, supra, at 19.* If a structure is listed on the State Register as a historic site, Act 250 has no discretion to declare such structure not to be historic. *Re: Stonybrook Condominium Owners Association, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order at 9 (Vt. Envtl. Bd. Sep. 18, 2001); Re: OMYA, Inc. and Foster Brothers Farm, Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Envtl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).*

Even if a site has not been listed on the National or State Register, 10 V.S.A § 6001(9) allows the Commission to declare it to be a "historic site" if it is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant. Accordingly, the Commission must consider whether such testimony establishes a site, structure, district, or archeological landmark as historically significant. The Commission is not bound by the opinion provided by the Council, but rather, must weigh the testimony and make the determination. *Re: Manchester Commons, supra, at 20.*

A Phase I and a Phase II archaeological investigation were completed. Archaeological site VT-CH-1180 was designated based on the results of the surveys. Consequently, the Commission has determined that the Project site contains a historic site.

2. Whether the proposed Project will have an adverse effect on the historic site

The next question is whether the Project will have an adverse effect on the historic site, or whether the Project is in harmony with or fits the historic context of the site.

Important guidelines in evaluating this question include the following: (1) whether there will be physical destruction, damage, or alteration of those qualities which make the site historic, such as an existing structure, landscape, or setting; and (2) whether the proposed project will have other effects on the historic structure, landscape, or setting which are incongruous or incompatible with the site's historic qualities, including, but not limited to, such effects as isolation of an historic structure from its historic setting, new property uses, or new visual, audible or atmospheric elements. *Re: Middlebury College, #9AO177-EB, Findings of Fact, Conclusions of Law and Order at 10 (Vt. Env'tl. Bd. Jan. 26, 1990); cited in Re: OMYA, Inc. and Foster Brothers Farm, Inc., #9A0107-2-EB, Findings of Fact, Conclusions of Law, and Order at 39 (Vt. Env'tl. Bd. May 25, 1999), aff'd, OMYA Inc. v. Town of Middlebury, 171 Vt. 532 (2000).*

VT-CH-1180 will be buffered with a not-to-be-disturbed zone and will be protected with exclusionary fences during construction and will be marked with concrete markers. No disturbances to VT-CH-1180 will occur.

As conditioned herein with the mitigation conditions proposed by VDHP, the Commission concludes that the Project will not have an adverse impact on historic sites. Therefore, the Commission concludes that the Project complies with Criterion 8 for historic sites.

Criterion 9(B) - Primary Agricultural Soils:

Findings of Fact

59. The tract is not located in a designated growth area referenced in 10 V.S.A. §6093(a).
60. The municipal plan that applies to the Project is the *Essex Town Plan* (2016). The regional plan that applies to the Project is the *Chittenden County ECOS Plan* (2018).
61. The Project is located within Essex's Industrial district (I1) and the Agricultural Residential (AR) district. However, all development for the Project will take place within the I1 district. Exhibit #017. The intention of the I1 district is to provide employment opportunities in manufacturing, warehousing, and research and development where commercial uses in I1 districts serve the industries and their employees.

62. The tract is bordered to the south and west by mini-storage properties, auto repair shops, gasoline stations, Suburban Propane property, CSWD drop off center, the Gauthier Industrial Park (LUP #4C0842 and amendments), the Gardenside residential complex (LUP #4C1290 and amendments) the Pioneer Street residential subdivision (LUP #4C0039 and amendments), the Royal Park mobile home park and the Suffolk Lane residential subdivision (LUP #4C0617 and amendments).
63. Municipal water, municipal wastewater, natural gas, and electricity are proposed to serve the Project.
64. The Project includes the following:
 - a. 57.8 acres of land.
 - b. 40.75 acres of land that is not mapped as or considered to be primary agricultural soils.
 - c. 7.87 acres of primary agricultural soils that were previously disturbed and do not warrant mitigation.
 - d. 3.81 acres of soil that do not meet the statutory definition of primary agricultural soils due to the existence of wetlands and steep slopes.
 - e. 2.35 acres of primary agricultural soils that will not be disturbed by the Project.
 - f. 3.02 acres of primary agricultural soils which will be directly or indirectly impacted by the Project and warrant mitigation.
65. The Applicant has attested that they do not own or control any other land containing non-agricultural soils that are reasonably suited for the purpose of the Project. Exhibit #001.
66. The Applicant propose to mitigate impacts to primary agricultural soils via off-site mitigation, only.
67. The Applicant request that the Project tract be designated as an Industrial Park pursuant to 10 V.S.A. §6001(37):

“‘Industrial park’ means an area of land permitted under this chapter that is planned, designated, and zoned as a location for one or more industrial buildings, that includes adequate access roads, utilities, water, sewer, and other services necessary for the uses of the industrial buildings, and includes no retail use except that which is incidental to an industrial use, and no office use except that which is incidental or secondary to an industrial use.”

