

**STATE OF VERMONT  
ENVIRONMENTAL BOARD  
DISTRICT ENVIRONMENTAL COMMISSION #3**

**RE:** Ray G. & Lynda J. Colton  
P.O. Box 688  
Pittsfield, VT 05762

Application #3W0405-5  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
AND ORDER**  
10 V.S.A., §§ 6001 - 6092

**I. INTRODUCTION**

On April 5, 2001, Ray G. & Lynda J. Colton filed an application for an Act 250 permit for a project generally described as **storage for up to 1,000 cords of logs on-site, reclamation of topsoil from the log storage area at least once annually, grinding and storage of wood bark, occasional wood chipping, an increase in daily truck traffic, and replacement of the existing generator with a 210-kW generator.** During the permitting process the Applicants also requested year-round operation of the permitted project and extraction of gravel from the Tweed River. The project is located on VT Route 100 in Pittsfield. The tract of land consists of 7 acres. The Applicants' legal interest is ownership in fee simple described in a deed recorded on November 15, 1982, in the land records of the Town of Pittsfield, Vermont.

The application was determined to be incomplete under Environmental Board Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicants dated April 13, 2001. The application was deemed complete on April 25, 2001, upon receipt of supplemental information.

Under Act 250, projects are reviewed based on the 10 criteria of 10 V.S.A., § 6086(a) (1)-(10). Before granting a permit, the District Environmental Commission must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file identified as Exhibits 1 through 51, and the evidence received at a hearing held on May 18, 2001. At the end of the final hearing, the District Environmental Commission recessed the proceeding pending submission of additional information from the Applicants. The final information from the Applicants was submitted September 14, 2001. Pursuant to 10 V.S.A. § 6085(f) all parties were allowed an opportunity to review and respond to the submittals. The Commission adjourned the hearing on October 2, 2001, upon receipt of the additional information and completion of Commission deliberations.

**II. JURISDICTION**

Jurisdiction attaches because the project is a substantial and material change to a permitted project, Land Use Permit #3W0405, and thus constitutes "development" pursuant to Board Rules 2(A)(5) and 2(P).

**III. PARTY STATUS**

A. Preliminary Party Status Determinations

Parties to this application who attended the hearing are:

1. The Applicants by Ray and Lynda Colton, landowners; Ralph Michael, professional engineer; and Ken Kaliski, traffic consultant.
2. The Municipality of Pittsfield by Stephen Dietz, Selectboard member.
3. The Pittsfield Municipal Planning Commission by John Barrows, member.
4. The Two Rivers-Ottawaquechee Regional Planning Commission did not attend the hearing.
5. The State of Vermont Agency of Natural Resources (ANR) by Timothy Melchert, legal staff, through an entry of appearance dated May 15, 2001.

The following adjoining property owners were either admitted as parties or denied party status, as indicated, pursuant to Board Rule 14(A):

6. Nancy Caparell, an adjoining property owner, was represented by Sarah Gray. Ms. Caparell requested party status under Criteria 1 Air Pollution and 8 Aesthetics. The Applicants objected because Ms. Caparell was not at the hearing. The Commission granted preliminary party status under Criteria 1 and 8, provided Ms. Caparell submit a letter authorizing Ms. Gray to represent her at the hearing. Ms. Caparell did submit the requested letter to the Commission.
7. Donald Gray, an adjoining property owner, requested party status under Criteria 1 Air Pollution, 8 Aesthetics and 10 Local Plan. The Applicants did not object. The Commission granted preliminary party status under Criteria 1, 8 and 10.

8. Dorothy Gray, an adjoining property owner, requested party status under Criteria 1 Air Pollution, 5 Traffic Safety, 8 Aesthetics and 10 Local Plan. The Applicants objected to Criteria 5 and 10. The Commission granted preliminary party status under Criteria 1, 8 and 10. The Commission denied party status under Criterion 5 because it was not convinced the project had the potential to directly effect Ms. Gray's property under that criterion.
9. Gordon Gray, an adjoining property owner, requested party status under Criteria 1 Air Pollution and 8 Aesthetics. The Applicants did not object. The Commission granted preliminary party status under Criteria 1 and 8.
10. Sarah Gray, an adjoining property owner, requested party status under Criteria 1 Air Pollution, 5 Traffic Safety, 8 Aesthetics and 10 Local Plan. The Applicants objected to Criteria 5 and 10. The Commission granted preliminary party status under Criteria 1, 8 and 10. The Commission denied party status under Criterion 5 because it was not convinced the project had the potential to directly effect Ms. Gray's property under that criterion.

B. Final Party Status Determinations

Pursuant to 10 V.S.A. § 6085(c)(2) and Board Rule 14(F), the District Environmental Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. Prior to the completion of deliberations, the Commission re-examined the preliminary party status determinations and found that the parties continue to qualify under the relevant criteria as stated above.

**IV. FINDINGS OF FACT**

In making the following findings, the District Environmental Commission has summarized the statutory language of the 10 criteria of 10 V.S.A., § 6086(a):

**GENERAL FINDINGS**

1. On April 8, 1983, the Commission issued Land Use Permit (LUP) #3W0405 authorizing a firewood processing plant, including three separate buildings and a large graveled storage yard. The Findings of Fact and Conclusions of Law and Order (Findings) discuss a firewood kiln. Under Criterion 1 Air Pollution they state:

The firewood kiln will be heated with a wood fired Conifer 21-S Chequamegon boiler, which will not cause undue air pollution. The Conifer is a wood gasification boiler which will eliminate the majority of smoke and particulate emissions normally associated with conventional wood fired systems having much lower efficiency ratings.

