

**State of Vermont**  
**NATURAL RESOURCES BOARD**  
**DISTRICT 3 ENVIRONMENTAL COMMISSION**  
**100 Mineral Street, Suite 305**  
**Springfield, VT 05156-3168**

**RE:** Ray G. and Lynda J. Colton  
PO Box 688  
Pittsfield, VT  
05762

Application #3W0405-6(Altered)  
**Findings of Fact, Conclusions  
of Law, and Order**  
10 V.S.A. §§ 6001-6093 (Act  
250)

## **I. INTRODUCTION**

On April 19, 2019, Ray G. and Lynda J. Colton filed an application for an Act 250 permit for a project generally described as amending Land Use Permit (LUP) #3W0405-5B to (1) remove restrictions on summer (May 1 through August 14) kiln operations; and (2) add the ability to chip wood into an insulated storage shed throughout the year in addition to the current limit of 24 hours per year which is not restricted to indoor chipping. The tract of land consists of seven acres. The Applicants' legal interest is ownership in fee simple described in a deed recorded on November 15, 1982 in the land records of Pittsfield, Vermont.

The Commission held a public hearing on this application on May 29, 2019. The Commission also conducted a site visit on May 29, 2019 prior to the hearing and placed its observations on the record. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on December 19, 2019 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

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

## **II. JURISDICTION**

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

## **III. OFFICIAL NOTICE**

Under 3 V.S.A. § 810(4) of the Administrative Procedure Act ("APA"), notice may be taken of judicially cognizable facts in contested cases. See 10 V.S.A. § 6007(c) and 3 V.S.A. § 801(b)(2). Under § 810(1) of the APA, "[t]he rules of evidence as applied in civil cases .... shall be followed" in contested cases. Under the Vermont Rules of Evidence, "(a) judicially noticed fact must be one not subject to reasonable dispute in that it is ... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." V.R.E. 201(b); See *In re: Handy*, 144 Vt.601, 613 (1984).

The Commission may take official notice of a judicially cognizable fact whether requested or not, and may do so at any stage of the proceeding. See V.R.E. 201(c) and (f). Under 3 V.S.A. § 809(g), the Commission may make findings of fact based on matters officially noticed. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). The Commission takes official notice of the Pittsfield Town Plan and previous Land Use Permits and decisions related to the #3W0405 series. Accordingly, official notice is hereby taken of the Pittsfield Town Plan and previous permits and decisions subject to the filing of an objection on or before thirty days from the date of this decision pursuant to Act 250 Rule 6.

#### IV. AMENDMENT APPLICATION – RULE 34(E)

The threshold question on an amendment application is “whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1).

The Applicants are proposing to amend conditions #10, #16 and #7 of LUP #3W0405-5A (the dash 5A permit) by removing limitations on the kiln operations and by adding the ability to chip wood into an insulated storage building during operating hours in addition to the 24 hours per year of chipping that is currently allowed outside of that building. Permit conditions #10, #16 and #7 were included in the dash 5A permit to incorporate portions of the parties’ Stipulation and Land Use Appeal Settlement Agreement (Agreement) dated August 29, 2002. These conditions were included to mitigate potential impacts related to Criterion 8 Noise:

##### Condition #10 of the dash 5A permit, in part:

10. The permittees shall use their best efforts to make good faith applications for funding and permits for a new wood storage shed within three years of the date of the Land Use Permit. Such new wood storage shed is planned to be approximately 100 feet by 60 feet in size with an approximate capacity of 500 processed cords of wood. Once the new wood storage shed is constructed, the operation of the kilns will be amended to the following:

- a. From May 1 through August 14 the permittees shall not operate the kilns on Sundays and holidays and shall only operate the kilns a maximum of three sessions, with each session to be limited to a maximum of 96 hours. Holidays, in this case, include Memorial Day and Independence Day. The permittees shall give Gordon and Sarah Gray at least 24 hours written notice before each of these sessions. If Sarah Gray is away from her home place for a period of two days or more during May 1 through Augusts 14 the permittees will be allowed to operate the kilns during her absence, exclusive of Sundays and holiday, in addition to the maximum number of sessions allowed.
- b. The permittees shall be allowed to operate the kilns from August 15 through April 30 as needed and shall be allowed to empty and refill the kilns between the hours of 7:00 a.m. and 4:00 p.m. on Sundays and legal holidays. Holidays, in this case, shall include Labor Day, Thanksgiving Day, Christmas Day and New Year’s Day.

##### Condition #16 of the dash 5A permit:

16. The permittees may chip waste wood for a maximum of 24 hours per year. The chipping shall occur no more than four times per year for six hours during the middle of the day. The permittees shall notify the neighbors with party status prior to chipping.

##### Condition #7 of the dash 5A permit:

7. The project is approved for the following maximum impacts:
- 1,000 cords of logs stored on-site;
  - Chipping wood no more than 24 hours per year;
  - 40 vehicle round trips per day.

The 100-foot by 60-foot wood storage building was constructed.

Condition #10a is specific to the times of year, the number of sessions and the maximum number of hours per session that the kilns can operate. Condition #16 is specific to the number of hours the wood can be chipped per year, reiterating the maximum number of hours for chipping allowed by

Condition #7 - "no more than 24 hours per year." These conditions were critical to the issuance of the dash 5A permit.

The Applicants here do seek to amend critical permit conditions. Therefore, the Commission must conduct the Rule 34(E) analysis, as set forth below.

