



# LAND USE PERMIT AMENDMENT

State of Vermont  
Natural Resources Board  
District 7 Environmental Commission  
374 Emerson Falls Road, Suite 4  
St Johnsbury, VT 05819  
<https://nrb.vermont.gov/>

[phone] 802-751-0120

**CASE NO:** 7C0602-6

Kingdom Gravel and Aggregate, Inc.  
PO Box 667  
Barton, VT 05822  
and  
Jason Sicard  
PO Box 667  
Barton, VT 05822

**LAWS/REGULATIONS INVOLVED**

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 7 Environmental Commission hereby issues Land Use Permit Amendment 7C0602-6, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This permit amendment applies to the 97.1 acres of land identified in Book 156 Pages 567-575 of the land records of the Town of Danville, Vermont, as the subject of a deed to Jason Sicard.

**This permit specifically authorizes continued operation of the existing stone quarry, subject to all terms and conditions of permit #7C0602 (as amended), including (i) increase in maximum annual extraction rate to 45,000 cubic yards per year, (ii) total maximum remaining extraction of ± 1,274,000 cubic yards, (iii) expansion of pit operations into a new ± 15 acre (quarry floor) area, (iv) updated operating hours, (v) new deadline to close and complete all reclamation by October 15, 2051, and (vi) clearing of vegetation along U.S. Route 2 to maintain entrance drive sight distances. The project is located at 2033 U.S. Route 2 West, in Danville, Vermont.**

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

1. The Permittees and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 7 Environmental Commission (the "Commission") in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 7C0602-6, and (c)



the permit application, plans, and exhibits on file with the Commission and other material representations. In the event of any conflict, the terms and conditions of this permit and the conclusions in the findings shall supersede the approved plans and exhibits.

3. All conditions of Land Use Permit 7C0602 and amendments are in full force and effect except as further amended herein.
4. The Permittees shall comply with all of the conditions of the following Agency of Natural Resources Permits:
  - Authorization to Discharge Stormwater under Multi-Sector General Permit 3-9003 (permit #9171-9003) authorized on March 4, 2021 by the ANR Watershed Management Division;
  - Air Pollution Control Permit #AP-11-029, issued on July 13, 2011 by the Agency of Natural Resources (Exhibit 017).
5. Any nonmaterial changes to the permit 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.

Following condition number 11 replaces conditions numbers 13 and 18 of permit 7C0602-4:

11. Hours of operation shall not exceed 6:00 AM to 6:30 PM, Monday to Friday, and 6:00 AM to Noon on Saturday, with no operation on national holidays, and excepting that emergency operation may be approved by the District Coordinator. Permittees may additionally be present at the Project site one hour beyond these operating hours, weekdays (i.e. 5:00 AM to 6:00 AM, and 6:30 PM to 7:30 PM, Monday to Friday, however activities during these extended hours shall not include trucking, heavy equipment operations, nor any on-site activities having potential to generate noise off-site. Blasting may only occur between the hours of 10:00 AM and 3:00 PM, Monday to Friday.

12. The Permittees shall post a financial guarantee which shall be filed with the District Commission for review, on or before February 1, 2022. The financial guarantee shall be in the form of a bond, escrow agreement or an irrevocable letter of credit from a recognized lending institution in the amount of \$75,000; alternatively, Permittee may provide the financial guarantee via deposit \$3,000 annually into an escrow account, due annually in the month of March, and to continue until the balance reaches \$75,000 at which time the balance and interest will accumulate in excess of \$75,000. The financial guarantee is subject to review and approval of the District Commission and shall remain in effect until the Commission accepts Permittees' certification of completion of reclamation.

Following condition 13 replaces condition 9 of permit 7C0602-5:

13. The annual rate of extraction shall not exceed 45,000 cubic yards (CY) per year. Written approval from the District Commission shall be obtained prior to any increase in the rate of stone extraction.
14. Permittees shall submit a written annual report, due in the month of December of each year, specifying the cubic yards of product excavated and the acreage involved. In addition, the report shall provide details regarding completed reclamation.
15. The Permittees shall not erect exterior lighting or signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.

