

Town of Kingston Planning Board
Sawkill Road, Kingston, NY 12401

Date 04/15/2019

Re. Concerns with 850 Route 28 LLC Construction and Operation (the "Project")

Dear Planning Board

I live at 55 Waughkonk Road, a neighboring property to the Project. I attended the last Planning Board meeting in March, and offer the within letter to supplement my continuing objection and concerns about the Project, this Board's analysis of the information provided, and the premature Negative Declaration.

Noise Study dated February 2019

1. Page 5 of the report notes that equivalent sound level measured at logging stations 11-14 during the day periods (8:30am to 12:30pm). This data was supplied but the monitoring results of the front end loader loading shot rock into a tractor trailer between 12:26pm-1:50pm was not provided. This information should be in the report and your analysis. The report also contains a small graph which is very hard to read noting times from prior to 12:00pm -2:00pm. It should reflect the template used in the ambient background report.
2. One minute reading on the data collection seems to be long in duration. I would like to see what seconds would look like. One minute reading may not take into account the higher db levels and/or is used to average out the peak noise.
3. An actual site DB reading should be provided for the following on site equipment; material crusher, mobile batch plant and a tractor trailer, going up and down the inclined roadway between proposed buildings. A dozer with the blade running across bedrock and a sample blasting readings should be taken and recorded to understand what the residence will hear, as well as any other outside equipment that will be used during the construction and operation of the proposed plants.
4. The report does not note where the front end loader loading into the tractor trailer was in relation to the logging stations. That should be noted on the drawing showing distances to residence.

5. If this work is approved to proceed after issues noted in this letter are satisfactory, I would like to see sight monitoring at residence houses during the duration of the phase I and phase II work and made available to residence or reported at monthly town planning board meetings.
6. We need an Order and action plan whereby work will stop when sound levels are exceeded.
7. The SEQRA report was premature and incomplete. We also need a copy of all reports and analysis.

Traffic Assessment dated November 8 2018

1. Mobile batch plant and crusher plants are located outside the buildings. This will be a severe noise concern. Block wall around the plants should be installed to reduce noise impact to residence.
2. There will be over 42 tractor trailer a day in and out of this site plus worker vehicles. I was told only 2-3 per day at the March Planning Board meeting. Thus needs to be addressed.
3. The study does not take into account of the construction traffic. What will that look like as they will have construction vehicle working through both phases and during the start up and running of phase one plant operation?
4. We need high barriers on the inclined road that goes between the buildings to mitigate the sound of truck traffic.
5. Proposed operation hours of 24/7 has not been approved as far as I know. What sounds other than tractor trailers be generated? We need to restrict hours of operation to eight hours maximum with no weekend or Holiday work.

Blasting Plan dated January 2019

1. What is the duration of blasting work? Will they blast one day a week and remove material the rest of the week? Need to understand what the durations of blasting will be and how often? An actual Blasting Plan should be submitted for review.
2. Vibration limiting criteria, as well as, db level limits will need to be understood and monitoring provide for review. Where are the monitoring locations?

3. Who will pay for damages to existing housing in the area and how will that be mitigated?
4. When will the final plan be presented to the public for review and comment?

Negative Declaration adopted March 18, 2019

1. Voting of this declaration must have been after the residents left. Why?
2. Page 6 notes that the 48.0db readings are within residence noise levels, based on Noise report. The Noise Report does not take into account those items listed above that should be taken at the site to better understand the impacts to residence.
3. How will we know if the proposed mitigation measures are enough without actual readings taken on all equipment? We need to schedule intermittent reviews.
4. The 2 gallons per hour requirement of water for the operation of this site is a concern. What impact will be on residence wells, and local aquifer? How will future well issues be resolved?

* * *

All of the above concerns need to be addressed in writing by the applicant and resolved by this Board and any related town boards. Indeed, the Negative Declaration and the Town's seeming disregard of the impacts of the Project have and/or may render the decisions deriving from this process arbitrary and capricious and/or not supported by substantial evidence.

I look forward to the Board's consideration of and appropriate written response to the above concerns.

Sincerely



Steve Malloy

cc. John T. Shaban, Esq.

May 6, 2019

Caleb Carr
Medenbach and Eggers Civil Engineering and Land Surveying PC
4305 US Hwy 209
Stone Ridge, NY 12484

Via email

RE: **Response to Steve Malloy Comments On 850 Route 28 LLC Project Dated 04/15/2019**

Dear Mr. Carr

Below please find H2H's response to the comments received from Steven Malloy regarding the above referenced matter.

Our responses to Mr. Malloy's comments (**in bold font**) are in *italics*.