The next step under the analysis is for the Commission to "consider whether the permittee is merely seeking to relitigate the permit condition or to undermine its purpose and intent." Rule 34(E)(3)(g). If the Applicants are seeking to relitigate or undermine conditions, the analysis ends and the Applicants are not entitled to seek an amendment. *In re: Waterfront Park*, 138-9-14 Vtec, May 8, 2015.

As testified at the hearing, the Applicants are requesting an expansion of time to operate the kiln to provide suitable treatments for ash logs intended to reduce the spread of Emerald Ash Borer (EAB) pursuant to the VT Department of Forests, Parks & Recreation's (FPR) guidelines for controlling the spread of EAB. Heat treating or chipping ash logs are recommended treatments that are critical to the State's *Slow the Spread* initiative and guidelines during the EAB flight season of June 1 through September 30. The Coltons' facility can provide both of these treatments.

With respect to the proposed additional chipping, the Applicants are not requesting to change condition #16, but are proposing to place a chipper at another location.

The Commission is persuaded that the Applicants are not "merely seeking to relitigate" the permit conditions or to undermine their purpose and intent. (g).

The first Act 250 permit, LUP #3W0405, issued to the Coltons for the firewood processing and kiln facility was issued in 1983. Over the past 20 plus years, the main concern of the neighbors has been the increasing noise they have been exposed to as a result of a growing business. This is evidenced by the time and expense that went into the Settlement Agreement of 2002, portions of which have been incorporated into the dash 5A permit. The Applicants are now requesting that the kiln operations be extended during the summer months and that, in addition to the previously permitted 24 hours of chipping per year, an additional wood chipper be allowed with no limitations to operating times.

The Applicants propose to amend permit conditions that were included to resolve an issue critical to the issuance of a permit, therefore, Rule 34(E)(3) requires the Commission to balance the need for flexibility against the need for finality, considering at least the following factors:

- a. Whether there has been a change in law, regulation or fact beyond the permittee's control.
- b. Whether there has been a change in technology, construction, or operations which necessitates the amendment.
- c. Other factors, including innovative or alternative design, which provide a more efficient or effective way to mitigate impacts from the Project.
- d. Other important policy considerations, including the proposal's furtherance of goals in the municipal plan.
- e. Whether there was manifest error in issuance of the permit condition.
- f. The degree of reliance on the permit condition or material representations made in the prior proceeding, by the Commission, Environmental Court or former Environmental Board if applicable, or any other person with a particularized interest in the proposed amendment.
- g. Whether the applicant is merely seeking to relitigate the permit condition or to undermine its purpose and intent.

Prior to the detection of Emerald Ash Borer (EAB), air dried (AD) firewood made up about 94% of the total production at the Colton's mill between May 1 and August 15. Since the quarantines for moving firewood outside of Vermont, the production of AD wood has fallen to approximately 24% of the total production. There is a limited market for AD wood within Vermont, but the quarantines for all firewood have made it illegal to sell outside of the state. The Coltons have no control over quarantines that the state or other states and provinces may pose on transporting wood through their states or provinces.

This change in policy, regulation and facts is beyond the Colton's control (a).

The changes made to the operations under (b) (technology, construction, or operations which necessitate the amendment) that favor flexibility include the newer kiln installed in 2009 that in a 2011 noise study indicated that the nighttime noise levels were less than the nighttime noise levels in 2002 when the permit was issued; advanced technology has been installed resulting in cleaner emissions from the boiler; replacing the older bucket loader that could only scoop one yard of chips at a time with a new bucket loader that can scoop 5-yards of chips at a time, meaning fewer trips to load the boiler resulting in a reduction in the amount of noise from the loader, scooping and dumping of chips; and the newer bucket loader is 6 to 9 decibels quieter than the old bucket loader.

Under factor (c) (innovative or alternative design), the chipper will be placed such that the outfeed end of the chipper is inside the insulated shed. An acoustical curtain will be installed over the open end of the shed to attenuate noise and the existing buildings between the chipper and Sarah Gray's house will also mitigate noise from the new chipping operation. The height of the existing bunker south of the insulated shed will be increased from the current 7-foot height to eleven feet tall. The anticipated noise level from the increased chipping is not expected to exceed 55 dBA at any nearby residences. This alternative design will provide for a more efficient or effective means to mitigate the impacts associated with the chipping.

There are no other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans (d).

There has been no manifest error on the part of the District Commission, the Natural Resources Board, or the Vermont Superior Court, Environmental Division in the issuance of the permit conditions (e).

The neighbors relied on the implementation of and compliance with the Stipulated Agreement and the conditions of the dash 5A permit to mitigate the noise from the facility that impacts their enjoyment of home. The neighbors testified at the hearing that there is a lot of noise coming from the facility all day long. The amount and duration of noise from the operation of the mill has increased over the years.

The neighbors did rely on the Stipulated Agreement such that they did not oppose the dash 5A permit application when it was submitted for review to the Commission. The dash 5A permit incorporated portions of the Agreement. The neighbors relied on the representation that the operation of the kiln and chipping would be limited. The kiln would be silent on Sundays and holidays and there would be a maximum of 96 hours for each of the allowed three sessions between May 1 and August 14. The degree of reliance on the permit conditions, the Agreement and material representations made in the prior proceeding, by the neighbors was significant.

The existing dash 5A permit conditions have been difficult for both the Permittees and Sarah Gray to implement. Sarah Gray has not been notifying the Coltons of her absences from home and the Coltons have been deviating from the notifications to the neighbors related to the chipping. The conditions in the dash 5A permit have proven to be vague and unenforceable and therefore,

ineffective. Since the conditions have not been effective, it is necessary for the Commission to find a better way to mitigate the existing and proposed noise level impacts.

