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September 22, 2015

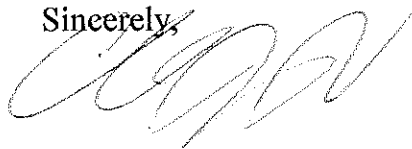
Robbin Gabriel
Interim ZBA Secretary
Town of Halifax
PO Box 127
West Halifax, VT 05358

Re: C.A. Denison Lumber Co., Inc.
Application for Zoning Permit Conditional Use

Dear Robbin:

Enclosed please find the Applicant's proposed Findings of Fact and Conclusions of Law.
Please let me know of any questions. Thank you.

Sincerely,



Christopher J. Nordle

CJN/eac
cc: Service List

**TOWN OF HALIFAX
DEVELOPMENT REVIEW BOARD**

C.A. Denison Lumber Co.)
(Conditional Use & Site Plan))
)

APPLICANT'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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PROPOSED FINDINGS OF FACT

1. The Applicant in this matter is C.A. Denison Lumber Co., Inc. (Denison).
2. Denison owns a tract of land consisting of approximately 1,210 acres (Property). Conditional Use Application. Denison proposes to lease approximately 69 acres of the tract (Lease Area). Within the Lease Area Denison proposes a quarry operation which will impact approximately 14.5 acres (Project Area). Application Cover Letter. The Property, the Lease Area and the Project Area are depicted on Exhibit 1 (revised).
3. A number of Halifax residents participated in the hearings. The distance between the Project Area and the 911 addresses provide by these individuals is significant. *See Exhibit 19 & Exhibit 20.*¹ Most of the interested parties do not live along or adjacent to the proposed truck route. *See Exhibit 19 and Exhibit 20.*
4. The Property is accessed by a Class 4 section of Town Highway 52. Conditional Use Application; Exhibit 10. The Town does not maintain the Class 4 section of TH 52. Historically, with the approval of the Town, Denison has maintained this portion of TH 52. Testimony J. Pratt. The Applicant does not anticipate that upgrades to TH 52 will be required. Exhibit 21 #4. The Applicant currently uses TH 52 for forestry purposes and travels over the road with loaded log trucks that are substantially larger and heavier than what will be used in connection with the Project. Testimony J. Pratt.
5. There is an existing gate at the intersection with TH 52. An additional gate will be installed where the proposed access road intersects the existing access road near the Lease Area. Exhibit 22 #28.
6. Access from TH 52 to the Lease Area is over an existing logging road that has been improved such that it can be driven with a passenger vehicle. Testimony J. Pratt; Exhibit 21 #5. A new segment of roadway will be built within the Lease Area in order to avoid potential impacts on a stream that runs through the Property and to avoid impacts on Class II wetlands located outside of the Lease Area. Testimony J. Pratt; Exhibit 8; Exhibit 14.
7. The proposed project involves the removal of large blocks of stone from the Project Area. The stone blocks will then be transported off site for further processing. Application Cover Letter.
8. Up to four employees will work at the site on any given day. Application Cover Letter. It is not expected that employees will need to leave the site frequently throughout the course of a work day. Anticipated trips will be close to one arrival and one departure per employee. Exhibit 21 #16.

¹ Exhibit 19 and 20 were submitted mid-way through the hearings. They were based upon the interested party list provided by the Town at that time. They were not updated based on attendance lists for subsequent hearings.

9. The hours of operation are limited to 7:30 a.m. to 4:30 p.m. excluding State and Federal holidays. Occasional maintenance activities might take place on Saturday (no drilling or sawing will occur on those days). The operating season will start no earlier than April 1 each year and will conclude no later than November 30 each year. Application Cover Letter.

10. Trucking will not occur during periods where the roads are unsuitable for travel. The project operator needs to ensure that the employees are safe and that the project equipment will not be damaged. These objectives are consistent with the Town's objectives of not having heavy equipment on the roads when conditions are poor. If the project is in operation when roads are posted, operations would be limited to activity that is consistent with the limits placed on use of the roads. The operator might, for example, want to go to the project to work on maintenance activities or to begin preparing blocks of rock for transport so that they are available when conditions allow for trucking. Exhibit 21 #19.

11. The blocks of stone will be removed with the assistance of a drill and a wire saw. Application Cover Letter. Blasting and crushing are not proposed as part of the project. No onsite processing screening or crushing of material is proposed. Application Cover Letter. Excavator-mounted rock hammers are not being proposed for this project. Exhibit 21 #12.

12. Generation of schist dust will occur as part of the stone extraction process. Based on operational information provided by Jerry Pratt, the proposed extraction method for a given block of stone includes drilling 4 holes and making two saw cuts (a back cut and a bottom cut). Assuming two large 54" x 54" x 10'-2" blocks per day, the volume of fines generated per day would be approximately 0.35 cubic yards, or about 9.5 cubic feet. Exhibit 21 #20.

13. The Agency of Natural Resources Air Quality & Climate Division (AQ&CD) has determined that an Air Pollution Control Permit is not required for the project because "no crushing or screening equipment and no diesel engines greater than 450 brake horsepower will be operated at the quarry." Exhibit 2.

14. The AQ&CD has requested that the Act 250 permit for the Project be conditioned such that reasonable precautions (application of water and/or calcium chloride, maintenance to prevent dust build up, covers utilized on trucks when loaded with materials that may generate fugitive dust, wet or dry dust controls on drills, revegetation as soon as possible) be taken to prevent fugitive dust. Exhibit 2. The AQ&CD has also requested a condition prohibiting operation if a certain size crusher is used. Exhibit 2. The Applicant does not propose crushing. The Applicant has no objection to the other requested conditions being included in the Act 250 permit or the municipal permit.

15. All trucks will operate in compliance with current federal emissions regulations which are designed to protect public safety. Truck volume is limited to 2 loaded trucks per day such that only a minimal amount of emissions will be generated. Exhibit 21 #15.

16. Dust control measures will be provided on the drill and saw. Wet suppression will be provided on the saw and either vacuum or mist suppression will be provided on the drill. Dust collected at the site will be combined with on-site overburden soils to limit runoff volumes. Exhibit 21 #20.

17. There will be no onsite bulk storage of gasoline, motor oil, or other fluids. Application Cover Letter.

18. The following permits have been issued by the Agency of Natural Resources:

- a. Wastewater System and Potable Water Supply Permit WW-2-4648 (Wastewater Permit) – Exhibit 15;
- b. Authorization to Discharge Under General Permit 3-9015 (Stormwater Permit) – Exhibit 3;²
- c. Notice of Authorization 7130-9020 (Erosion Control Permit) – Exhibit 4;
- d. Authorization to Discharge Under General Permit 3-9003 (Multi-Sector General Permit or MSGP) – Exhibit 5;
- e. Authorization to Conduct Stream Alteration Activities (Stream Alteration Permit) – Exhibit 7.

