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STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT ENVIRONMENTAL COMMISSION #2

RE: O'Neil Sand & Gravel, LLC
P.O. Box 699
Chester, VT 05143

Application #2S0214-6A
10 V.S.A., §§ 6001 - 6092
(Act 250)

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

This proceeding concerns an application for an amendment to an existing permitted project to allow for a change in operations from a gravel pit with no blasting to an operation involving removal of gravel, stone and bedrock with blasting. The amendment also seeks to lengthen the term of operations an additional ten years.

The District Environmental Commission (Commission) considered as a preliminary issue whether, after weighing the factors in Act 250 Rule 34(E), including the competing policy considerations of flexibility and finality, to proceed to consideration of the merits of the permit amendment application. As explained in detail below, the majority of the Commission concludes that the policy of finality outweighs the considerations of flexibility; accordingly, the Commission will not consider the merits of the amendment application.

I. PROCEDURAL HISTORY

On May 24, 2006, O'Neil Sand & Gravel, LLC, filed an Act 250 application for a project generally described as the annual extraction of up to 100,000 cubic yards of gravel, stone and bedrock over a 10-year period and processing of construction aggregate. The project is located off Route 103 in Chester, Vermont. On May 30, 2006, the District Coordinator, in a jurisdictional opinion, determined the application was not complete because it did not include a *Stowe Club Highlands* Analysis as outlined in Act 250 Rule 34(E).

A Pre-hearing Conference, pursuant to Act 250 Rule 16, was held on the application on September 6, 2006, and a Pre-hearing Conference Report which identified preliminary grants of party status (and preliminary status as a "Friend of the Commission") was issued on September 12, 2006. The Pre-hearing Conference Report also explicitly identified that a *Stowe Club Highlands* Analysis would be conducted by the Commission and allowed parties until September 21, 2006, to file arguments and a response to the Applicant's *Stowe Club Highlands* Analysis (dated July 28, 2006).

(owned by Bruce R. Parker In Trust) and that the parcel to be purchased and subject to Land Use Permit #2S0214-6 is 139 acres (and an easement across the property of JCJ Properties, Inc. which is so subject to an Act 250 permit. [1] The introductory paragraphs from the permit and the findings for Land Use Permit #2S0214-6 are as follows:

Permit

District Environmental Commission #2 hereby issues Land Use Permit #2S0214-6, pursuant to the authority vested in it by 10 V.S.A., §§ 6001-6092. This permit applies to the lands identified in Book 62, Page 271; Book 71, Page 41; and Book 72, Page 60, of the land records of the Town of Chester, Vermont, as the subject of deeds to Bruce R. Parker In Trust, and a revised dedicated easement for the access road over the property owned by JCJ Properties, Inc. There is a pending purchase and sales agreement between landowner Bruce R. Parker In Trust and co-Applicants Michael and Amy O'Neil for transfer of 139 acres and the easement rights for the access road. The permittees are Michael and Amy O'Neil and Bruce R. Parker In Trust.

This permit specifically authorizes the permittees to extract sand and gravel and to construct 800 feet of access road. The project is located on Vermont Route 103 in Chester.

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[1] The land subject to the original permit was 289 acres and there had been a number of amendments to the permit and the permit has not expired. The remainder of the original 289 acres immediately adjacent to the O'Neil property has now been permitted for 25 house lots under Land Use Permit #2S0214-7 issued on February 6, 2004.

Findings

On June 6, 2001, Michael and Amy O'Neil; Bruce R. Parker In Trust; and JCJ Properties, Inc., filed for an Act 250 permit for a project generally described as **a sand and gravel extraction operation and construction of 800 feet of access road over property of JCJ Properties, Inc. The project is located on Vermont Route 103 in Chester.** The tract of land consists of 232 acres. Michael and Amy O'Neil have a Purchase and Sales Agreement with Bruce R. Parker In Trust, to purchase 139 acres of the larger tract which is covered by Land Use Permit #2S0214 and amendments. An additional acre of land, owned by co-Applicant JCJ Properties, Inc., will provide a dedicated easement for the project access. Bruce R. Parker In Trust's legal interest is ownership in fee simple described in deeds recorded in Book 62, Page 271; Book 71, Page 41; and Book 72, Page 60, of the Land Records of the Town of Chester, Vermont.

2. The Permittee has never claimed the acres committed to the project as anything less than 139 acres until filing the present amendment application. In Application #2S0214-6, Exhibit 1, (the Application Cover Sheet) the Applicant responded as follows to question #7: "Acres committed to this project 139."

3. Although the Application discusses operating gravel extraction on 18 acres of the 139 acres to be purchased from Bruce R. Parker In Trust, it also makes clear that the project is not limited to 18 acres. For example, the application also involves an access road and 28 acres of land on the tract to be used as mitigation lands. Moreover, the application in Exhibit 14 makes clear that the protected deeryard could be relocated to another portion of the property, if needed, because the Applicant would own (after the purchase) an additional 37 acres of deeryard on the 139-acre tract. Also, see Condition #29 of the current permit:

> 29. The permittees shall permanently protect 28.8 acres of deer wintering area as shown on Exhibit 19. The location of the 28.8 acres of protected deer wintering area may be modified in conjunction with future amendments.

4. The Commission, in its permit and findings, makes clear that the entire project tract is the permitted project. In neither the project description for the permit or the findings of fact is the project limited to 18 acres.

5. Commissioner Bernhardt, who participated in the initial permit issued on October 1, 2001, stated in his explanation for his decision to deny the instant application at the December 19, 2006 hearing, that he recalls that the Commission's intent was that the permit would apply to the 139-acre tract subject to the permit.

6. In addition to the 28.8 acres of mitigation land required in Condition #29, the Commission makes clear in Condition #28 that any logging proposals on the *entire tract* must be approved by the Commission. See Condition #28:

> 28. Any proposals for logging on the tract of land, other than the 18 acres which will be logged for the extraction, shall be submitted for review and approval by the District Environmental Commission and the District Wildlife Biologist.

7. Logging on other parts of the tract beyond the 18 acres devoted to extraction could well affect the values Act 250 is intended to protect, including aesthetics (both visually and from noise) as well as the impact on the deeryard. Thus, the Commission reserved review of any logging on the *entire parcel.* See also Findings under Criterion 8: "Additional logging on the property has the potential to affect aesthetics of the project visually and with respect to noise impacts."

