

**STATE OF VERMONT
DISTRICT 5 ENVIRONMENTAL COMMISSION**

Re: Rivers Development, LLC
PO Box 555
Waitsfield Vermont 05673

)Application 5W1455
)Memorandum of Decision
)Motion to Alter
)Natural Resources Board Rule 31(A)
)10 V.S.A. Chapter 151
) (Act 250)

INTRODUCTION

On January 19, 2007, the District 5 Environmental Commission issued Findings of Fact 5W1455 with respect to the development and operation of a rock quarry and crushed rock processing facility on a 93± acre tract located off Vermont Route 100B in the Town of Moretown. In its decision, the District Commission stated affirmative findings and conclusions under all Act 250 criteria except criteria 1 (Air Pollution) and 10 (Town Plan).

On February 5, 2007, the applicant filed a timely motion to alter pursuant to Board Rule 31(A). Replies to the motion were then filed on February 21, 2007 by the Town of Moretown and parties Denise and Benjamin Sanders et al. A hearing on the motion was not requested by the applicant or any party. The District Commission deliberated in this matter on March 9, 2007.

CONCLUSIONS

Criterion 1 (Air Pollution)

The applicant is correct in observing that McLean Enterprises Corporation 2S1147-1-EB (November 24, 2004) was the next to last, not last, Environmental Board decision that was issued with respect to a quarry project and that administrative error in the January 19, 2007 decision is herein corrected.

Having reviewed the record in this matter and the content of the January 19, 2007 decision, the District Commission declines to alter its findings and conclusions under criterion 1 (Air Pollution). The Commission restates its conclusion that by not providing threshold and essential information with respect to the potential migration of diesel emissions and particulate matter from the project tract, the applicant did not meet its evidentiary burden of production. The applicant's two samples for crystalline silica content of rock on the site did not adequately address the potential for a substantive source of pollutant on the site - the applicant's own evidence was that it expected the silica content and quality of rock to vary as extraction proceeded on the site. The applicant did not rebutt the parties' evidence that air inversions are common in this valley setting. The Commission does not find the position of the Agency of Natural Resources that air modeling would not be required for the site to be

determinative. The Agency's regulatory trigger for modeling is very high. The District Commission must have some structured methodology for the evaluation of air quality impacts from the operation of quarry of this scale. Modeling is an acceptable and reasonable means of performing such an evaluation.

The Commission is not persuaded by the applicant's recital of other earth extraction projects permitted without requiring air quality modeling. To be correct, however, this Commission did have benefit of the results of an air modeling analysis before it in the matter of the Pike Industries 5R1415-EB (June 7, 2005) (See Exhibit 55 in the record for application 5R1415).

The review of all projects under Act 250 is site specific. The Environmental Board held that reviews under criterion 1 are fact-specific to determine whether air pollution will be "undue" and depend on a series of factors (Pike Industries 5R1415-EB at page 31).

The applicant in this matter undertook a detailed air quality analysis for potential impacts in Moretown Village yet performed no such detailed analysis for the project site itself. It is the absence of information, in the face of countervailing site specific information from the opposing parties on air inversions and concerns for silica particulates, that requires a conclusion that the burden of production has not been met. The Commission was able to extend minimal evidentiary weight to the applicant's proposal to suppress dust at the stockpiles - no details were provided.

The District Commission finds no basis to alter its decision under criterion 1 (Air Pollution).

Criterion 10 (Town Plan)

The Commission has considered the applicant's lengthy explication of Board holdings as set out in the motion. Without doubt, Board holdings have examined in closest scrutiny the meaning to be afforded language employed by townspeople in drafting their town plans. This Commission has carefully read the Board's decisions for a correct, yet practical, understanding in how to interpret the provisions of the Moretown town plan. The Commission found that the language of the town plan was sufficiently clear to guide the average person in reaching a conclusion on whether the project conforms with the policies stated therein. The proposed land use at this location in the Town of Moretown does not conform with the provisions of the town plan. The District Commission declines to alter its decision under criterion 10.

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ORDER

The applicant's motion to alter is denied.

Dated at Barre, Vermont this 14th day of March, 2007.

By /s/ Karl Johnson
Karl Johnson, Chair

Other members participating in this decision:

Ruth Towne
Elizabeth McLain, former member and
participating pursuant to 3 V.S.A. 849

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