19. Wetlands within the Project Area have been delineated and are shown on the site plans. The Project has been designed to avoid wetland impact and to minimize impacts when they cannot be totally avoided.

20. The Project Area is not located within a floodway and is not located within a Special Flood Hazard Area. Exhibit 6.

21. Stormwater from the Project will all be collected in detention ponds that have been sized to meet applicable State standards. Runoff rates will be controlled through these ponds. The retention time in the ponds will be sufficient to allow sediment to settle. Testimony T. Gingras.

22. With respect to the stream alteration, ANR has made the determination that “if the project is constructed as [Denison has] described, as shown on the ... approved plans and according to the [permit] conditions, there is no reason to expect any violation of Vermont Water Quality Standards. Exhibit 8.

23. The number of trucks loaded with stone blocks is proposed to be two per day. Additional employee vehicles will periodically enter the site. Application Cover Letter. The Applicant has committed to using trucks that are equivalent in body chassis size to the trucks utilized by the Town. Exhibit 16; Exhibit 17; Testimony of J. Pratt. A dump body is not required to transport stone blocks so a flatbed version will likely be used. Exhibit 21 #14; Testimony of J. Pratt.

24. The proposed restoration plan is included with the overall site plans. The project does not involve the removal of any soil overburden from the site. As such, all of the soil presently located at the site will be available to use for site reclamation. In addition, organic matter, such as stumps which will decay over time, will be stored at the site and used in reclamation. The stumps will also be used to limit the presence of exposed rock outcroppings as they will be utilized as initial cover on

² This authorization is presently under appeal. At the request of ANR the Applicant has also filed an application for coverage under an individual stormwater permit. That application is pending.

some of the benches and then this initial cover will be covered, in turn, with overburden soil. Exhibit 22.

25. It is anticipated that the site will naturally re-vegetate following completion of the propose extraction activity. To the extent that all of the materials necessary for reclamation are already located at the site, and to the extent that reclamation will progress as the extraction limits are reached in a particular area, reclamation costs will be limited to equipment time. To insure that necessary funds are available to complete the site restoration work, an escrow of \$1,000 per year until the fund reaches \$10,000 is proposed for the project. Exhibit 22.

26. The Applicant conducted an extensive natural resource assessment of the site which included analysis of streams, wetlands, rare or irreplaceable natural areas, necessary wildlife habitat and endangered species. *See* Exhibit 8.

27. The Applicant's study took place over the course of eight site visits by eight individual specialists. Exhibit 25. In addition, ANR staff conducted a number of site visits. Exhibit 25

28. The study area included the Project Area and surrounding land which is not proposed to be disturbed. The total study area was 50 acres (Resource Study Area). Exhibit 8 Page 2. The Resource Study Area is shown on Exhibit 8 Attachment Page 1.

29. There are 15 stream segments within the Resource Study Area. Exhibit 8 Page 3. A Vermont Fish and Wildlife fisheries biologist also investigated the project.

30. The Project will require crossings or activities within one intermittent, three ephemeral, and one perennial stream. Exhibit 8 Page 3. The areas of unavoidable impacts for the access road are quite small. The crossings have been designed in a manner that maintains natural flow and condition to the extent possible. Exhibit 8 Page 3.

31. There are fifteen features that would meet either the U.S. Army Corps of Engineers or the ANR's criteria for wetlands. Exhibit 8 Page 4. The project has been designed to minimize impacts to wetlands, significant or otherwise, including limiting the quarry footprint to avoid Class III wetlands. The Project will not impact any Class II wetlands. Exhibit 8 Page 5.

32. The new access road will impact two Class III wetlands. Exhibit 8 Page 5. Permanent impacts to these wetlands are 1,305 square feet. Exhibit 8 Page 5.

33. The Applicant reviewed on-site natural community or vegetative assemblage types. Exhibit 8 Page 6. Three natural communities were identified within the Resource Study Area. Exhibit 8 Page 6. These areas are Hemlock forest, Hemlock-Northern Hardwood Forest, and Northern Hardwood Forest. Exhibit 8 Page 6. These communities are classified as "common" or "common and widespread." Exhibit 8 Page 6.

34. The natural communities within the Resource Study Area are not considered a significant natural community. Exhibit 8 Page 6.

35. The Applicant also reviewed ANR maps of known deer wintering habitat, black bear habitat, and black bear wetland habitat. Exhibit 8 Page 6; Exhibit 11. No State-mapped necessary wildlife habitat was found within the Resource Study Area. Exhibit 8 Page 6.

36. The Applicant did locate some potential deer wintering area within the Resource Study Area. Exhibit 8 Page 6. This area occurs to the north, east and south of the Project Area. Exhibit 8 Page 6.

37. The Applicant has agreed to manage the potential deer wintering area (the forest within the Lease Area that is located to the north and east of the Project Area) as deer habitat during the life of the project. Exhibit 14. The Project has been designed to avoid direct impacts to this area to the extent possible (i.e. relocating a portion of the access road to minimize impacts and not operating in the winter). Exhibit 8 Pages 6-7. The management area proposed by the Applicant is 23.1 acres compared to the impact on potential deer wintering area of 1.72 acres. *See* Exhibit 8 Page 7 (1.72 acres impacted) and Exhibit 14 (23.1 acres of managed habitat).

38. A large wetland complex exists outside of the Lease Area and to the east of the proposed project. Exhibit 8 Page 7. Evidence of bear use is apparent in this wetland complex. Exhibit 8 Page 7.

39. The Project has been designed to avoid impacts to this wetland complex. The closest portion of the Project Area to the wetland complex is 130 feet and the new access road is 220 feet (further than the existing access road). Exhibit 8 Page 7.

40. The Applicant has agreed to install a gate across the existing access road and to avoid using the existing log landing during bear foraging periods. Exhibit 14.

41. The Applicant researched known occurrences of threatened and endangered species within the Resource Study Area and the surrounding lands. Exhibit 8 Page 7. The Applicant also conducted an onsite targeted field study for male fern, thee-birds orchid, and pine drops. Exhibit 8 Page 7. These species are known to present in natural communities that are similar to those found in the Resource Study Area. Exhibit 8 Page 7. None of these three species were located. Exhibit 8 Page 7 & Attachment Page 85. There are no known occurrences of threatened or endangered species with the Resource Study Area or the Lease Area.

42. The ANR Natural Resource Atlas of wastewater system permits shows that the nearest permitted systems to the Project Area are at least 643 meters away. Exhibit 9.

43. The quarry, which is located between elevations of 390 and 432 meters above sea level according to the USGS topographic map, does not likely provide significant recharge to aquifers because it appears to be located in a groundwater discharge area, and because the soil and bedrock types at the site have low permeabilities/transmissivity to the flow of water, so that rates of discharge/recharge are limited. Exhibit 21 #22.