Considering all the factors, the Commission finds that flexibility outweighs finality, so the amendment application will be considered on its merits.

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

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

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

1. The Applicant by Nate Stearns, Esq., Christa Bollman, Lynda Colton, Ray Colton and Ed Duncan, RSG engineer.
2. The municipality of Pittsfield, by Ann Kuendig.
3. Then Pittsfield Planning Commission, by Sarah Gallagher.
4. The Two Rivers-Ottawaquechee Regional Commission, by Peter Gregory.
5. The State of Vermont Agency of Natural Resources (ANR) through an entry of appearance by Jennifer Mojo, Senior Planner, Office of Planning, dated May 24, 2019 (Exhibit #011), and Sam Lincoln, Deputy Commissioner, Department of Forests, Parks & Recreation.
6. The Vermont Agency of Transportation (VTTrans) through an entry of appearance by Theresa C. Gilman, Permitting Services Supervisor, and Craig S. Keller, P.E., Chief of Permitting Services, Development Review & Permitting Service Section, dated May 29, 2019 (Exhibit #012).

### **B. Interested Parties**

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

#### **i. Preliminary Party Status Determinations**

Pursuant to Act 250 Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated below:

1. Sarah and Gordon Gray, live at 1669 Route 100 in Pittsfield, adjacent to the Coltons' mill and also own a residence across Route 100 from the mill. The Grays requested party status under Criteria 1 Air Pollution and 8 Aesthetics. There were no objections. The Commission granted preliminary party status under Criteria 1 Air and 8.
2. Don Gray, owns the property with a house on it across Route 100 from the Coltons' mill, at a higher elevation than the mill and the noise from the mill impacts the enjoyment of the home by anyone who lives there. Don Gray requested party status under Criterion 8 Aesthetics. There were no objections. The Commission granted preliminary party status under 8.

ii. Final Party Status Determinations

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

C. Friends of the Commission

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

1. Ed Larson, for the VT Forest Products Association, and is a consulting forester;
2. Grant MacDonald, Vermont GoodWood, as a supporter of the project and a customer of the Coltons' mill;
3. Beth Kennett, Liberty Hill Farm, supports the project and uses the sawdust from the mill at the Liberty Hill Farm.

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

The Applicants have met the burden of proving compliance with the following criteria through submittal of the application:

- |                                       |  |
|---------------------------------------|--|
| 1 - Water Pollution                   | 8 – Historic Sites                           |
| 1(A) - Headwaters                     | 8(A) - Wildlife Habitat & Endangered Species |
| 1(B) - Waste Disposal                 | 9(A) - Impact of Growth                      |
| 1(C) - Water Conservation             | 9(B) - Agricultural Soils                    |
| 1(D) - Floodways                      | 9(C) - Productive Forest Soils               |
| 1(E) - Streams                        | 9(D) - Earth Resources                       |
| 1(F) - Shorelines                     | 9(E) - Extraction of Earth Resources         |
| 1(G) - Wetlands                       | 9(F) - Energy Conservation                   |
| 2 - Water Supply                      | 9(G) - Private Utility Services              |
| 3 - Impact on Existing Water Supplies | 9(H) - Costs of Scattered Development        |
| 4 - Soil Erosion                      | 9(J) - Public Utility Services               |
| 5 - Transportation                    | 9(K) - Effects on Public Investments         |
| 6 - Educational Services              | 9(L) – Settlement Patterns                   |
| 7 - Municipal Services                | 10 - Local and Regional Plans                |
| 8 – Natural Areas                     |  |

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

The findings of fact are based on the application, Exhibits #001 - #029, and other evidence in the record. Findings made in this decision relate to Criteria 1 Air Pollution and 8 Aesthetics as it relates to Noise.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. LUP #3W0405 issued on April 8, 1983 authorized the construction and operation of a firewood processing plant consisting of three separate buildings and a large graveled storage yard.
2. LUP #3W0405-1 issued on August 2, 1985 authorized the construction of a 26' X 38' kiln building, increased the boiler from 23 HP to 50 HP, added a 12' X 26' addition to the Energy Center building, graveled an additional area around the Energy Center building and relocated a leach field.
3. LUP #3W0405-2 issued on May 9, 1991 authorized the construction of a 40' X 50' unheated wood-frame storage building (labeled "little shed" on Exhibit #004 of current application #3W0405-6).
4. LUP #3W0405-3 issued on July 27, 1994 authorized the construction of a 40' X 40'10" addition to an existing building to contain a wood chip-fired boiler (90 HP), and relocation of a septic tank, leachfield and parking lot. Hours of operation are 7:00 a.m. to 5:00 p.m. and the boilers operate 24 hours per day during the 7 months of operation from September through March.
5. LUP #3W0405-4 issued on November 25, 1996 authorized the installation of a 135-kW generator inside the existing building, a 10,000-gallon underground fuel tank, and a 60-ton truck scale.
6. LUP #3W0405-5 issued on October 15, 2001 authorized the permittees to store up to 1000 cords of logs on-site, reclaim topsoil from the log storage area at least once annually, grind and store and sell wood bark (mulch), occasional wood chipping, increase daily truck traffic, replace existing generator with a 210-kW generator and operate year round. Maximum of 24 hours of wood chipping per year. 40-vehicle round trips per day. Hours of operation Monday through Saturday, except holidays, 7:00 a.m. until 6:30 p.m.
7. Memorandum of Decision (MOD) #3W0405-5 and LUP #3W0405-5(Revised) issued on January 29, 2002 altered condition #8 to:
  8. Hours of operation shall be limited to Monday through Saturday, except holidays, from 7:00 a.m. until 6:30 p.m. The permittees may conduct inspections, emergency maintenance, snowplowing, sanding, emergency services and refueling the boiler automatic loading system outside these hours. Emptying and refilling the kiln outside the permitted hours and days shall be prohibited. Holidays, in this case, shall include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
8. Memorandum of Decision (MOD), LUP #3W0405-5(Revised)-EB issued by the former Environmental Board on July 17, 2002 ordered that "the test established by the Board in *Re: Stowe Club Highlands*, #5L0822-12-EB (Jun. 20, 1995), *aff'd* 166 Vt. 33 (1996), applies to the amendment application." The MOD explained that "the Permittees are seeking to amend prior findings of fact and expand the operation which will convert it from part-time or seasonal to a year-around operation."
9. The former Environmental Board issued LUP Application #3W0405-5(Revised)-EB, Memorandum of Decision and Remand Order on October 2, 2002, concluding that "the Project meets the test articulated in *Stowe Club Highlands*" and remanding LUP #3W0405-