Following conditions 16 and 17 replace condition number 8 of permit 7C0602-4:

16. The Permittees shall take reasonable precautions at all times to prevent fugitive particulate matter (dust) from becoming airborne from the Project and its operations. Reasonable precautions to be taken shall include, but not be limited to, the following measures or other equally effective measures for Project operations and activities under the Permittee's control or supervision:
  - a. The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;
  - b. Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper

- c. All trucks owned, operated or under the control of the Permittees shall be securely covered when operated on public roadways when loaded;
  - d. All rock drills operated at the Project shall be equipped and operated with either an effective wet or dry dust control system;
  - e. All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions;
  - f. Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable; and
  - g. The Permittees 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.
17. The Permittees 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. The facility equipment identified in the Air Pollution Control Permit (Exhibit 017) is hereby authorized by the District Commission.
  18. The project shall be operated in a manner that prevents off-site tracking of soils onto area roadways. All vehicles entering or exiting the site shall be kept clean from rubble or other debris that could be hazardous to other motorists.
  19. Vehicle idling (e.g. before or after the operating hours) is strictly prohibited.
  20. Permittees shall maintain records of all blasts, to include the pre-blast notifications, blast reports identified in the Blasting Plan (Exhibit 016) and all seismographic recordings. Permittee shall provide a copy of any blasting records to the District Commission, if and when requested by the District Commission via the Coordinator, within 10 working days of any such request.
  21. The Permittees shall maintain an undisturbed, naturally vegetated riparian zone on the Project Tract along the unnamed stream, as depicted on Exhibit 005, which shall begin at the water's edge at base flow conditions, and shall further extend 100 feet measured inland from, perpendicular to, and horizontally from the Top of Bank. 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.

22. The Permittees shall maintain an undisturbed, naturally vegetated Class II wetland and 50-foot wetland buffer zone on the Project Tract as depicted on Exhibit 005. 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.
23. The Permittees shall comply with the Agency of Natural Resources (Vermont Department of Environmental Conservation) “Best Management Practices for Blasting Activities to Avoid Environmental Contamination (2016)” (Exhibit 019).
24. The Permittees shall implement the Groundwater Monitoring Plan (Exhibit 015).
25. Fueling or maintenance of mobile vehicles (as opposed to stationary or semi-stationary equipment) shall not occur on the pit floor. Overnight parking of such vehicles shall be outside of the pit floor. Fueling and maintenance of stationary or semi-stationary equipment on the pit floor shall be conducted over absorbent pads or with secondary containment.
26. Reclamation activities shall not commence without a construction stormwater discharge permit issued by the Agency of Natural Resources or a written determination from the Agency of Natural Resources that no such permit is required.
27. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and its successors and assigns.
28. The Permittees shall provide each prospective purchaser of any interest in this Project a copy of the approved plan and the Land Use Permit amendment before any written contract of sale is entered into.
29. The Permittees shall reference the requirements and conditions imposed by Land Use Permit #7C0602-6 in all deeds of conveyance and leases.
30. This permit amendment shall expire on October 15, 2051, unless that date is extended in writing by the Commission.
31. Reclamation shall be completed no later than October 15, 2051. Permittee shall submit a written report of completion of reclamation, with photographs, within 30 days of such completion. Permittee’s reclamation report must specifically document how the required reclamation work has been completed in accordance with (a) the conditions of this permit, and (b) the permit application, plans, and exhibits.
32. Act 250 jurisdiction shall remain in effect until the District Coordinator issues a written jurisdictional opinion which concludes that reclamation has been completed, and that the Project or tract is no longer subject to Act 250 jurisdiction.

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

Dated at St. Johnsbury, Vermont, this 11<sup>th</sup> day of February, 2022.

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

Members participating in this decision:

Keith Johnson  
Nicole Davignon

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

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

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

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

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

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

## CERTIFICATE OF SERVICE

I hereby certify that I, Gina St Sauveur, Natural Resources Board Technician, District #7 Environmental Commission, sent a copy of the foregoing document Act 250 Findings of Fact and Conclusions of Law and Order & Land Use Permit #7C0602-6 for Kingdom Gravel & Aggregate and Jason Sicard, Barton VT by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 11<sup>th</sup> day of February, 2022.

**Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify our office of any e-mail address changes.**

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### For Your Information

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Gina St Sauveur  
Natural Resources Board  
Technician



# FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

State of Vermont

Natural Resources Board

District 7 Environmental Commission

374 Emerson Falls Road, Suite 4

St. Johnsbury, VT 05819

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

[phone] (802) 751-0120

CASE NO: 7C0602-6

Kingdom Gravel and Aggregate, Inc.

