TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD

In re: Julian Material, LLC (Allstone) Conditional Use Application

REPLY BY SCOTT KILGUS AND LESLIE THORSEN TO POST-HEARING BRIEF SUBMITTED BY JULIAN

This reply brief responds to the erroneous factual assertions and legal theories in Julian's post-hearing brief.

1. Use of a Rock Hammer Has Not Already Been Permitted at the South Quarry

Julian claims on pages 2 and 3 that use of the rock hammer has already been permitted for the South Quarry, because of the 2003 conditional use permit obtained by Mr. Adamovich. Julian states on page 2 that the rock hammer is permitted, and states on page 3 that the plan is to engage only in previously-permitted activities, including use of the rock hammer.

Julian does **not** allege that Mr. Adamovich **sought** conditional use approval to operate a rock hammer at the South Quarry. (There is no evidence that would support such a claim.) Julian's theory is that the rock hammer is already permitted by the 2003 conditional use permit because the permit did not mention a rock hammer; that is, Julian argues that the permit's silence about rock hammers authorized use of rock hammers. Julian's logic is that any activity that is part of quarrying that is not explicitly prohibited in a permit is allowed. By this logic, since the conditional use permit did not explicitly prohibit use of helicopters to transport the quarried rock, the use of helicopters also has already been permitted.

Contrary to Julian's argument, conditional use permits authorize the **particular** land use designs, plans and activities that are **proposed** by an applicant, and nothing else—and Julian does not claim that Mr. Abramowich proposed use of a rock hammer. A development review board does not grant carte blanche for any designs, plans or activities that would serve the purpose of an application except for those that are explicitly prohibited in the permit. The basic purpose of the conditional use ordinance and the conditional use statute requires a DRB to consider the potential impacts of the particular designs, plans, and activities being proposed. One proposal for a quarry or a retail store or any other conditional use at a given location might merit approval while another proposal for a quarry or a retail store at the same location might not.

If a developer desires conditional use approval of a retail store, for example, the developer proposes specific designs for the building footprint, the signage, the hours of operation, etc. and only those specific designs, plans, and activities are approved. The developer cannot later change the building footprint, the signage, the hours of operation, etc. without additional conditional use approval. See, e.g., *In re Appeals of Wesco*, Dkt Nos. 65-3-000 Vtec, 66-3-00 Vtec (Vt. Super. Ct. May 3, 2001)(Wright, J.) Decision and Order on Appellant's Motion for Partial Summary Judgment (holding that conditional use permit for 7-pump gas station did not authorize change to 5-pump gas station without amended conditional use permit); *In re:*

Application of Robert and Amy Scharges, Dkt No. 194-9-05 Vtec (Vt. Super. Ct. Feb. 24, 2006 (Wright, J.) Decision and Order on Cross-Motions for Summary Judgment or to Dismiss, slip op. at 5 (holding that conditional use approval for mixed-use including residence and production of seven canoes a month would require a permit amendment for production of "any larger amount of canoes.")

The Chester ordinance is incompatible with Julian's theory. CUDB § 3.4.C states that any "alteration" from an approved conditional use requires new conditional use approval. If Julian's theory were correct, one would never need conditional use approval for an alteration so long as the alteration is for the same purpose as the initial application. A conditional use permit that implicitly or explicitly purported to authorize future significant changes without DRB review (which seems to be how Julian reads the South Quarry permit), would violate § 3.4.C and 24 V.S.A.§ 4414(3).

Note that activities that are permitted as of right differ. For example, residences are permitted as of right in residential districts, and a landowner does not need a conditional use permit to build a residence or conditional use approval for any alteration of a residence.

As noted above, Julian does not allege that Mr. Adamovich sought conditional use approval to use a rock hammer. In fact, the record evidence shows that he did not do so. This is because in the documents he submitted when applying for an Act 250 permit for the South Quarry he listed the equipment he was seeking permission to use, and he did not list a hydraulic hammer.[1] Mr. Adamovich would not have sought and received permission to use a hydraulic hammer from the DRB, but not sought approval from the District Commission to do so.