2. The Commission concluded in its Findings under Criterion 1 Air Pollution:

The Commission reserves the right to conduct site visits and schedule hearings to review the project under this criterion and impose additional conditions if problems develop in the future.

3. Condition #12 of LUP #3W0405 states:

The Commission reserves the right to conduct site visits and schedule hearings to review the project under Criterion 1 Air Pollution and impose additional conditions with regard to the combustion of waste wood projects [sic] if problems develop in the future.

4. Under Criterion 1(E) Streams the Findings state:

The applicants have agreed to maintain a 75-foot buffer strip between storage area and the stream bank which will remain in its natural condition.

5. Under Criterion 8 Aesthetics the Findings state:

The applicants have stated that this will be a part time operation except for the spring when it will be full time.

6. On August 2, 1985, the Commission issued LUP #3W0405-1 authorizing an additional kiln building, an increase in the boiler from 23 HP to 50 HP, an addition to the Energy Center building, an increase in the gravel area around the Energy Center building and relocation of the septic system.

7. The Applicants' Schedule B in this application states:

Traffic will not be affected by the proposed changes except the number of loads of incoming logs and outgoing processed firewood will probably nearly double. Trips per day will still be not more than 20.

8. On May 9, 1991, the Commission issued LUP #3W0405-2 which authorized construction of a storage building.
9. On July 27, 1994, the Commission issued LUP #3W0405-3 which authorized construction of an addition to an existing building to contain a wood chip-fired boiler and to relocate a septic tank, leach field and parking lot.
10. The Applicants' Schedule B in this application states:

Hours of operation for this facility are from 7:00 A.M. to 5:00 P.M. and this addition will not change that. The boilers are operated 24 hours per day during the seven months of operation from September through March.
11. On November 26, 1996, the Commission issued LUP #3W0405-4 which authorized installation of a 135-kilowatt generator inside the existing building, installation of a 10,000-gallon underground fuel tank and installation of a 60-ton truck scale.
12. The proposed project includes storage of up to 1,000 cords of wood, reclamation of topsoil from the log storage area at least once annually, grinding and storage of wood bark, occasional chipping of junk wood, an increase in truck traffic, replacement of a 135-kilowatt generator with a 210-kilowatt generator and year-round operation of the firewood processing operation. Exhibit 6.

**SECTION 6086(a)(1) WATER AND AIR POLLUTION:**

The District Environmental Commission concludes that this project will not result in undue air or water pollution:

**SECTION 6086(a)(1) AIR POLLUTION:**

13. The project includes year-round operation of the wood processing plant, grinding and storage of wood bark, chipping junk wood, an increase in truck traffic and use of a larger generator. The project is located in a rural residential neighborhood. Possible air pollution from the project includes emissions, odor and noise. Exhibit 2 and Testimony.

**EMISSIONS:**

14. The project will produce additional emissions through an increase in the use of the kilns and the use of a larger generator. Exhibit 6 and Testimony.

15. The process of kiln dried hardwood firewood includes kiln drying the wood in four kilns. Steam for the kilns is provided by two wood-fired boilers. The boilers are fueled with wood chips or chipped waste wood. Exhibit 48.
16. The output of each of the furnaces on the boilers is less than 90 horse power (HP). An Air Pollution Control Permit was not required for their installation. Their outputs are greater than 40 HP and they are, therefore, subject to Section 5-211 regarding visible emissions. Exhibit 48.
17. The boilers are started occasionally during the summer and usually operate continuously during the heating season, September through March. There are times the boilers are taken off line to clean the tubes and then restarted. The boilers create visible emissions upon startup. Exhibit 48 and Testimony.
18. Summer startups are necessary as the Applicants now provide wood to restaurants that cook with wood. The demand is such that the Applicants cannot dry all the firewood at one time, but require the ability to dry wood intermittently during the summer. Exhibit 26 and Testimony.
19. The boilers are started using wood chips. The chips are loaded into the furnace and ignited with a propane torch. The chips burn quickly, igniting the load of chips fed from the hopper. No alternative fuel exists to start the boilers. Exhibits 26 and 48.
20. Visible emissions cannot exceed 20% opacity for a total of six minutes in any hour and at no time can emissions exceed 60% opacity. Section 5-211(3). An exception is allowed for wood fuel burning equipment which allows emissions during start up to exceed the standards for no longer than one hour. A maximum of 80% opacity cannot be exceeded during that hour. Exhibit 48.
21. A representative of the Air Pollution Control Division (APCD) conducted a visible emissions test of the boilers at the request of the Commission. Visible emissions were heavy for about one minute from the small boiler. Except for the first 1.5 minutes that the boiler smoked during start-up, emissions from the boiler were visually clear. At no time did the average of the highest two minutes exceed the 80% opacity limit. Exhibit 48.