44. The majority of the soils at the quarry site (Westbury fine sandy loam, Tunbridge-Lyman complex, and Marlow fine sandy loam) are classified by the US Natural Resources Conservation Service as hydrologic groups C and D, which have low permeability rates and produce more runoff rather than groundwater recharge. Note that the permitted stormwater management system

(authorization #7130-9015) was designed not to provide groundwater recharge, based on the site characteristics. Exhibit 21 #22.

45. The presence of surface water (wetlands, and streams emerging from some wetlands and from non-wetland areas) in the vicinity of the quarry indicates that the area is most likely a groundwater discharge area rather than a significant recharge zone. Also, the sloping, convex topography of the quarry site is indicative of shedding water rather than affording significant recharge. Exhibit 21 #22.

46. Forest cover within the Lease Area is of a density such that line of sight will be blocked from the Project Area to the property line. Exhibit 21 #7.

47. Noise producing equipment at the site includes a rock drill, hand drill, generator, bucket loader excavator, trucks, and a wire saw. Exhibit 13 & 18.

48. The nearest residence to the Project Area is approximately 2,330 feet away. Exhibit 13 Page 1. Most other "nearby" residences are in excess of 3,000 feet from the Project Area.

49. Sound was modeled using Cadna A acoustical modeling software. This is an internationally accepted acoustic model. Exhibit 13 Page 10.

50. The Noise Impact Assessment includes both monitoring and modeling of sound levels. The monitoring that is presented in the Noise Impact Assessment was conducted for the purposes of quantifying the sound power level of the proposed equipment. The sound power level is used as an input into the sound propagation model which projects what the sound pressure level from the project will be at neighboring residences. Exhibit 21 #11.

51. The noise modeling was run with all equipment running simultaneously at their maximum output levels except for the saw and drill because they cannot be simultaneously run. Exhibit 13 Page 10 & Exhibit 18. The drill was included in the model because it is louder than the saw. Exhibit 18. Simultaneous operation of all equipment is unlikely to occur. Exhibit 13 Page 10.

52. The saw and drill cannot simultaneously operate at the same time because if they were to operate at the same time a second generator would be required. Each tool requires a power source. Only one generator is proposed. Exhibit 21 #18.

53. The highest sound level anticipated at the closest dwelling is 49 dBA using the Leq1sec. Exhibit 13 Page 11. The 49 dBA is the maximum sound level produced by the project with all equipment operating at their maximum output simultaneously. Exhibit 21 #8. Typical conversational speech produces sound levels between 55 and 60 dBA at a distance of 3 feet. Changes in sound pressure level of 10 dB are generally perceived as a doubling or halving of loudness. The maximum level of 49 dBA would be approximately half as loud as typical conversation. Exhibit 21 #8.

54. The highest sound level anticipated at a neighboring residence was 51 dBA using the Lfmax metric. The Applicant's consultant does not believe this is the correct metric to use but ran the analysis this way at the request of the Act 250 District Commission. Exhibit 13 Page 11-14.

55. The highest modeled sound levels at the property line are 70 dBA when the quarry first commences operations. This drops by 10 dBA when the equipment is no longer operating at the existing surface. These number reflect all equipment operating simultaneously which will not likely occur.

56. The Applicant has agreed to maintain forest cover within the Lease Area (other than the Project Area). Exhibit 13 Page 18.

57. The Applicant will use noise reducing barriers around the drill when necessary to maintain a 70 dBA property line noise level. Exhibit 13 Page 18.

58. The Applicant will use alternating backup alarms to reduce potential noise impacts. Exhibit 13 Page 18 and Exhibit 21 #7.

59. The Noise Impact Assessment takes into account noise from on-site equipment. Noise emissions from heavy trucks that are involved in interstate commerce are regulated by the federal government, and trucks used for this project would be subject to those regulations. Exhibit 21 #9.

60. Table A2 in Appendix A of the Noise Impact Assessment, provides the Sound Power Level of the modeled sources, including a heavy truck accelerating to 20 mph. In contrast the results within the main body of the report are Sound Pressure Level. The property line standard is a sound pressure level standard. The sound power level is used to calculate what the sound pressure level would be in a specific environment. A more detailed description of the difference between sound power levels and sound pressure levels is provided in Section 3.2 of the Noise Impact Assessment.

The Noise Impact Assessment which includes both monitoring and modeling of sound levels. The monitoring that is presented in the Noise Impact Assessment was conducted for the purposes of quantifying the sound power level of the proposed equipment. The sound power level is used as an input into the sound propagation model which projects what the sound pressure level from the project will be at neighboring residences. The monitoring was conducted at the site in September of 2013, and there were leaves on the trees at the time of the tests. Given that the type of measurements conducted were in close proximity to the equipment for the purpose of quantifying the sound power level, the foliage at the site would have minimal to no impact on the measured sound levels. In other words, the foliage would not have impacted the measurements.

61. Since the project area is heavily forested, the attenuation effect from foliage was included in the sound propagation modeling and the projected sound levels presented in the Noise Impact Assessment. This is referenced in Table A3 of the Appendix. The sound pressure levels in the report represent the sound levels at the property line and at the nearest residences during full quarry operations with foliage. Foliage is the summation of leaves, flowers, and branches. According to the

ISO 9613-2, the international sound propagation modeling standard used for this project, foliage can be included as an attenuation factor “if it is sufficiently dense to completely block the view along the propagation path.” Thus, even when there are no leaves on the trees in the winter, there is still foliage in the surrounding forest that will block line-of-sight between residences and the project, so accounting for foliage attenuation even when there are not leaves on the trees is appropriate in this case.

62. The type of truck used in the noise model for on-site noise is classified by the Federal Highway Administration (FHWA) as a heavy truck, which is essentially any truck with three or more axles. FHWA has standard noise emission values for this classification of vehicle and the noise emission values used for this project are provided in Table A2 of the Noise Impact Assessment Appendix. Exhibit 21 #13.

63. Noise impacts along the truck route will be limited in terms of frequency and duration. Truck traffic is limited to 2 loads per day or 4 trip ends (1 in and 1 out for each load). Exhibit 21 #9. A truck travelling at 15 miles per hour covers 22 feet per second. A property with 300’ feet of road frontage would have a truck travelling in front of it for no more than a minute per day at 15 miles per hour. At 10 miles per hour the duration increases to 80 seconds per day. Exhibit 21 #9.

64. The Project is located in an area that visibility from off site is not expected. Testimony J. Pratt. To the west of the Project Area the land rises preventing visibility in that direction. Exhibit 1. There are hills to the north and northeast of the Project Area that will block visibility in those directions. Exhibit 1. In addition, most of the forest cover in the Lease Area will be maintained to further shield the Project from view. *See* Exhibit 15.

