

Michael J. LeClair
129 Clemons Road
Chester, VT 05143

July 8, 2023
MS

Preston Bristow
Town Planner and
Zoning Administrator
Town of Chester

VIA EMAIL: zoning@chestervt.gov

Dear Preston and Members of Town of Chester Development Review Board,

This letter is written by Michael J. LeClair in response to ongoing unpermitted, unlawful operations at and between the quarries of the Julian companies.

My family and I live at 129 Clemons Road in Chester, VT. We lived at this address for 40 years in peace and tranquility alongside the neighborhood quarry operation. Since the Julians assumed ownership of the local quarries the community has been negatively impacted. Beginning December 17, 2018, my wife, neighbors, and I have documented the negative impact the Julian company operations has on our day-to-day lives. We regularly experience: the incessant loud noise of hydraulic hammering, a visibly polluted Dean Brook that was once a beautiful trout stream and now is a gray mess from Chandler Quarry activity, dangerous blasting, rock debris on highways and railroad tracks, and heavy equipment transporting stone in their buckets on our public roadways. We have shared our concerns and documentation of the intrusive operations in one-on-one conversations, with emails, letters, and presentations at public meetings with our Town of Chester officials, and with Act 250 enforcement officers as well as with the Julians.

In winter of 2019 my wife Cheryl and I had a meeting at our home with the Julians, along with their foreman, Scott Kendall. We expressed our concerns about the way their operations were adversely affecting our everyday life. At the conclusion of that meeting one of the owners of the quarry, Jason Julian, said to me, "Mike, what can we do to make you happy?" My response was, "Abide by the law. If you did that, you never would have heard from me in the first place."

The Julians are not abiding by the law! For the past four years the Julians have managed to violate nearly every rule and regulation required by the Town of Chester and the State of Vermont Act 250 regulations as well. It's hard to believe that since we began our efforts to seek help that the State of Vermont Act 250 enforcement and our town government have been unsuccessful in curbing this unlawful activity. The evidence of noncompliance is plentiful and yet, the Julians are allowed to operate as if they are not in violation. The Julians do what they want when they want. They have made a mockery of our town and state requirements.

And now, I understand that the Julians are submitting requests to expand their operation! Expansion plans would entail putting up a 20,000 square foot metal building for stone cutting and processing and expanding the existing South/Alistone Quarry across from our home. They are also seeking to connect the South/Alistone Quarry to the North Quarry (unpermitted since 2008) on Route 103. This would involve building a road between the two quarry sites. I see no mention in their request conveying that to build such a road they would have to go over or through the stream known as Roaring Brook that includes a beautiful waterfall and runs directly into the Williams River.

For a thorough unbiased summary of the vast amount of information that has been gathered about the Julian quarry operations, please review *Jurisdictional Opinion 2-324, Julian, Chester (JO)* written by Aaron Brondyke, State of Vermont Natural Resources Board State Coordinator and issued on March 6, 2023. In this document Mr. Brondyke provides a detailed overview of the Julian quarry operations, history and permitting of the quarries, and determination of the need for Act 250 permit amendment for the operations described to be compliant. The JO provides a great deal of evidence (referencing primary source documents, permits, and reports from the Mine Safety and Health Administration) that supports the fact that the Julians are operating without regard to the rules, regulations, and laws of the Town of Chester or the State of Vermont.

I ask you, members of the Development Review Board, to hold the Julians accountable for abiding by the rules, regulations, and laws that are designed to protect our citizens, our neighborhoods, our state, and the environment.

The Julians should be required to:

1. Cease all use of the unpermitted hydraulic hammer.
2. Cease unpermitted extraction from the North Quarry. The Land Use permit (2S0775) for this quarry expired on July 15, 2008, and the quarry was to be closed and fully reclaimed.
3. Cease unpermitted Chandler Road quarrying and processing activity. The Town of Chester Zoning permit (21-065) there allows for a storage building "to protect equipment".
4. Become Act 250 compliant in their current operations as Jurisdictional Opinion 2-324 determined.

Finally, I ask that no application for expansion of the Julians' operation be reviewed or acted upon until they are fully compliant.