22. The APCD representative also observed the larger boiler during start-up. The maximum two minute average was less than the 80% opacity limit. After the initial two minutes of start-up with heavy opacity, two additional minutes of relatively low opacity smoke, emissions were visually clear. Exhibit 48.
23. The use of dry wood chips as opposed to green chips, allows for a quicker, cleaner start-up with less smoke. Exhibits 48 and 49.
24. Smoke and soot from the boilers can blow onto the neighbors' property. The prevailing wind is toward the neighbors' property and Killington. Exhibit 48 and Testimony.
25. A wind direction indicator would allow the Applicants to be aware of the direction of the wind, and not to start the boilers when the wind is blowing toward the neighbors' property. Exhibit 48.
26. A stationary diesel engine rated at 450 horse power (HP) or greater and used for other than emergency backup purposes is subject to review and an Air Pollution Control Permit. The 210 kW generator is approximately 300 HP and therefore does not require an Air Pollution Control Permit. Exhibit 20.
27. The generator is fueled with off-road diesel. The generator could be fueled with a cleaner diesel fuel. On-road diesel has a lower sulfur content. The main change in emissions from the generator would be sulfur dioxide. The cost of running on-road diesel is extremely high. Manufacturer's specifications do not require this more expensive fuel. Testimony.
28. The building housing the generator is blackened. This occurred when the generator was under-powered. Testimony.
29. The Grays' daughter has a chronic cough that disappears when she is away from home for long periods. Testimony.
30. The Applicants have a maintenance schedule for the generator. The Applicants indicate they follow this schedule and thus maintain the generator in top condition minimizing emissions. Exhibits 26 and 37.
31. The generator operates 24 hours per day during the winter. Testimony.

32. Because air contaminant emissions from the project site exceed five tons per year, the Applicants must obtain a valid Air Pollution Registration annually. Exhibit 48.

ODORS:

33. Bark is a residual material of the firewood processing operation. The Applicants grind the bark from the logs and operate a bark mulch business. The Exhibits 6 and 36.
34. The piles of bark and mulch can begin to decay if left for long periods of time and create an odor. By shortening the time period the products are stored, decomposition is reduced. Decomposition is greatest during the summer when the weather is hotter. Exhibit 36.
35. Approximately 2,000 cubic yards of bark is generated at the site each year, mainly during the firewood splitting process. Another 5,000 cubic yards of bark is brought to the site. The 5,000 cubic yards of bark brought to the site is usually hemlock, a material in high demand for mulch. During the winter, September through March, the bark is collected and stored in a stockpile close to the processing building. Exhibit 36.
36. The Applicants grind the bark into bark mulch at the site for approximately 200 hours per year. This operation occurs primarily during the spring. During the site visit the Commission observed a very large pile of bark mulch at the site. Exhibit 36 and Observations from Site Visit.
37. Processing the bark mulch at a different site would be inconvenient for the Applicants. The loader and personnel used for processing firewood and mulch are the same. Exhibit 26.
38. The majority of the bark mulch is sold and removed from the site as it is ground. A lesser amount is stored on site for local customers. All the bark mulch leaves the site before the end of July. The bark mulch is sold Monday through Saturday from 7:00 a.m. until 6:30 p.m. Exhibit 36 and Testimony.

NOISE:

39. Hearing loss occurs with continual exposure to more than 70 decibels (dB(A)). Pittsfield does not have a noise standard. Other Vermont towns limit noise to 70 dB(A) at the property line. Testimony.



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40. The Applicants would like to chip waste wood a maximum of four times per year for no more than six hours during the middle of the day. The chipper would operate Monday through Saturday from 7:00 a.m. until 6:30 p.m. Exhibit 11 and Testimony.
41. Noise from the firewood operation will not exceed 70 dB(A) at the property line, and 55 dB(A) at any residence or area of frequent human use. The exception is chipping which may exceed 55 dB(A) Lmax at residences. Exhibit 18.
42. Normal operating hours are Monday through Saturday except holidays from 7:00 a.m. until 6:30 p.m. This does differ from the originally approved 7:00 a.m. until 5:00 p.m. Exhibit 11.
43. The grinder is used for grinding the bark into mulch. This machine is audible off site, but is not significantly louder than background levels of noise. The grinder operates Monday through Saturday between 7:00 a.m. and 6:30 p.m. Exhibits 11 and 18.
44. The Applicants also want to process topsoil left over from the log piles. This would occur once or twice a year and involve the use of a screener. The screener is not as loud as the grinder. Exhibit 7.
45. Trucks deliver logs to the site 24 hours per day. The majority of deliveries occur Monday through Saturday between 7:00 a.m. and 6:30 p.m. Exhibit 11 and Testimony.
46. The generator is very loud, 85 dB(A), when operated with the door open. With the door closed the generator will not be highly audible, 66 dB(A). The generator will be barely audible off-site if operated with the door closed. The generator and the boilers operate around the clock seven days a week. Exhibits 11 and 18.

Conclusions:

Whether an air pollutant is "undue" depends on factors such as the nature and amount of the pollution, the character of the surrounding area, whether the pollutant complies with certain standards or recommended levels, and whether effective measures will be taken to reduce the pollution. "Undue" has been defined in Brattleboro Chalet Motor Lodge, Inc. #4C0581-EB, Findings of Fact, Conclusions of Law, and Order at 6(October 17, 1984) to mean "that which is more than necessary - exceeding what is appropriate or normal." See Re: Barre Granite Quarries, LLC, and William and Margaret Dyott, Land Use Permit Application #7C1079 (Revised)-EB, Findings of Fact, Conclusions of Law and Order at 67 (December 8, 2000).