The Board should find that there is no existing conditional use approval for use of a hydraulic hammer at the South Quarry.

Counsel adds further explanation of the absurdity of Julian's theory in the footnote.[2]

2. Regardless of Whether Adamovich Obtained Conditional Use Approval of a Rock Hammer at the South Quarry, the Permit Was Issued with a Condition Prohibiting the Use that Julian Has Engaged In and Proposes to Continue

If one were to assume that Mr. Adamovich did seek and obtain conditional use approval in 2003 for use of a hydraulic hammer (which he clearly did not), that assumption would not assist Julian's claim that it has the right to continue to use its rock hammer. The permit was issued with the requirement that the quarry would adopt performance standards that would be

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[1] Exh. KK addressed the noise of a hydraulic drill, an excavator, a 70-ton rock splitter, a loader moving metal hoppers, and a Generator and 300-ton rock splitter. Exh. LL addressed the noise of a hydraulic drill, an excavator, a loader, a 70-ton rock splitter, a 300-tone rock splitter, and haul trucks on the Quarry driveway. Neither exhibit addressed the noise of a rock hammer.

[2]Julian's theory makes no sense for additional reasons. The first is that the notice to the public that is required by 24 V.S.A. § 4464 could not possibly inform members of the public of what is on the table for approval. Second, under 24 V.S.A. § 4472 and *Application of Lathrop Ltd. P'ship I*, 2015 VT 49 ¶¶ 48-73, 199 Vt. 19, 121 A.3d. 630, Julian's theory rule would **require** neighbors or other intervenors to challenge **all** potential future activities on the site even though the permit applicant is not proposing those other activities. DRB proceedings would become even more time-consuming and expensive.

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"not likely to effect adversely the use of the surrounding area by the emission of such dangerous or objectionable elements as noise…." Exhibit P-2 pp.3-5 and Finding 8**.**

Julian has adopted no performance standards,[3] and the hydraulic hammer has been generating noise that the required performance standards were intended to prohibit—use of the hydraulic hammer clearly produces noise that is objectionable to the residents of the surrounding area. Thorsen Affidavit (Exhibit 8); LeClair Affidavit (Exhibit 10); MacAllister Affidavit (Exhibit 9); Greene Affidavit (Exhibit 15); also testimony from Thorsen, Kilgus, LeClairs, and MacAllisters.

The 2003 permit, even if it had approved of use of a rock hammer, therefore would have prohibited the type of rock hammer use that Julian has been using and now seeks approval to use in the future. The Board should find that even if the conditional use permit had authorized use of a hydraulic hammer (which it did not), the permit did not authorize the use that Julian has engaged in and proposes to continue, so that approval for continuation of that use is denied.

3. The Rock Hammer Was Not Used Prior to Julian's Purchase So Its Noise Was Not Customary

On page 2 (in the text and in footnote 1) Julian claims that rock hammer use predated acquisition by Julian of the quarries. This assertion contradicts the testimony of witnesses Kilgus, Thorsen, LeClair, Greene, MacAllister, Melanson, Goodrich, Kenworthy, and Nowak. They testified that the rock hammer had not been in use until recently, within the past several years, after the Julian purchase. No witness contradicted their testimony. The Julians had the opportunity to testify but chose not to.

Julian not only produced no witnesses contradicting witnesses, Kilgus, Thorsen, LeClair, Greene, MacAllister, Melanson, Goodrich, Kenworthy and Nowak, it has admitted that it possesses no documents that would contradict their testimony. Julian's response to the subpoena stated that it possesses no documents that show use of a hydraulic hammer as of 2014.[4]

Julian's brief, however, asserts that there was historic use predating the purchase. Footnote 1 of the brief states "A rock hammer was purchased as part of the equipment purchased with the property, so it is obvious a rock hammer has been used historically at the location."

