VERMONT SUPERIOR COURT
Environmental Division
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ENVIRONMENTAL DIVISION
Docket No. 20-ENV-00020

Weyerhaeuser Act 250 Permit #7E1388	DECISION ON THE MERITS

Weyerhaeuser Company (Weyerhaeuser) is a timber company that has sought and received permission from relevant state agencies, chiefly the Agency of Natural Resources and the Act 250 Program, to harvest timber from land it owns in Northeastern Vermont. Weyerhaeuser presently appeals a decision of the District #7 Coordinator and District #7 Environmental Commission determining that its initial application for an Act 250 permit for that harvest was incomplete. Although Weyerhaeuser subsequently complied with the Coordinator and Commission's request to supplement its application and received the sought-after permit, it has maintained this appeal. Weyerhaeuser claims that the incomplete determination has a bearing on its rights as a landowner, due to additional burdens it will face should it need to amend its Act 250 permit. The Natural Resources Board (NRB) argues that Weyerhaeuser's appeal is moot, and should we find that it is not, urges us to affirm the District Coordinator and Commission.

The Court held a one-day merits hearing on October 20, 2021, following which it took the matter under advisement to deliberate and write this decision. The Court did not undertake a site visit, and no party requested that we do so.

Weyerhaeuser is represented by David L. Grayck, Esq. The Natural Resources Board is represented by Alison M. Stone, Esq.

Findings of Fact

1. On September 14, 2020, Weyerhaeuser filed Act 250 application #7E1388 (Application) for a timber harvest and related activities on 302 acres above 2,500 feet (the Project Harvest Area).
2. The Project Harvest Area is located on a +/- 26,618-acre Weyerhaeuser-owned contiguous parcel of land that extends into the towns of East Haven, Ferdinand, Granby, Victory, and Burke (the Tract).
3. The Tract has also been identified as "Subdivision D" in a conservation easement that attached to the lands with their transfer from Champion International to Weyerhaeuser.
4. Application Schedule E, the adjoining landowner list Weyerhaeuser filed with its application, identified only two adjoining landowners – those whose land adjoins the Project Harvest Area.
5. The Application included Exhibit #004, September 14, 2020 Letter of David L. Grayck, Esq., "Re: Application by Weyerhaeuser West Branch ACT 250 THP." This letter argued that based on In re Green Crow Corporation, 2007 VT 137, the Schedule E – Adjoining Landowner Information component of the application must only identify those persons whose land adjoins the Project Harvest Area. The letter stated that "if the Commission disagrees, then Weyerhaeuser requests that the Commission grant a waiver of notice as authorized by Act 250 Rule 10(F)…."
6. The letter did not explain why a waiver was appropriate, stating only that "[t]he application materials establish compliance with the notice waiver standard."
7. On October 22, 2020, Kirsten Sultan, the District #7 Coordinator, and Eugene Reid, the District # 7 Commission Chair, issued a letter "[o]n behalf of the District 7 Commission, pursuant to Act 250 Rule 10(D)" indicating that the application would "not be deemed complete" until the items set out therein were addressed (the "October 22, 2020 Incomplete Letter")."
8. The October 22, 2020 Incomplete Letter identified the 26,618-acre Tract as the relevant "tract of land" from which adjoining property owners must be determined.

9. The Letter further observed that "The total number of property owners that adjoin the Tract has not been identified as a component of the application"; nor, it noted, had a list of names and addresses for such property owners been provided.

10. The Letter acknowledged Weyerhaeuser's request in-the-alternative for a waiver of the notification requirement. The District Coordinator and Commission Chair determined, however, that they did not have sufficient information to grant the waiver request. Specifically, the letter stated that to grant a waiver, the Commission Chair would need to determine "that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed development or subdivision and that service to each and every property owner by the District Commission would constitute a significant administrative burden without corresponding public benefit."

11. The Commission Chair determined that "notice to all who adjoin the Tract, will constitute a significant administrative burden (however the degree of such burden is unclear)."