PROPOSED CONCLUSIONS OF LAW

Deemed Approval –24 V.S.A. §4448(d)

Section 4448(d) of Title 24, Vermont Statutes Annotated states as follows:

If an administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal pane, a permit shall be deemed issued on the 31st day.

The completed conditional use and site plan review application was submitted on April 14, 2014. The cover letter to the application specifically stated that the Applicant was seeking conditional use review, site plan review, and any other required review. No action was taken on the application until May 21, 2015 when the municipality mailed a hearing notice for a hearing to be held on June 9, 2015. The notice does not indicate whether the administrative officer had denied the application or referred the application to the Zoning Board of Adjustment. The notice does not indicate that there is a right to appeal whatever decision – denial or referral – that the administrative officer had made.

The hearing notice indicates that the purpose of the meeting is to consider the “request of C.A. Denison Lumber Co., Inc. for conditional use permit.” No mention is made of site plan review. None of the subsequent hearing notices mention site plan review either.

The administrative officer is required to provide notice to the applicant, within the 30 day period, concerning the action taken by the office. *In re Trahan NOV*, 2008 VT 90 ¶12-14. The hearing notice was out of time and, in any event, does not constitute notice of what decision the administrative officer made. The request for site plan review still has not been addressed. Pursuant to Section 4448(d) the application was approved as a matter of law 31 days after submission.

Conditional Use Standards – Section 203(3)(a)

Capacity of existing of planned community facilities. The Project will not utilize any community facilities other than the town highway system. The system already accommodates trucks of the size and weight proposed by the Applicant. The addition up to two loaded trucks per day from April through November will not overwhelm the local roads.

The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan. The area in which the Project is located is rural. The Project can only be located where there is suitable stone. The Project can only be located where there is sufficient space to mitigate impacts. The Project location is desirable in that it is very isolated from surrounding land uses. Both topography and linear distance provide significant separation between the Project and other uses in the area. Because of the distances and the forest cover which will further screen the Project the impact on the character of the area will be minimal. This Project, which will generate up to two loaded truck trips per day can easily blend in with the this area.

The purpose of the conservation district is to protect the natural resource value of lands that are essentially undeveloped, are important upland wildlife habit or corridors, particularly for large game animals such as deer and bear, or have high forestry value, are unsuitable for land development, or include irreplaceable, limited or significant natural, recreational or scenic resources. Section 308(2). The Project is consistent with this objective. There is no question that animals use the area around the Project. As set forth in the Natural Resource assessment, however, there was no indication, following extensive field study, that there is important wildlife habitat that will be impacted, that there are travel corridors that will be impacted or that there are irreplaceable, limited or significant resources that will be impacted. The Project is not going to impact that resources that are designated for protection.

As indicated above, and as provided in 24 V.S.A. §4413(3)(A), the Project must not result in an “undue adverse impact on ... specifically stated policies in the municipal plan.” The Halifax Town Plan was adopted on March 4, 2014. The Town Plan contains a Chapter called “Policies and Recommendations.” Within this Chapter the plan identifies a series of “policies” which are generally organized by subject matter. Section 4413 and Section 203 only require an analysis of “specifically stated policies” when determining if a project is in conformance with the Town Plan. The conformity test requires that there be a “‘specific policy’ set forth in the plan” to act as a standard

against which one can gauge compliance. *In re: Centrangolo and DeFelice*, Docket No. 66-3-06 Vtec (Vt. Env'tl. Ct., April 11, 2007) (quoting *In re John A. Russell Corp.*, 2003 VT 93, ¶16-24). The specific policy must be stated in language that 'is clear and unqualified, and creates no ambiguity.'" *Russell*, 2003 VT at ¶16.

Where a policy in a Town Plan "provides no specific standards to enforce the policy, or is at best ambiguous and in conflict with applicable zoning provisions," the policy cannot support a determination of nonconformity. *Russell*, 2003 VT at ¶17. Town Plan policies which are vague or "those that delegate standardless discretion to the [factfinder]" are unenforceable. *In re Appeal of JAM Golf, LLC*, 2008 VT 110, ¶17. Where multiple general policies in a plan are in conflict, and the plan provides insufficient guidance as to how the competing interests must be balanced, the competing policies become unenforceable. *Id.* at ¶17.

If the Town Plan is specific, it is applied to the proposed project without any reference to the zoning regulations. A provision of a town plan evinces a specific policy if the provision: (a) pertains to the area or district in which the project is located; (b) is intended to guide or proscribe conduct or land use within the area or district in which the project is located; and (c) is sufficiently clear to guide the conduct of an average person, using common sense and understanding. *Re: John J. Flynn Estate and Keystone Development Corp.*, #4C07902-EB, Findings of Fact, Conclusions of Law and Order, at 28 (May 4, 2004); *Re: The Mirkwood Group and Barry Randall*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 29 (Aug. 19, 1996).

If the provisions are ambiguous, however, the Board examines the relevant zoning regulations for provisions which resolve the ambiguity. *Re: Molgano* 163 Vt. 25, 29-31 (1994). Zoning bylaws may provide meaning where the plan is ambiguous. *Russell*, 2003 VT ¶16. In this case, the Town of Halifax does have zoning regulations and they do have an entire section which applies to earth/mineral extraction.

In general, the policies set forth in the Town Plan are not specific. Many of the provisions apply to portions of Halifax other than where the Project is located. Many of the policies are aspirational (encourage, discourage, promote, etc) and thus are not sufficiently clear. At least two of the provisions are in potential conflict with one another. In summary, there are few "specific policies" in the Town Plan that are applicable. The following paragraphs individually address each of the policies even though most of them do not qualify as "specific policies."

The policies pertaining to land use are found on page 19 of the Plan. Policy 1 is not applicable as the Project is not strip development. Policy 2 is not applicable as the Project is located within Halifax rather than in an abutting community. The Project is consistent with Policy 3 in that it the Project will be accessed via a town-maintained road (Jacksonville Stage Road) and over a town road that historically has been privately maintained. Moreover, the vehicle traffic that will be generated by the Project is minimal. The Project will not alter or impact historic development patterns. Policy 4 is not applicable as the Project does not impact town trails. Policy 5 is not applicable as the Project does not entail "development" on slopes of more than 25%. It is clear from the text of the land use section that "development" refers to human settlement and use activities that will require on-site septic and potable water supplies. This Project does not implicate those concerns. Policy 6 "encourages" the protection of mineral resource lands like the Project. The Project is

consistent with this policy but the policy does not contain any specific standards as to how mineral resources should be protected from non-extraction development. The Project is consistent with Policy 7 in that the impervious coverage is far less than the limit for the Conservation District. The impervious surface is 11.4 acres as shown on the site plans and the District allows for 25% coverage for non-residential uses. The impervious surface will be far less than 11.4 acres at any given time as reclamation is ongoing throughout the project duration. Policy 8 is an aspirational standard rather than an enforceable mandatory standard. In any event, the distance between the Project and potential offsite home occupations is significant such that the impacts of the Project are very limited. Policies 9 and 10 are not applicable as the Project is not a home occupation activity. Policy 12 suggests adopting a capital improvement plan and budget. Policy 12 does not provide any land development standards. Policy 13 suggests the need for mapping of floodplains and fluvial erosion areas. There is no floodplain near the Project. Policy 13 does not provide any land development standards. The Project will not have an undue adverse impact on any of the Land Use Policies.