Thank you for your time and service.

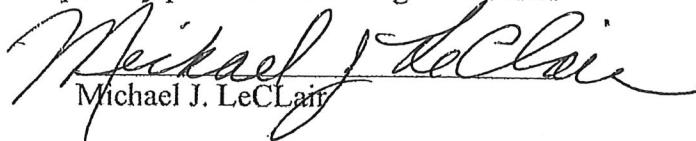
Sincerely,

Mike LeClair

Michael J. LeClair

MJL/tlo

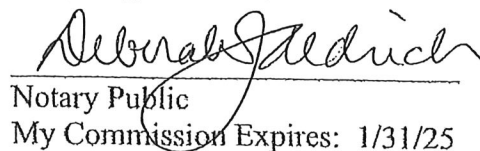
The above observations and statements are true and based upon my personal knowledge and belief


Michael J. LeClair

STATE OF VERMONT
WINDSOR COUNTY

Sworn to and subscribed before me on this 17th day of July, 2023 by Michael J. LeClair

DEBORAH J. ALDRICH
Notary Public, State of Vermont
Commission No. 157.0006914
My Commission Expires Jan. 31, 2025


Notary Public
My Commission Expires: 1/31/25

See attached documents:

Jurisdictional Opinion 2-324, Julian, Chester

Request for Reconsideration (JO 2-324)

Response to Reconsideration Request letter regarding JO 2-324

cc:

Julie Hance

julie.hance@chestervt.gov

Chester Town Clerk

Deborah.aldrich@chestervt.gov

Stephanie Gile

Stephanie.Gile@vermont.gov

Michaela Stickney

Michaela.Stickney@vermont.gov

Jenny Ronis

JennyRonis@vermont.gov

Steve Ankuda

parkerankuda@vermontel.net

Leslie Thorsen

lesliethorsen@gmail.com

Cheryl LeClair

cherylleclair@yahoo.com

Karen MacAllister

Dublin2knees@gmail.com

Tabitha LeClair Orthwein

taborthwein@gmail.com



State of Vermont
Natural Resources Board
District 2 Environmental Commission [phone] 802-289-0603
100 Mineral Street, Suite # 305
Springfield, VT 05156-3168
<https://nrb.vermont.gov/>

March 6, 2023

Via email

Karen MacAllister
355 Clemons Road
Chester, VT, 05143

Subject: Jurisdictional Opinion 2-324, Julian, Chester

Dear Ms. MacAllister:

I. Summary of Opinion

The following is a jurisdictional opinion (JO) with respect to your query as to whether the following activities would trigger the need for an Act 250 permit amendment to land use permit series 2S0775: 1) hydraulic hammering; 2) operations at the North Quarry; and 3) use of the Chandler Road property in the Act 250-permitted operation. It is my opinion that an Act 250 permit amendment for the proposed activities described would be required. I have relied upon the following facts in making this determination.

II. Facts and Documents Relied Upon

The background for your request is outlined in the following documents, which are incorporated herein by reference:

- Your letter dated October 8, 2022.
- Supplemental JO request from Mike and Cheryl LeClair dated December 1, 2022.
- Letter from Natural Resources Board Enforcement Officer Michaela Stickney dated February 28, 2023.
- Photos and videos dated 4/13/21 in Coordinator's Record.
- 2018-2019 MSHA Inspection Reports.
- Representative videos of hydraulic hammering in the North Quarry between 9/9/20 and 12/7/22.

- Town of Chester Zoning Permit 21-065 dated 9/29/21.
- Photos of commercial buildings on the Chandler Road property dated 2/22/23.