8. The Commission, in Condition #30, placed conditions on the remaining 63.6 acres of deeryard on the *entire* parcel with respect to uses that could impact wildlife habitat. See Condition #30:

> 30. The permittees shall effectively restrict and prohibit cross-country skiing, snowmobiling and travel by off-road vehicles in deer wintering areas designated by the Department of Fish and Wildlife on the tract of land, unless such uses are approved by the Department of Fish and Wildlife and the District Environmental Commission.

9. The Permittee did not seek to limit the "permitted project" to a portion of the tract pursuant to *Stonybrook Condominium Association,* Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order (May 18, 2001). The Applicant's after-the-fact representations that the permit was meant to apply to only the 18 acres is not relevant as the permit and findings clearly indicate the entire tract was being considered and the permit conditions apply to the entire tract. Had the Permittee not agreed with the permit conditions, it had the option of seeking reconsideration or taking an appeal.

Critical Conditions From Land Use Permit #2S0214-6

10. In addition to Conditions #28, 29 and 30 discussed above, the following additional conditions were critical to issuance of Land Use Permit #2S0214-6:

> 12. In order to protect the public investment in Green Mountain Union High School, noise levels from all aspects of operations occurring on the site will be *no louder than barely audible* at the school buildings *and areas used for outdoor recreation and education.* (Emphasis added).
>
> 21. There will be *no blasting. A hydraulic rock hammer may be used no more than two times a year* (for no more than four days each time) to split larger boulders. (Emphasis added)
>
> 31. The Permittees will, by November 30, 2001, or prior to commencement of clearing the excavation area, establish an escrow account with an initial deposit of $5,000, to provide for reclamation. The Permittees will, by November of each year of operation, add $5,000 to the escrow account. The escrow account will be in an escrow agreement form to be prepared by the District Coordinator. The Commission, in its discretion, may waive annual additions to the escrow account after reclamation has been initiated in the first two phases of operations.
>
> 46. *All extraction and removal of the material will be completed within six years of commencement of extraction activities.* All reclamation will be completed in accordance with

the approved plans by October 1, 2009, unless an extension of this date is approved in writing by the District 2 Environmental Commission. (Emphasis added).

11. Condition #46 makes clear that the extraction and removal of material was to be completed no later than six years after commencement of extraction activities and only an extension of the October 1, 2009, *reclamation date* may be considered.

Critical Underlying Findings of Fact and Conclusions of Law for Land Use Permit #2S0214-6 and Reliance by the Commission

Air Pollution

12. The Commission made the following finding and conclusion under Criterion 1 Air Pollution:

12. There will be no blasting, but a hydraulic hammer may be used twice a year (for no more than four days at a time) to split larger boulders. Exhibits 3 and 39.

Conclusion:

The Environmental Board *In Re: Barre Granite Quarries, LLC, William and Margaret Dyott*, Land Use Permit #7C1079 (Revised)-EB Findings of Fact and Conclusions of Law and Order (December 8, 2000), indicated that relevant air pollutants to be considered in mineral extraction operations include noise, fumes and dust. The Board also indicated that "whether a pollutant is "undue" depends on factors such as the nature and amount of pollution, the character of the surrounding area, whether the pollutant complies with certain standards or recommended level and whether effective measures will be taken to reduce the pollution." . . . Noise levels relating to the Green Mountain Union High School will be addressed under Criterion 9(K) Public Investments.

Criterion 8 Aesthetics and Scenic Beauty

13. Under this criterion, the Commission incorporated, by reference, its findings under Criterion 1 Air Pollution, including Finding #12, which prohibited blasting. (See finding of fact #34 under Criterion 8):

> 34. The Commission incorporates by reference its findings under Criterion 1 Air Pollution.

14. Under Criterion 8, the Commission found the project had an adverse aesthetic impact, but that its effects would not be undue given the Commission's imposition of noise requirements and the *limited length of operations:*

> The Commission concludes that with the imposition of the noise standards for adjacent residences as articulated by the Board in the *Barre Granite Quarries* case, the project will not be so out of character with its surroundings as to be shocking or offensive. Further, by conditioning the permit to meet the noise levels as
> discussed under Criterion 9(K) Public Investments, for the Green Mountain Union High School, the project will not be offensive because of incompatibility with the character of its surroundings.
>
> Although the clearing of trees will be quite substantial, *the limited length of the proposed operation (six years) and the reclamation plans involving progressive planting allow the Commission to conclude the project will not significantly diminish the scenic qualities of the area.* The Commission notes that the Applicants have not provided a buffer to the Green Mountain Union High School property and are relying, in part, upon the existing forested land on the high school's property and the Gendron Enterprises property for sound reduction. The Applicants, in representing that the project will be, at worst, "barely audible" at the high school, must also realize that even if adjoining landowners remove part of that buffer, the project will still need to meet the representations made with respect to noise. The Applicants have also represented that the project will not be visible from Route 103. The Commission will require any logging plans on the entire parcel be submitted to the Commission for review and potential

approval prior to any logging over the 18 acres. Additional logging on the property has the potential to affect aesthetics of the project visually and with respect to noise impacts. (Emphasis added).

Criterion 8(A) Necessary Wildlife Habitat

15. The Commission's findings and conclusions under Criterion 8(A) Necessary Wildlife Habitat include the following:

> 46. The Applicants are aware that an Act 250 permit amendment is required for the *Applicant's plans to develop house lots on the property* after completion of the quarry and adjustments to mitigation location (28 acres of wildlife mitigation land) can occur during that process. Exhibits 14, 19, 33, and 44.

16. Exhibit 44 is the decision of the Chester Zoning Board of Adjustment which includes, under Criterion 1B The Character of the Area Affected, the following :

> Mr. Curran questioned the use of the property after the quarry is completed. *The Applicants responded for housing, possibly two or three homes.* Mr. Michael explained that it would require an amendment to the Act 250 permit to change the use. (Emphasis added)

Criteria 9 (D&E) Earth Resources and Extraction of Earth resources

17. The findings under these criteria include the following:

> 57. The future land use for the reclaimed area will be a forested area with possibly two to three homes. Exhibit 44.
>
> 58. The Applicants have not provided any financial surety plan to ensure completion of reclamation of the site. The Town of Chester Selectboard waived the town bonding requirement.

18. The Commission was sufficiently concerned that reclamation be appropriately completed so that the site would be suitable for an approved alternative use that it required establishment of an escrow account. The Commission's conclusion reads as follows:

Conclusion:

Before issuing a permit for the extraction or processing of mineral and earth resources, the Commission must find the following:

> (i) . . . 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 or the Board 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.