12. The letter also stated the following:

> [A]dditional information is needed to establish if owners for whom a waiver is requested may or may not be affected by the proposed development. For example, may truck traffic (traveling to and from the 302 acre Project area) constitute a particularized interest for any such landowners? May stormwater runoff flow onto or through such owners' property, or streams located thereon? May there be any potentially substantive aesthetic impact on public viewsheds from such properties? Therefore, the Chair requests the following:
> 1. Please explain how only two such adjoiners may be affected by the proposed project.
> 2. Please explain precisely how all other adjoiners reasonably could not be affected by the Project, under the criteria of Act 250 (e.g. see above examples identified in (ii) above). Please include and reference mapping in your explanation, to support the waiver request.
> 3. If, upon further examination, it is determined that a waiver request is no longer applicable for some adjoiners, please update Schedule E accordingly.

13. By virtue of this letter, the District Coordinator and Commission Chair therefore deemed the application incomplete due to the incomplete list of adjoining landowners, and determined that without further information from the applicant, they would need to deny the request-in-the-alternative for a waiver of notice as to those landowners.

11. On October 27, 2020, Weyerhaeuser filed this appeal of the October 22, 2020 Incomplete Letter.

12. On November 11, 2020, rather than wait for the outcome of this appeal or provide the additional information sought by the Chair to determine whether a waiver was appropriate, Weyerhaeuser filed a revised Schedule E (list of adjoining property owners) with Coordinator Sultan and the District #7 Environmental Commission.

13. Revised Schedule E identifies fifty-three (53) adjoining landowners to the Tract: Mr. Bacon, Mr. Shenk, and fifty-one (51) additional landowners who adjoin the Tract, but not the Harvest Project Area.[1]

15. On November 24, 2020, after Weyerhaeuser filed Revised Schedule E, Coordinator Sultan and the District #7 Environmental Commission determined the application to be complete and issued notice that the application was being reviewed as a Minor Permit Application.

16. On August 25, 2021, the Commission issued final Act 250 Land Use Permit #7E1388 (LUP #7E1388) authorizing the harvest in stages over the following three winters.

17. The final permit was not appealed, and the appeals period has passed.

Discussion

Our court hears appeals from decisions of the District Commissions and Coordinators of the Act 250 Program, including jurisdictional opinions, *de novo*. 10 V.S.A § 8504(H); V.R.E.C.P. 5(a), 5(g). A de novo trial "is one where the case is heard as though no action whatever has been held prior thereto." Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989) (quoting In re Poole, 136 Vt. 242, 245 (1978)). We therefore make our own findings of fact and resolve the legal issues raised by the appellant's Statement of Questions that were properly before the District Commission or Coordinator anew, generally without deference to the conclusions reached below. In re Northeast Materials Group, LLC, No. 143-10-12 Vtec, slip op. at 4 (Vt. Super. Ct.

[1] We note that the Applicant's September 14 letter referred to the existence of fifty-one property owners who adjoined only those portions of the tract located in East Haven, and not those portions of the Tract in the towns of Ferdinand, Granby, Victory, or Burke. Fifty-one is also the number of additional adjoining landowners listed in the revised Schedule E, raising the possibility that there are additional adjoiners to the Tract not listed in the revised Schedule E. Nevertheless, the District Coordinator and Commission determined the application to be complete after receiving the revised Schedule E and subsequently issued a permit. Neither the November 24 completeness determination nor the permit issuance have been appealed, and so we do not address this potential shortcoming.

Envtl. Div. May 09, 2013) (Walsh, J.). We apply the same substantive standards in our review as the decision-maker below. Wolcott SD Final Plat Denial, No. 57-8-20 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Aug. 11, 2021) (Walsh, J.).

The single question raised in Weyerhaeuser's Statement of Questions is: "Whether Weyerhaeuser Act 250 land use permit application #7E1388 is complete, notwithstanding the October 22, 2020 jurisdictional opinion by the Act 250 District 7 Coordinator that Weyerhaeuser Act 250 permit application #7E1388 is incomplete under 10 V.S.A. § 6001(23) and § 6084(a), and Act 250 Rule 2(C)(12) and 10(E)(v)?"