Responses to Steve Malloy Comments:

Noise Study Dated February 2019

1. **Page 5 of the report notes that equivalent sound level measured at logging stations 11-14 during the day periods (8:30am to 12:30pm). This data was supplied but the monitoring results of the front end loader loading shot rock into a tractor trailer between 12:26pm-1:50pm was not provided. This information should be in the report and your analysis. The report also contains a small graph which is very hard to read noting times from prior to 12:00pm-2:00pm. It should reflect the template used in the ambient background report.**

The monitoring results of the front end loader loading shot rock into a tractor trailer between 12:26-1:50pm is provided in the Noise Study Dated February 2019 (Sound Report) for logging stations 11,12,13, and 15 on pages 60, 69,74, and 79 respectively. The data collected between 12:26pm-1:50pm is in section 2.5.1 of the Sound Report. The analysis is also included in section 2.5.1 of the Sound Report. Sound data was collected between 8:00am -2:30pm on December 26, 2018. Data from prior to 12:00pm-2:00pm is shown in the Ambient Survey Monitoring Results Section 2.4, and in Appendix C of the Sound Report.

2. **One minute reading on the data collection seems to be long in duration. I would like to see what seconds would look like. One minute reading may not take into account the higher db levels and/or is used to average out the peak noise.**

The sound level meters collect data a rate of 16 times per second. The logging interval for the study is one minute meaning that the measurements collected over each one minute period are averaged into one LA_{eq} sound level. A one minute logging interval is used to allow for the data to be analyzed more effectively while still recording the maximum sound levels. This method does not affect the maximum sound level recorded during the study.

- 3. An actual site DB reading should be provided for the following on site equipment; material crusher , mobile batch plant and a tractor trailer , going up and down the inclined roadway between proposed buildings. A dozer with the blade running across bedrock and a sample blasting readings should be taken and recorded to understand what the residence will hear, as well as any other outside equipment that will be used during the construction and operation of the proposed plants.**

Collecting an actual on site sound level to understand what the residence will hear is not feasible given none of the equipment listed above will be on site until the project is started. H2H used sound levels collected from similar operations to best predict what the residence will hear. Based on H2H's findings shown in the Sound Report the largest anticipated increase in ambient sound levels at Receptor 2 (Steve Malloy residence) was while the crushing plant is in operation. Based on the fact that the crushing plant operates at 96.0 dB, and the above mentioned site equipment operates at a lower sound level (Table D of the NYSDEC "Assessing and Mitigating Noise Impacts" guidance document, Attachment A of Sound Report) H2H does not believe the above mentioned site equipment will have a greater impact on the Malloy residents than the primary crusher used in the Sound Report.

- 4. The report does not note where the front end loader loading into the tractor trailer was in relation to the logging stations. That should be noted on the drawing showing distances to residence.**

A revised Figure 2 is attached showing the location of the front end loader loading shot rock into a tractor trailer, and the distances to each residence.

If you or your staff have any questions, please do not hesitate to contact me directly at (518) 270-1620, extension 102 or by email at mpolacco@h2hassociates.com.