10 V.S.A. § 6086(a)(9)(E)

As stated in the Findings and Conclusions under the other criteria, the Commission is persuaded that the project, if operated in accordance with the representations of the Applicants and the mitigating conditions required by the permit, will not have an unduly harmful impact upon the environment or surrounding land uses and development. The Commission is also persuaded that the Applicants have developed a comprehensive rehabilitation plan which, if properly implemented, will leave the site in a condition suited for an approved alternative use or development. In order to ensure that reclamation is completed, the Commission will require an annual $5,000.00 payment be escrowed for purposes of ensuring reclamation

Criterion 9(K) Public Investments

19. The Commission incorporated by reference its findings under Criterion 1 Air Pollution and Criterion 8 Aesthetics, including the findings regarding the prohibition on blasting. See Finding #60:

> 60. The District Environmental Commission incorporates the findings under Criterion 1 Air Pollution and Criterion 8

Aesthetics with respect to noise issues and Criterion 5 with respect to traffic issues.

20. The Commission's findings under Criterion 9(K) Public Investments make clear its intention to protect the 162-acre Green Mountain Union High School property:

> 61. The Chester Town Plan makes the following reference to the Green Mountain Union High School, specifically noting the importance of the 162-acre site for athletic and outdoor education programs:
>
> 9.8 Education
>
> Name: Green Mountain Union High School (Union #35)
> Location: South of the Village
> Year Opened: 1971
> Type: High School - Grades 7-12
> Classrooms: 41
>
> The 162-acre site makes it possible to create a variety of athletic and outdoor education programs which add measurably to the community's attractiveness and desirability as a place to work and live.
>
> Exhibit 15.

21. The Commission's conclusions under Criterion 9(K) make clear that it relied upon the Applicant's representations regarding noise that could affect the school property, ***including areas used for outdoor education and recreation.*** This point was very strongly emphasized, including specifically advising the Applicants that failure to meet the "barely audible" representation would subject the permit to revocation. See the following 9(K) Conclusion:

> **Conclusion:**
>
> Criterion 9(K) requires that a development will not unnecessarily or unreasonably endanger public investments or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to public investments. In this case, the Commission must ensure that

noise from the project does not materially interfere with the efficient function of the school and the use and enjoyment of the school by the students and the public. The noise safeguards for a school are necessarily higher and more protective than many other settings given the substantial public investment in *school land* and facilities and the important function of educating students. The Applicants have represented that because of the topography, "it is doubtful the project will be audible" or, at worst, the project will be "barely audible." The Commission is relying on this representation in concluding the project conforms to this criterion. The Commission further defines the phrase "barely audible" to mean noise which is no louder than the lowest background level noise which presently occurs when students are in classes. If, however, noise is more than "barely audible" and thus has the potential to interfere with the enjoyment of and functions of the school and its facilities, ***including outdoor education and athletic programs,*** the project will not be in conformance with Criterion 9(K) Public Investments and the permit for continued operation will be subject to revocation.

Since the Commission is relying upon the Applicants' representations with respect to noise to find conformance with this Criterion, the proposed project will be required by permit condition to achieve this level of performance. See *Re: Old Vermonter Wood Products and Richard Atwood,* Findings of Fact, Conclusions of Law and Order #5W1305-EB (August 19, 1999) ("The Board will accept the numbers presented by the Permittees and then require the Permittees to operate within their stated prediction.") Also, see *Re: Unifirst Corporation and Williamstown School District*, #5R0072-2-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 22 (July 20, 2000). (The Board's affirmative conclusion under Criterion 9(K) relies on the Applicants' representations and proposed project will be required by the permit condition to achieve this level of performance.) (Emphasis added)

Stowe Club Highlands Flexibility and Finality Factors

(a) changes in facts, law or regulations beyond the permittee's control;

22. The Applicant has not demonstrated any changes of fact, law or regulations beyond the permittee's control.

(b) changes in technology, construction, or operations which drive the need for the amendment;

23. The Applicant has not demonstrated any changes in technology, construction or operations which drive the need for the amendment. The site conditions that existed on the permitted tract of land have not changed. The underlying bedrock existed on the parcel before the land was purchased and before the permit was issued.

(c) other factors including innovative or alternative design which provide for a more efficient or effective means to mitigate the impact addressed by the permit condition;

24. The Applicant has not offered an innovative or more sensitive design to mitigate either noise or visual impacts. The noise mitigation the Applicant would employ is typical of earth extraction projects and is not innovative. Further, rather than more effectively mitigating the noise, the proposal would substantially increase the types and duration of the loudest noises. The previous permit restricted the use of a rock hammer to *"no more than two times a year* (for no more than four days each time) to split larger boulders." This rock quarry operation would require the routine use of a rock hammer, be noisier than the previous operations, and be spread over a larger portion of the site with even greater potential to be disturbing to users of the school property. The noise levels proposed would include blasting and bast whistles before and after blasting, (blasting was prohibited and the routine use of a rock hammer very restricted). The rock quarry operation would also involve the use of a pneumatic rock drill.

25. The original permit was time-limited with all extraction being completed *within six years of commencement of extraction activities.* The Applicant, instead proposes to extend the extraction for another ten years which would necessarily mean noise impacts over a longer period of time.

26. The project also does not offer a more innovative or environmentally sensitive design with respect to visual impact. The impacts from the initial project have been significant to the residents on Green Mountain Turnpike Road. Rather, the project involves using a portion of the original gravel pit area for storage and operations and this portion of the tract could not be reclaimed in the original timeframe.

(d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;

27. The Applicant argues that the project furthers the Chester Town Plan Mineral Resource Goal "To encourage the extraction and processing of mineral resources in a manner that is appropriate and consistent with Chester's rural character."

28. The Commission takes official notice of the Chester Town Plan. The Town Plan Mineral Policy #3 states, "Require that earth resource extraction activities do not adversely affect surrounding properties and mitigate adverse impacts on essential wildlife habitat, and that extraction sites be restored to viable condition in a timely manner." Chester Town Plan, Page 40.

29. The Chester Town Plan also specifically mentions the Green Mountain Union High School lands as a "Recreation" resource and includes the following statement "Green Mountain Union High School - The high school has a soccer field, baseball field, track and other land areas used in school recreation and sports programs." Chester Town Plan, Page 29.