P.O. Box 667

Barton, VT 05822

and

Jason Sicard

PO Box 667

Barton, VT 05822

## LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

## I. INTRODUCTION

On September 17, 2021, Kingdom Gravel & Aggregate, Inc. and Jason Sicard filed application number 7C0602-6 for a project generally described as continued operation of the existing stone quarry including (i) increase in maximum annual extraction rate to 45,000 cubic yards per year, (ii) total maximum remaining extraction of  $\pm 1,274,000$  cubic yards, (iii) expansion of pit operations into a new  $\pm 15$  acre area, (iv) updated operating hours, (v) new deadline to close and complete all reclamation by October 15, 2051, and (vi) clearing of vegetation along U.S. Route 2 to maintain entrance drive sight distances. The project is located at 2033 U.S. Route 2 West, in Danville, Vermont. The tract of land consists of 97.1 acres of land. The Applicant's legal interest is ownership in fee simple described in a deed recorded in Book 156 Pages 567-575 of the land records of the Town of Danville, Vermont, as the subject of a deed to Jason Sicard.

The District #7 Environmental Commission initiated the review process on this application as a Minor application under Act 250 Rule 51 on October 8, 2021, and on November 23, 2021 following receipt of substantive project design revisions. The Commission distributed a notice and proposed permit establishing a deadline of December 13, 2021 by which parties, or the Commission on its own motion, could request a hearing on this matter. The Commission received timely requests for a public hearing and determined that sufficiently substantive issues



had been raised. On January 6, 2022, the Commission issued a notice of site visit and hearing. The site visit was held on January 20, 2022, and the hearing was held on January 26, 2022.

The Commission adjourned the hearing on January 31, 2022 after completion of Commission deliberations.

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

## **II. JURISDICTION**

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

## **III. 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.

## **IV. PARTY STATUS AND FRIENDS OF THE COMMISSION**

### **A. Parties by Right**

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

- The Applicant by Jason Sicard, Joey Wilson, Chad Hickey, George Carpenter, Lance Cleveland;
- The State of Vermont Agency of Natural Resources by Kevin Anderson, via Entry of Appearance dated December 7, 2021;
- The Regional Planning Commission (NVDA) by David Snedeker;

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

### **B. Interested Parties**

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

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the 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:

Dana Calkins, Admitted: Criteria 1 and 8

Jeffrey Frye, Admitted: Criteria 1, 5, and 8;

Barbara Sweet, Denied: Criteria 1, 5, and 8;

Anissa Morrison, Denied: Criterion 5.

ii. Final Party Status Determinations

Prior to the close of hearings, the District Commission re-examined the preliminary party status determinations in accordance with 10 V.S.A § 6086(c)(6) and Act 250 Rule 14(E) and found no reason to change its preliminary determinations.

C. Friends of the Commission

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):

Barbara Sweet, as it pertains to Criteria 1, 5, and 8;

Anissa Morrison, as it pertains to Criterion 5.

**V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

The findings of fact are based on the application, Exhibits 001 -038, 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. The Project is located on a 97.1 acre tract of land located at 2033 U.S. Route 2 West, in Danville, Vermont.
2. The Project is continued operation of the existing stone quarry including (i) increase in maximum annual extraction rate to 45,000 cubic yards per year, (ii) total maximum remaining extraction of  $\pm 1,274,000$  cubic yards, (iii) expansion of pit operations into a new  $\pm 15$  acre area, (iv) updated operating hours, (v) new deadline to close and complete all reclamation by October 15, 2051, and (vi) clearing of vegetation along U.S. Route 2 to maintain entrance drive sight distances.

**Criterion 1 - Air Pollution:**

Findings of Fact

3. As identified in the Commission's draft permit, the following condition will be included to restrict hours of operation, thus limiting noise and air pollutant emissions resulting from operation of the Project. The operating hours below are reasonably consistent with the previously established hours of operation as identified in conditions 13 and 18 of permit 7C0602-4 (Exhibit 030):

*Hours of operation shall not exceed 6:00 AM to 6:30 PM, Monday to Friday, and 6:00 AM to Noon on Saturday, with no operation on national holidays, and excepting that emergency operation may be approved by the District Coordinator. Permittees may additionally be present at the Project site one hour beyond these operating hours, weekdays (i.e. 5:00 AM to 6:00 AM, and 6:30 PM to 7:30 PM, Monday to Friday, however activities during these extended hours shall not include trucking, heavy equipment operations, nor any on-site activities having potential to generate noise off-site. Blasting may only occur between the hours of 10:00 AM and 3:00 PM, Monday to Friday.*

4. Normal quarry operations include crushing and processing of rock product, heavy equipment operation, and dump trucks entering and exiting the site. Other activities which are not a daily occurrence will be earthwork to strip overburden, and blasting of rock.
5. Noise and air emissions from the Project should be consistent with such existing emissions from the existing permitted quarry (Exhibit 001).
6. Neighbor Dana Calkins owns a developed commercial site (where trucking and equipment operations occur) located to the East of the Project site. The quarry

expansion will be nearer to this adjacent commercial operation, in comparison to the existing permitted quarry area.