Best Regards,

H2H Associates, LLC

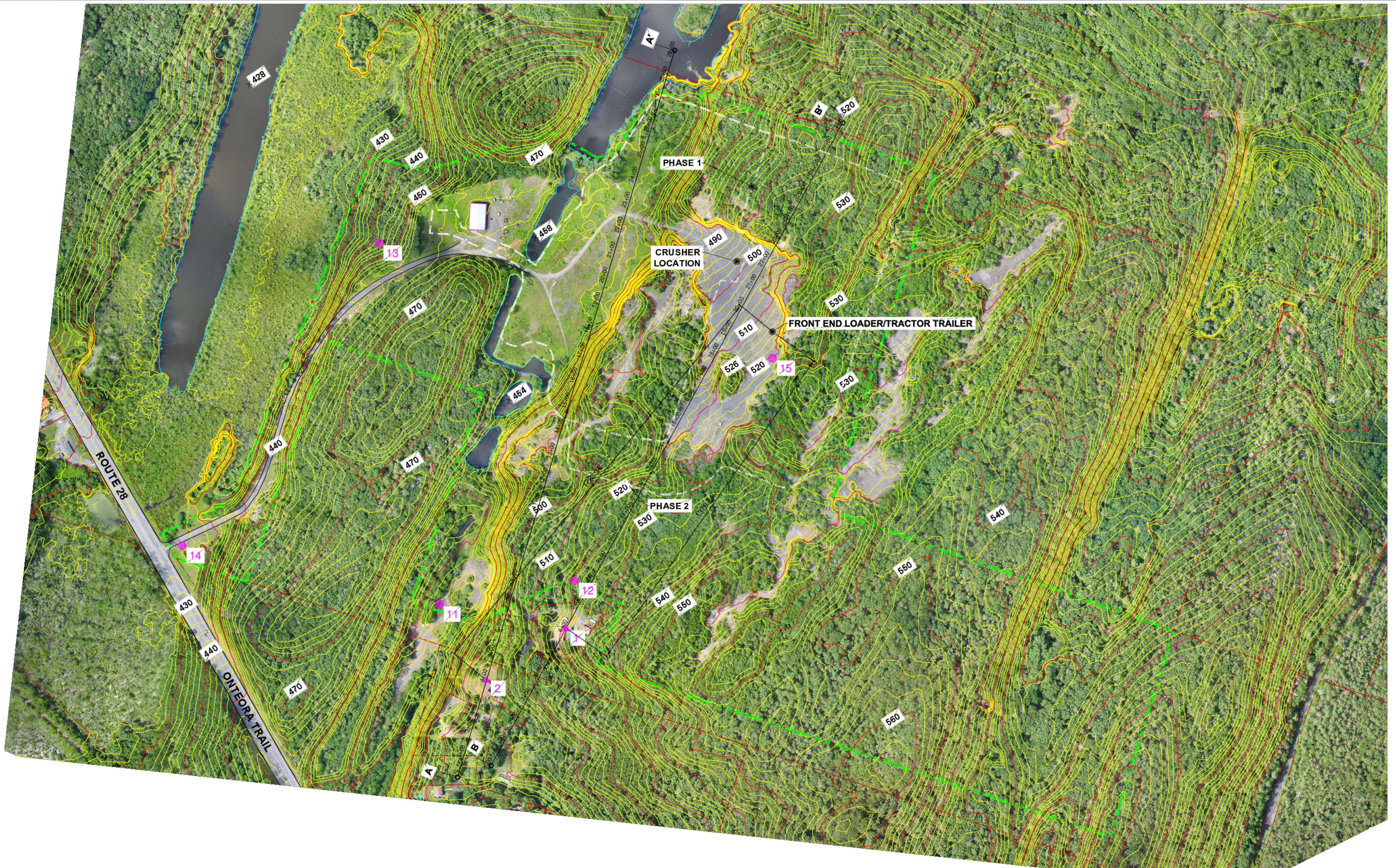


Michael Polacco
Project Geologist

Attachments

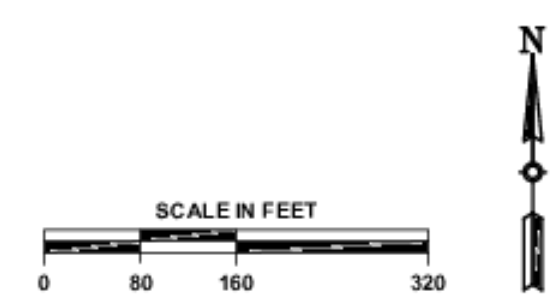
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Richard Hisert, PhD, PG, H2H Associates, LLC.



MAP NOTES:
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DATE	REVISIONS RECORD/DESCRIPTION
2019-5-3	REVISD PER STEVE MALLOY COMMENTS DATED 04-15-2019

THIS DRAWING IS NOT TO BE USED FOR ENGINEERING PURPOSES

DRAWN BY:	SAS
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ROUTE 28 NOISE STUDY	
850 ROUTE 28, LLC.	
WEST HURLEY	ULSTER COUNTY, NY

Medenbach & Eggers

Civil Engineering and Land Surveying P.C.

4305 US Highway 209
Stone Ridge, New York
12484-5620

Phone (845) 687-0047
Fax (845) 687-4783
www.mecels.com

Barry Medenbach, P.E.
N.Y. Lic. No. 60142
N.J. Lic. No. 27646

William R. Eggers L.S.
N.Y. Lic. No. 49785

May 14, 2019

Town of Kingston
ATTN: John Konior, Chariman
906 Sawkill Road
Kingston, NY 12401

Re: Concerns with 850 Route 28 LLC Construction and Operation (the "Project")

Dear Mr. Konior,

The following is our response to Steve Mallory's concerns with 850 Route 28 LLC Construction and Operation (the "Project") dated 04/15/2019.

Noise Study:

- 1 - 4. See the attached letter dated May 6, 2019 from H2H Associates responding to comments 1 through 4 on the Noise Study.
5. If this work is approved to proceed after issues noted in this letter are satisfactory, I would like to see sight monitoring at residence houses during the duration of phase I and phase II work and made available to residence or reported at monthly town planning board meetings.

The Blasting Plan proposes a Pre-Blasting Impact Assessment. The potential impact assessment would assess the potential impacts from the proposed blasting operations on nearby residential or other structures.

6. We need an Order and action plan whereby work will stop when sound levels are exceeded.

The Town of Kingston Code Enforcement Officer will have the ability to stop work for excessive sound levels.