Occasional or infrequent use of a rock hammer by Adamovich would not have triggered the outpouring of complaints that Julian's later use triggered. If Adamovich did use a rock hammer, no one noticed. Its noise wasn't customary. The possibility that Adamovich possessed a rock hammer, and may have used it, does not show that the horrendous noise later generated by

[3]If Julian had adopted noise performance standards, Julian's noise expert would have stated them and applied them in his report.

[4] Paragraph #3 of the subpoena (in Exhibit II), required production of all documents that describe or show "the types of extraction equipment used (such as a hydraulic hammer)… at each of the three quarries in 2014…" Attorney Hall responded by stating "The only related information we are aware of relates to noise testing undertaken by RSG for Act 250 proceeding for the South Quarry in 2005." These are exhibits KK and LL. They were submitted by the prior owner, Mr. Adamovich, to the Act 250 District Commission. They do not mention a rock hammer. Attorney Hall's response to the subpoena stated that that evidence was all that Julian possesses.

Julian was already customary in the neighborhood. The testimony of the witnesses proved that it wasn't.

However, there is no credible or substantial evidence that Adamovich did sell and did use a rock hammer. No document or witness is cited as support for Julian's statement that Adamovich sold a rock hammer to Julian. Counsel has searched the record to see if any document would support this claim. All he found was on pdf page 7 of Exhibit II, which is a document labeled "Exhibit B" and which consists of a list of equipment, including a hydraulic hammer. The list does **not** refer to the purchase in particular or to Mr. Adamovich in general. It is unsigned and undated. There is no reason to believe that page 7 is a list of equipment sold by Mr. Adamovich. It may be a list of equipment that Julian was assembling to use at the quarries, or a list of equipment that was prepared for Julian's accountant for tax purposes. Because the Julians chose not to testify, the meaning of this undated, vague document that Julian produced is speculative, and the document is not probative that Adamovich sold Julian a hydraulic hammer.

A handwritten note on pdf page 7 of Exhibit II states "These may be the machines used to shape rocks at Chandler Road." This cryptic note reinforces the speculative nature of the document. Use of the word "may" indicates that the author of the note had no knowledge of whether or when the hammer was used. It may be referring to the equipment being used **by Julian** to shape rocks at Chandler Road. There is no evidentiary foundation that links this note to use by Adamovich, much less customary use.

The distinctive and highly disturbing hit-hit-hit-hit-hit noise of the hydraulic hammer was not customary in the neighborhood of the South Quarry, the North Quarry or the Chandler Road Quarry before Julian commenced use of the hammer. The Board should find under CUDB § 4.9 that the disturbing, hit-hit-hit-hit-hit noise of the hydraulic hammer is not customary in this neighborhood.

4. Conditional Use Approval of Use of a Rock Hammer Two Days a Week at Each Quarry Must Be Denied Under § 4.8

Julian's brief appears to rely upon the theory that hydraulic hammer use at the South Quarry has already obtained conditional use approval. This is incorrect, as shown above. However, the brief could be construed as seeking conditional use approval for use at the South Quarry, and perhaps the other two quarries. If so, the request, even for two days a week, must be denied.

The Supreme Court of Vermont has repeatedly held that proof of the existence of preexisting loud noise does not suffice to authorize issuance of a conditional use permit for a new, noisy activity. The **increased frequency** of loud noise events must be weighed under the Quechee test. *In re John Russell Corp.* 2003 VT 93 ¶ 33, 176 Vt. 520, 838 A.2d 906 (reversing Environmental Court because it failed to consider increase in frequency of loud noises); *Application of Lathrop Ltd. P'ship I*, 2015 VT 49 ¶ 87, 19 Vt. 199, 121 A.3d. 630 (reversing Environmental Court because it failed to consider the frequency of added trucking noise events); *In re JSCL LLC CU Permit, supra at* ¶ 22 (determining whether noise is unreasonable "depends on how frequently it occurs"); *In re Ferrera & Fenn Gravel Pit*, 2013 VT 97, ¶ 11, 195 Vt. 138, 87 A.3d 483 (affirming Development Review Board denial of permit because of the increased frequency of noise events from gravel pit even though noise would not exceed decibel standards).