Conclusions of Law

Act 250 defines primary agricultural soil as either (1) important farmland soils map unit identified by the Natural Resources Conservation Service of the United States Department of Agriculture (“NRCS”) as prime, statewide, or local importance, or (2) “soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities...” 10 V.S.A. §6001(15).

The Commission finds that the Project will result in a reduction in the potential of primary agricultural soils, through direct or indirect impacts to the soils. Therefore, the District Commission must conduct a review of subcriteria i, ii, iii and iv of Criterion 9(B).

Subcriterion (i)

The Commission finds that the Project will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential. Therefore, the Commission concludes that the Applicant has met subcriterion (i).

Subcriterion (ii)

The Applicant affirms that it does not own or control any land containing non-agricultural soils which are reasonably suited for this Project. Exhibit #001. Therefore, the Commission concludes that the Applicant has met subcriterion (ii).

Subcriterion (iii) and (iv)

In most instances, projects that are located outside designated growth centers are required to provide on-site mitigation of primary agricultural soils through the use of “innovative land use design resulting in compact development patterns which will preserve primary agricultural soils on the project tract for present and future agricultural use.”

Subcriterion (iii) is not expressly met since the Project would not minimize the reduction of the agricultural potential of the on-site primary agricultural soils and does not account for on-site mitigation. However, the Commission has the flexibility to approve alternate mitigation proposals both inside and outside of designated centers in appropriate circumstances, where in lieu of the provisions of 10 V.S.A. §6093(a)(2) and 10 V.S.A §6098(a)(9)(B)(iii), the Commission may require payment of an off-site mitigation fee, or a combination of on-site or off-site mitigation.

In accordance with the Natural Resources Board *Statement of Procedure: Preservation of Primary Agricultural Soils Policy* (2012), appropriate circumstances may be based on a finding of the following:

- a) *“the tract of land containing primary agricultural soils is of limited value in terms of contributing to an economic or commercial agricultural operation and devoting the land to agricultural uses is*

considered impracticable based on the size of the land or its location in relationship to other agricultural and nonagricultural uses; or

- b) the project tract is surrounded by or adjacent to other high-density development with supporting infrastructure and, as a result of good land design, the project will contribute to the existing compact development patterns in the area; or*
- c) the area contains a mixture of uses, including commercial and industrial uses and a significant residential component, supported by municipal infrastructure, and*
- d) the District Commission determines that payment of an off-site mitigation fee, or some combination of on-site or off-site mitigation, will best further the goal of preserving Primary Agricultural soils for present and future agricultural use with special emphasis on protecting Prime Agricultural soils this serving to strengthen the long-term economic viability of Vermont's agricultural resources."*

The Project meets (c) above, as the surrounding area contains a mixture of uses including commercial, industrial and a significant residential component including mini-storage properties, auto repair shops, gasoline stations, Suburban Propane property, CSWD drop off center, the Gauthier Industrial Park (LUP #4C0842 and amendments), the Gardenside residential complex (LUP #4C1290 and amendments) the Pioneer Street residential subdivision (LUP #4C0039 and amendments), the Royal Park mobile home park and the Suffolk Lane residential subdivision (LUP #4C0617 and amendments). The surrounding uses are supported by municipal infrastructure including water, natural gas and electricity. Also, municipal sewer is provided to most of these surrounding properties. The Project will be supported by water, sewer, natural gas and electricity. As the Commission has determined that the Project meets (c) above, it need not proceed further with an assessment of whether the Project complies with (a) or (b), above.

Regarding (d) and Subcriterion (iv), the Commission finds that the Project meets the appropriate circumstances guidelines and that the mitigation may be solely off-site. The Commission concludes that payment of an off-site mitigation fee will further the goal of preserving primary agricultural soils for present and future agricultural use with special emphasis on protecting prime agricultural soils thus serving to strengthen the long-term economic viability of Vermont's agricultural resources. The Commission also finds that the off-site mitigation arrangement is not inconsistent with the agricultural elements of the local and regional plans and 24 V.S.A §4302.