Emissions:

The proposed project, due to its small scale, does not require an Air Pollution Control Permit. However, the neighbors testified that smoke and soot blow toward their property, particularly during start-up of the boilers and dark soot was evident on the generator building. The Commission notes that it retained jurisdiction over this process in the original permit, indicating it would add conditions if problems developed. Applicants can reduce the visible emissions from boilers during start-up. This can be accomplished by starting the boilers with dry wood chips only instead of green chips. The Applicants can also monitor wind direction and not start the boilers when the wind is blowing toward the neighbors' property. The Applicants can also properly maintain the generator. Although the Applicants could operate the generator with on-road diesel, it costs more to do so. Off-road diesel has more sulfur than on-road diesel, however, the generator operates within manufacturer's specifications without the more expensive fuel.

Odors:

The odors from the bark mulch operation are caused by decomposition and stockpiling large quantities of bark or mulch during the warmer summer months. It is not reasonable to require the Applicants to conduct the mulch operation at a different site if odors can be reduced. The Applicants can grind the bark in the spring and have the majority of it removed before the end of July. Furthermore, the Applicants can operate this business on a first in first out basis so that the oldest bark and mulch are used first, thus reducing the opportunity for decomposition.

Noise:

The Environmental Board considers noise to be air pollution in the context of the potential adverse health effects it can cause. Re: Black River Valley Rod & Gun Club, Inc., #2S1019-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 18 (June 12, 1997); Re: Talon Hill Gun Club, Inc., #9A0192-2-EB, Findings of Fact, Conclusions of Law, and Order at 8 (June 7, 1995); Re: Sherman Hollow, Inc., #4C0422-5-EB, Findings of Fact, Conclusions of Law, and Order (Revised) at 30 (Feb. 17, 1989). The Board's test for undue air pollution caused by noise is: will the noise have impacts rising above annoyance and aggravation to cause adverse health effects, such as hearing damage. See Re: John and Joyce Belter, #4C0643-6R-EB, Findings of Fact, Conclusions of Law and Order at 13 (May 28, 1991).

Noise from this project, the chipper, grinder, screener, generator or truck traffic will not cause an adverse health effect. The District Environmental Commission concludes that noise from this project does not create undue air pollution.

The Commission will retain jurisdiction under Criterion 1 Air Pollution and if technology improves and the emissions from the boiler continue to be a problem may reopen the hearing or impose additional conditions. The Commission will add conditions to the permit requiring the Applicants to use dry wood chips to start the boilers, to install a wind sock and to start the boilers when the wind is not blowing toward the Grays' house and to maintain the generator according to the manufacturer's specifications. The Commission will also require the Applicants to operate the bark mulch operation on a first in first out basis with all stockpiles removed by July 31 of each year. With these conditions, the Commission concludes that this project is designed so the emissions and odors are not more than what is necessary and do not exceed what is appropriate and normal.

The Commission concludes that this project will not result in undue air pollution. The project, therefore, conforms with Criterion 1 Air Pollution.

SECTION 6086(a)(1)(A) HEADWATERS:

47. The project is not located in a drainage area of 20 square miles or less, is at an elevation of 968 feet, is not in the watershed of a public water supply, and is not in an aquifer recharge area. Exhibits 7 and 42.

Conclusions:

The District Environmental Commission concludes that this project is not located in a headwaters area as defined by this section. The project, therefore, conforms with Criterion 1(A).

SECTION 6086(a)(1)(B) WASTE DISPOSAL:

48. The project does not involve a change to the previously approved sewage disposal system, stormwater runoff or diesel storage. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that this project will meet applicable Division of Wastewater Management Regulations and will not result in the injection of waste materials or harmful or toxic substances into groundwater or wells. The project, therefore, conforms with Criterion 1(B).

SECTION 6086(a)(1)(C) WATER CONSERVATION:

49. The project does not involve a change in the previously approved water conservation devices. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project utilizes the best available technology for water conservation. The project, therefore, conforms with Criterion 1(C).

SECTION 6086(a)(1)(D) FLOODWAYS:

50. The project is located on the Tweed River. Exhibits 7 and 42.
51. The Applicant does not propose filling or storing any materials within the 100-year flood plain fringe. Exhibit 42.

Conclusions:

The District Environmental Commission is concerned that the storage of logs or bark mulch does not spill into the floodway. The Commission will condition the permit requiring the Applicants to store all materials outside of the floodway fringe. With this condition, the Commission concludes that this project will be located in a floodway fringe, however, the project will not restrict or divert the flow of flood waters nor significantly increase the peak discharge of the Tweed River. The project, therefore, conforms with Criterion 1(D).

SECTION 6086(a)(1)(E) STREAMS:

52. A stream is located on the tract of land adjacent to Route 100. This stream has a previously required 50 foot, undisturbed, naturally vegetated, unmowed buffer strip. This application, including the storage of logs does not change that buffer. Exhibits 7 and 42.

53. The Tweed River adjoins the tract of land. The River bank is unstable and has moved since the last survey. The Applicants surveyed the stream bank and channel. Exhibit 42.
54. The original permit required the Applicants to maintain a 75 foot, undisturbed, naturally vegetated, unmowed buffer strip. Because the stream bank has moved, the former stream bank buffer has moved. A snowmobile trail runs through the buffer strip. The trail is mowed periodically. The Applicants agree to reclaim a section of new stream buffer that has been used for bark storage. The Applicants further agree to maintain the new 75 foot stream buffer strip in an undisturbed, naturally vegetated, unmowed state. Exhibits 35 and 42.
55. Snow will not be plowed into the stream buffer. Exhibit 26.
56. The Applicants have obtained a State of Vermont permit to extract up to 50 cubic yards of gravel from the Tweed River annually. Exhibit 40.
57. The stability of the river channel is based on maintaining a certain flow of water, shape and slope of the channel and sediment loads. When any of these change significantly, the river channel must change, resulting in erosion of the stream bed or banks. ANR's "Stream Channel Instability Fact Sheet." Exhibit 46.
58. Gravel extractions, even in small quantities, cause the bed of the stream channel to drop. The stream requires balance and will seek to obtain it. The result is bank failure. Exhibit 46.
59. The Applicants agree that they will no longer extract gravel from the Tweed River. Exhibit 49.