The recent Environmental Division decision in *JSCL LLC CU Permit* (Vt. Supr. Ct. Env'l Div. 12/8/22) (Durkin, J.) at 5, 19-20 confirms that it is essential under *John Russell* and *Lathrop* that the project applicant address the frequency with which residents will experience the new noise. ("… even in scenarios where noises of comparable intensity during comparable hours already exist, we must still evaluate the impact of increasing the frequency with which people living or working near a proposed development experience those noises.")

Julian's proposed use of a hydraulic hammer many hours a day on two days each week would be a dramatic increase in the frequency of repeated, highly disturbing loud-noise events. Before Julian, these events were either nonexistent or so rare that none of the witnesses recall hearing a hydraulic hammer. Highly disturbing and maddening noise nearly all day long on two days each week fails the Quechee test. It would be offensive or shocking to a reasonable person. It violates a clear written community standard (it is not customary and is a repeated disturbance, as well as exceeding 70 dbA at the North and Chandler Road Quarries). Julian also has failed to adopt reasonable mitigation—use of extraction equipment other than the hydraulic hammer, as Julian's predecessors did. *North East Materials Group, LLC, Act 250 J.O. #5-21,* 2015 VT 79 ¶ 20, 199 Vt. 577, 127 A3d 926.

5. The North Quarry as a Nonconforming Use Requires Proof of Compliance with CUDB § 3.19.D for Proposed Use of a Rock Hammer

The North Quarry began operation before zoning was adopted. Julian appears to be claiming that because the North Quarry is grandfathered, any and all extraction activities at the North Quarry that arose after the adoption of zoning are grandfathered (including use of a rock hammer), regardless of whether those activities were in use when zoning was adopted. See pages 7, 10, and 22.

The Vermont Supreme Court has rejected this argument with respect to quarries. *In re North East Materials Group, LLC, Act 250 J.O. #5-21,* supra at ¶ 28, the Court held that that because a permit would not have granted "open-ended" use of a quarry and would have been limited to the use proposed at the time of permitting, a grandfathered use similarly is limited to the specific activities being conducted at the time the right vested. Use of a rock crusher in new parts of the same quarry, therefore, were not grandfathered and had to go through the standard permit process. *North East Materials Group* was decided under Act 250, not zoning, but there is no reason for the outcome to differ under zoning. Under Vermont law, nonconforming uses are treated more strictly than under Act 250 because under Vermont law one goal of zoning is to carefully limit all nonconforming uses. *DeWitt v. Town of Brattleboro Zoning Bd. of Adjustment,* 128 Vt. 313, 320 (1970) (stating that Vermont public policy is to "carefully limit the extension or enlargement of nonconforming uses").

The Chester ordinance also rejects Julian's argument. Nonconforming uses are not granted open-ended permission to operate in any way, shape or form, so that all the landowner must prove is that it started a land use prior to zoning. On the contrary, all alterations and expansions of a nonconforming use are governed by CUDB § 3.19. Under CUDB § 3.19.D.1.d, a nonconforming use can be altered "for the sole purpose of conformance with mandated environmental, safety, health or energy codes." Julian has not shown that introduction of the hydraulic hammer is for the sole purpose of conformance with mandated environmental, safety, health or energy codes. As a nonconforming use, not a use authorized by any permit, the alteration cannot be permitted because it violates CUDB § 3.19.D.1.d.

If the North Quarry had been permitted as a conditional use, then the more liberal standards governing alteration of a conditional use would apply under § 3.4.C. But the North Quarry has not been permitted as a conditional use. Alteration of its operation from when zoning was adopted must meet the strict standards of § 3.19.D.1.d. Julian's proposed alteration fails this test.