30. The Applicant presented evidence that there is a statewide need for gravel resource development, particularly for gravel extraction operations near highways and near areas of need. This is presented under the public policy factor.

31. There are substantial resources of the type of bedrock material located on the O'Neil property throughout Vermont and New Hampshire. There are also numerous existing large developed regional sources of aggregate gravel resources in Southern Vermont and New Hampshire (Cersosimo Industries has aggregate resource operations at the Bemis Pit in Vernon, Evans Pit in Vernon, Jamaica pit in Jamaica, Amsden pit in Weathersfield, and the River Road Pit in West Chesterfield, N.H. St. Pierre sells from its mining operations in North Charlestown, N.H. Pike Industries extracts and sells aggregate products from its facilities in West Lebanon, N. H. and Blacktop Inc. sells from its facility in Lebanon, N. H. Cold River Materials extracts gravel from its site in Walpole, N.H.

32. There is also an existing network of local medium and small scale developed sources of aggregate resources in Southeastern Vermont. All towns in the vicinity of Chester are having their needs met by either a local source or a combination of local and regional sources as outlined in Exhibit 75.

33. There was no evidence that there is any important policy consideration to develop a gravel resource at this particular location.

34. As indicated in the Commission's original permit, there is an important public policy consideration to protect the public's investment in the Green Mountain Union High School property to ensure, "the enjoyment and functions of the school, and its facilities, including outdoor education and athletic programs." The Commission emphasized the need to protect this public investment from noise in an extremely strong way taking pains to point out that if the noise is more than "barely audible" that "the project will not be in conformance with Criterion 9(K) Public Investments and that the permit for continued operations will be subject to permit revocation."

35. The Applicant, in its August 3, 2006, *Stowe Club Highlands* filing (Exhibit 19 which references Applicant's Exhibit 5 Noise Analysis - Commission Exhibit 7) states that operational noise would be below existing background noise at the Green Mountain High School *building*, the intersection of VT 11 and VT 103, a farm on Green Mountain Turnpike, Marshall Road, Chester depot and "New Housing Development." The *only* location where background noise was monitored on the 160+ acre school property, which is also nearly the most distant point on the property from the extraction, was at the school building. (See Exhibit 7, Page 8). The Applicant has not presented background noise measurements at areas of the school property used for *"outdoor education and athletic programs"* or an analysis as to whether operational noise would exceed those background levels at these locations.

(e) manifest error on the part of the district commission or the board in the issuance of the permit condition;

36. There are no claims of error on the part of the Commission in issuance of the permit conditions.

(f) the degree of reliance by the district commission, or parties on prior permit conditions or material representations of the applicant in prior proceeding(s).

37. Edward J. Brown, the Superintendent of the Windsor Southwest Supervisory Union which includes Green Mountain Union High School, has submitted a sworn affidavit that states the following:

> 3. Based on the fact that the O'Neils represented that there would be no blasting on the property, that extraction would be completed within six years and the site would be reclaimed, I did not recommend the Green Mountain Union High School Board to seek party status to the Act 250 proceeding
>
> 4. If I had known that the gravel operation was to include blasting, increased rock drilling and crushing and would extend beyond the six years, I would have advised the Green Mountain High School Board to seek party status to the Act 250 proceeding. (Exhibit 35)

38. A number of landowners who have been granted party status in this proceeding have also submitted sworn affidavits that they relied upon critical conditions of Land Use Permit #2S0214-6 when making decisions to purchase homes or property, renovate or to refrain from selling their homes. Exhibits 36, 37, 38, 39, 40, 41, 42, 43, and 44.

39. The Commission clearly relied on the conditions to issue a permit for the project in such a sensitive location. The Commission, as stated by the Chair of the Commission at the December 19, 2006, hearing, intended the permit to apply to the entire parcel. The Commission also developed very specific conditions for this project which are different from conditions normally applied to earth extraction operations. The reason for this is the presence of the Green Mountain Union High School property which is an important public investment. The Commission relied on the operations being over in six years and on conditions to ensure the "continued enjoyment of the lands which are an important part of the public investment."

40. It was the Commission's understanding, as stated in Finding #46, that the "property" (not the 18-acre site) would be developed for housing not additional earth extraction. See Finding #46 as follows:

46. Exhibit 19 shows the location of the 28.8 acres of protected DWA (Deer Wintering Area). The Applicants, however, wish future flexibility in accommodating development plans and may wish at a later date to move the protected 28.8 acres. The Department of Fish and Wildlife is open to revisiting the location as long as all impacts for the 14.4 acres and future impacts are mitigated at a 2:1 ratio. The Applicants are aware that an Act 250 permit amendment is required for the Applicants' plans to develop house lots on the property after completion of the quarry and adjustments to mitigation location can occur during that process.

41. Condition 29 flows from those findings and reads as follows:

29. The permittees shall permanently protect 28.8 acres of deer wintering area as shown on Exhibit 19. The location of protected deer wintering area may be modified in conjunction with future amendments.

The amendments in this condition refer to amendments for *housing*, not for additional quarrying of gravel or stone.

42. The Applicant represented that the "proposed use of gravel extraction is a *temporary impact and will not have a long term affect on adjoining land use*". (Emphasis added). (Exhibit 3, Schedule B response under Criterion 9(H). Land Use Permit Application #2S0214-6).

V. CONCLUSIONS OF LAW:

Permitted Project

The majority of the Commission concludes the permitted development for Land Use Permit #2S0214-6 is the entire tract of land purchased by the O'Neils.[2] As outlined in *Stonybrook Condominium Owners Association,* Declaratory Ruling #385, Findings of Fact and Conclusions of Law and Order (May 18, 2001), the permitted project is the entire tract of land unless the permittee applies for and receives a permit that defines the permitted project as something less than the

[2] The balance of the 239 acres owned by Bruce R. Parker in Trust discussed in Land Use Permit 2S0214-6 not purchased by the O'Neils was sold and developed for a project involving 25 single-family houses pursuant to Land Use Permit #2S0214-7.

entire tract. As the Environmental Board made clear in *Stonybrook,* the burden of attempting to establish that only a part of the tract has a nexus to the project is on the applicant. The Board also made clear that such a determination would not be an easy or simple process and would require "extensive fact finding hearings merely to discover whether the jurisdiction of the Act would apply in a given case. These hearings would necessarily explore the merits of the proposed project just to reach the question of how much of the tract of land being built upon is involved in the project. Their findings might well require, and could well turn on the results of detailed, and expensive, surveys of the square footage of land affected or utilized by the project." *Stonybrook* at 16.