In addition, I reviewed the following online information sources:

- Land Use Permit 2S0775: <https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2S0775>
- Land Use Permit 2S0775-1(Altered):
[https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2S0775-1\(Altered\)](https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2S0775-1(Altered))
- Jurisdictional Opinion 2-263:
<https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=JO%202-263>
- Vermont Secretary of State's Office, Corporations Division website:
<https://bizfilings.vermont.gov/online/BusinessInquire/>
- Facebook Page for Julian Enterprises: <https://www.facebook.com/JulianEnterprises>
- Website for Allstone Vermont - Julian Materials, LLC:
<https://www.allstonevermont.com/>
- Website for Julian Enterprises: <https://www.julianenterprises.com/>
- Google Earth: <https://earth.google.com/web>
- Vermont Parcel Viewer: <https://maps.vcgi.vermont.gov/ParcelViewer/>

III. Jurisdictional Analysis

Request

Your jurisdictional opinion request states that you and eight additional requestors who live in the vicinity of the quarries experienced significant impacts on the quality of your daily lives due to loud noises and traffic from changes in quarrying operations. Specifically, you ask whether the following activities would trigger the need for an Act 250 permit amendment to land use permit series 2S0775: 1) hydraulic hammering; 2) operation of the North Quarry; and 3) use of the Chandler Road Quarry property in the Act 250-permitted operation.

Parcel Information

The quarries and their respective properties are known by different common names. The following names are used throughout this jurisdictional opinion.

Parcel Name	Location	SPAN and Legal Ownership	Notes
North Quarry	VT Route 103 North, adjacent to Williams River Bridge	144-045-11176 3643 VT Route 103 N, LLC	Land use permit 2S0775 issued in 1998. Expired 7/15/2008.
Allstone Quarry	3645 VT Route 103 North	144-045-11176 3643 VT Route 103 N, LLC	Land use permits 2S0775-1 and 2S0775-1(Altered) issued in 2005. Expires 10/1/2025.
Stone Store	3643 VT Route 103 North	144-045-10728 Green Mountain Railroad Corporation	Land use permits 2S0775-1 and 2S0775-1(Altered) issued in 2005. Expires 10/1/2025.
Chandler Road Quarry	137 Chandler Road	144-045-10646 137 Chandler Road, LLC	No existing land use permit

Permit History

On July 22, 1988, the District 2 Environmental Commission issued Land Use permit 2S0775, which authorized Milligan Mountain Quarry, Inc. to extract rock from the North Quarry at an average rate of between 100 and 500 tons per week. Condition 11 states that the permit shall expire on July 15, 2008.

On June 21, 2005, the District 2 Environmental Commission issued Land Use Permit 2S0775-1(Altered) to Allstone Corporation, George Milligan, and Green Mountain Railroad, which authorized the permittees to develop the Allstone Quarry on approximately 11 acres of the 300+/-acre tract, use of a 20-foot x 24-foot portable processing shelter, construction of screening berms, stormwater treatment basins, the continued use of the Stone Store retail building on Green Mountain Railroad leased land, and use of a portable rock crusher for four weeks a year at the existing quarry. Condition 25 states that the permit shall expire on October 1, 2025. In this JO, I will refer to the properties with SPANs of 144-045-11176 and 144-045-10728 as the "Permitted Project Tract."

On June 11, 2009, District 2 Coordinator April Hensel issued JO 2-263, which found no Act 250 jurisdiction over the Chandler Road Quarry property. At that time, the property was owned by Peter Holl.

Analysis

You ask whether the following activities trigger the need for an Act 250 permit amendment to land use permit series 2S0775: 1) hydraulic hammering; 2) operation of the North Quarry; and 3) use of the Chandler Road property in the Act 250-permitted operation. I will address each of these activities individually.

1) Hydraulic Hammering

On March 24, 2004, RSG conducted sound level monitoring in anticipation of the application for Land Use Permit 2S0775-1. Exhibit 16 to that permit amendment, the Quarry Development and Reclamation Plan, states that RSG monitored the sounds of a hydraulic drill, an excavator, a 70-ton rock splitter, a loader moving metal hoppers, a generator, and a 300-ton rock splitter. Finding 47 of Land Use Permit 2S0775-1 also lists this specific equipment. On September 13, 2004, RSG issued Exhibit 37 entitled, "Response to Item #4 on the District Commission's Hearing Recess Memo." This exhibit utilized noise modeling to address the Commission's questions in the Recess Memo. In addition to the noise sources listed above, this report also modeled the sound of haul trucks on the quarry driveway. Exhibit 37 clarifies that RSG's "modeling assumed that the quarry was beyond the initial start-up and at full operation with all equipment present." [Emphasis added.] A hydraulic hammer was not included in the list of all equipment to be utilized at the quarry.