Even if hydraulic hammer use were grandfathered, as Julian argues, that right terminated upon two years of nonuse under CUDB § 3.19D.1.b. Melanson Affidavit (Exhibit 14) and Testimony; Affidavit of Mr. Goodrich (Exhibit 11). The evidence is uncontradicted that there were at least two years of nonuse.

The Board should reject Julian's argument that the use of a hydraulic hammer at the North Quarry is a grandfathered or nonconforming use. The Board instead should find that the proposed addition of a hydraulic hammer fails to meet the standards of CUDB § 3.19D.1.b.

5. The Chandler Quarry as a Nonconforming Use Requires Proof of Compliance with CUDB § 3.19.D for Proposed Use of a Rock Hammer

Julian apparently is making the same argument about the Chandler Road Quarry. It proposes to return Chandler to its "traditional use" which it claims includes use of a rock hammer. Brief pp. 1-3, 6-7. This too is wrong for the same reasons as with the North Quarry. The rock hammer was not in use at Chandler at the time zoning was adopted, introduction of its use was and is not for the sole purpose of complying with environmental or other regulations, and the use lapsed for two years. Kenworthy Affidavit (Exhibit 12), Kenworthy Testimony; Nowak Affidavit (Exhibit 13) and Testimony.

As with the North Quarry, if the use had been permitted as a conditional use, then the more liberal standards governing alteration of a conditional use would apply under § 3.4.C. but this quarry exists only as a nonconforming use.

The Board should reject Julian's argument that the use of a hydraulic hammer at the Chandler Road Quarry is a grandfathered or nonconforming use. The Board instead should find that the proposed use of a hydraulic hammer is not authorized under CUDB § 3.19D.1.b.

6. Preexisting Above-70 dbA Noise at the Chandler Road Quarry and North Quarry Does Not Exempt from the Ordinance New Noise that Is Above 70 dbA or Not Customary Or Is a Repeated Disturbance

The ordinance requires that Julian prove both that use of the hammer and its other excavating equipment will not cause above 70-dbA noise **and** that its noise levels and frequencies will be customary in the neighborhood and will not be a repeated disturbance. Julian's brief (pages 16-17) appears to argue that because there is already above-70 dbA noise from its Chandler Road Quarry and North Quarry, additional noise from the hydraulic hammer noise will comply with CUDB §§ 3.9, 4.8, and 4.9. However, the fact that there may already be noise over 70 dbA does not exempt Julian from any of these standards.

Concerning new above-70 cbA noise, CUDB § 3.9 does not contain an exemption for areas in which preexisting noise already exceeds 70 dbA. If a landowner wants to obtain a conditional use permit, the landowner must show that the proposed activity will not generate above-70 dbA noise at the property line.

The prohibition against adding new above-70 dbA noise, regardless of the level of existing noise, makes sense, and is necessary for a noise performance standard such as this to work. If grandfathered above-70 dbA noise could serve as justification for new above-70 dbA noise, that would make it impossible to bring an impacted neighborhood into compliance. When the grandfathered above-70 dbA noise source terminates (because the grandfathered activity ceases operation or ceases creating loud noise), the neighborhood would remain subject to above-70 dbA noise. Once new above-70 dbA noise sources are permitted on the basis that a grandfathered use already creates above-70 dbA noise, they can never be challenged, even when the grandfathered noise source ends. The above-70 dbA limit will, in effect, have been repealed in these neighborhoods.

Concerning the prohibition against noise that is not customary or is a repeated disturbance, Julian's brief does not address why existing above-70 dbA noise at any quarry exempts it from compliance.

7. The Town Plan Supports Extraction Activities Such as Julian's Predecessors Engaged In—Not Those Which Julian Proposes; No Neighbor Has Moved Next to a Quarry and Then Complained about Its Normal Activities

Julian's brief on pages 9-11 that the proposed extraction activities should be permitted because they conform to the Town Plan, and that the complaining witnesses should be disregarded because they moved next to the quarry and now are complaining about normal quarrying activities. Both assertions are untrue.