Conclusions:

The District Environmental Commission encourages the Applicants to work with their neighbors to stabilize the banks of the Tweed River before additional property is lost. The Commission will add conditions to the permit prohibiting extraction of gravel from the Tweed River, prohibiting snowplowing into the buffer and requiring the Applicants to maintain the stream buffer as outlined in Exhibit 42, including reclamation of the area currently containing bark. The Commission will allow snowmobiling to continue within the stream buffer. However, the Commission will limit the width of the trail to the size of the groomer and limit mowing of the trail to once a year. With these conditions, the Commission concludes that the Applicants will maintain the natural condition of the streams. The project, therefore, conforms with Criterion 1(E).

SECTION 6086(a)(1)(F) SHORELINES:

60. The project is located adjacent to the Tweed River. Exhibit 42.
61. We incorporate by reference our findings under Criterion 1(E) Streams.
62. The public does not have access to the Tweed River at this location. Testimony.

Conclusions:

The District Environmental Commission concludes that the shoreline associated with the project will be maintained in its natural condition, that the project has never allowed access to the shoreline, that the project will retain or provide vegetation which will screen the project from the waters, and that the bank will be stabilized from erosion, as necessary, with vegetation cover. The project, therefore, conforms with Criterion 1(F).

SECTION 6086(a)(1)(G) WETLANDS

63. There are no Class I or Class II wetlands located on the project tract. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that this project will not violate the rules of the Water Resources Board relating to significant wetlands. The project, therefore, conforms with Criterion 1(G).

SECTION 6086(a)(2 & 3) WATER AVAILABILITY AND IMPACT ON EXISTING SUPPLY:

64. This project does not propose a change in the use of the previously approved water supply. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that there is sufficient water available to meet the needs of this project and that it will not place an unreasonable burden on an existing supply. The project, therefore, conforms with Criteria 2 & 3.

SECTION 6086(a)(4) SOIL EROSION AND THE CAPACITY OF THE LAND TO HOLD WATER:

65. The project does not include earthwork. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water. The project, therefore, conforms with Criterion 4.

SECTION 6086(a)(5) TRANSPORTATION:

66. The project includes an increase in traffic to the site. The Commission previously approved the project for 20 trips per day. Exhibit 7.
67. Maximum traffic with this project will not exceed 40 round trips per day. Employees generate eight round trips per day, bark mulch and firewood customers may generate 15 round trips on a peak day, log deliveries may generate 10 round trips and service vehicles or other visitors generate seven round trips per day. Exhibits 7 and 11.
68. The access onto Route 100 was approved in the original application and will not change. Exhibit 7.
69. Route 100 has the capacity to handle this additional traffic. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that this project will not cause unreasonable congestion or unsafe conditions with respect to transportation. The project, therefore, conforms with Criterion 5.

SECTION 6086(a)(6 & 7) EDUCATIONAL AND MUNICIPAL SERVICES:

70. The Applicants estimate that no school-age children will be added to the local school system as a result of this project. Exhibit 7.
71. The project will utilize municipal fire and rescue services. Exhibit 7.

72. The Pittsfield Volunteer Fire Department and the White River Valley Ambulance Service can provide services to the project. Exhibits 21 and 23.

Conclusions:

The District Environmental Commission concludes that this project will not place an unreasonable burden on the ability of the municipality to provide educational, municipal or governmental services. The project, therefore, conforms with Criteria 6 & 7.

SECTION 6086(a)(8) AESTHETICS, SCENIC BEAUTY, HISTORIC SITES AND NATURAL AREAS:

73. There are no historic sites or rare and irreplaceable natural areas which will be affected by this project. Exhibit 7.
74. The exterior of the buildings, lighting, signage and landscaping will not change with this project. Exhibit 7.
75. The project includes storage of up to 1,000 cords of wood, storage of bark and bark mulch, operation of a chipper, a grinder, a screener and a larger generator. Exhibit 7.
76. We incorporate by reference our findings under Criteria 1 Air Pollution and 10 Local and Regional Plans.
77. The tract of land is seven acres in size. It contains areas set aside for stream buffers and flood plain fringe. The remainder of the land is fully developed with buildings, area around the buildings for large trucks to maneuver and storage for logs, bark and bark mulch. Exhibits 2 and 42.
78. Neighbors are located very close to the tract of land, Caparell on the north, and Grays to the south. Exhibit 42.
79. The neighbors have indicated their main concern is the increase in this firewood operation from a part-time winter business to a full-time, year round business. The main issues are the noise, odors and emissions during the summer when windows are open and individuals want to be outside. Testimony.