In the instant case, just as the Board determined in the *Stonybrook* case, it is obvious that the permitted project is not merely the 18 acres that are being excavated. In *Stonybrook*, the Board discovered that the developer's figure excluded the access road and landscaping areas located on the same tract of land and obviously directly related to the construction of the facility. The Board also notes issues such as stormwater needed to be considered when looking at the permitted tract. In *Alpine Stone Corporation* #2S1103-EB, Findings of Fact, Conclusions of Law, and Order at 16 (Feb. 4, 2002), where the developer argued to limit the size of the permitted project, the Board concluded:

> [t]he record in this appeal is insufficient to determine the physical extent of the project's potential impacts under Act 250. For instance, the physical limits of the deer wintering area on the involved land and any related buffer area are not in evidence and there is no quantitative evidence on the amount of forest or other buffer areas needed to keep quarry noise levels down to reasonable levels at the nearest residences. As contemplated in *Stonybrook*, "delineating such boundaries will require a careful evaluation . . . of the natural resources on the project tract and of the actual impacts or effects created by the project on those resources.

Putting aside for a moment the fact that the Applicant *never applied for the permitted project to be something less than the 139 acres*, it is obvious on its face that the permit issued, which was accepted without appeal by the Applicant, addresses more than the 18 acres to be cleared for excavation. The permit authorized the construction of an 800-foot access road leading to the excavation area. Condition 30 protected the *entire* remaining deer wintering area with respect to future tree harvesting and recreational uses. Condition 23 required that any logging proposals on the entire tract (other than the 18 acres to be clear cut) be approved by the Commission. The Applicant did not attempt to provide the detailed information that a Commission would need to define "the physical extent of the Project's potential impacts under Act 250." In conclusion, the Commission finds the Applicant's argument that the permitted tract is the 18-acre excavation area to be without merit.

***Stowe Club Highlands* Analysis**

As discussed in *Re: Dr. Anthony Lapinsky and Dr. Colleen Smith* #5L1018-4/#5L0426-9-EB Findings of Fact, Conclusions of Law, and Order at 12 (October 3, 2003), the Environmental Board's decision in *Re: Stowe Club Highlands*, #5L0822-12-EB, Findings of Fact, Conclusions of Law and Order (June 20, 1995), *affd*, *In re Stowe Club Highlands*, 166 Vt. 33 (1996), stands for the proposition that, once a permit has been issued and used, amendments to that permit should not be granted as a matter of course, but rather only after the person who seeks the amendment can show that there are reasons why the *status quo* should be altered and the permit amended. The case, therefore, provides some level of assurance to the neighbors or other parties (who may have opposed the original permit or who may have relied upon the terms and conditions in the original permit) that a permittee will not be allowed to accept a permit, use it, and then seek to expand it beyond its original restrictions, merely because the permittee wishes to do so. As the Vermont Supreme Court wrote, the initial permitting process should not be "merely a prologue to continued applications for permit amendments." *Stowe Club Highlands*, 166 Vt. at 39. In affirming the Board's decision in *Stowe Club Highlands*, the Court stated:

> The Board framed its discussion as weighing the competing values of flexibility and finality in the permitting process. If existing permit conditions are no longer the most useful or cost-effective way to lessen the impact of development, the permitting process should be flexible enough to respond to the changed conditions.

Ultimately, the Court concluded that the Board was justified in denying the permit amendment application based upon the balancing of the policies of finality and flexibility.

The Board's decision in *Re: M.B.L. Associates, LLC*, #4C0948-3-EB, Findings of Fact, Conclusions of Law, and Order (October 20, 1999), summarizes the competing finality and flexibility policies as follows:

> The principle of finality is derived from the consequences of a permit being issued without any subsequent appeal. Once a permit is issued and the applicable appeal period has expired, the findings, conclusions and permit are final and are not subject to attack in a subsequent application proceeding . . . "To hold otherwise would severely undermine the orderly governance of development and would upset reasonable reliance on the process." *In Re Taft Corners Associates*, 160 Vt. 583, 593 (1993). [In contrast, t]he principle of flexibility is derived from the consequences of the development process . . . "[O]nce a permit is issued it is reasonable to expect the permittee to

conform to those representations unless circumstances or some intervening factors justify an amendment." *Re: Department of Forests and Parks Knight Point State Park,* Declaratory Ruling #77 at 3 (September 6, 1976). In a permit amendment application proceeding, the central question is "not whether to give effect to the original permit conditions, but under what circumstances those permit conditions may be modified." *In re Stowe Club Highlands. Id.* at 15, *citing* the Board's decision in *Nehemiah Associates, Inc., supra,* at 21-22.

The Board clarified and supplemented its *Stowe Club Highlands* case law through the adoption of Environmental Board Rule 34(E) on January 15, 2003, now known as Act 250 Rule 34(E). This rule reads as follows:

34(E) Balancing Flexibility and Finality of Permit Conditions: (Stowe Club Highlands Analysis)

(1) This rule governs applications to amend permit conditions which were included to resolve issues critical to the district commission's or the board's issuance of prior permit(s) pursuant to the criteria of 10 V.S.A. Section 6086(a). Applications to amend other permit conditions are not subject to the requirements of this section but must still satisfy the criteria of 10 V.S.A. § 6086(a) and other applicable provisions of these Rules.

(2) In reviewing an application for amendment, the district commission or the board should consider whether the permittee is merely seeking to relitigate the permit condition or to undermine its purpose and intent. It must also determine whether the need for flexibility arising from changes or policy considerations outweighs the need for finality in the permitting process.

(3) In balancing flexibility and finality, the district commission or the board should consider the following, among other relevant factors:

(a) changes in facts, law or regulations beyond the permittee's control;

(b) changes in technology, construction, or operations which drive the need for the amendment;

(c) other factors including innovative or alternative design which provide for a more efficient or effective means to mitigate the impact addressed by the permit condition;

> (d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;
>
> (e) manifest error on the part of the district commission or the board in the issuance of the permit condition;
>
> (f) the degree of reliance by the district commission, the environmental board, or environmental court, or parties on prior permit conditions or material representations of the applicant in prior proceeding(s).