- 5-(Revised)-EB and jurisdiction back to the District Commission to consider whether the Project under the Settlement Agreement signed by the Permittees and neighbors “complies with Criteria 8 and 10 and whether it impacts any new parties or Criteria not on appeal before the Board.”
10. LUP #3W0405-5A (the dash 5A permit) issued on December 26, 2002 incorporated portions of the parties’ Stipulation and Land Use Appeal Settlement Agreement (Agreement) dated August 29, 2002, including a new truck access, a noise barrier and construction of a 60’ X 100’ wood storage shed building. Permit conditions are noted above under Section IV- Amendment Application – Rule 34(E). The dash 5A permit also included a condition that required the installation of a more effective muffler on the mulch grinder. The mulch grinder (tub grinder) is not to be operated after 3:00 p.m. from June 1 through September 1 (condition #14).
  11. LUP #3W0405-5B issued on September 2, 2010 incorporated the Stream Alteration Permit issued by the Agency of Natural Resources (ANR) to stabilize approximately 200 linear feet along the Tweed River in the area of the VAST snowmobile trail (Route 100 Corridor).
  12. LUP #3W0405-A issued May 3, 2012 authorized the construction of a 10’ X 25’ addition to the existing office building.
  13. Project Review Sheet, dated Dec. 1, 2008, signed by the District Coordinator, indicated that “Replacing old kilns with one newer kiln as proposed, is not a material change to the previously permitted project. Act 250 Rule 2(C)(6).”
  14. The Applicants propose to expand the time to operate the kilns to provide suitable treatments for ash logs to reduce the spread of Emerald Ash Borer (EAB) pursuant to the VT Department of Forests, Parks & Recreation’s (FPR) guidelines for controlling the spread of EAB. Heat treating or chipping ash logs are recommended treatments that are critical to the State’s *Slow the Spread* initiative and guidelines during the EAB flight season of June 1 through September 30. The Colton’s facility can provide both of these treatments. Testimony and Exhibits #010, #018, #019, #021, and #022.
  15. The Applicants propose to remove limitations on the kiln operations by adding the ability to chip wood into an insulated storage building during operating hours in addition to the 24 hours per year of chipping that was allowed in the dash 5A permit. Exhibits #001 and #006.

#### **CRITERIA 1 - AIR POLLUTION and 8 - AESTHETICS (NOISE)**

##### Findings of Fact

16. The firewood processing facility is an existing, permitted project located on a triangular parcel between Route 100 and the Tweed River. The existing project is visible from Route 100. Exhibit #001.
17. The same woodburning boilers that operate the kiln currently will continue to be used for the proposed additional operation between May 1 and August 14. The kiln is currently permitted to operate: (1) three 4-day sessions (96 hours each session) and; (2) periods when Sarah Gray is away from her home for a period of two days or more between May 1



and August 14. The kiln is not allowed to operate on Sundays and holidays whether or not Ms. Gray is at home. Exhibits #001 and #025.

18. Year-round operations are currently limited by existing permit condition #8 of the dash 5A permit:
    8. Except as set forth in other conditions of this permit [LUP #3W0405-5A], the hours of operation shall be limited to Monday through Saturday, except holidays, from 7:00 a.m. until 6:30 p.m. Notwithstanding any other provision contained herein, the permittees may conduct inspections, emergency maintenance and services, snowplowing, sanding and refueling the boiler automatic loading system outside these hours. Kiln operation is addressed below.
  19. Condition #10 of the dash 5A permit prohibits the operation of the kiln from May 1 through August 14 on Sundays or holidays unless Ms. Gray is away from her home place for a period of two days or more, then the kiln can operate during her absence. Condition #10 allows three “sessions” of 96 hours even if Ms. Gray is home between May 1 and August 14. Official Notice, also see Section IV Amendment Application – Rule 34(E) above.
  20. There is no mechanism for Ms. Gray to inform the Coltons when she will be away from home for more than two days as required in the Settlement Agreement. The Coltons have not received notice of when she is away from home. The Applicants have been looking next door to see if Ms. Gray is home. Exhibit #001 and Testimony.
  21. Steam (water vapor) is produced by the boilers, but very little smoke. In 2014 visible emission tests indicated that opacity ranged from 5% to 10%, which was below the 20% opacity standard for visible emissions Section 5-211 of the VT Air Pollution Control Regulations (APCR) that applies to the boilers at this facility. Exhibits #001 and #005.
  22. Starting a cold boiler creates more dense smoke until the boiler is at optimum temperature. The APCRs allow up to 80% opacity for one hour during this start-up time. Exhibit #001.
  23. Keeping the boilers running will reduce the total startup periods and associated production of smoke with up to 80% opacity. Exhibit #001 and Testimony.
  24. Condition #16 of the dash 5A permit states:

The permittees may chip waste wood for a maximum of 24 hours per year. The chipping shall occur no more than four times per year for six hours during the middle of the day. The permittees shall notify the neighbors with party status prior to chipping.
- Official Notice.
25. The Coltons notified the Grays, by mail, of the days that chipping would occur, however, chipping did not always occur on those dates. Totals for chipping for any one year do not exceed 24 hours. Exhibit #025 and Testimony.
  26. The same person who unloads logs also runs the chipper. Unloading trucks takes precedence over chipping. Testimony.

27. There are no pre-scheduled shutdowns, but generally there is one week during the summer months when the mill closes for vacation. Deliveries to fulfill contracts continue during the vacation shutdown. Exhibit #025.
28. The World Health Organization's (WHO) guidelines for sleep disturbance established a standard of 45 decibels average over the course of an 8-hour night at the residence. In 2011 night time noise was between 39 to 42 decibels at the property line. Lmax is not used when the source is a constant, from a consistent source. An L50 sound level was used in the sound study. Exhibit #016 and Testimony.
29. The Applicants operate three kiln bays under several settings. The kiln bays use variable-speed fans that operate at 60 Hz in the daytime (7:00 a.m. to 4:00 p.m.) and at 45 Hz at night (4:00 p.m. to 7:00 a.m.). Two kiln bays are typically in use at one time and the third is generally being loaded or unloaded. Each kiln bay has steam vents on its north and south side. The direction in which the steam is vented changes automatically about every two hours. Exhibit #016.
30. Noise generated by the kiln is broadband in nature and the L50 sound level is at or below 45 dBA at night and 49 dBA during the day. Nighttime sound levels were approximately 6 dB lower during the 2011 monitoring than during the 2002 monitoring. Exhibit #016.
31. Woods chips are used to fuel the boilers for the kiln. Some of the wood chips are generated on site with a Dynamic Cone Head CH585B wood chipper. The wood chipper is loaded with a CAT M318 Excavator with a log grapple installed on the boom. Exhibit #006.
32. Loaders refueling the boilers, loaders loading and unloading the kilns, the mulch grinder, the fans from the kiln bays, firewood being loaded into trucks and trucks unloading and stacking logs, the boilers and the chipping all generate noise at the facility. The noise starts at 7:00 a.m. and has increased over the years. Testimony.
33. The new loader can carry up to five yards of chips to the boilers, whereas the previous loader could only carry one yard of material. Testimony.
34. When the kiln is running, firewood in any one kiln bay is dried and heat-treated over a period of between 3 and 6 days, depending on conditions. Exhibit #025.
35. The big storage shed was constructed for storing kiln dried (KD) firewood. Now that KD firewood demand has grown, the big shed is now the last shed to be filled and the first to be emptied. Exhibit #025.
36. Noise from the chipper will be controlled by locating the chipper so that the infeed end of the chipper is outdoors but the outfeed end will be inside the insulated storage building. The engine and chipping elements will be located entirely inside the shed. The end of the chipper where the logs are fed into the chipper via a loading platform will be located on the edge and slightly outside the woodshed. The logs will be located outside the shed and fed into the chipper with a material handler (a specialized excavator with a timber grapple). The material handler already operates throughout the site on a daily basis. The log loading platform of the chipper will be located behind the bunker walls. Exhibits #006 and #025.
37. To mitigate noise levels from chipping into the insulated storage shed the following measures are recommended:

1. Increase the transmission loss of the wood chip shed roof by adding a ceiling inside the shed or roof sheathing under the metal roof to increase the noise reduction from 18 dB to 29 dB or greater.
2. Increase the amount of acoustical absorption within the wood chip shed by adding absorptive material such as mineral wool, fiberglass, or other porous materials, to reduce the amount of reverberation and build-up of noise within the wood chip shed. The material should have a Noise Reduction Coefficient of 0.8 or greater.
3. Install a moveable noise control curtain that can be extended and retracted over the front opening of the shed.
4. Increase the height of the bunker wall that is currently 7 feet tall to 11 feet tall.

Exhibits #006 and #025.