RSG's sound level monitoring and modeling found that the sound of a hydraulic drill operating at the Allstone Quarry would create the highest sound pressure levels at nearby homes. Accordingly, the Commission placed strict limits on the number of hours per month that such a drill could be operated on the Permitted Project Tract, and the maximum noise levels permitted during drilling. (Conditions 19 and 23 of LUP 2S0775-1(Altered)) It is clear from the permit record that the type of equipment being monitored and regulated for noise was a hydraulic drill, used for drilling blast holes for explosives, and not a hydraulic hammer, which is typically mounted on the end of an excavator arm.

Land Use Permit Application 2S0775-1, Schedule B, subsection 1(a) states, in relevant part, "the rock will be removed with the use of explosives and hydraulic excavators."

Separately from the drilling noise test, RSG monitored the sound of a hydraulic excavator operating at the Allstone Quarry. RSG "observed the excavator bucket scraping loose rocks at the surface, swiveling the bucket, and moving." "This quarry

activity includes noise from the engine, a backup alarm, and the impulsive noise from the bucket picking up and moving quarry debris." (Exhibit 16 at 11)

Findings 47 through 57 of Land use Permit 2S0775-1 state the following:

47. The Applicants will use a hydraulic drill, an excavator, a 70-ton rock splitter, a loader moving metal hoppers, a generator and a 300-ton rock splitter. Exhibit 17.
48. The hydraulic drill is expected to be the loudest piece of equipment. The loudest noise would be heard when the drill bit begins to penetrate the rock surface. As the drill gets deeper, noise levels slowly drop. Exhibit 17.
49. The excavator, although audible, did not increase the overall sound levels. The 70-ton rock splitter, the loader moving metal hoppers, the generator and 300-ton rock splitter did not raise the overall sound levels. The high level of noise on Route 103 covers most of the projected noise from the quarry. Exhibit 17.
50. The Applicants reviewed possible noise impacts. Route 103 has a high ambient noise level. It has an Average Daily Traffic count of 5,000 vehicles per day. Many of these vehicles are trucks. The Applicants monitored noise at the closest residences adjacent to Route 103. Lmax sound levels are over 55 dBA 73% of the time between 7:00 a.m. and 5:00 p.m., Monday through Saturday at the houses close to Route 103. Exhibits 16, 17 and 37.
51. The Bushee house, which is immediately adjacent to the quarry driveway and the railroad tracks, would experience 74 dBA during initial drilling. This level of noise could occur for less than one second during the initial penetration of the bit into the rock. The drill noise drops by as much as 8 dBA for the remainder of the hole. The maximum level of noise at the Bushee residence will be between 55 and 57 dBA. Exhibit 37.
52. The quarry will increase the Lmax over 55 dBA at houses close to Route 103 an additional 1 % to 3% of the time. When drilling is present, this number increases to 13% to 15% of the time. The drilling would be for two days per month only. This is the worst case scenario. Exhibit 37.
53. The Commission asked the Applicants to review noise levels further from Route 103 to make sure topography does not create a problem where noise is worse further from the project. The Applicants monitored 31 additional houses and found the project would have very small noise impacts, with maximum noise levels below 52 dBA. Exhibit 37.
54. The Applicants presented eight letters of support from project neighbors. Exhibit 36.
55. The Applicants have never had complaints regarding noise at the permitted quarry to the north. Testimony.

56. The Applicants plan to blast approximately once per month. It is not expected that neighbors will hear or feel the blasts. Testimony.

57. The Applicants will use new equipment, including drills that are self-contained, quieter and faster than older equipment. Drilling occurs one to two days before blasting. Usually five hours of drilling will create enough stone for six weeks of work. Testimony.

Nowhere in the record is there reference to a hydraulic hammer being used in association with excavator operations at the quarry. In fact, there is no mention of "hydraulic hammer," "hydraulic breaker," "percussion hammer," "jackhammer," "chisel," "hoe ram," or any equivalent term anywhere in the permit record.