Conclusions:

The Environmental Board uses a two-part test to determine whether a project satisfies Criterion 8. First, it determines whether the project will have an adverse effect. Re: James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership, #8B0444-6-EB (Revised), Findings of Fact, Conclusions of Law, and Order at 24 (Aug. 19, 1996) [EB #629R]; Re: Quechee Lakes Corp., #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 17-20 (Nov. 4, 1985) [EB #254]. Second, it determines whether the adverse effect, if any, is undue. Hand, supra, at 24; Quechee Lakes, supra, at 17-20.

a. Adverse Effect

In determining whether a project will have an adverse effect,

[t]he Board looks to whether a proposed project will be in harmony with its surroundings or, in other words, whether it will "fit" the context within which it will be located. In making this evaluation, the Board examines a number of specific factors including the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability for the project's context 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.

If a project "fits" its context, it will not have an adverse effect. Re: Talon Hill Gun Club Inc., #9A0192-2-EB, Findings of Fact, Conclusions of Law, and Order at 9 (June 7, 1995).

This project, operation of a firewood processing plant which creates noise, odors and emissions in close proximity to residential dwellings, clearly does not fit. The Commission concludes that the project has an adverse effect on aesthetics. Having concluded there is an adverse effect, the Commission must determine if the adverse effect is undue.

b. Undue Effect

In evaluating whether a project's adverse effects on aesthetics are "undue," the Board analyzes the following three factors and concludes that a project is undue if it reaches a positive conclusion with respect to any one of the factors.

- 1) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area?

- 2) Has the applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings?
- 3) Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Quechee Lakes, supra, at 19-20.

1. Clear Community Standard:

The Commission has reviewed the Pittsfield Town Plan and the Two Rivers-Ottauquechee Regional Plan and concludes that there is no clear written community standard intended to preserve the aesthetics of the area.

2. Mitigation:

The project produces emissions, odors and noise in a residential neighborhood. The Applicants have agreed to conditions to mitigate these problems. Specifically, the Applicants will start the boilers with dry wood chips. Furthermore, they will not start the boilers when the wind is blowing toward the Grays' house, when indicated by a wind sock. The Applicants will rotate stockpiles of bark and mulch using a first in first out method, and remove all the mulch from the site prior to July 31 of each year. The Applicants have agreed keep the generator door closed to minimize the noise, and to notify neighbors prior to chipping wood. The Commission will limit the chipping to twenty-four hours per year. The Commission will prohibit all truck activity, deliveries, shipments and idling, outside the hours of 7:00 a.m. until 6:30 p.m. Monday through Saturday. With these conditions in the permit, the Commission concludes that the Applicants have taken mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings.

3. Offensive or Shocking:

The Commission does not find the thick smoke from the project, since it lasts no more than a few minutes during start-up, shocking. The Commission is also convinced that the Applicants can process the mulch in a manner that odors are not a problem. The Commission concludes that the project, as conditioned, is not shocking or offensive.

The District Environmental 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. The project, therefore, conforms with Criterion 8.

SECTION 6086(a)(8)(A) NECESSARY WILDLIFE HABITAT:

80. No necessary wildlife habitat or endangered species have been identified on or near the project site. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project will not destroy or significantly imperil necessary wildlife or endangered species habitat. The project, therefore, conforms with Criterion 8(A).

SECTION 6086(a)(9) CONFORMANCE WITH THE CAPABILITY AND DEVELOPMENT PLAN:

The District Environmental Commission concludes that this project conforms to the capability and development plan.

SECTION 6086(a)(9)(A) IMPACT OF GROWTH:

81. The project currently employs eight individuals. No increase in employment is expected from this project. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the municipality will be able to accommodate the total growth and rate of growth that will result from this project. The project, therefore, conforms with Criterion 9(A).

SECTION 6086(a)(9)(B) PRIMARY AGRICULTURAL SOILS:

82. No primary agricultural soils have been identified on the project site. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project will not significantly reduce the agricultural potential of any primary agricultural soils. The project, therefore, conforms with Criterion 9(B).

SECTION 6086(a)(9)(C) FOREST AND SECONDARY AGRICULTURAL SOILS:

83. No secondary agricultural soils or forestry soils have been identified on the project site. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project will not significantly reduce the potential of any secondary agricultural soils or forestry soils. The project, therefore, conforms with Criterion 9(C).

SECTION 6086(a)(9)(D & E) EARTH RESOURCES & EXTRACTION OF EARTH RESOURCES:

84. No mineral or earth resources have been identified on the project site. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that this project does not involve the extraction of or processing of earth resources or interference with the subsequent extraction or processing of mineral or earth resources. The project, therefore, conforms with Criteria 9(D & E).

SECTION 6086(a)(9)(F) ENERGY CONSERVATION:

85. The proposed project does not propose a change in the energy efficiency of the permitted project. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the planning and design of this project reflects the principles of energy conservation and incorporates the best available technology for the efficient use of energy. The project, therefore, conforms with Criterion 9(F).

SECTION 6086(a)(9)(G) PRIVATE UTILITY SERVICES:

86. No private utilities are proposed for the project. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the municipality is protected from having to assume responsibility for any private utilities. The project, therefore, conforms with Criterion 9(G).

SECTION 6086(a)(9)(H) COSTS OF SCATTERED DEVELOPMENT:

87. The project is an expansion of a previously approved project. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project is contained on a tract of land previously permitted for this use. The project, therefore, conforms with Criterion 9(H).

SECTION 6086(a)(9)(J) PUBLIC UTILITY SERVICES:

88. The project will not require additional public utility services as the generator is used to create electricity. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that the project will not place an excessive or uneconomic demand on any public facilities or services. The project, therefore, conforms with Criterion 9(J).