On the eve of trial, the NRB filed a motion to dismiss this appeal as moot, given the issuance of a final Act 250 permit for the project in question—a decision which has not been appealed. Because that motion was filed with so little time for a response before the merits hearing, we first solicited arguments on the motion to dismiss during that hearing and then took evidence related to the ultimate issue of whether the list of adjoining landowners was complete as filed in September 2020. We address the mootness argument as part of this merits decision[2]—as an issue going to our Court's subject matter jurisdiction, it is one that we may address at any time. *See* V.R.C.P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); In re D.C., 2016 VT 72, ¶ 7, 202 Vt. 340 (mootness is a matter of subject matter jurisdiction and therefore may be raised during an appeal even if not normally preserved).

i. The meaning of "adjoining landowner"

The issue for us to decide is whether Weyerhaeuser's application was complete with a list of adjoining landowners limited to the two landowners who adjoined the Project Harvest Area, in light of the applicable statute and Act 250 rules. Our ultimate goal in construing both statutes and regulations is to give effect to the intent of their drafters. In re Williston Inn Group, 2008 VT 47, ¶ 14, 183 Vt. 621. Where that intent is clear from the plain language of the statute, our inquiry need go no further. Id. (discerning intent "by reference to the plain meaning of the

[2] NRB subsequently re-filed the motion to dismiss after trial. Because the relief NRB requests at trial is the same as it requests through its motion, and because we award judgment to the NRB, we need not address that motion here.

regulatory language; other tools of construction are available to us should the plain-meaning rule prove unavailing").

10 V.S.A. § 6084(a) lists a number of entities to which an applicant for an Act 250 permit must send immediate notice of the application. It then states, "The applicant shall also provide a list of adjoining landowners to the District Commission." While "adjoining landowner" is not defined in the statute, "adjoining property owner" is, as: "a person who owns land in fee simple, if that land: (A) shares a property boundary with a tract of land where a proposed or actual development or subdivision is located; or (B) is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or public highway." 10 V.S.A § 6001(23).[3] In turn, the Act 250 Rules promulgated by the Natural Resources Board define "tract of land" as "one or more physically contiguous parcels of land owned or controlled by the same person or persons." Act 250 Rules (2015) Rule 2(c)(12).

From this language, it is clear that the legislature intended the default set of persons entitled to notice to be owners of property adjoining the tract of land on which development would occur. It is further clear from this language that "tract of land" refers to the entire tract of land, and not just the portion of it physically taken up by the development. In relevant part, an adjoining property owner is defined by statute as one sharing a boundary with the "tract of land where a proposed . . . development . . . is located." 10 V.S.A. § 6001(23). Under the plain meaning of the term "located," a development is "located" on the entire tract of land on which it sits, and the definition of "tract of land" in the regulations is quite clear: It includes all physically contiguous parcels of land owned or controlled by the same person. Had the drafters meant to require notice only to those landowners who abut the project site, we assume that they would have said so. Instead, through the three sections quoted above, the drafters made clear that owners of lands that adjoin the larger tract of land on which a development is set to take place must be listed.

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[3] Every previous decision we have found accepts that the terms "adjoining landowner" and "adjoining property owner" are used interchangeably throughout the Act 250 statute. *See* In re OMYA, Inc., No. 137-8-10 Vtec, slip op. at 7 (Vt. Super. Ct. Envtl. Div. Jan. 28, 2011) (Wright, J.); *Cf.* Diverging Diamond Interchange Act 250, No. 169-12-16 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Mar. 17, 2017) (Walsh, J.) (looking to definition of "adjoining property owner" at 10 V.S.A. § 6001 to determine meaning of "landowner" in 10 V.S.A. § 6085(c)(1)(B)). Weyerhaeuser does not appear to dispute that equivalence.

The plain meaning of the terms is sufficient to resolve the question of which landowners Weyerhaeuser was required to list on Schedule E of its application. We further note that case-law supports this interpretation. First, the former Environmental Board reached the same conclusion in Re: Champlain College Inc., No. 4C0515-6-EB, Mem. of Decision, at 4–5 (Vt. Envtl. Bd. June 28, 2002). There, the property of neighbors who claimed to be adjoining property owners did not directly abut the project site, but instead abutted other parts of the same tract of land (a college campus) on which the project site was located. The Court found that "[s]ince the Neighbors' property actually adjoins the tract of land upon which the development will occur, as defined in EBR 2(U)[4], they are 'adjoining property owners' for purposes of Act 250." Id.