The Town Plan encourages extraction, as Julian says, but not all extraction. On page 13 the Plan states that while extraction should be encouraged, this must be accompanied by adequate regulations to protect public welfare and reduce negative impacts from noise. Page 43 states that while residents support extraction, extraction can also "adversely affect the roads, rural landscape, essential wildlife habitat, and **the peace and quiet of the rural community**." (Emphasis added.) Therefore, a survey of Chester residents found that they want **"strict regulation"** of extraction to protect against these impacts. (Emphasis added.) The Plan concludes with the following Earth Resource Policies (emphasis added:

> 4. The extraction of any earth resource shall be permitted **only** when the present and future effects of such extractions or related processing are **not unreasonably damaging to the surrounding properties**, essential wildlife habitat, and the environment.
>
> 5. Special interests shall not override the health and integrity of the entire community.
>
> 6. Require that earth extraction activities **do not adversely affect surrounding properties**…

Mr. Kilgus, Ms. Thorsen, the LeClairs, Mr. Greene, the MacAllisters, the Melansons, Mr. Goodrich, Mr. Kenworthy, and Mr. Nowak have made clear in their affidavits and their testimony that they had no problem with extraction at these quarries under prior ownership. These

witnesses have lived in their homes for decades, without complaint. To characterize them as persons who moved next to a quarry and then started complaining about normal quarry activities is insulting, unfair, and inaccurate. What changed was not that newcomers who don't like quarrying moved next to the quarries but that the quarries were sold to new owner who changed extraction activities at the quarries.

8. The North Quarry By Law Should Have Closed in 2008, Not 2025—Stipulated Admission into the Record of the North Quarry and South Quarry Act 250 Permit File

On pages 3, 4, 7, and 8 Julian alleges that under Act 250 the North Quarry is entitled to operate until 2025 and that this Board should grant it a conditional use permit to do the same. This is incorrect.

By stipulation of the parties apparently (and if not by stipulation, then by judicial notice pursuant to Vermont Rule of Evidence 201), the permit files in Act 250 Land Use Permit #2S0775 and #2S0775-1 are being admitted into the record. Docket #2S0775 is the Act 250 Permit issued in July of 1998 for the North Quarry. As described in associated findings of fact in that permit, "[t]he tract of land consists of 208 acres with 1+ acres involved in the project area." Detailed measures to landscape and reclaim that quarry are set forth in Findings 4 and 8. Condition 1 states that "No changes shall be made in the project without the written approval of the District Environmental Commission." Condition 11 of the permit states: "This permit shall expire on July 15, 2008, unless extended by the District Environmental Commission." *Id.* at 2.

On June 21, 2005, the District 2 Environmental Commission issued LUP #2S0775-1 to develop the South Quarry as a "substantial change to a permitted project, Land Use Permit #2S0775." LUP -1, at 1. This permit is Exhibit P-1. Several pages of details are set forth for the development of the South Quarry, covering every aspect of quarry operation, much like the details set forth in 1998 for the North Quarry—but only for the South Quarry. No mention is made of the North Quarry in the 2005 permit for South Quarry. No changes in any of the terms in the 1998 North Quarry permit are mentioned. Condition 1 of the #2S0775-1 of the permit states that the project shall be completed, operated and maintained in accordance with the exhibits filed by the applicant. One of those Exhibits is Exhibit #16, which stated that the owner would discontinue use of the North Quarry over the coming two years—that is, by 2018—by reclaiming it as required by the existing permit. A copy of Exhibit #16 is attached to this memorandum. Condition 6 of the 2005 permit states: "All conditions of Land Use Permit #2S0775 are in full force and effect except as amended herein."). The 2005 permit also states that the amended permit, the one for the South Quarry, would expire on October 1, 2025 (Condition 25).

These documents conclusively establish that under Act 250 the North Quarry was not permitted to operate until 2025. It was required to close in 2008.