Between May 30, 2020 and January 2, 2023, the Natural Resources Board (NRB) received complaints about hydraulic hammering at the North Quarry and at the Allstone Quarry. (See letter from NRB Enforcement Officer to State Coordinator dated February 23, 2023, representative complainant videos documenting hydraulic hammering in the North Quarry, and documentation of hydraulic hammers in the Allstone Quarry from the federal Mine Safety and Health Administration (MSHA).)

2) Operations at the North Quarry

Land Use Permit 2S0775 (1988), Condition 11 states, "the permit shall expire on July 15, 2008, unless extended by the District Environmental Commission."

Finding 3 of land use permit 2S0775-1 (2005) states, "preliminary reclamation has begun at the permitted site. The Applicants expect the permitted site will be fully reclaimed and closed by 2008. Testimony."

Finding 33 of land use permit 2S0775-1 (2005), which permitted the Allstone Quarry, states, "the applicants own a permitted dimension quarry on the northwest of this tract of land, or 2,900 feet away. This quarry will be phased out of production over two years as the new quarry is developed. Exhibits 2 and 16."

Between May 30, 2020 and January 2, 2023, the NRB received complaints about hydraulic hammering, drilling operations, blasting operations, excavator operations, and truck loading operations at the North Quarry.

Records received from Mine Safety and Health Administration (MSHA) about inspections and citations for MSHA violations between 2018 - 2022 verify the use of stone saws, rock splitters, stone chisel, excavators, front loaders, and a crushing plant at the North Quarry.

The NRB's Enforcement Officer observed and documented active extraction of stone materials from the North Quarry on November 10, 2020, on April 13, 2021, and on July 14, 2022. The North Quarry has not been reclaimed.

- 3) Use of the Chandler Road property in the Act 250-permitted operation.

Ownership

The North Quarry and the Allstone Quarry are owned by 3643 VT Route 103 N, LLC. The Vermont Secretary of State's Office lists Andrew and Jason Julian as principals of that corporation. The Chandler Road Quarry property is owned by 137 Chandler Road, LLC. The Vermont Secretary of State's Office lists Andrew and Jason Julian as principals of that corporation.

The Julian Enterprises website states the following:

"Recent Events

Julian Materials is proud to announce our most recent acquisition.

We are excited to announce that we have just acquired the **Allstone** dimensional stone quarry in Chester, Vermont which includes **Olde Chester Granite** and **Castleton Granite**. As of April 2nd, 2018, we are offering all of our stone and construction material products under one name, JULIAN MATERIALS LLC."

The Vermont Secretary of State's Office lists Andrew Julian as a principal of Julian Materials LLC.

The Allstone Vermont - Julian Materials, LLC website lists the following contact information:

Allstone Vermont Headquarters
Old Chester & Castleton Office
3643 VT Rte 103 North
Chester VT 05143
Phone: (802) 875-6564

Chesterfield Office
137 Chandler Road
Chester VT 05143

Julian Materials, LLC Headquarters
418 Meadow Street, Suite 203
Fairfield, CT 06824
Phone: (203) 416-5308

Local: (802) 875-6564"

For the purposes of a "development," 'Person' means an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership; a municipality or state agency; and, individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the "development" of land. (Act 250 Rule 2(C)(1)) Therefore, the North Quarry, the Allstone Quarry, and the Chandler Road Quarry are all owned by the same "person" as defined under Act 250.

Permit Record

Land Use Permit Series 2S0775 does not include the Chandler Road property. It permits stone processing in the Allstone Quarry. Finding 35 of Land Use Permit 2S0775-1 states, "the applicants will perform stone processing and splitting in a 24-foot by 20-foot portable shelter. This shelter will be in the eastern portion of Phase 1 in the early stages of quarry development. It will be relocated closer to working areas as the development progresses. Exhibit 16."

Finding 43 of Land Use Permit 2S0775-1 states, "the base area of Phase 1 will be reclaimed as a working area for stone processing. The portable shelter will be utilized in this area. Exhibit 16."