The Vermont Supreme Court decision in In re Killington, Ltd.,159 Vt. 206 (1992) also supports this interpretation. There, the question was whether a municipality that adjoined the tract of land on which a proposed Act 250 development was located, but not the actual physical borders of the development, was a statutory party entitled to notice of a hearing under § 6084(a). The Court affirmed the Environmental Board's conclusion that it was, stating in relevant part, "The Board's conclusion that the statutory language includes more than the land to be physically altered is reasonable, particularly in light of the statutory scheme that gives a voice to persons and entities affected by development." Id. at 213, quoting In re Conway, 152 Vt. 526, 530 (1989). One reason for the Board's conclusion was that if only those municipalities with lands directly adjoining the project site were owed notice, a developer could avoid having to provide notice to any adjoining municipality simply by preserving a narrow buffer of land between the development and its property boundaries. While the Court found this hypothetical "unlikely," it did highlight for the Court "the need to interpret the statute in a way that recognizes the impact on an affected municipality, rather than only the physical site of the development activity." Id.

The Court's concern in Killington for adjoining municipalities applies equally to adjoining landowners. Interpreting the statute as urged by Weyerhaeuser would allow an applicant to avoid the requirement of notice to adjoining landowners entirely by locating the development in a portion of its property completely surrounded by the Applicant's own land. Even if limited to

[4] Environmental Board Rules ("EBR") Rule 2(U) was the predecessor to NRB Rule 2(c)(12).

applications for high altitude logging as Weyerhaeuser argues, we conclude, like the Environmental Board and the Court in Killington, that such an interpretation runs counter to the clear purpose of the statute to give notice of an application to potentially affected parties. Clearly, the legislature chose adjoining any portion of the tract of land on which development is located as the best initial proxy for those who might be affected by a development, subject to subsequent narrowing via a waiver (as discussed below), or expansion, at the discretion of the District Commission. *See* 10 V.S.A. § 6084(b).

In light of the clear language of the statute and Rules, as supported by these precedents, Weyerhaeuser's reliance on the 2007 Vermont Supreme Court Decision, In re Green Crow Corp., 2007 VT 137, is misplaced. Weyerhaeuser argues that because the Supreme Court in Green Crow held that a District Commission did not have jurisdiction to impose permit conditions on logging-related activities below 2500 feet for a project over which it had jurisdiction only above 2500 feet, a Commission also may not require notice to landowners who abut those parts of a parcel over which the Commission lacks jurisdiction, due to their lying below 2500 feet. In other words, Weyerhaeuser seeks to import jurisdictional analysis, which in the Act 250 context flows from the definition of a "development," to the problem of whom is entitled to notice. As the NRB points out, these are distinct, if related concerns: jurisdiction determines when a landowner or project developer must seek a permit for their planned development; notice is intended to ensure that persons with a reasonable likelihood of being affected by that development have a chance to participate in the process of deciding on the application. The Supreme Court itself said in Green Crow, "We do not hold that Act 250 review of high-altitude logging may never include consideration of the impacts of that logging on land below 2,500 feet. Certainly conditions may be imposed on the land above 2,500 feet based on concerns about impacts on land below that elevation." Id. ¶ 18. For "concerns about impacts on land below" 2500 feet to be raised, such that the Commission might reasonably impose conditions related to them, those landowners abutting the property lines below 2500 feet must receive notice of the application. Green Crow therefore not only does not support Applicant's position; it undermines it.

Given the above, we conclude that Weyerhaeuser's application was incomplete, because it did not list all adjoining landowners to the tract of land on which the development was

proposed. In this instance, the tract of land on which the proposed development was located was the entire 26,618 contiguous acres of Subdivision D of the former Champion Lands.