Three Step Analysis Required by Act 250 Rule 34(E)

Step One: Critical Conditions

Following the three step analysis outlined in Act 250 Rule 34(E), there can be no question that the inclusion of Conditions 11, 12 and 21 were critical conditions intended to address noise. In its findings, the Commission makes clear that its primary concern with respect to noise impacts was the protection of the public investment of the adjoining school and its grounds. These conditions were critical in making positive findings of fact under Criteria 8 Aesthetics and under 9(K) Public Investments. Under Criterion 8, the Commission stated that "by conditioning the permit to meet noise levels as discussed under Criterion 9(K) . . . for the Green Mountain High School, the project will not be offensive . . . "

Under Criterion 9(K), the Commission relied on Conditions 12 and 21[3] in order to find conformance with Criterion 9(K). The Commission stated "[i]f, however, noise is more than "barely audible" and thus has the potential to interfere with the enjoyment of and the functions of the school and its facilities, including outdoor education and athletic programs, the project will not be in conformance with Criterion 9(K) Public Investments and the permit for continued operation will be subject to revocation." The Commission notes that the only way the project could meet the barely audible standard, given the proximity of the school grounds to the

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[3] The Commission incorporated, by reference, its findings under Criterion 1 Air Pollution and Criterion 8 Aesthetics, including the findings regarding the prohibition on blasting, under its findings for Criterion 9(K). See Finding #60:

> 60. The District Environmental Commission incorporates the findings under Criterion 1 Air Pollution and Criterion 8 Aesthetics with respect to noise issues and Criterion 5 with respect to traffic issues.

operations, would be to prohibit blasting. The pre and post warning sirens and the blasting itself would be more than barely audible. The Applicant in its August 3, 2006 *Stowe Club Highlands* Analysis and accompanying Affidavit of Kenneth Kaliski, does not attempt to provide the required evidence that noise from blasting and/*or operations* would actually meet the standards of the permit conditions of noise being barely audible at the school *and areas used for recreation and outdoor education.* The noise analysis fails to provide an accurate level of the lowest audible noise levels on the school property when class is in session and also fails to provide either modeled or measured sound levels except at the school building and other locations off the school grounds. Finally, the noise levels fail to provide a worst case noise level as all the combined noise generators are not modeled.

Condition 31 required an escrow account for reclamation so that the Commission could complete the required reclamation should the Permittee default on its obligations. Condition 46 required that all extraction and removal of material be completed in six years and all reclamation completed in accordance with the approved plans by October 1, 2009, unless extended by the District Commission. Although the condition allows for an amendment to extend the reclamation activities, it does not allow for an amendment to extend the time period for the extraction and removal of material. These conditions were critical as the Commission noted in reaching a positive conclusion under Criterion 8 Aesthetics and Scenic Beauty and issuing a permit for the project. The Commission noted that "the limited length of the proposed operation (six years) and the reclamation plans involving progressive planting allow the Commission to conclude that the project will not significantly diminish the scenic qualities of the area."

Step Two: Relitigation or Undermining the Purpose or Intent of Critical Conditions

With respect to the second step of the analysis, the Commission is guided by the Vermont Supreme Court's observation that the initial permitting process should not serve as "merely a prologue to continued applications for permit amendments." *Stowe Club Highlands,* 166 Vt. at 39. The Environmental Board has further observed that "No applicant should accept a permit under the belief that such acceptance need only bind him to the permit's terms and conditions until he chooses to challenge them." *Dr. Anthony Lapinsky and Dr. Colleen Smith, supra,* at 18.

In this case, the Applicant not only accepted the conditions, but *offered* to not conduct blasting *and* to limit the term of operation to six years. The *Stowe Club Highlands* Court observed that "foreseeability is related to the degree of change" and that "while small or moderate changes are expected and even common, extreme changes will likely come as a surprise to all." *Stowe Club Highlands*, 166

Vt. at 39. Therefore, a permit applicant "should consider foreseeable changes in the project during the permitting process, and not suggest conditions that "[it] would consider unacceptable should its project change slightly. Otherwise, the initial permitting process would be merely a prologue to continued applications for permit amendments."

The Applicant also indicated its intention to reclaim the area and signed the required escrow agreement. An Act 250 permit amendment is required for the "Applicants' plans to develop house lots on the property after completion of the quarry and adjustments to the mitigation location can occur during that process".

In the original application, the Commission was presented with a *time-limited* project in a sensitive location next to a public school. The present application would require the Commission to relitigate issues with respect to the impacts to this important public investment. Also, the proposed application would undermine the purpose and intent of the critical conditions. The application seeks to include blasting and other noise which would be more than barely audible on the adjoining school grounds. The proposed amendment would also clear an additional 15 acres above and beyond the area previously approved and extend operation for 10 additional years. The proposal also significantly extends the time period of reclamation for both the original project (of which part would be used for storage and loading operations) as well as the additional 15 acres of cleared area.

The Applicant's justification for applying for the amendment now is that the original permit conditions, intended to protect the Green Mountain Union High School property, only applied to a small portion of the 139 acres the Applicant itself defined as the "Acres committed to this project." The Applicant has failed to persuade the Commission that the current application is anything other than a request to relitigate and undermine previously decided permit requirements.

Step Three: Flexibility Versus Finality

With respect to the third part of the analysis, the Commission examines factors (a) through (f) in attempting to balance the need for flexibility versus finality in the permit process.

(a) *changes in facts, law or regulations beyond the permittee's control*

Under factor (a), the majority of the Commission is not persuaded that there are any changes in facts, law or regulations beyond the permittee's control which are relevant to the matter at hand. The Applicant appears to be making the argument that because the site conditions on the 15 additional acres are different from the approved project that this is a change in fact. As pointed out in the

affidavit of the owners of O'Neil Sand and Gravel LLC, the Applicant has been in the excavating business since 1989. Additionally, before purchasing the property test pits were dug "in locations on the Parker Trust land." The fact that there are differing deposits of stone and gravel exist on the site is not a change in fact.

(b) *changes in technology, construction, or operations which drive the need for the amendment*

The Applicant's argument under factor (b) is not persuasive to the majority of the Commission. The Applicant argues that "the change in site conditions necessitate a change in operations." (Exhibit 19) We reject the Applicant's contention that the permitted site was limited to the 18 acres.

(c) innovative or alternative designs which provide a more efficient means to mitigate the impact.