Prior JO

On June 11, 2009, District 2 Coordinator April Hensel issued Jurisdictional Opinion 2-263, which found no Act 250 jurisdiction over the Chandler Road property. At that time, the property was owned by Peter Holl. Coordinator Hensel based this determination on the facts that the tract of land was 8.5 acres, and that the project involved less than 10 acres in a town with both permanent zoning and subdivision regulations. Specifically, she noted that "there are no other tracts of land within five miles used in conjunction with the quarry operation. Thus, there is no "involved land" and the tract or tracts of land used for commercial quarrying operations comprise less than ten acres."

Current Usage of Chandler Road Property

Between May 30, 2020 and January 2, 2023, the NRB received complaints about stone splitting and cutting at the Chandler Road Quarry tract, excavator operations at the Chandler Road Quarry tract, and stone delivery from the North Quarry to the Chandler Road Quarry tract for processing.

On April 13, 2021, NRB Enforcement Officer Michaela Stickney and District 2 Coordinator Stephanie Gile observed a red and orange dump truck being loaded at the North Quarry, driving to the Chandler Road Quarry to dump the load, and returning to the North Quarry to be reloaded. They also observed a flatbed truck leaving the

Chandler Road Quarry loaded with crates of processed stone, and then parking at the Stone Store near the Allstone Quarry, either to deliver or unload the materials. These observations are documented in photos and videos included in the Coordinator's Record.

The NRB Enforcement Officer has received records from the Mine Safety and Health Administration (MSHA) about inspections and citations for MSHA violations at all three quarries between 2018 and 2022. These records verify the use of rock splitters, feed conveyors, a mine process building, a front loader, and an excavator at the Chandler Road Quarry. A 6/4/19 MSHA report from inspection of the Chandler Road Quarry tract notes, "Park Industries TXS 4800 saw – just purchased, not hooked up yet." A 5/29/19 MSHA report from inspection of the Chandler Road Quarry tract notes, "Immediately after installation of the Kohler 200 Generator and the Big and Little Steinex Splitters and Feed Conveyors located in the Process Building a continuity and resistance test of the grounding system was not completed. The generator and Splitters were installed and put into operation on or around 3/29/19 and were in operation the day of the inspection."

A March 28, 2019 Facebook post on the Julian Enterprises Facebook page (recently removed) includes a video depicting two Steinex rock splitters in what appears to be a building with a window, an electrical service panel and a large overhead door. The video depicts two people using the machines to split pieces of stone. The video caption reads, "Steinex is up and running -Getting our Chester Ashlar ready for pallets!..." According to the Merriam-Webster Dictionary online, "ashlar" is defined as "1. hewn or squared stone;" or "2. a thin squared and dressed stone for facing a wall of rubble or brick."

Based upon the foregoing evidence, it appears that stone quarried from the North Quarry and the Allstone Quarry is being delivered by dump truck to the Chandler Road Quarry for processing into dimensional stone products, and then is packed into pallets and delivered by flatbed truck to the Stone Store near the Allstone Quarry for storage and sale.

On 9/29/21, the Town of Chester issued Zoning Permit 21-065 to 137 Chandler Road, LLC for the construction of a 70-foot by 25-foot storage building "to protect equipment" on the Chandler Road tract. A site visit and photos by the Town of Chester on 2/22/23 confirmed that the building has been constructed, and that equipment is inside.

IV. Conclusions

1. Hydraulic Hammering

Act 250 Rule 34(A) states, in relevant part: "A permit amendment shall be required for any material change to a permitted development or subdivision, or administrative

change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.”

Act 250 Rule 2(C)(6) defines “Material Change” as follows: “Any cognizable change to a development or subdivision subject to a permit under Act 250 or findings and conclusions under 10 V.S.A. § 6086b, which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).”