We can understand Weyerhaeuser's concern over the effort required to compile such a list of adjoining landowners, given the relatively small portion of the overall tract that it seeks permission to develop. Yet the statute itself anticipates and offers a solution to this burden: the option of a partial or complete waiver.

ii. Waiver of listing and notice under 10 V.S.A. § 6084(a), NRB Rules 10(E)(v) & 10(F)

Weyerhaeuser's September 14 letter to the District Coordinator requested a waiver of the requirement to list any further adjoining landowners, should the Coordinator disagree with Weyerhaeuser's analysis under Green Crow. Weyerhaeuser repeated this request in its arguments at trial and in its post-trial briefing. *Weyerhaeuser Post-Trial Memorandum* at 1. Yet Weyerhaeuser's Statement of Questions did not clearly preserve this issue for our de novo review—Weyerhaeuser's sole question is narrowly focused on whether its application was complete as submitted. The scope of our review in appeals is limited by the Statement of Questions. *See* In re Jolley Assocs., 2006 VT 132, ¶ 9, 181 Vt. 190, but we may address issues "intrinsic to" those raised by the Statement of Questions. In re Atwood Planned Unit Dev., 2017 VT 16, ¶ 17, 204 Vt. 301 (2017). We conclude that the issue of a waiver is intrinsic to Weyerhaeuser's question of whether the application was complete, "construing [the] statement of questions liberally in favor of [the] party exercising appeal rights." In re Jolley Assocs., 2006 VT at ¶ 9 (citing In re Hignite, 2003 VT 111, ¶ 9, 176 Vt. 562 (mem.)). Weyerhaeuser's request in the alternative for a waiver was part of its application. Construing Weyerhaeuser's sole question liberally in its favor, the application would be complete if Weyerhaeuser's request for a waiver were granted. We therefore consider this issue to be within our scope of review.

The waiver provisions in the Statute and Regulations contain several ambiguities. 10 V.S.A. § 6084(a) is the principal provision and states, "Upon request and for good cause, the District Commission may authorize the applicant to provide a partial list of adjoining landowners in accordance with Board rules." The language invites us to look at the NRB's adopted regulations. NRB Rule 10(E)(v) mirrors the Statute but does not elaborate on what an applicant must do to demonstrate good cause or otherwise be entitled to a waiver: "The applicant shall file

. . . a list of adjoining property owners to the tract or tracts of land proposed to be developed or subdivided unless this requirement is waived by the district coordinator, in consultation with the chair of the District Commission."

NRB Rule 10(F) does provide a more specific standard than "good cause," but it is unclear whether it applies to the same waiver. Rule 10(F) states, "The chair of the District Commission may authorize a waiver *of personal notice of the hearing or public comment period* to adjoining property owners by the District Commission. Any waiver must be based on a determination that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed development or subdivision and that service to each and every property owner by the District Commission would constitute a significant administrative burden without corresponding public benefit." (emphasis added).

The NRB rules seemingly distinguish between two distinct opportunities for waiver. One comes at the stage when an applicant submits its list of adjoining landowners. The second, presumably once the list of adjoining landowners has been provided, is a waiver of notice of the hearing or public comment period to those landowners. If these are, in fact, meant to be read as distinct waiver opportunities, the "administrative burden" Rule 10(F) refers to would appear to be the burden of the District Commission in providing notice to adjoiners and other interested persons. Even with a large list of adjoiners, however, it is difficult to see how serving notice imposes much of a burden on the District Commission; the real burden lies in compiling the list of adjoiners with current addresses. This common-sense understanding of the burdens supports reading the two provisions as in fact describing one and the same waiver.

The NRB, in its post-trial proposed findings of fact and conclusions of law treats the provisions as overlapping: It argues that Weyerhaueser's waiver request must be supported by "good cause" under 10 V.S.A. 6084(a) and that it also must satisfy the requirements of NRB Rule 10(F). Weyerhaeuser also elided this distinction: In the letter in which it requested the waiver, Weyerhaeuser did not provide a list of even the 51 landowners that it stated adjoined the portion of Subdivision D in the Town of East Haven, much less all adjoiners to Subdivision D. We must therefore view this letter as requesting a partial waiver of the requirement to provide a list of

adjoining landowners, per 10 VSA § 6084 and NRB Rule 10(E)(v). Weyerhaueser's letter to the District Coordinator, however, also explicitly requested a waiver of notice under NRB Rule 10(F).