The Applicant argues that the design of the project demonstrates an innovative design because it incorporates a depression where equipment would operate, and there is a 200-foot buffer of trees adjacent to the excavation area. These are not innovative measures for quarry operations to employ. The Applicant has not provided evidence of how the project would *more* efficiently mitigate the impact of noise from the project.

(d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;

The Applicant has argued that the project further the goals and objectives of the Chester Town Plan. The Mineral Resources Goal in the plan reads as follows:

1. To encourage the extraction and processing of mineral resources in a manner that is appropriate and consistent with Chester's rural character". Town Plan p. 40.

The Town Plan also has Mineral Resource Policy #3 which reads as follows:

3. Require that earth resource extraction activities do not adversely affect surrounding properties and mitigate adverse impacts on essential wildlife habitat, and that extraction sites be restored to viable condition in a timely manner. Town Plan p.40.

The Commission notes that while the goal *encourages* mineral extraction, the policy *requires* that it not adversely affect surrounding properties. Given the addition of blasting and the extension of the operations for ten additional years, it is easily argued that the amendment, looking at the addition of even blasting alone, could result in adverse impacts to surrounding properties. So, while the project could possibly further a goal of encouraging the extraction and processing of mineral resources in a manner that is appropriate and consistent with Chester's rural character, it also could be at odds with Policy #3. The Commission, therefore, declines to give weight to this factor.

(e) manifest error on the part of the district commission or the board in the issuance of the permit condition

The Applicant has not claimed there was any manifest error on the part of the Commission in issuing the permit as conditioned.

(f) the degree of reliance by the district commission, the environmental board, or environmental court, or parties on prior permit conditions or material representations of the applicant in prior proceeding(s)

With respect to factor (f), *Stowe Club Highlands* and subsequent decisions, make clear that "evidence of reasonable reliance by a party or a decision-maker on the condition which is the subject of the proposed amendment weighs heavily in favor of finality." Re: *Town and Country Honda and Robert M. Aughey, Jr.* #5W0773-2-EB Findings of Fact and Conclusions of Law and Order (February 15, 2001). The Commission placed strong reliance on representations of the Applicant. The issuance of the permit was specifically conditioned upon the protection of the public investment in the Green Mountain Union High School property, not just the school building, but also the areas used for "outdoor recreation and education." The Commission relied upon the representations of the Applicant that there would be no blasting and that it could therefore meet the standard outlined in Condition 12 that "noise levels from all aspects of operations occurring on the site shall be no louder than barely audible at the school buildings and areas used for outdoor recreation and education".

The Commission also placed strong reliance on the Applicant's representation that the extraction would last six years and the area would be reclaimed. It was this representation that allowed the Commission to conclude the project would conform with Criterion 8 Aesthetics and Scenic Beauty. In its conclusion under that criterion, the Commission noted "[a]lthough the clearing of trees will be quite substantial, the limited length of the proposed operation (six years) and the reclamation plans involving progressive planting allow the Commission to conclude the project will not significantly diminish the scenic

qualities of the area." Also, the Applicant represented that the future use of the property would be for home sites. The flexibility in the mitigation site was expressly reserved so that house sites could be best accommodated on the property. As stated in Finding # 46 under Criterion 8(A) Wildlife habitat, " [t]he applicants are aware that an Act 250 permit amendment is required for the Applicants' plans to develop house lots on the property after completion of the quarry and adjustments to the mitigation location can occur during that process. Exhibits 14, 19, 33, and 44."

The Green Mountain Union High School Board has been granted party status in the current proceeding. Edward J. Brown, the Superintendent of the Windsor Southwest Supervisory Union which includes Green Mountain Union High School, has submitted an affidavit indicating that he relied upon the representations made by the Applicant with respect to no blasting, a six year term of operations and reclamation of the site when he recommended that the School Board not seek party status in 2001. Had he known of the plans to expand the operations to include blasting and to extend the length of operations, he would have advised the Board to seek party status.

A number of landowners who have been granted party status in this proceeding have also submitted sworn affidavits that they relied upon critical conditions of Land Use Permit #2S0214-6 when making decisions to purchase homes or property, renovate or to refrain from selling their homes.

While neither the Green Mountain School Board and its Superintendent or the property owners who have submitted sworn affidavits were interested parties to the 2001 application, their reliance on the permit process needs to be given weight. The Vermont Supreme Court in *In re Nehemiah Associates Inc.*, 168 Vt. 288, 294 (1998), stated that the "permitting process requires some finality because, both at the time the permit issues and subsequently, the parties and other interested persons reasonably rely on the permit conditions in making decisions."

Finally, the Applicant relied upon and benefitted from the permit. The Applicant presented a project for gravel extraction in a very sensitive area. The project was designed to obtain a permit at this site and included the types of operational restrictions needed to obtain such a permit. As a result, the Permittee had a permit process without opposition from the Green Mountain Union High School or others, was granted a permit from the Commission, the permit was not appealed by any party, and the Permittee has operated and benefitted from the permit. The *Stowe Club Highlands* Court observed that "foreseeability is related to the degree of change" and that "while small or moderate changes are expected and even common, extreme changes will likely come as a surprise to all." *Stowe Club Highlands*, 166 Vt. at 39. The changes the Applicant is asking for in this permit amendment are large, including ten additional years of operations, delay of

reclamation of the site, blasting and other noise which was specifically prohibited under the existing permit.

Balancing Flexibility and Finality

In weighing the factors of flexibility versus finality, the majority of the Commission concludes that the Applicant, which bears the burden of changing the status quo, has not demonstrated that there are any persuasive factors favoring flexibility. In contrast, the factors favoring finality, notably the reliance by the Commission and interested persons who reasonably relied on the Applicant's representations and the permit conditions, are strong. The Commission, therefore, denies the application to seek an amendment for the expansion and extension of the duration of the extraction operations of the project.

VI. ORDER

1. The application for the project is denied pursuant to Act 250 Rule 34(E) as the Commission has determined that the application seeks to relitigate and undermine the critical permit conditions and that the need for finality outweighs the need for flexibility.

Dated at Springfield, Vermont on February 2, 2007.

By: _____
Michael Bernhardt, Chair
District 2 Environmental Commission
Natural Resources Board

Concurring commissioner
participating in this decision: Leslie Hanafin Cota

Dissenting commissioner: John Follett

Commissioner Follett dissents from the decision of the majority and believes there is sufficient evidence in favor of going forward with a hearing on the merits of the application.