Flood Hazard Area Policies are found on page 23 of the Plan. The Project is not located within a flood hazard area. Policy 5 suggests the need for fluvial erosion hazard maps but does not contain any land development standards. The Project will not have an undue adverse impact on any of the Flood Hazard Area Policies.

Economic Development Policies are found on page 25 of the Plan. Policy 1 states a preference for supporting economic development but does not contain any specific implementing standards. Nonetheless, the Project is consistent with this policy to the extent that jobs will be created. The Project is consistent with Policy 2 in that town services will not need to be expanded as a result of the Project. The Project does not entail residential growth and will not impact affordability of housing. The Project is consistent with Policy 3 as evidenced by the permits issued by the ANR including the multi-sector general permit. With only two loaded trucks per day and some additional employee trips the Project will not result in traffic congestion. Policy 4 is an aspirational policy with no implementing standards. Policy 5 is not implicated as the Project will not require child care services. Policy 6 is an aspirational policy rather than a policy with an enforceable standard. Nonetheless, the Project is consistent with Policy 6 to the extent that noise impacts are limited by operating parameters of the project and by the significant distance between the Project and other uses. The Project is consistent with Policy 7 in that approximately 55 acres of the 69.5 acres within the Lease Area will remain forested. The forested area presents an adequate buffer. In addition, although not necessary for mitigating Project impacts, there is significant forest cover throughout the Project that provides additional buffer. The Project is consistent with Policy 8 in that the Project Area is expected to generally be shielded from sight due to terrain and forest cover. Adequate vehicular access is provided over the existing access road and will be provided over the proposed access road. The Project will not have an undue adverse impact on any of the Economic Development Policies.

The Surface Water Policies are found on page 27. The Project has been designed to maintain the natural course, condition and function of water courses and stream banks. The necessary stream crossing has been approved by ANR. ANR has determined that the stream crossing is in compliance with its applicable standards and policies. The Project is therefore in compliance with Policy 1. The Applicant has proposed undisturbed buffers along the banks of surface waters as required under Policy 2. The buffers are shown on the site plans. The Project is therefore in compliance with Policy 2. The Project does not involve development or modification of natural ponds. Policy 3 is therefore

not applicable. The objective of Policy 4 has been met by obtaining the erosion control permit from ANR. *See* Exhibit 4. A significant wetland exists to the east of the Project Area and outside of the Lease Area. No disturbance of this wetland is proposed. The Project conforms with Policy 5. Policy 6 is not applicable as no dam is proposed. Policy 7 states a preference to utilize natural drainage but does not prohibit all alterations of natural drainage. The Project has been designed to maintain natural drainage where feasible. A limited amount of rerouting is required in order to accommodate the stream crossing. The stream crossing can and will be implemented consistent with the Vermont Water Quality Standards. Policy 1 states that stream alterations are permissible where they can be complete in accordance with State rules as is the case here. The Project is in conformance with Policy 1 and Policy 7. Policies 8 and 9 are not applicable as this is not a hydroelectric power project. Policy 10 is not implicated as the drainage pathways associated with the Project are not located anywhere near municipal roadways. The Project will not have an undue adverse impact on any of the Surface Water Policies.

Groundwater Policies are listed on page 28 of the Plan. The Project meets the requirements of Policy 1 because sufficient water is expected to be available in the stormwater detention ponds. In addition, the Applicant will truck in water from offsite in a pickup size truck if needed. No new wells are required for the Project so Policy 2 is not applicable. The Project conserves water to the extent that water for dust suppression will be recycled from the stormwater ponds consistent with Policy 3. There are no aquifers mapped by the State in the vicinity of the Project. Exhibit 9. The Project therefore conforms to Policy 4. The Project does not require a source of groundwater so there is no danger of the Project violating Policy 5. The Applicant has obtained an erosion control permit from the State of Vermont. This permit demonstrates compliance with Policy 6. There is no onsite septic system. There will be a portable toilet which has been permitted by ANR. Exhibit 15. The Project conforms with Policy 7. The Project is in conformance with Policies 8 and 10 as road salt will not be used at the Project. The Project is in conformance with Policy 9 to the extent that there is no water supply system and there is no in ground sewage disposal system. The main dust suppression strategy for the Project is application of water. Calcium chloride will be used only if needed. Application of any dust suppression strategy is expected to be infrequent. These operating parameters are consistent with the requirements of Policy 11. The Project will not have an undue adverse impact on any of the Groundwater Policies.

The Air Quality Policy is found on page 29. The Project does not require an air quality permit from ANR. Due to the limited size of the Project air impacts will be very limited. In any event, Policy 1 discourages, but does not prohibit, air quality impacts. The Project will not have an undue adverse impact on the Air Quality Policy.

The Forest Resource Policies are found on page 30 of the Plan. The Project is consistent with Policy 1 in that it will not limit forestry potential. Reclaimed quarry sections will be suitable for the continued growth of trees. The Project is consistent with Policy 2 in that a large portion of the Lease Area will be actively maintained as wildlife area. Forest management will be implemented consistent with State rules in the portions of the Lease Area that are located outside of the Project Area. Policy 4 encourages management of small forest parcels through cooperatives and is therefore not applicable to the land which is the subject of this application. The Project will not have an undue adverse impact on any of the Forest Resource Policies.

The Scenic Resource Policies are found on page 31 of the Plan. The Project is in conformance with Policy 1 as the Project Area is not located within any scenic resources, does not contain and cannot be seen from any scenic roadways, is not in an historic village, is not a river corridor, is not a ridgeline, and is not part of any scenic views. The Project is in conformance with Policy 3 as no buildings are proposed, parking/staging will not be visible from offsite, and extensive vegetation as well as topography will block visibility. The Project is in conformance with Policy 4 as it is not a "highly vulnerable landscape." It is not a high-risk site for erosion. Exhibit 4 (moderate risk erosion control permit). The Project is in conformance with Policy 5 and 6 as it is not located in the Green River Valley river corridor and is not located between the East Branch of the North River and Route 12. The Project will not have an undue adverse impact on any of the Scenic Resource Policies.