38. The existing buildings between the chipper location and Sarah Gray's house (to the south) will also help attenuate some noise from the new chipping operation. Concrete blocks just outside the southeast corner of the proposed wood chipping shed create a bunker wall and header that help to attenuate sound from propagating in a southeasterly direction. Exhibits #001, #006, #025 and Testimony.
39. For the record, the Commission noted, that during the site visit, noise from traffic on Route 100 was more objectionable than the kiln noise.
40. The annual average daily traffic for Route 100 in this area, is 3,190 from VTrans' counts from 2018. Between 7:00 a.m. and 5:00 p.m. there is an average of 244 vehicles per hour or one vehicle every 15 seconds. Of those vehicles, approximately 87% are cars and pick-ups, 4% are medium trucks, 4% are heavy trucks, 2% are busses, and 2% are motorcycles. Exhibit #006.
41. Average background sound levels between 7:00 a.m. and 5:00 p.m. at seven nearby residences due to traffic ranged from 50 dBA to 64 dBA. Exhibit #006 (page 4).
42. For the seven closest residences, both the maximum and average sound levels of the proposed operation are less than the maximum and average sound levels caused by traffic on Route 100. Exhibit #006.
43. The chipper will run, on average, one day per week between the hours of 8:00 a.m. and 4:00 p.m. If Ash logs arrive from an EAB infested area, the Ash logs will need to be chipped within one business day of receipt. Exhibit #025.
44. On average, the boilers use approximately 100 cubic yards of chips to dry three kiln bays. This takes approximately 25 bucket loads with the 4-yard bucket loader. More chips are needed on cold winter days and fewer chips on hot summer days. Exhibit #025.
45. Chips that are not produced on site are purchased and trucked to the site. The percentage of chips purchased for the last three years are:
  - 2016-17 season, 4,500 cords dried, 9% of chips purchased;
  - 2017-18 season, 5,000 cords dried, 17% of chips purchased;
  - 2018-19 season, 6,000 cords dried, 61% of chips purchased.

Exhibit #025.

46. The anticipated noise level from the increased chipping is not expected to exceed 55 dBA at any nearby residences. This alternative design will provide for a more efficient or effective means to mitigate the impacts associated with the chipping. Exhibit #001.
47. Heat treatment relates to temperature and the venting relates to the humidity. The more humid the wood is, the faster the fans have to operate to get the humidity out. Two fans going in the same direction and another going in a different direction makes more noise than if all three fans were going in the same direction. Testimony.
48. The 2011 sound study indicates that daytime operating modes of the kilns range from 47 to 49 dBA and nighttime operating modes range from 42 to 45 dBA. Nighttime sound levels were approximately 6 dB lower during the 2011 monitoring than during the 2002 sound monitoring. Exhibit #016.
49. The Grays (adjacent neighbors to the south) disagree that the new kiln is quieter than the old kilns. They have lived next door to the mill facility since it was originally permitted. Also, the noise is constant. Ms. Gray can hear the fans at night even though she wears ear plugs. Though not sound engineers, the Grays have a sound reader that registers 8 to 10 decibels higher on the second floor deck than at the RSG monitoring location at ground level. Also, the nighttime noise level is only slightly lower than the daytime level. Exhibits #013, #027A, #029 and Testimony.
50. Condition #11 of LUP #3W0405-5A, in part, stated: The permittees shall construct a noise barrier consistent with Section 1(D) of the Agreement, prior to June 1, 2003. Official Notice.
51. Section 1(D) of the Agreement states:

Noise Barrier. The Coltons agree to apply for all necessary permits and approvals and if permitted and approved, construct a noise barrier along the common property line of the Coltons and Gordon and Sarah Gray to reduce the impact of noise on the property of Gordon and Sarah Gray. The noise barrier will be approximately fifty (50) feet in length and ten (10) feet high and will be an earth berm, sound fence, or other material of sufficient design to assist in reducing noise transmission from the Coltons' yard to the property of Gordon and Sarah Gray. The Colton's agree that construction of the sound barrier will not take place after 4:00 P.M.

Official Notice.
52. Since February 2018 Emerald Ash Borer (EAB) has been detected in at least five Vermont counties. Instead of a county by county quarantine, the state, through an interagency EAB task force comprised of Federal and State partners, implemented a "Slow the Spread" initiative (STS). EAB naturally moves one to two miles a year, but can move further and wider by transporting untreated firewood. Ash comprises approximately 4-5% of Vermont's forests. Exhibit #022 and Testimony.
53. The *Recommendations to Slow the Spread of Emerald Ash Borer When Moving Ash from the Infested Area* have been incorporated into timber sale contracts on State and Federal timber sales as mandatory requirements that must be followed by purchasers of timber. Exhibit #021 and Testimony.

54. Low-risk options for transport, use and disposal of potentially infested wood will reduce the spread of EAB. When transporting Ash roundwood during the flight season of the EAB, June 1 – September 30, the *Recommendations to Slow the Spread of Emerald Ash Borer When Moving Ash from the Infested Area* include: a) delay harvest until October 1; 2) if harvesting must occur, delay movement until after October 1; 3) if movement is unavoidable before October 1, notify purchaser of origin and the purchaser processes and/or treats immediately; and 4) do not sell as homeowner firewood or bole wood outside the infested area. Exhibit #018.
55. Movement of Ash visibly infested with EAB is prohibited between June 1 and October 1 and may be subject to enforcement actions from the Vermont Agency of Agriculture, Food & Markets. Exhibit #025.
56. There has been an increase in the percentage of Ash logs brought into the Colton's facility since EAB has been detected in the State. Landowners who are managing their forests are cutting Ash while it still has value. Testimony.
57. Vermont is part of the federal EAB quarantine, and the Maine/New Hampshire border is the federal quarantine boundary, making it impossible to move any ash pulpwood beyond Vermont's borders. Exhibit #022 and Testimony.
58. The Coltons' firewood processing facility is located in a zone in Vermont that does not have the ability to treat Ash in the summer. Many loggers do not have the ability to chip the Ash on site. Access to a facility that can heat treat, burn in a boiler, or chip Ash during the EAB flight season is needed to comply with the *Slow the Spread* recommendations. Exhibit #020 and Testimony.
59. Unless it's been heat treated, transporting firewood over state lines has been quarantined for six to seven years. Heat treatment occurs as part of the kiln drying process. Heat treatment for STS requires that the wood be heated to 160 degrees (Fahrenheit) for at least 75 minutes. Connecticut, Maine, New Hampshire, Pennsylvania, New York and Canada require heat-treating all species of firewood to kill insects and pathogens. Exhibits #019, #025 and Testimony.
60. Prior to the detection of EAB, air dried (AD) firewood produced between May 1 and August 15 averaged 94% of the total production at the Coltons. Since the quarantines for moving firewood outside of Vermont have been in effect, the production of AD wood has fallen to approximately 24% of the total production. There is a limited market for AD wood within Vermont, and the quarantines for all firewood have made it illegal to sell outside of the state. Exhibit #025.
61. The project does not require an ANR Air Pollution Control Permit. Exhibit #001.
62. There will be no new signs, no new exterior lighting, no new utilities and no new landscaping. There will be no physical changes to the existing facility that will be visible from off-site. Exhibit #001.
63. The Future Land Use Map of the Pittsfield Town Plan designates the area of the project as "Route 100 Corridor Area." The Town Plan, in part, states "[a]ll projects requiring an Act 250 permit shall conform to the following Guidelines." Relevant Guidelines under "Commercial Development along Route 100" include:

- Development shall be located in clusters and set back from the highway for minimal visual impact.
- A landscaped buffer (using native plants and trees) shall be part of any new construction adjacent to Route 100.

Official Notice, Pittsfield Town Plan, adopted Aug. 18, 2015, pages 108 – 109.

### Conclusions of Law

#### **Criterion 1 - Air Pollution**

The test for undue air pollution caused by noise is whether the noise has “impacts rising above annoyance and aggravation to cause adverse health effects such as hearing damage.” *Re: Talon Hill Gun Club, Inc. and John Swingleton, #9A0192-2-EB*, Findings of Fact, Conclusions of Law and Order at 8 (June 7, 1995). Also, the former Environmental Board established that “the Board relies on EPA standard of 70 dbA for 24 hours/day, 365 days/year in a lifetime for health and safety considerations of noise.” *Re: Pike Industries, Inc. and Inez M. Lemieux, #5R1415-EB*, Findings of Fact, Conclusions of Law, and Order at 32 (June 7, 2005) [EB #853]; *Casella Waste Management, Inc., and E.C. Crosby & Sons, Inc. #8B0301-7-WFP*, Findings of Fact, Conclusions of Law, and Order at 28 (May 16, 2000).

LUP #3W0405-5, issued on October 15, 2001, included findings of facts and conclusions of law related to Criterion 1 Air Pollution.

In addition to the noise mitigation addressed below under Criterion 8 Aesthetics, the Commission will include permit conditions requiring nighttime noise levels not to exceed 45 dBA and daytime noise levels not exceed 55 dBA at areas of frequent human use. Complying with the maximum nighttime sound levels may require the fan speeds to be reduced at night.

The Commission concludes that, with conditions, this Project will not result in undue air pollution that rises above annoyance and aggravation to cause adverse health effects.

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

#### **Criterion 8 - Aesthetics and Scenic Beauty as it relates to Noise**

Prior to granting a permit, the Commission must find that the proposed development under Criterion 8 “will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.” 10 V.S.A § 6086(a)(8). Previous permits have made positive findings related to historic sites and rare and irreplaceable natural areas. The Commission will address the impacts of the proposed development as it relates to Aesthetics, and specifically, Noise.

#### **AESTHETICS and NATURAL AND SCENIC BEAUTY**

In addressing this criterion, the Commission will address the proposed changes to the existing permitted firewood processing facility. Those changes include increasing the kiln operations and adding a chipper to chip into an insulated building.

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will

have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Env'tl. Ct. May 17, 2010)(citations omitted); see also, *Re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985); *In re Halnon*, 174 Vt. 514 (mem.)(applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A § 6088(b), but the applicants must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Env'tl. Ct. May 17, 2010)(citing *Re: Susan Dollenmaier*, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt Env'tl. Bd. Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct. Feb. 15, 2008), *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or witnesses . . ." *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553-54 (1990)).

### 1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al. #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Env'tl. Bd., Nov. 4, 1985)*(cited in *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).

This amendment application specifically proposes to remove some of the limitations on kiln operations by allowing the kiln to continue to operate on Sundays and holidays. Operations will be limited to between the hours of 7:00 a.m. and 4:00 p.m. The application also proposes to add the ability to chip wood into an insulated storage building during operating hours in addition to the previously permitted 24 hours per year of chipping outside of the building. Even though the nature of the project's surroundings is an existing, permitted firewood processing facility, an increase in the use or duration of the equipment that makes noise, including the kiln and chippers is adverse.

This proposed change to the previously permitted firewood processing facility will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

### 2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592 ).

*(a) Clear, Written Community Standard*

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. Hannaford Brothers Co. and Southland Enterprises, Inc., #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Env'tl. Bd. 4/9/02). A clear, written community standard must be intended to preserve the aesthetics or scenic beauty of the area where the project is located. Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action, #2WO694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Env'tl. Bd. 12/21/00).

The Commission has reviewed relevant portions of the Pittsfield Town Plan and the Two Rivers-Ottawaquechee Regional Plan. The Town Plan includes mandatory language for Commercial Development along Route 100, such as "development *shall* be located in clusters and set back from the highway for minimal visual impact" and "a landscaped buffer (using native plants and trees) *shall* be part of any new construction adjacent to Route 100." [Emphasis added]. This project is not a new development, the buildings are clustered, is off the highway, and there are trees between Route 100 and the facility. The proposed placement of a wood chipper is in an existing storage shed that is set back from the highway for minimal visual impact. The project complies with the mandatory language of the Town Plan related to Commercial Development along Route 100.