Exhibit List #2S0214-6A
O'Neil Sand & Gravel, LLC
Chester

No.	Date Admitted/ Received	By	Subject
1	9/6/06	Applicant	Act 250 Application
2	"	"	Schedule B
3	"	"	Operational Plan
4	"	"	Air Pollution Control Permit to Construct (4/25/06) AP-06-015
5	"	"	Letter (8/22/05) from District Wetlands Ecologist
6	"	"	Procedures for Refueling Off Road Equipment in Site (7/27/01)
7	"	"	Noise Analysis (2/22/06)
8	"	"	Blasting Design & Vibration Control Plan (2/06)
9	"	"	Erosion Prevention and Sediment Control Plan (2/06)
10	"	"	Notice of Intent to Discharge Stormwater (Public Notice)
11	"	"	Letter (2/10/06) from Bruno Associates
12	"	"	Wildlife Management Plan (2/1/06)
13	"	"	Letter (5/5/06) from Fish & Wildlife Specialist Bernier
14	"	"	Municipal Impact Questionnaire
15	"	"	Visual Impact Analysis (5/15/06)
16	"	"	Phase 1A Literature Review Phase 1B Archeological Field Reconnaissance
17	"	"	Excerpt from Chester Town Plan
18	"	"	Excerpt from Southern Windsor County Regional Plan

No.	Date Admitted/ Received	By	Subject
19	9/6/06	Applicant	Stowe Club Highlands Analysis (7/28/06)
20	"	ANR	Interagency Comments (9/1/06)
21	"	Applicant	Existing Conditions Plan, Sheet EX-1 (1/20/06) revised 3/10/06
22	"	"	Plot Plan, Sheet OA (1/16/06) revised 3/10/06
23	"	"	Grading & Phasing Plan, Sheet C-1 (1/6/06) revised 3/10/06
24	"	"	Road Plan & Profile, Sheet C-2 (12/19/05) revised 3/10/06
25	"	"	Profile & Section, Sheet C-3 (1/6/06) revised 3/10/06
26	"	"	Deer Wintering Area Mitigation Plan, Sheet C-3 (12/19/05) revised 4/26/06
27	"	"	Sightline Plan & Profile, Sheet C-5 (12/19/05) revised 3/10/06
28	"	"	Overall Erosion Control Plan Sheet ECP-1 (12/19/05) rev
29	"	"	Erosion Control Plan, Sheet ECP-2 (12/19/06) revised 3/10/06
30	"	"	Erosion Details, Sheet ECD-1 (12/19/05) revised 3/10/06
31	"	"	Sightlines, Sheets M-1, S-1, S-2, S-3, S-4, S-5, S-6, S-7, and S-8 (2/14/06)
32	9/20/06	The Neighbors	Memorandum in Opposition to the Applicant's Stowe Club Highlands Analysis (9/21/06)
33	"	"	Act 250 Application #2S0214-6
34	"	"	Excerpt from Schedule B of Application #2S0214-6

No.	Date Admitted/ Received	By	Subject
35	9/20/06	The Neighbors	Affidavit of Edward Brown (9/18/06)
36	"	"	Affidavit of Jonathan Otto (9/18/06)
37	"	"	Affidavit of Melanie McGuirk (9/18/06)
38	"	"	Affidavit of Rachel Root (9/17/06)
39	"	"	Affidavit of Heather Chase (9/17/06)
40	"	"	Affidavit of Janet Colbert (9/17/06)
41	"	"	Affidavit of Alice Forlie (9/17/06)
42	"	"	Affidavit of Michael Caduto (9/17/06)
43	"	"	Affidavit of Mary Hildreth (9/17/06)
44	"	"	Affidavit of Valerie Kratky (9/20/06)
45	"	Stefaney	Sworn Statement of Lynne Stefaney (9/20/06)
46	"	Greenlees	Affidavit of Janet Greenlees (10/2/06) w/attached map
47		Dryer	Sworn Statement of Anne B. Dryer (10/10/06)
48		Applicant	Applicant's Rebuttal to Memorandum in Opposition to the Applicant's Stowe Club Highlands Analysis
49		"	Excerpt from Environmental Board Rules (9/13/02)
50		"	Prefiled Direct Testimony of Michael and Amy O'Neil
51		"	Prefiled Direct Testimony of Ralph Michael
52		"	Resume of Ralph Michael
53		"	Cover Sheets for Application #2S0214-6

No.	Date Admitted/ Received	By	Subject
54		Applicant	Letter (3/22/01) from Chris Bernier, F&W Tech.
55		"	Prefiled Direct Testimony of Bruce Boedtker
56		"	Resume of Bruce Boedtker
57		"	Prefiled Direct Testimony of Thom Serrani
58		"	Prefiled Direct Testimony of William Ahearn
59		"	Resume of William Ahearn
60		"	VTrans Web Page
61		"	Excerpts from New England Governor's Report *Construction Aggregates Demand in the New England States*
62		"	Truck Network Map
63	11/28/06	The Neighbors	Letter (11/28/06) from Evan Mulholland
64		"	Letter (11/22/06) from William Wargo, Esq.
65		"	Prefiled Testimony of Jessica Edgerly
66		"	MSDS - Material Safety Data Sheet
67		"	Health Assessment Document for Diesel Engine Exhaust
68		"	17th Meeting of the International Commission for Acoustics, Rome, Italy 2/7/01
69		"	Prefiled Testimony of Kevin O'Donnell
70		"	Prefiled Testimony of Carrol Otto
71		"	Rebuttal Statement from Rachel Root

No.	Date Admitted/ Received	By	Subject
72	11/28/06	The Neighbors	Rebuttal Statement from Anne Kipp
73		"	Rebuttal Statement from Janet Podnecky
74		"	Rebuttal Statement from Sheila McDonald
75		"	Rebuttal Testimony of Michael Caduto
76		"	Excerpt from Noise Analysis for O'Neil Sand & Gravel's Proposed Crushed Stone Quarry (2/16/06)
77		"	Price List from Cersosimo Industries - sand, gravel & stone products
78	"	"	Price List from St. Pierre
79	"	"	Price List from Cold River
80	"	"	O'Neil Sand & Gravel Material Price List
81	"	"	Construction Aggregates Demand In The New England States (1/92)

CERTIFICATE OF SERVICE
#2S0214-6A

I hereby certify that I sent a copy of the foregoing Findings of Fact, and Conclusions of Law and Order on February 2, 2007, by U.S. Mail, postage prepaid, and electronically, where indicated, to the following:

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