The Board should find that under Act 250 the North Quarry is not entitled to operate until 2025, that its permit expired on July 15, 2008, that Julian is continuing to operate the North Quarry in violation of its Act 250 permit, and that the continuing violation of Act 250 at the North Quarry provides no justification for continued operation of that quarry under Chester zoning.

9. The Last-Minute Concrete Bunker Proposal Lacks Critical Details and Noise Modeling

Julian's brief (pages 5, 7, 8, 16, and 17) relies heavily on a mobile 12-foot tall concrete bunker at each quarry to mitigate noise whenever the hydraulic hammer is used. The brief's heavy reliance on concrete bunkers rests on a very thin foundation. Mr. Duncan testified briefly during his last appearance that the bunkers would reduce noise by 7 dbA, but he produced no report on the bunkers and no modeling to support his last-minute conclusion. He testified that a 7 dbA decrease would be a noticeable decrease; he did not testify that if the bunkers were used the noise would resemble customary preexisting noises in the neighborhood and would not be a repeated disturbance.[5]

Counsel has researched the published decisions of the Vermont Environmental Court, the Vermont Supreme Court, the Vermont Environmental Board, and the courts of all fifty states, and has not found a single instance in which a mobile concrete bunker has ever been offered, or ever approved, as a noise mitigation measure.

The Board should not swallow this novel and minimally reported bait. Hard surfaces such as concrete **reflect** sound, a fact that Mr. Duncan's minimal testimony about the bunkers did not address. See Exhibit J, p.39, explaining that sound is reflected by hard surfaces such as "harder ground, pavement and open water." Even surfaces softer than concrete reflect sound, such as the "harder ground" mentioned in Exhibit J. The bunker will be open on one end and on top, and the sound reflected off the walls will have to go somewhere. Mr. Duncan submitted no testimony and no modeling about the impact of the sound that will be reflected by the bunkers through the open end of the bunkers or through the open top of the bunkers.

In *In re Appeal of William Smith*, #263-12-02 Vtec (Vt. Super. Ct, Dec. 20, 2004) (Wright, J.) Decision on Motion, the Environmental Court reversed a Development Review Board's decision in part because of sloping land that reflected noise toward residences. The matter was remanded to the DRB to consider the noise that would be reflected from the sloping land. Here, there is not just steeply sloped land behind each of the quarries, there are quarry walls. It is impossible to conceive of how the bunkers could be positioned so that the open end would not reflect sound toward steeply sloped lands and quarry walls— and then to existing residences. In the absence of design plans for the bunkers and for their use, and in the absence of modeling of the reflected noise from the bunkers, there is no basis upon which the bunkers can be relied upon by the Board. The design of the bunkers, and their use, and the modeling, should have been provided to the Board and all parties for cross-examination and for rebuttal.

The proposed bunkers would not mitigate the **other** repeatedly disturbing, not-customary noise, and the **other** new noise above 70-dbA that will not be generated by the rock hammer. These impacts were summarized in Ms. Thorsen and Mr. Kilgus' Proposed Findings 73-80. They include the very loud new scraping sound of metal on rock or rock on metal, followed by the sound of rocks tumbling into a truck, that has gone on for an hour or an hour-and-a-half at a time

[5] A 12-foot high wall of concrete behind the hammer, and extending on either side of the hammer to enclose both sides of the rock being hammered, would be a massive amount of concrete. In addition to the lack of modeling and the lack of a report, there is no evidence of whether each bunker will be a single unit or two or three separate walls that are pushed together, or of the equipment that would be needed to move these massive bunkers, or of the noise that would be generated by pushing them across the quarry floor.

since the Julian purchase. They also include the proposed new above-70 dbA noise on property adjacent to the North Quarry and the Chandler Road Quarry from equipment other than the hydraulic hammer, as shown in Figures 28, 30, 34, 36, 37, 41, and 42 of Mr. Duncan's report.

Dated at Bristol, Vermont, this 16th day of January, 2024.

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