The Commission concludes that the Project will result in a reduction in the agricultural potential of primary agricultural soils on the Project tract; however, the Applicant has satisfied the applicable provisions of subcriteria (i)-(iv). Therefore, the Project meets the appropriate circumstances guidelines and the mitigation may be off-site.

The Commission will require the Applicant to pay an off-site mitigation fee to the Vermont Housing and Conservation Board. The off-site mitigation fee calculation shall use the 2021 rate to acquire conservation easements for primary agricultural soils in the same geographic region of \$4,088 per acre. The Commission finds that the Project meets the definition of an Industrial Park and will be able to use the flexibility afforded by 10 V.S.A. 6093(a)(4), allowing for a 1:1 mitigation ratio.

As conditioned herein, the Commission concludes that the Project complies with Criterion 9(B).

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 4C1274-1, 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 4C1274-1 is hereby issued.

DATED this 27th day of September, 2021.

By /s/Parker Riehle, Vice Chair
Parker Riehle, Vice Chair
District 4 Environmental Commission

Commissioners participating in this decision:

Kate Purcell

Pam Loranger

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.

Findings of Fact, Conclusions of Law, and Order 4C1274-1
Page 24

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.

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Exhibit List



Application #	4C1274-1 (9/3/21)
Applicant(s)	A & C Realty LLC c/o AI Senecal
Landowner(s)	A & C Realty LLC c/o AI Senecal
Project Town(s):	Essex

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
000		000 Exhibit List	
001	6/18/21	001 Act 250 Application; and cover letter (if provided)	Applicant
002	6/18/21	002 Schedule G	Applicant
003	6/18/21	003 Land Use Permit 4C1274	Applicant
004	6/18/21	004 Location Plan	Applicant
005	6/18/21	005 Soils Map	Applicant
006	6/18/21	006 Construction Waste Reduction Plan	Applicant
007	6/18/21	007 Construction General Permit 7167-9020.1	Applicant
008	6/18/21	008 Email from Ashley Carver - No MSGP Amendment Required	Applicant
009	6/18/21	009 Existing Air Pollution Control Permits	Applicant
010	6/18/21	010 Traffic Impact Evaluation	Applicant
011	6/18/21	011 Municipal Impact Questionnaire	Applicant
012	6/18/21	012 Blasting Plan	Applicant
013	6/18/21	013 Processing Plan	Applicant
014	6/18/21	014 Hydrogeologic Assessment	Applicant
015	6/18/21	015 Primary Agriculture Intake Letter	Applicant
016	6/18/21	016 Local & Regional Plan Excerpts	Applicant
017	6/18/21	017 Town Approval	Applicant
018	6/18/21	018 Sheet 1, Overall Plan, last revised 1-20-21	Applicant
019	6/18/21	019 Sheet 2, Site Plan, last revised 3-19-21	Applicant
020	6/18/21	020 Sheet 3, Landscaping Plan, last revised 3-19-21	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
021	6/18/21	021 Sheet 4, Lighting Plan, last revised 3-19-21	Applicant
022	6/18/21	022 Sheet 5, Roadway Details, last revised 3-19-21	Applicant
023	6/18/21	023 Sheet 6, Water Details, last revised 3-19-21	Applicant
024	6/18/21	024 Sheet 7, Sewer Details, last revised 3-19-21	Applicant
025	6/18/21	025 Sheet 8, Pump Station Details, last revised 3-19-21	Applicant
026	6/18/21	026 Sheet E1, EPSC Pre Construction, last revised 3-19-21	Applicant
027	6/18/21	027 Sheet E2, EPSC Construction Phase 1, last revised 3-19-21	Applicant
028	6/18/21	028 Sheet E3, EPSC Construction Phase 2, last revised 3-19-21	Applicant
029	6/18/21	029 Sheet E4, EPSC Post Construction, last revised 3-19-21	Applicant
030	6/18/21	030 Sheet E5, EPSC Erosion Control Details, last revised 3-19-21	Applicant
031	6/18/21	031 Sheet ST1, Storm Management Plan, last revised 3-19-21	Applicant
032	6/18/21	032 Sheet ST2, Storm Details, last revised 3-19-21	Applicant
033	6/18/21	033 Sheet AG, Prime Agricultural Soil Impacts, last revised 5-20-21	Applicant
034	6/18/21	034 Sheet A200, Building Elevation A, last revised 1-20-21	Applicant
035	6/18/21	035 Sheet A201, Building Elevation B, last revised 1-20-21	Applicant
036	6/18/21	036 Sheet A202, Building Elevation C, last revised 1-20-21	Applicant
037	7/15/21	037 Cover Letter by Bryan Carrier re Incomplete Letter Response 7-15-21	Applicant
038	7/15/21	038 SH 2A - Existing Conditions 6-18-21	Applicant
039	7/15/21	039 SH EX1 - Extraction Plan - Pre Construction 6-29-21	Applicant
040	7/15/21	040 SH EX2 - Extraction Plan - X Sections 6-29-21	Applicant
041	7/15/21	041 SH EX3 - Extraction Plan - Processing 6-29-21	Applicant
042	7/15/21	042 Operations Plan 7-14-21	Applicant
043	7/15/21	043 Hydrogeologic Assessment 2-2-16	Applicant
044	7/15/21	044 Phase II Hydrogeologic Assessment 7-13-21	Applicant
045	7/15/21	045 Review Email from DWGPD 7-15-21	Applicant
046	7/15/21	046 CGP Submission 6-29-21	Applicant
047	7/15/21	047 Stormwater General Permit #7167-9050.A Issued July 8, 2021	Applicant
048	7/15/21	048 Multi-Sector General Permit #7167-9003 Issued December 22, 2015	Applicant
049	7/15/21	049 Stormwater Pollution Prevention Plan - Greystone Phase II Updated March 26, 2021	Applicant
050	7/15/21	050 Greystone Phase I EOF 2015 - UVM	Applicant