It is clear from the permit record that hydraulic hammering was not contemplated during the permitting of the North and Allstone Quarries. At the time of permitting, the applicants represented that stone would be removed using a combination of drilling, blasting, and an excavator with a bucket, and cut using a 70-ton rock splitter. The commission carefully considered the applicants’ evidence that the drilling of blast holes would create the most noise, and conditioned the permit to limit drilling accordingly. The introduction of a hydraulic hammer to regular operations on the Permitted Project Tract is a material change to the permitted project with significant impacts under findings 47 through 57 of Land use Permit 2S0775-1 and the potential for significant adverse impacts under Criterion 8, Aesthetics, specifically with regard to the nuisance impacts of noise.

2. North Quarry

The permit record clearly documents that the North Quarry land use permit expired on July 15, 2008. Reclamation of the North Quarry was to be completed incrementally as excavation proceeded. When the Allstone Quarry was permitted in 2005, the applicants assured the District 2 Commission that the North Quarry would be reclaimed and closed prior to the 2008 expiration date. To date, no obvious reclamation has occurred within the North Quarry, and quarrying operations have continued for more than fourteen years beyond the permit’s expiration date. The continued operation of the North Quarry is a material change to the permitted project that required a land use permit amendment prior to July 15, 2008.

3. Chandler Road Quarry

Development Commenced on Chandler Road Quarry Tract; North/Allstone Quarry Tract and Stone Store Tract Involved

10 V.S.A. § 6081(a) states, in relevant part, “Permits required...” “No person shall... commence development without a permit.”

10 V.S.A. § 6001(3)(A) defines “Development,” in relevant part, as: “(i) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving

more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes in a municipality that has adopted permanent zoning and subdivision bylaws.”

Chester has adopted permanent zoning and subdivision bylaws and is a “10-acre Town” for the purposes of determining Act 250 jurisdiction.

Act 250 Rule 2(C)(5) defines “Involved land,” in relevant part, as: “The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction.”

At the time of Coordinator Hensel’s JO (June 11, 2009), the Chandler Road Quarry was owned by another party, and was not accepting stone from offsite for processing. In addition, the Chandler Road Quarry parcel is less than 10 acres in size. Therefore, operations at the Chandler Road Quarry were not jurisdictional at that time. Importantly, as Coordinator Hensel noted in her 2009 JO, there were “no other tracts of land within five miles used in conjunction with the quarry operation” at that time. Thus, there was no “involved land” and the tract or tracts of land used for commercial quarrying operations comprised less than ten acres at that time. Since then, the situation has changed as follows:

- The Chandler Road Quarry tract and the tract encompassing the Allstone and North Quarries have been acquired by the same person.
- The current owners expanded quarrying operations in the Chandler Road Quarry, constructed a commercial building in the Chandler Road Quarry, and installed stone splitting equipment within a process building on the Chandler Road Quarry tract.
- The current owners began delivering stone extracted from the North Quarry/Allstone Quarry tract to the Chandler Road Quarry tract for processing into dimensional stone products.
- The current owners began delivering dimensional stone products made in the splitting facility on the Chandler Road Quarry tract to the Stone Store tract (which they lease from Green Mountain Railroad Corporation) on Route 103 for storage and sale.

- Google Earth data indicate that all three properties and the Stone Store, processing facilities, and quarries within those three properties are located within a radius of approximately 1.5 miles of one another.
- Vermont Parcel Viewer data indicate that together, the Chandler Road Quarry tract, the North Quarry/Allstone Quarry tract, and the Stone Store tract comprise at least 351 acres.

The owners of the Chandler Road Quarry tract commenced development when they installed the stone splitters on the Chandler Road Quarry tract and began accepting stone from the North Quarry and the Allstone Quarry for processing and delivery to the Stone Store tract for sale. They further commenced development when they constructed the commercial building permitted by the Town in 2021. The North Quarry/Allstone Quarry tract and the Stone Store tract are involved in the development of the Chandler Road Quarry tract, and a permit for the Chandler Road Quarry tract was required at the time that the property owners began receiving stone for processing and/or delivering processed stone to and from the Permitted Project Tract.