If indeed these provisions cover separate scenarios, it matters whether an applicant is requesting a waiver of the requirement to provide the commission with a list of landowners or a waiver of notice to those landowners. It matters first because the commission should know what it is ruling on, and second because it affects what standards the commission applies (and that we, sitting in the shoes of the commission in a *de novo* appeal, apply). This legal issue is not addressed, much less explored, in either party's filings. We do not resolve this issue here, because to do so would constitute an impermissible advisory opinion. *See* Baker v. Town of Goshen, 169 Vt. 145, 151 (1999). As we discuss below, the issue of *any* waiver for the application for LUP #7E1388 is now moot, and the issue of a waiver for any applications to amend that permit is not yet ripe for our review; therefore, we can not resolve this ambiguity in the waiver provisions.

iii. Mootness

The NRB argues that this appeal became moot once Weyerhaeuser received a final permit for its harvest and no party sought an appeal of that final permit decision. As our Supreme Court has stated, "A case is moot if the reviewing court can no longer grant effective relief." In re Moriarty, 156 Vt. 160, 163 (1991) (quoting Sandidge v. Washington, 813 F.2d 1025, 1025 (9th Cir.1987)). "The mootness doctrine derives its force from the Vermont Constitution, which, like its federal counterpart, limits the authority of the courts to the determination of actual, live controversies between adverse litigants." Holton v. Dep't of Emp. & Training (Town of Vernon), 2005 VT 42, ¶ 14, 178 Vt. 147. Where "the appellant obtains [the same] relief by another means" after filing a case, that case will likely become moot. In re Barlow, 160 Vt. 513, 518, (1993).

After Weyerhaeuser received the incompleteness determination underlying this appeal, it provided the District Coordinator with a revised list of adjoining landowners to Subdivision D, at which point the District Coordinator deemed the application complete. The District Commission subsequently granted a permit for the project in question, and no appeal from that final permit was taken.

Weyerhaeuser's primary argument that its claim is *not* moot turns on its belief that if fewer parties had been required to receive notice for this initial application than ultimately received notice, that would confer a concrete benefit upon it. Namely, Weyerhaeuser argues that it would only be required to provide notice to this smaller group of adjoiners for any future proposals to amend the permit. It claims such proposals to amend the permit are likely to occur due to rapidly changing conditions in the winter months when this timber harvest is permitted to occur.

Weyerhaeuser's argument misstates the connection between the list of landowners required to receive notice of an application for a permit and those who must receive notice of a proposed amendment to that permit. Nothing in the statute or regulations suggests that the landowner list for an initial application is determinative, in the strong sense of the word, of the landowner list for subsequent amendments. A landowner applying for a permit amendment is not directed, for example, to merely resubmit the same list of adjoining landowners as submitted in the original permit proceedings. Instead, the Act 250 Rules and forms make clear that except for administrative amendments, the application requirements for a permit amendment are essentially the same as those for a new permit. *See, e.g.,* Rule 34(A); *Weyerhaeuser Exhibit 1* at 1 (indicating same form is to be used for an original application as for any non-administrative amendments). And, in the case of an administrative amendment, the Rules do not require the Commission to hold a hearing or even provide notice that it is considering the application; all that is required of the Commission is to share its decision on the application, once reached, with "all parties of record and current adjoining landowners." Rule 34(D).

The use of the word "current" in Rule 34(D) suggests the list of adjoiners must be compiled anew. Our interpretation of the statute directs that the same must be true for non-administrative amendments. Common sense supports this interpretation: In the years between an initial application and an amendment thereto, new adjoining landowners will move in and old ones will move out. Any new adjoiners must receive notice for their interests to be protected. The same statutory provisions and Act 250 Rules that determine the requisite list of adjoining landowners for an initial application also determine the list for an amendment application, but they do so anew.

This case is therefore distinguishable from In re Barlow, a case Weyerhaeuser cites to, where operators of a gravel pit appealed a determination that their operations required an Act 250 permit and then applied for and received that permit. The Supreme Court determined that the appeal from the permit necessity determination was not mooted by granting a permit, in part because "it remain[ed] possible to undo the effects of compliance" and "The relief petitioners [sought was] different from that provided by obtaining their permit." In re Barlow, 160 Vt. 513, 519 (1993). In other words, the appellant in Barlow sought to be free to operate without the constraints of an Act 250 permit at all, despite having applied for and received one. Here, it is not possible to undo the effects of Weyerhaeuser's compliance, chiefly because there are no equivalent ongoing adverse effects of the incompleteness determination or of Weyerhaeuser's decision to supplement the list of adjoining landowners in response thereto. The proceedings on Weyerhaeuser's first permit application are closed. As discussed above, if Weyerhaeuser wishes to apply for an amendment to that permit, it will need to list anew any adjoining property owners or seek a waiver from this requirement at that time.