Natural Area Policies are found on page 32. The Natural Area Policies are limited in scope to four geographic areas, none of which are located near the Project. Because these Policies are limited to four areas, they are not specific to this Project and no additional analysis is required. Were the Policies applicable, the Project is in conformance with them. Policy 1 is an aspirational policy concerning acquisition of land and is not at issue in this matter. Policy 2 suggests that wetlands should not be altered. This is in conflict with Policy 1 of the Surface Water Policies which specifically allows alteration of streams and stream banks and necessarily contemplates the alteration of wetlands adjacent to those streams when ANR standards are followed. In addition, Section 501(4) of the Zoning Regulations establishes a undue adverse impact with respect to wetland analysis. Policy 2 must be read in conjunction with Policy 1 of the Surface Water Policies and Section 501(4). Policy 2 must therefore be interpreted as requiring wetland avoidance where possible and conformance with applicable standards where impacts will occur. This project has been designed to avoid wetland impacts except for some limited impacts on the access road. The Army Corps of Engineers has determined that the access road impacts are consistent with the applicable standards. The Project is therefore in conformance with Policy 2. The Project is not located within the Halifax gorge, Summit of Jolly Mountain or Trust for Wildlife Lands, and is a substantial distance from Deer Park Pond. Exhibit 11. The Project is not in conflict with the aspirations of Policy 3. Similarly, the Project is in conformance with Policy 4 as it is not located near any of the natural areas identified in the Plan. Although the Class II wetland complex adjacent to the Lease Area and the streams within the Lease Area not "natural areas" defined in the Plan, the Applicant has imposed buffers adjacent to a number of resources as shown on the Plan. Based on a review of available maps and actual field study there are no rare, threatened or endangered species that will be impacted by the Project. The natural communities in the Lease Area are "common" but nonetheless have been protected to the extent that the Applicant proposes to manage more than 20 acres as potential deer habitat and proposes to manage the Lease Area, other than the Project Area, according to an approved forestry management plan. The Project will not have an undue adverse impact on any of the Natural Area Policies.

The Fish and Wildlife Policies are found on page 34 of the Plan. No rare, threatened, endangered, and economically significant fish and wildlife species have been identified within the Lease Area. The Department of Fish and Wildlife has reviewed the Project and requested that a portion of the Lease Area be set aside for deer habitat management and that a portion of the existing access road be gated and not used during a portion of the year. The Applicant has agreed to these conditions as reflected in Exhibit 14. Although Policy 3 is aspirational and contains no mandatory enforceable standards, the Project will maintain a large contiguous forest tract. The Project is not

located near the North River so Policy 4 does not apply to this Project. The Project will not have an undue adverse impact on any of the Fish and Wildlife Policies.

The Agricultural Resources Policies are found on page 35. The Project area does not consist of agricultural land so these Policies do not apply to this Project. The Project will not have an undue adverse impact on any of the Agricultural Resources Policies.

The Earth and Mineral Extraction Policies are found on Page 37 of the Plan. The project is regulated by the Agency of Natural Resources, by the Natural Resources Board, and by the Town of Halifax. The Town of Halifax has adopted a zoning regulation that regulates removal of earth and mineral resources. Earth extraction is considered "resource industry" under the Zoning Regulation adopted March 6, 2012. Resource industry is permitted as a conditional use in the Conservation District. The project will need to obtain conditional use approval, site plan approval. The project is subject to the general performance standards (Section 405) and the earth/mineral extraction standards (Section 501). The Applicant has taken steps to minimize noise impacts. Blasting is not proposed. Drill barriers are proposed to be used in areas nearest the property lines. Onsite processing such as crushing and screening is not proposed. Weekend operations are not proposed. Winter operations are not proposed. The Applicant has taken steps to minimize impacts on public highways. Truck traffic is limited to two loaded trucks per day. Trucks will not operate in the winter. Trucks will not operate when there are adverse road conditions in the spring. The Applicant has taken steps to preserve the character of the area and minimize aesthetic impacts. The project area is quite isolated from existing residential development. The nearest residence is located over 2,300 feet from the project area. Exhibit 13 (page 1). The project cannot be seen looking easterly from Deer Park Road due to topography. See Exhibit 1. The same holds true looking from the north and northeast of the project area. See Exhibit 1. Visibility from the south is expected to be limited to the Denison tract itself. Noise impacts are discussed in detail in Exhibit 13. The Project will not have an undue adverse impact on any of the Earth and Mineral Extraction Policies.

The Town Government Policies are found on page 37 of the Plan. These Policies suggest or require actions on the part of the municipality. None of these Policies provide clear review standards for land development. The Project will not have an undue adverse impact on any of the Town Government Policies.

The Solid Waste Policies are found on page 39 of the Plan. Two of these Policies are aspirational rather than mandatory and the third applies to agricultural uses. In addition, these Policies are geared towards solid waste management. The Project will not produce solid waste. The Project will not have an undue adverse impact on any of the Solid Waste Policies.

The Emergency Planning Policies are found on page 40 of the Plan. Two of these Policies are aspirational rather than mandatory and the third applies to new roads. The new portion of the access road will be constructed so that it is accessible for trucks and emergency vehicles. The Project will not have an undue adverse impact on any of the Emergency Planning Policies.

The Police and Fire Protection Policies are found on page 41 of the Plan. Policy 1 requires the Town to take action and is therefore not applicable to review of this Project. Policy 2 requires that development be undertaken so as to minimize fire risks. The Applicant does not propose to store

flammable materials on site. This is consistent with Policy 2. Policy 3 requires smoke detectors but no buildings are proposed for this Project. Policy 4 requires that applicants identify potential burdens on police and fire protection services. The Applicant does not believe that there will be any burdens. There are no buildings proposed, no flammable materials will be stored, and the site will be readily accessible to emergency vehicles. The Project will not have an undue adverse impact on any of the Police and Fire Protection Policies.

The Education Policies are found on page 42 of the Plan. The Project is not expected to alter school enrollment or otherwise impact the school system and will therefore not have an undue adverse impact on any of the Education Policies.

The Health and Emergency Service Policies are found on pages 43 of the Plan. The Project is not related to the health care field and is not expected to increase the need for health care services and will therefore not have an undue adverse impact on any of the Health and Emergency Service Policies.

The Communications Tower Policies are found on page 44 of the Plan. The Project is not a communications facility and will not have an undue adverse impact on any of the Communication Tower Policies.

The Historic Resource Policies are found on page 46 of the Plan. There are no historic sites within the Lease Area. The Project will not have an undue adverse impact on any of the Historic Resource Policies.

The Recreation Policies are found on page 47 of the Plan. These Policies suggest actions that the Town might take and are thus not applicable to this Project. The Project will not have an undue adverse impact on any of the Recreation Policies.

The Energy Resource Policies are found on page 49 of the Plan. These Policies suggest actions that the Town or Town citizens might take and are thus not applicable to this Project. The Project will not have an undue adverse impact on any of the Energy Resource Policies.