Use of Chandler Road Tract is a Material Change to the Existing Land Use Permit Series

The transportation of stone from the Permitted Project Tract to the Chandler Road Quarry tract for processing and splitting, and the subsequent delivery of cut stone products from the Chandler Road Quarry tract back to the Permitted Project Tract for storage and sale is a material change to land use permit series 2S0775 with potential for significant adverse impacts under, at minimum, Criterion 5 – Transportation, Criterion 8 – Aesthetics, and Criterion 9(E) – Extraction of Earth Resources, specifically with regard to the safe use of highways, the nuisance impacts of exhaust, dust, and noise; the rehabilitation of the permitted extraction site, and the disposal of waste from the processing of mineral resources. Therefore, land use permit 2S0775-1(Altered) requires an amendment to incorporate the ongoing use of the Chandler Road Quarry tract.

V. Reconsideration and Appeal

Any party may file within 30 days from the date of a decision of the District Coordinator a request for reconsideration with respect to the jurisdictional opinion, pursuant to Act 250 Rule 3(B). Any reply to a request for reconsideration shall be filed within 15 days of the service of the request, unless otherwise provided by the District Coordinator.

Any person aggrieved by an act or decision of a District Commission or District Coordinator, or any party by right, may appeal to the Environmental Division of Vermont Superior Court within 30 days of the act or decision pursuant to 10 V.S.A. § 8504. Such appeals are governed by Rule 5 of the Vermont Rules for Environmental Court Proceedings. The appellant must file a notice of appeal with the clerk of the court and pay any fee required under 32 V.S.A. § 1431.

JO 2-324
Julian, Chester
Page 13

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. The Natural Resources Board's copy may be sent to NRB.Legal@vermont.gov and/or 10 Baldwin Street, Montpelier, VT 05633-3201.

Please note that there are certain limitations on the right to appeal, including interlocutory appeals. See, e.g., 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

The foregoing statements regarding requests for reconsideration and appeals are intended for informational purposes only. They neither supplant any rights or obligations provided for by law nor do they constitute a complete statement of the rights or obligations of any person or party.

Sincerely,



State Coordinator
aaron.brondyke@vermont.gov
802-595-2735

CERTIFICATE OF SERVICE

I hereby certify that I, Rebecca Bezanson, Natural Resources Board Technician, District 2 Environmental Commission, sent a copy of the foregoing **Jurisdictional Opinion JO 2-324** by U.S. Mail, postage prepaid, on this March 6, 2023 to the following individuals without email addresses and by electronic mail, to the following with email addresses:

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.

Mike and Cheryl LeClair
cherylleclair@yahoo.com

Karen MacAllister
Dublin2knees@gmail.com

Chester Selectboard
PO Box 370
Chester, VT 05143
jonynas@vermontel.net

Chester Planning Commission
PO Box 370
Chester, VT 05143
smokeshire@vermontel.net

Mount Ascutney Regional Commission
PO Box 320
38 Ascutney Park Rd
Ascutney, VT 05030
jrasmussen@marcvt.org

Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901
anr.act250@vermont.gov

FOR INFORMATION ONLY

James Goss
jgoss@fgmvt.com

Chester Town Clerk
PO Box 370
Chester, VT 05143
deborah.aldrich@chestervt.gov

State of Vermont
Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
barry.murphy@vermont.gov
PSD.VTDPS@vermont.gov

Vermont Agency of Transportation
Barre City Place
219 N. Main Street
Barre, VT 05641
AOT.Act250@vermont.gov


Vermont Agency of Agriculture, Food and
Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901
AGR.Act250@vermont.gov

Vermont Division for Historic Preservation
National Life Building, 6th Floor, Drawer 20
Montpelier, VT 05620-0501
ACCD.ProjectReview@vermont.gov

Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201

NRB.Legal@vermont.gov
nrb.act250agenda@vermont.gov
Jenny.Ronis@vermont.gov
Michaela.Stickney@vermont.gov
Sabina.Haskell@vermont.gov
Peter.Gill@vermont.gov
Aaron.Brondyke@vermont.gov
Stephanie.Gile@vermont.gov (Springfield)

Dated this March 6, 2023.



Rebecca Bezanson
Natural Resources Board Technician
802-289-0599
NRB.Act250Springfield@vermont.gov