There are no specific standards relating to aesthetics of the area in the Regional Plan.

Therefore, the proposed Project does not violate a clear community standard.

*(b) Offensive or Shocking Character*

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc.* #2S0351-S-EB Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 11-12; *Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992).

Emissions, odors, and noise at this facility have been reviewed and permitted by the District 3 Commission in previous permits. What is being proposed now is an increase in the use of the kiln and the addition of a wood chipper into an insulated building. The Applicants have produced two sound studies (2002 and 2011 – Exhibit #016) as well as a "Sound Propagation Modeling and Mitigation of a Proposed Indoor Wood Chipping Operation" (Exhibit #006) report. According to the sound modeling, the average or maximum sound levels at the nearby houses due to the operation of the indoor wood chipping does not exceed 55 dBA (see Table 3, Exhibit #006, page 8). The nighttime sound level of the fans from the kilns now being proposed to run through Sundays and holidays, is approximately 6 decibels less than the sound levels in 2002.

The Commission finds that the traffic noise on Route 100 is more offensive and shocking than the noise generated by the kilns. The location of the wood chipper will be placed so that noise



generated from the chipping is mostly into an insulated building with an acoustical curtain over a portion of the opening of the building.

The firewood processing facility has been operating since 1983 and, over the years, has increased the operating times, seasons, and dates as evidenced in the amendments that have been issued. The additional hours of running the kiln and the operation of the wood chipper are not new noises for the permitted facility. As described above under Criterion 1 Air and below, conditions to mitigate the impacts from noise will be included in the permit.

Given all of these considerations and conditions, we find that the Project is not offensive or shocking.

*(c) Generally Available Mitigating steps*

The question under this factor of the aesthetics analysis is whether the Applicants have “failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.” *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must “take generally available mitigating steps to reduce the negative aesthetic impact of a particular project,” otherwise, “[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse.” *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010). A generally available mitigating step “is one that is reasonably feasible and does not frustrate [either] the project’s purpose or Act 250’s goals.”

To mitigate the aesthetic impacts from the wood chipper, the majority of the chipper will be placed inside the storage building. The engine and chipping elements will be located entirely within the building. Other mitigating measures of the building will include: 1) increasing the noise reduction in the roof by adding a ceiling under the metal roof to reduce the noise by 29 dB or greater; 2) adding absorptive material (with a Noise Reduction Coefficient of 0.8 or greater) to the upper portion of the inside walls and the underside of the ceiling; 3) installing a moveable noise control curtain across the opening; and 4) increasing the height of the bunker wall to 11 feet. These mitigation measures, recommended by the Applicants’ sound engineers, are described in Exhibits #006 and #025. The Commission will incorporate these measures as conditions in the permit.

Chipping is currently allowed to occur for a maximum of 24 hours per year and the chipper is not limited to a particular location. The wood chipper will be located in the insulated building.

At the hearing the neighbors stated that the noise from the activities at the facility have increased over the years. In order to accommodate the additional kiln use and chipping, and to balance the needs of the Applicants’ operation with the neighbors’ right to enjoy their home environment, the Commission will include conditions in the permit. The Commission will include a condition that prohibits the existing 24 hours chipping per year at any location, but that allows chipping, into the insulated building only, Monday through Saturday from 10:00 a.m. to 2:00 p.m., excepting holidays. Also, the operating hours for the kiln will be reduced to between 7:00 a.m. and 4:00 p.m. on Sundays and holidays.

The Commission will include a condition that will require the firewood processing facility to be closed down, except for accepting logs, for the first two full weeks in August. The first week of the shut-down shall start on the first Sunday in August and continue for two weeks. All other activities, including the firewood processor, splitting wood, kiln, chipper, mulch grinder and all other

equipment that generates noise, shall not be in use during those two weeks. The facility can start up on the Monday morning following those two weeks of shut-down.

Given all of these considerations, and with the addition of conditions, we find that the Applicants have taken the available mitigating steps to minimize the adverse impacts of the proposed Project on the scenic or natural beauty of the area.

*(d) Conclusion*

Based on the above, the Commission concludes that, with conditions, the Project will not have an undue adverse effect on the aesthetics or natural and scenic beauty of the area.

The Commission concludes that the Project will not have an undue adverse effect on Aesthetics as it relates to Noise.

**VII. SUMMARY CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicants, and in accordance with in the findings and conclusions of this decision and the conditions of Land Use Permit #, will comply with the Act 250 criteria. 10 V.S.A § 6086(a).

**VIII. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #3W0405-6(Altered) is hereby issued.

Dated at Springfield, Vermont, this 28th day of February 2020.

By   
\_\_\_\_\_  
Tim Taylor, Chair  
District #3 Environmental Commission

This is an amended decision issued pursuant to Act 250 Rule 31.

If the District Commission issued this amended decision on its own motion, any party may file a motion to alter with the Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A). If the District Commission issued this amended decision in response to a motion to alter filed by a party, then no additional motions to alter this amended decision may be filed. This decision was issued only to make clerical or ministerial corrections that do not change the substance of the Commission's decision. Any appeal of the Commission's decisions must be filed with the Superior Court, Environmental Division within 30 days of the date the original decision was issued, pursuant to 10 V.S.A. Chapter 220, not including the time between the date any motion to alter was filed and the date the Commission issued this amended decision. The issuance of this amended decision does not restart the deadline for appealing the Commission's original decision. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the relevant entry fee required by 32

V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401.