7. Neighbor Dana Calkins is concerned with noise and air emissions (e.g. dust, particulate matter) from the Project operation. Neighbor Dana Calkins sometimes piles log wood on his adjacent property and it will be concerning to him if dust accumulates on his log wood.
8. Neighbors Barbara Sweet and Jeffrey Frye did not express concerns with dust emissions.
9. The existing quarry operation occurs below the existing area grade, in a "hole". The engineer has been on site quite a few times, and has observed that the owner does a good job with dust control at the existing quarry operation (testimony of Joey Wilson).
10. Dust emissions from the existing quarry operation are acceptable (testimony of Dana Calkins).
11. The quarry expansion area will involve stripping 6 to 10 feet of overburden to expose the rock to be quarried. After the stripping is completed, the quarry expansion will continue to operate surrounded by higher elevation land, whereby the dust emissions from the expansion area should not be appreciably greater than the dust emissions from the existing quarry. If there is a problem with dust control at the quarry expansion area it will have to be addressed so that the problematic dust emission does not continue. (testimony of Joey Wilson).
12. The following conditions will remain in effect, as identified in conditions 15 to 17 of permit 7C0602-4 (Exhibit 030):

*Noise levels at the quarry shall not exceed 70 decibels at the property lines.*

*Permittees shall, prior to conducting blasting, notify all residents who request such notice of the planned date and time of all blasting activity.*

13. The Commission will include the following conditions in its permit:

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

- a. *The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;*

- b. *Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper*
- c. *All trucks owned, operated or under the control of the Permittees shall be securely covered when operated on public roadways when loaded;*
- d. *All rock drills operated at the Project shall be equipped and operated with either an effective wet or dry dust control system;*
- e. *All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions;*
- f. *Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable; and*
- g. *The Permittees 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.*

*The Permittees 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. The facility equipment identified in the Air Pollution Control Permit (Exhibit 017) is hereby authorized by the District Commission.*

*The project shall be operated in a manner that prevents off-site tracking of soils onto area roadways. All vehicles entering or exiting the site shall be kept clean from rubble or other debris that could be hazardous to other motorists.*

*Vehicle idling (e.g. before or after the operating hours) is strictly prohibited.*

- 14. Some rock debris resulting from blasting activities at the existing quarry has occasionally landed on or near the adjacent Calkins property (testimony of Dana Calkins).
- 15. The Project design includes a Blasting Plan (Exhibit 016). Blasting will be undertaken by licensed and insured contractors only, with monitoring of blast vibration and the air blast, using a seismograph, and record keeping. The Commission will include the following condition in its permit:

*Permittees shall maintain records of all blasts, to include the pre-blast notifications, blast reports identified in the Blasting Plan (Exhibit 016) and all seismographic recordings. Permittee shall provide a copy of any blasting records to the District Commission, if and when requested by the District Commission via the Coordinator, within 10 working days of any such request.*

16. The ANR Air Pollution Control Division issued Air Pollution Control Permit #AP-11-029 issued on July 13, 2011 (the "Air Permit") authorizing operation of the Project. The Air Permit (Exhibit 017) encompasses prohibition of particulate matter, nuisance and odor.

#### Conclusions of Law

The ANR Air Pollution Control Permit AP-11-029 issued on July 13, 2011 creates a rebuttable presumption pursuant to Act 250 Rule 19 that this Project will not result in undue air pollution. In addition, the technical determinations ANR made in issuing the permit are entitled to substantial deference. 10 V.S.A § 6086(d). No evidence was presented to rebut the presumption or challenge the technical determinations made by ANR.