SECTION 6086(a)(9)(K) DEVELOPMENT AFFECTING PUBLIC INVESTMENTS:

89. The project is located adjacent to the Tweed River and Route 100. Exhibit 42.

90. We incorporate by reference our findings under Criteria 1(E) Streams and 5 Traffic Safety.

Conclusions:

The District Environmental Commission concludes that this project will not unnecessarily or unreasonably endanger the public or quasi-public investment or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to any adjacent public facilities. The project, therefore, conforms with Criterion 9(K).

SECTION 6086(a)(9)(L) RURAL GROWTH AREAS:

91. The project is an expansion of a previously permitted project. Exhibit 7.

Conclusions:

The District Environmental Commission concludes that this project is not located in a rural growth area as defined by the statute. The project, therefore, conforms with Criterion 9(L).

SECTION 6086(a)(10) CONFORMANCE WITH THE LOCAL OR REGIONAL PLAN:

92. The Pittsfield Town Plan (PTP), Adopted August 3, 2000, is the Town Plan in place at the time the application was filed. The PTP states in its Proposed Land Use Section:

Route 100 Corridor Aesthetics:

While elsewhere in this Plan, development is directed to the Route 100 corridor, the Town is confident that proper siting, screening, landscaping, and structural design of new developments can serve to protect and even enhance the scenic values of Route 100 while also contributing to the local and regional economies.

Adequate setback distances for new construction can serve to lessen the visual impacts of new buildings. . . . Similarly, parking loading, and storage areas should be screened, landscaped, or located in the rear of the buildings.

PTP, page 38.

Expansion of Non-Conforming Uses:

The Planning Commission recognizes that there are a number of existing non-conforming uses, which do not conform to the proposed land uses set forth in this Plan. It is recommended that such uses be permitted to continue and even expand as long as certain conditions are met. Expansions to pre-existing non-conforming uses may be permitted by the Planning Commission if it can be demonstrated that there are no adverse impacts on abutting properties, municipal services, or the environmental and social character of the area.

PTP, pages 42.

93. The PTP states in its Natural Resources section:

Forest Resources:

Policies:

Appropriately sited and designed businesses promoting local processing, sale and distribution of timber products is [sic] are encouraged.

94. The Town of Pittsfield does not have Zoning bylaws. Exhibit 39.

95. The Pittsfield Planning Commission reviewed the project under the Expansion of Non-Conforming Uses section of the Town Plan and determined the project conforms to the PTP. The Commission did not determine or define what "adverse impacts on abutting properties" meant. Exhibits 13 and 27.

Local Plan Conclusions:

The Environmental Board has fashioned an analysis of whether a project conforms to a Town's Plan. The Board has relied on the Supreme Court decision in Re: Molgano, 163 Vt. 25 (1994); and has set out its analysis in the following decisions: Re: Herbert and Patricia Clark, supra, at 39-40; Re: The Mirkwood Group and Barry Randall, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order (Aug. 19, 1996) [EB #641]; Re: Manchester Commons Associates, #8B0500-EB, Findings of Fact, Conclusions of Law, and Order at 27 (Sept. 29, 1995) [EB #631]. We look to the Board's decisions for guidance.

In Molgano, the Supreme Court held that zoning bylaws are germane to interpreting ambiguous provisions of a town plan. Molgano, 163 Vt. at 29-31. Molgano does not stand for the proposition that zoning bylaws control or override the specific policies of a town plan in an Act 250 proceeding. Re: Herbert and Patricia Clark, supra, at 40. Thus, the Board first considers whether the town plan provisions at issue are specific policies or ambiguous. Id. If such provisions are specific policies, they are applied to the proposed project without any reference to the zoning bylaws. Id. However, if such provisions are ambiguous, the Board next examines the relevant zoning bylaws for provisions which help the Board construe the town plan provisions at issue and thereby resolve their ambiguity. Id.

In order for a town plan provision to be deemed a specific policy, the applicable provision must: (a) pertain to the area or district in which the project is located; (b) intend to guide or proscribe conduct or land use within the area or district in which the project is located; and (c) be sufficiently clear to guide the conduct of an average person, using common sense and understanding. Mirkwood, supra, at 29.

The PTP has a section that pertains to the area in which the project is located and is intended to guide or proscribe conduct within that area. However, the plan is not clear enough to guide the conduct of an average person. The PTP does not describe nor offer any guidance regarding what is meant by the notion that a project will be permitted if it is "demonstrated that there are no adverse impacts on abutting properties." The Commission concludes that the PTP is ambiguous in this case. The Town has not adopted Zoning bylaws, so the Commission turns to the Regional Plan for further guidance.

Regional Plan:

96. The Two Rivers-Ottawaquechee Regional Plan (TRORP) identifies the project as being located within a Rural Area. These areas consist of a mixed land use pattern, including small-scale businesses and are located outside of the village setting. Exhibit 33.
97. The TRORP states in its Land Use section under Rural Areas:
- 5) Planning and implementation of developments or subdivisions should reflect the following principles:
    - a) balancing of landowners' rights to use their land, with the corresponding rights of abutting and neighboring landowners to live without undue disturbances (e.g., noise, smoke, fumes, dust, odors, glare, stormwater runoff, etc.):
    - 6) Non-residential uses, including service businesses, professional offices and inns are acceptable land uses for rural areas provided that such uses are planned as relatively small in size or scale, are not primary or dominant uses in an area, do not unduly conflict with existing or planned residential, forestry or agricultural uses, and do not unduly affect rural character.
- TRORP, pages 28 and 29.
98. We incorporate by reference our findings under Criteria 1 Air Pollution and 8 Aesthetics.