The Transportation Policies are found on pages 51-52 of the Plan. Policies 1, 2, 4, 5, 6, and 7 suggest actions that the Town might take and are thus not applicable to this Project. With respect to Policy 7, the Applicant will utilize an unmaintained portion of TH 52 as it always has. The Applicant proposes that it will continue maintaining that stretch of road as it has been doing for a number of years. Although there is no "expanded highway policy" as described in Policy 6, this Policy does specifically appear contemplate some private maintenance of roads of this type. Policy 2 seeks to ensure that new development does not impose new highway expenditures that are not budgeted. The Applicant proposes to utilize existing roads for two loaded vehicles per day. The Applicant proposes to use vehicles similar in size and weight to other vehicles being used by the Town on the same road. Based on the professional experience of the Project operator the two trucks per day will not result in additional damage or cost to the Town. To the extent that certain culverts are undersized, damaged, or improperly installed already, replacement or repair of those culverts is not an expenditure being created by this Project. It is an expenditure that the Town already needs to make. The Project will not have an undue adverse impact on any of the Transportation Policies

The Housing Policies are found on page 44 of the Plan. The Project is not a housing project and will not have an undue adverse impact on any of the Housing Policies.

In summary, the Town Plan contains a number of policies. The majority of these policies are aspirational measures that cannot form the basis of a determination that the Project will have an undue adverse impact on the Town Plan. These are not "specific policies" as that phrase has been interpreted by the Court. In the limited number of cases where there is a specific policy stated in the Plan and where that policy actually applies to the Lease Area or to the proposed activity, the numerous scientific investigations undertaken by the Applicant show that the Project will not have an undue adverse impact on the policy.

Traffic on roads and highways in the vicinity. Project traffic is limited to two loaded trucks per day and employee vehicles. These types and sizes of vehicles regularly travel over the same roads that the Applicant will use without incident. The Project will not have an undue adverse impact on traffic or roads in the vicinity.

Bylaws and ordinances then in effect. The only applicable bylaws in effect are the Zoning Regulations. As detailed throughout, the Project will not have an undue adverse impact on the Zoning Regulations.

Use of renewable energy sources. The Project does not involve the use of renewable energy sources and will not impact the use or development of renewable energy sources. The energy requirements of the project are limited to the operation of the generator and the equipment, all of which are powered by diesel fuel. The Project will not have an undue adverse impact on the use of renewable energy resources.

Site Plan Review – Section 203(3)(e)

Adequacy of parking, traffic safety and access, and circulation for pedestrians. There is sufficient parking provided in the staging area. Pedestrian circulation is not required for this project.

Landscaping, screening and setbacks to achieve maximum compatibility with the protection of adjacent property. Due to topography views of the Project are not expected. In addition, forest cover will remain in place within the Lease Area. No additional landscaping is required.

The protection and use of renewable energy resources. The equipment at the site is powered by diesel fuel and cannot be powered by renewable energy sources.

Exterior lighting. No lighting is proposed.

The size, location and design of signs, and other matters specified by these regulations. No signs are proposed other than signs internal to the Property indicating that trespassing is not permitted within the Lease Area.

General Zoning District Standards

Buildings and Uses on Lots. The Applicant does not propose any buildings on the land. A tool storage container might be utilized. The project complies with Section 304(1) which allows for only one "principal building."

Building Heights. The Applicant does not propose any structures which exceed three stories or thirty-five feet. The project complies with Section 304(2).

Setback from a Street or Property. Setbacks are measured from the "property line or permanent easement ... to the closest point of the structure or setback object." Section 304(3). The only proposed structure is a tool storage unit. This will be located several hundred feet from the property line which is far in excess of fifty feet which is the largest property line setback in the applicable zoning district. The project complies with Section 304(3).

Setbacks from a Water Course or Water Body. Section 304(5) imposes a minimum setback of seventy-five feet from watercourses and water bodies. This setback applies to structures and septic systems. Watercourses are natural or artificial streams "in which water flows continuously in a definite course." Article 7. A water body "is any natural or artificial collection of water." Article 7. The "septic system" consists of a portable toilet which will be located greater than seventy-five feet from any watercourse or water body. A structure is defined as "anything constructed or erected for occupancy." The only improvement that might be classified as a structure under this defined is the tool storage box. This will be located greater than seventy-five feet from any watercourse or water body.

General Performance Standards

Noise in excess of seventy decibels at the property line. Section 405(1). The worst case noise modeling scenario shows that sound levels will not exceed 70 dBA at the property line. It is unlikely that sound levels will actually be this high given that simultaneous operation of equipment will typically not happen. The Project complies with the property line noise standard.

Non-farming or forestry related odors determinate by the Department of Environmental Conservation to be offensive. Section 405(2). The Project will not generate odors and thus complies with this section.

Emissions of dust, ash, or smoke, or other particulates composed of liquid or solid particles in concentrations exceeding 0.3 grains per cubic foot at the point of emission, or which cause soiling beyond the property line. Section 405(3). Dust suppression will be achieved through vacuum attachments and/or wet suppression on the drill. Fines will be mixed with overburden soil and stabilized in order to prevent travel offsite or into the air. Wet suppression methods will be sufficient to ensure that dust on the access road is minimized. The operator will conduct quarry operations consistent with strict MSHA regulations concerning dust exposure for

workers. These measures will ensure that particulate emission comply with this section and that there will be no soiling beyond the property line.

Release of gases that can damage human or animal, vegetation, or property by reason of concentration or toxicity. Section 405(4). There are no identified sources of potential gaseous release. The Project complies with this Section.

Vibration, as a result of normal operation, that creates displacement of two one-thousandths (0.002) of one (1) inch at the property line. Section 405(5). Blasting is the source of ground vibration at a quarry. Blasting is not proposed. Ground vibrations in excess of the stated limit will not occur.

Glare, lume, lights or reflection which could impair the vision of a driver of any motor vehicle, be detrimental to the general public safety, health or welfare, or which constitutes a nuisance to other property owners or tenants. Section 405(6). Lighting is not proposed as part of the Project. The Project Area is not visible from any public road. No detrimental glare, lume, lights or reflection will be associated with the Project.

Existing or potential fire, explosion or safety hazard. Section 405(7). As fuel will not be stored onsite and blasting is not proposed there is little potential for fire. The Project complies with this Section.

Discharge, runoff, or leaching harmful wastes including, but not limited to, oils, fuels, pesticides, seepage, and other pollutants into aquifer recharge area, groundwater, streams, ponds, lakes or other bodies of water. Section 405(8). The Multi-Sector General Permit contains sufficient safeguards to protect against discharges of pollutants to bodies of water. The MSGP includes a sufficient spill prevention plan and a sufficient plan to address and contain any accidental spills that do occur. In addition, State oversight ensures that any spills are promptly and properly addressed.