No.	Date Received (Office Use Only)	Document Name/Description	Submitted By (Office Use Only)
051	7/15/21	051 Greystone Phase II EOF 2015 - UVM	Applicant
052	7/15/21	052 VDHP Sign Off Letter 2015	Applicant
053	7/15/21	053 Sign Detail - Greystone	Applicant
054	8/12/21	054 VTrans Comment Letter	VTrans
055	8/17/21	055 Letter by CCRPC re Comments on Project (8/16/21)	Regional Planning Commission
056	8/19/21	056 ANR Entry of Appearance Comments (8/19/21)	Applicant
057	9/3/21	057 Cover Letter by Bryan Currier re Hearing Recess Order Response 9-3-21	Applicant
058	9/3/21	058 Wastewater System and Potable Water Supply Permit #WW-4-4205-1 Issued September 3, 2021	Applicant
059	9/3/21	059 Public Water System Construction Permit #C-3949-21.0 Issued September 1, 2021	Applicant
060	9/3/21	060 Construction General Permit #7167-9020.2 Issued July 30, 2021	Applicant
061	9/3/21	061 Email Correspondence with AAFM dated 6-25-21	Applicant
062	9/3/21	062 Proposed Private Roadway Maintenance Agreement	Applicant
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CERTIFICATE OF SERVICE

I hereby certify on this 27th day of September, 2021, a copy of the foregoing ACT 250 LAND USE PERMIT & FINDINGS OF FACT & CONCLUSIONS OF LAW & ORDER #4C1274-1, 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

A & C Realty, LLC/Omega Excavating
c/o Al Senecal and Brian Bertsch
31 Commerce Avenue
South Burlington, VT 05403
asenecal@omegavt.com
bbertsch@omegavt.com

Dated at Essex Junction, Vermont, this 27th day of September, 2021.

Shawn Cunningham/Bryan Currier
O'Leary-Burke Civil Associates
13 Corporate Drive
Essex Junction, VT 05452
scunningham@olearyburke.com
bcurrier@olearyburke.com

/s/Christine Commo
Natural Resources Board Technician
802-879-5614
christine.commo@vermont.gov

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Susan McNamara-Hill, Town Clerk
Chair, Selectboard/Chair, Planning Commission
Town of Essex
81 Main Street
Essex Junction, VT 05452
smcnamarahill@essex.org

Chittenden County Regional Planning Commission
c/o Charlie Baker
110 West Canal Street, Suite 202
Winooski, VT 05404
permitting@ccrpcvt.org

Agency of Natural Resources
c/o Kevin Anderson
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Montpelier, VT 05602-3901
ANR.Act250@vermont.gov
kevin.anderson@vermont.gov

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christopher.clow@vermont.gov

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Division for Historic Preservation
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ACCD.ProjectReview@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
Parker Riehle, Vice Chair
Kate Purcell/Pam Loranger
111 West Street
Essex Junction, VT 05452