Regional Plan Conclusions:

The District Environmental Commission concludes that the permit conditions proposed under Criteria 1 Air Pollution and 8 Aesthetics are sufficient to minimize the impact on the adjoining property owners. With these conditions, the Commission concludes that the project conforms to the regional plan. The project, therefore conforms with Criterion 10.

**V. SUMMARY CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact, it is the conclusion of this District Environmental Commission that the project described in the application referred to above, if completed and maintained in conformance with all of the terms and conditions of that application, and of Land Use Permit #3W0405-5, will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A., § 6086(a).

**VI. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #3W0405-5 is hereby issued.

Dated at Springfield, Vermont, on October 15, 2001.

By   
Sharetha Marsicovetere  
District #3 Environmental Commission  
Environmental Board

Commissioners participating in this decision:  
Alvin Converse  
Mary B. Russell

The Applicants or a party may file a motion to alter within 30 days from the date of this decision, pursuant to Environmental Board Rule 31. Any appeal of this decision must also be filed within 30 days of the date of the decision and must comply with all provisions of 10 V.S.A. §6089 and Environmental Board Rule 40, including the submission of the original and ten copies of the following: notice of appeal, a statement of why the appellant believes the commission was in error, a statement of the issues to be addressed in the appeal, a summary of the evidence that will be presented, a preliminary list of witnesses and this decision.

Exhibit List #3W0405-5  
Ray and Lynda Colton

No.	Date Admitted/ Received	By	Subject
1	4/5/01	Applicants	Cover Letter
2	"	"	Application Cover Sheet
3	"	"	Project Location Plan
4	"	"	Schedule A
5	"	"	Schedule E
6	"	"	Project Description
7	"	"	Schedule B
8	"	"	Excerpts from Pittsfield Municipal Plan
9	"	"	Excerpts from Regional Plan
10	"	"	Site Plan dtd. 4/3/01
11	4/20/01	"	Ltr. dtd. 4/18/01 from Michael Engineering Co.
12			None
13	5/9/01	Pittsfield Planning	Ltr. dtd. 5/7/01 from Pittsfield Planning Commission
14	"	Town of Pittsfield	Ltr. dtd. 5/2/01 from Pittsfield Selectboard
15	5/16/01	ANR	Interagency Comments
16	5/18/01	Grays	Ltr. dtd. 5/7/01 re: Concerns
17	"	Applicants	Proposed Conditions
18	"	"	Ltr. dtd. 5/15/01 Re: Noise Measurements

Exhibit List #3W0405-5  
 Ray and Lynda Colton  
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No.	Date Admitted/ Received	By	Subject
19			None
20	5/18/01	APCD	Ltr. dtd. 2/21/01 from Air Pollution Control Div.
21	5/18/01	Pittsfield Fire Dept.	Ltr. From Greg Martin, Chief
22	5/18/01	Applicants	Ltr. dtd. 4/5/01 Re: Ambulance Service, Inc.
23	5/25/01	Caparell	Ltr. dtd. 5/17/01 from Nancy Caparell, Abutter
24			None
25			None
26	6/26/01	Applicants	Ltr. dtd. 6/25/01 - Response to Hearing Recess Memo
27	6/26/01	"	Ltr. dtd. 6/14/01 from Pittsfield Planning Commission
28			None
29	6/19/01	"	Ltr. dtd. 6/19/01 from Patricia Haskins
30	9/12/01	Sarah Gray	Ltr. Dtd. 9/11/01 from Sarah Gray - with photos
31	6/22/01	ANR	Ltr. dtd. 6/2/101 from Tim Melchert
32	6/27/01	Applicant	Ltr. dtd. 6/27/01 from Michael Engineering
33	6/26/01	"	Ltr. from TRORC dtd. 6/20/01
34	"	"	Interagency comments dated 6/19/01
35	"	"	Ltr. dtd. 6/21/01 from Resource Systems Group

Exhibit List #3W0405-5  
 Ray and Lynda Colton  
 Page 3

No.	Date Admitted/ Received	By	Subject
36	"	"	Bark Mulch Mitigation to Prevent Odor Summary
37	"	"	Maintenance Schedule
38	"	"	Ltr. dtd. 6/20/01 from Pittsfield Fire Chief
39	"	"	Criterion 10 Info.
40	"	"	Permit to Extract Gravel
41	"	"	Ltr. dtd. 6/22/01 from Jack Dwyer
42	"	"	Revised Site Plan 6/14/01
43	7/10/01	Donald & Dorothy Gray	Ltr. Dated 7/9/01
44	7/10/01	Applicant	Ltr dtd. 7/8/01
45	7/17/01	Hansen	Ltr. dtd. 7/16/01 from Atty. Hansen Re: Coltons
46	8/10/01	ANR	Memo dtd. 8/10/01 from Kim Greenwood
47	8/14/01	"	Ltr. dtd. 8/13/01 from Tim Melchert
48	8/29/01	DEC	Ltr. dtd. 8/27/01 from Phillip Etter, Air Pollution Control Division
49	9/4/01	Applicant	Ltr. dtd. 8/31/01 from Michael Engineering
50	9/13/01	Donald Gray	Ltr. dtd. 9/11/01 Re: Response to Atty. Hansen
51	9/14/01	Applicant	Ltr. dtd. 9/13/01 Re: Response to memo from Donald Gray