Storm water discharge that may create unsafe conditions or cause damage to persons or property off the site. Section 405(9). The proposed stormwater detention system will manage the quantity and quality of stormwater leaving the site. The post-development rate of runoff will not exceed the pre-development rate. The Project will not create an unsafe condition with respect to stormwater.

Existing or potential health hazards which result from the improper storage, disposal or removal of garbage, trash, rubbish, noxious substances, or other similar materials. Section 405(10). No noxious substances will be stored at the site. No trash will be generated at the site. The Project complies with this Section.

Earth/Mineral Extraction – Section 501

The operation will conform to all General Performance Standards. Section 501(1). General performance standards are addressed above. The Project complies with the applicable standards.

The operation will not cause an unreasonable burden on an existing water supply if one is to be used, nor have an adverse impact on the quality or quantity of neighboring water supplies. Section 501(2). The Project will not use an existing water supply. Neighboring water supplies are located a significant distance from the Project. The Project Area is a groundwater discharge area rather than a recharge area. The Project is highly unlikely to create a burden on any existing water supply.

The operation will not cause unreasonable soil erosion; it will not result in a reduction in the capacity of the land to hold water during and after the operation which creates a dangerous or unhealthy situation for adjoining property owner or downstream areas due to stream bank erosion, surface water runoff, or flooding. Section 501(3). The erosion control permit and the erosion control measures detailed on the site plans demonstrate that unreasonable soil erosion will not occur. The stream alteration permit and the protection measures to be implemented as part of that permit ensure that stream bank erosion will not occur where the stream is impacted. Appropriate buffers have been included where required on all pertinent streams. All of these measures will ensure adequate downstream protection and will afford protection to adjoining property owners.

It will not adversely impact any wetland area or stream bank, nor cause the sedimentation of streams. Section 501(4).³ Wetland impacts have been avoided where possible. The limited impacts that are necessary have been approved by the Army Corps of Engineers. The impacts to the Class III wetlands are not undue. Impacts to Class II wetlands have been completely avoided. Sedimentation is unlikely to occur due to: (1) practices implemented as part of the erosion control permit; (2) practices and structures implemented as part of the stream crossing permit; (3) practices and structures implemented to manage stormwater and control runoff rates; and (4) avoidance of watercourses, wetland, and stream banks where feasible.

It will not cause unreasonable highway congestion, unsafe conditions or excessive use with respect to town highways and bridges existing or proposed in the area. Section 501(5).

It will not have an undue adverse effect on the scenic or natural beauty of the area, other aesthetic values, historic sites, or rare or irreplaceable natural resources or areas. Section 501(6). There are no historic sites within the Lease Area. There are no rare or irreplaceable natural resources areas that are impacted. The natural resources identified in the Town Plan are not located near the Project. The Project is a natural setting but the wildlife and vegetation characteristics are not unique or uncommon. The lack of visibility of the Project from offsite will ensure that the scenic character of the area is maintained.

It will not result in an embankment with a slope steeper than on foot vertical to two feet horizontal upon completion of an area of work. Section 501(7). Final slopes will vary depending on the extent of rock actually removed in an area (some areas may not be useable), the extent of

³ The standard to be applied is undue adverse impact rather than "adverse impact" as stated in the Zoning Regulations. *In re: Walker*, 156 Vt. 639 (1991) (all conditional uses result in some adverse effect, use of "material-adverse-effect standard to appraise the permit application facilitates a rational result consistent with legislative intent and sound statutory interpretation"); *In re Miller*, 170 Vt. 64, 69 (1999) ("the adverse effect test must be applied reasonably to prohibit only substantial and material adverse effects") (*citing Walker*).

material that is not suitable for processing that will be placed on benches, placement of rocks to promote bobcat habitat and use of existing overburden. The State geologist has reviewed and approved the reclamation plan.

It will provide, in the form of a Site Reclamation Plan, for restoration of the area operation and site restoration process. Section 501(8). Site restoration will occur as the quarry progresses. The overburden that is currently onsite will be used as ground cover when quarrying is completed in a particular area. In addition, rock that is not useable for further processing will be placed on quarry benches to promote wildlife habitat and to provide areas for vegetation to re-establish. At the end of the project the quarry floor will be stabilized, seeded, and available for vegetation to re-establish.

A performance bond, letter of credit, or equivalent surety shall be secured from the applicant sufficient to ensure that, upon completion of the extraction operations, the site will be left in a safe, attractive and useful condition in the interest of public safety and welfare, and in conformance with the Site Restoration Plan. Section 501(9). The proposed reclamation amount of \$10,000 deposited over time is sufficient to ensure reclamation of the Project. The reclamation escrow is the same amount as what was approved for a project in Randolph, Vermont of similar overall size. Both projects involve the removal of rock in a manner that will not result in a hole in the ground. Neither project involved the sale or transport of overburden. Both projects proceed in a 'reclaim as you go' manner. Onsite equipment will be used to complete reclamation. In summary, reclamation is undertaken as the project proceeds, all of the dirt required for reclamation is onsite and it will stay there, all of the necessary equipment is onsite. The design of the project reduces the end-of-project work required to reclaim because reclamation will be an ongoing effort. Substantial reclamation funds will not be required at the end of the Project.

It will not undermine any adjacent road. Section 501(10). There are no roads adjacent to the Project Area so this Section is satisfied.

Adequate vegetative buffers or other screening shall be maintained at all times between the operation (including excavating, blasting, crushing and traffic access and circulation) and all road and adjacent properties. Section 501(11). The only tree removal within the Lease Area is proposed to be the Project Area, the new access road, and trees removed as part of a forest management plan. These limitations will ensure that adequate vegetative buffers are in place.

Limitations on hours of operation and the number truck trips, as well as required covering for loads leaving the site. Section 501(12). Hours of operation have been limited as stated in the application and in the findings. The Applicant proposed two loaded truck trips per operating day. No more than two trips per day can be considered. The decision should be permitted to allow up to the two requested trips. Covers are not necessary because trucks leaving the Project will be loaded with blocks which will not lead to fugitive dust.

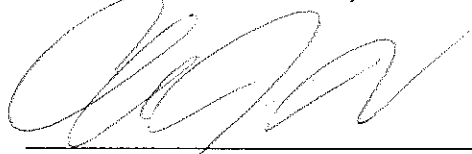
This Project has undergone intensive and extensive review and analysis. At all times the Applicant has sought to avoid impacts on natural features and wildlife. This has resulted in a Project that complies with all of the applicable standard set forth in the Zoning Regulations. The Project is

quite small in terms of day to day impacts and can be operated in a manner that does not offend any of the standards set forth in the Zoning Regulations and in a manner that is entirely consistent with the existing character of the area. The Project should be approved.

Dated at Waterbury this 22 day of September 2015.

C.A. Denison Lumber Co., Inc.

By:



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