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

#### **Criterion 5 - Transportation:**

##### Findings of Fact

17. The Project is not located in a Transportation Improvement District (TID).
18. The Project will access via the existing permitted access two-lane access road from U.S. Route 2.
19. The Vermont Agency of Transportation has issued a construction permit ("AOT Permit", Exhibit 014) for removal of trees located in the right of way of U.S. Route 2, to maintain sight distances at the access road from U.S. Route 2. An existing sign was found to be located in the right of way from U.S. Route 2 and is to be removed pursuant to the AOT Permit.
20. The estimated traffic from the Project is expected to be equivalent or similar to the current traffic at the existing quarry on the Project site, which is active, and estimated to be typical 25 daily one-way trips, and 5 AM and PM peak hour trips (Exhibit 001).
21. U.S Route 2 has the capacity to accommodate the continued traffic from the Project.
22. The Project does not create additional unmet parking demand.
23. Neighbors Jeffrey Frye, Barbara Sweet, and Anissa Morrison are not concerned with traffic resulting from the Project. These neighbors are interested in their ability to use an existing road that is presently located through the quarry expansion area. The status of these neighbors' legal right(s) to travel through the subject Project Tract is not clear to the Commission which does not have jurisdiction over this private property right topic.

Nonetheless, the Applicant has designed the Project with a re-aligned road, and has avoided impeding these neighbor's ability to safely travel through the Project Tract (Exhibit 005A).

#### Conclusions of Law

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

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

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

The Project complies with Criterion 5(A) and Criterion 5(B).

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

##### FINDINGS OF FACT

##### Findings of Fact: Aesthetics, Scenic or Natural Beauty

24. The Project tract features the access road from U.S. Route 2, open and wooded areas, streams and wetlands, and the existing quarry with stormwater treatment system. The Project site consists predominantly of logged woods, an old log yard, and the existing quarry (Exhibit 001).
25. The Project site is adjacent to the existing quarry on the tract, commercial development located to the East (Calkins), vacant land, and a state highway (U.S. Route 2).
26. There is no residential development presently located on the adjacent Calkins property to the East (testimony of Dana Calkins).
27. The quarry expansion will not be visible from high traffic areas such as U.S. Route 2 adjacent to the tract (Exhibit 001).

28. The trees to be retained in proximity of the Project site are depicted on the site plan. The limits of the quarry expansion excavation will retain a 50 foot undisturbed buffer from all property lines (Exhibits 005, 005A).
29. Findings of fact under Criterion 1 are incorporated herein by reference.
30. The Project does not encompass new buildings, exterior lighting, or new landscaping.
31. On or before permit expiration, operations will cease and the Project site will be reclaimed.
32. Project site reclamation work will include narrowing the road to a  $\pm$  12 foot width, in accordance with the MSGP authorization (Exhibit 007) as required by the Agency of Natural Resources.
33. An exterior sign that was found to be located in the U.S. Route 2 right of way is to remain removed pursuant to the AOT Permit (Exhibit 014). A location and design of a potential new exterior sign has not been identified nor reviewed by the Commission. Prior to installing such potential new exterior signage, the Commission requires that the details be submitted for review, including but not limited to signage dimensions, height, colors, materials, and illumination if any. The Commission will include the following permit condition, as identified in the draft permit:

*The Permittees shall not erect exterior lighting or signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.*
34. There are no known historic sites or rare and irreplaceable natural areas which will be affected by this Project.
35. There are no known rare and irreplaceable natural areas which will be affected by this Project.

## CONCLUSIONS OF LAW

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

### Conclusions of Law: Aesthetics and Scenic or Natural Beauty

The Commission uses a two-part test to determine whether a project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is



undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, *Decision and Order at 12* (Vt. 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 following: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB *Findings of Fact, Conclusions of Law and Order at 18* (Vt. Env'tl. Bd., Nov. 4, 1985) (cited in *Rinkers*, No. 302-12-08 Vtec, *Decision and Order at 12-13*).

The Project is in an area developed with an existing quarry, adjacent commercial development or vacant land or state highway (U.S. Route 2). Importantly, the Project will not be visible from U.S. Route 2. Substantive conditions to control and minimize operational air emissions have been included, as outlined in the Commission's findings. The Project operations have a finite duration and the Project site will be reclaimed prior to permit expiration, at which time operations will cease.

We conclude that the Project is compatible with its surroundings and will not have an undue adverse aesthetic impact. Accordingly, it complies with Criterion 8.

#### SUMMARY CONCLUSIONS OF LAW: Aesthetics, Historic Sites and Rare & Irreplaceable Natural Areas

The Commission concludes that the Project 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.

#### VI. 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 7C0602-6 will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

## **VII. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 7C0602-6 is hereby issued.

DATED this 11<sup>th</sup> day of February, 2022.

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

Commissioners participating in this decision:

Keith Johnson

Nicole Davignon

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

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

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

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

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

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