Weyerhaeuser's request that we rule on such a waiver now is one we cannot entertain. For us to rule now on a request for a waiver of notice as to some hypothetical, undefined future permit amendment would be to "render an advisory opinion prohibited by the State's Constitution." Baker v. Town of Goshen, 169 Vt. 145, 152 (1999), quoting Chittenden South Education Association v. Hinesburg School District, 147 Vt. 286, 294 (1986). In such an instance, standing concerns would dovetail with the mootness issue, given that "[w]here future harm is at issue, the existence of an actual controversy 'turns on whether the plaintiff is suffering the threat of actual injury to a protected legal interest, or is merely speculating about the impact of some generalized grievance.'" In re Moriarty, 156 Vt. 160, 163, 588 A.2d 1063, 1064 (1991) (quoting In re Boocock, 150 Vt. 422, 424).

Lastly, at trial Weyerhaeuser raised one additional argument for why this appeal is not moot. That argument does not appear in its post-trial memorandum, and our understanding is that Weyerhaeuser is no longer advancing it as an argument. For the sake of completeness, however, we address it here.

Weyerhaeuser argued at the hearing that because the District #7 Coordinator and Commission required Weyerhaeuser to list adjoiners to the entire tract of land or provide more information to justify a waiver, one particular adjoiner, Toad Hall LLC, received notice of the application that otherwise would not have, and that this aggrieved Weyerhaeuser. Toad Hall sought to intervene[5] and submitted information attesting to historical roadbeds and possible sites of archaeological significance in the area. Weyerhaeuser Exhibit WY-24. This was an issue on which the Commission apparently received further input from the State of Vermont Division of Historic Preservation (VDHP). VDHP's conclusion was "the project will have No Effect on any sites eligible for, or listed on, the State Register of Historic Places." Weyerhaeuser Exhibit WY-29.

Weyerhaeuser's attorney admitted at trial that it was not arguing that the conditions of the permit were different because of the participation of Toad Hall:

> THE COURT: If we go back and say, less notice is required, number 1, would the permit be any different? Number 2, isn't [sic] there somebody with party status before the Court that there's a good chance that they wouldn't have it if the notice was different?
>
> MR. GRAYCK: I think the answer to both of those questions, based upon what happened, no.

Transcript at 13:3-11.

Subsequent research confirmed that Toad Hall did not receive interested party status. There were multiple early drafts of the Commission's Decision on the permit, which was issued as a minor permit application. In the first draft, issued January 27, 2021, the Commission stated, "Concerning Toad Hall, the Commission did not receive a request for party status or a hearing, and declines to grant party status or a hearing, in response to the communications received, noting that the Vermont Division for Historic Preservation reviewed the project." Weyerhaeuser Exhibit WY-47. While Toad Hall was provided with copies of the drafts and final permit, it was listed under "For Your Information."

[5] The permit was issued as a minor permit, so while there were no hearings before the District Commission, Toad Hall, LLC submitted information to the Commission.

Weyerhaeuser's sole justification then for this argument is that it does not wish to provide notice of applications to amend the permit to Toad Hall, LLC in the future. Transcript at 13:12-16. That argument collapses into Weyerhaeuser's other argument for why this appeal is not moot, which we have already addressed. If Weyerhaeuser believes that this landowner, or any other landowner, could not reasonably be impacted by proposed changes to the activities governed by the permit, it will have the opportunity to seek a waiver of notice when it submits the appropriate amendment application.

In sum, the issue of a waiver of the requirement to list adjoining landowners is moot, now that that list has been provided and Act 250 Land Use Permit # 7E1388 granted. The appeal is therefore **DISMISSED.**

A Judgment Order is issued concurrently with this decision. This concludes the matter before the Court.

Electronically Signed: 5/25/2022 9:14 AM pursuant to V.R.E.F. 9(d).

Thomas G. Walsh, Judge
Superior Court, Environmental Division