7. **The SEQRA report was premature and incomplete. We also need a copy of all reports and analysis.**

The reports and analysis have been submitted to the Town Planning Board at the Town of Kingston Clerk's office for review.

Traffic Assessment: dated November 8 2018

1. **Mobile batch plant and crusher plants are located outside the buildings. This will be a severe noise concern. Block wall around the plants should be installed to reduce noise impact to residence.**

The Mobile batch plant has been moved to be inside the proposed Phase 1 building. The crusher plant will be temporarily located outside during the rock excavation portion of the project. We have placed the rock crusher as far away as possible from any existing neighboring buildings within the previously disturbed mining area and the Noise Study concluded the crusher was within acceptable levels.

2. **There will be over 42 tractor trailer a day in and out of this site plus worker vehicles. I was told only 2-3 per day at the March Planning Board meeting. Thus needs to be addressed.**

Yes, the Traffic Assessment dated November 8, 2018 estimates at full build out that there will be 42 tractor trailers trips throughout the day. An estimated 22 truckloads is expected per day for raw material deliveries and another 20 truckloads per day is expected for finished products.

3. **The study does not take into account of the construction traffic. What will that look like as they will have construction vehicle working through both phases and during the start up and running of phase one plant operation?**

The traffic assessment date November 8 2018 addresses Construction Impacts on Page 6 of 7 in section 6.0 Construction Impacts. It is estimated that rock removal could generate 16 to 20 trips per hour. According to the report, the traffic due to construction is significantly less than the trip generation studied for the project.

4. **We need high barriers on the inclined road that goes between the buildings to mitigate to sound of truck traffic.**

The road between the proposed buildings is currently proposed to be excavated 15 to 20 feet into the rock. Therefore, there will be a rock barrier between the road and neighboring properties to the south of the project area.

5. **Proposed operation hours of 24/7 has not been approved as far as I know. What sounds other than tractor trailer be generated? We need to restrict hours of operation to eight hours maximum with no weekend or Holiday work.**

The construction hours are proposed to be limited to 6 AM - 7 PM and no construction on Holidays. The steel and concrete fabrication requires there to be workers onsite 24/7.

Blasting Plan: dated January 2019

1. **What is the duration of blasting work? Will they blast one day a week and remove material the rest of the week? Need to understand what the durations of blasting will be and how often? An actual Blasting Plan should be submitted for review.**

It is unlikely that they would need to do more than one blast a week. The exact details of blasting will be provided in a site specific Blasting Plan provided by the blasting contractor after a Pre-Blasting Impact Assessment is performed. The blasting contractor will need to follow the Town of Kingston Code 245-5 Extractive operation, limitations. The blasting contractor will need to monitor the closest occupied structures.

2. **Vibration limiting criteria, as well as, db level limits will need to be understood and monitoring provide for review. Where are the monitoring locations?**

See answer to question 1.

3. **Who will pay for damages to existing housing in the area and how will that be mitigated?**

The owner and contractor will maintain the required liability insurance.

4. **When will the final plan be presented to the public for review and comment?**

The final plans have been presented.

Negative Declaration: adopted March 18, 2019.

1. **Voting of this declaration must have been after the residents left. Why?**

Voting on the Negative Declaration took place during the March 18, 2019 Town of Kingston Planning board meeting.

2. **Page 6 notes that the 48.0 db readings are within residence noise levels, based on Noise report. The Noise Report does not take into account those items listed above that should be taken at the site to better understand the impacts to residence.**

See the Attached H2H Associates response to the Noise study comments.

3. **How will we know if the proposed mitigation measures are enough without actual readings taken on all equipment? We need to schedule intermittent reviews.**

A front end loader was used to load shout rock into a tractor trailer while sound levels were being monitored. Please see the attached H2H Associates response to the Noise Study comments.

4. **The 2 gallons per hour requirement of water operation of this site is a concern. What impact will be on residence wells, and local aquifer? How will future well issues be resolved?**

A pump test is scheduled for the existing well.

If you have any questions on the above or need additional information, please contact our office.

Sincerely,



Caleb Carr *E. I. T.*

Medenbach and Eggers Civil Engineering and Land Surveying PC

Cc: Ryan Loucks
Dan Lefever

Attached:

H2H Associates Re: Response to Steve Mallory Comments On 850 Route 28 LLC Project Dated 04/15/2019

May 6, 2019

Caleb Carr
Medenbach and Eggers Civil Engineering and Land Surveying PC
4305 US Hwy 209
Stone Ridge, NY 12484

Via email

RE: **Response to Steve Malloy Comments On 850 Route 28 LLC Project Dated 04/15/2019**

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If you or your staff have any questions, please do not hesitate to contact me directly at (518) 270-1620, extension 102 or by email at mpolacco@h2hassociates.com.

Best Regards,

H2H Associates, LLC

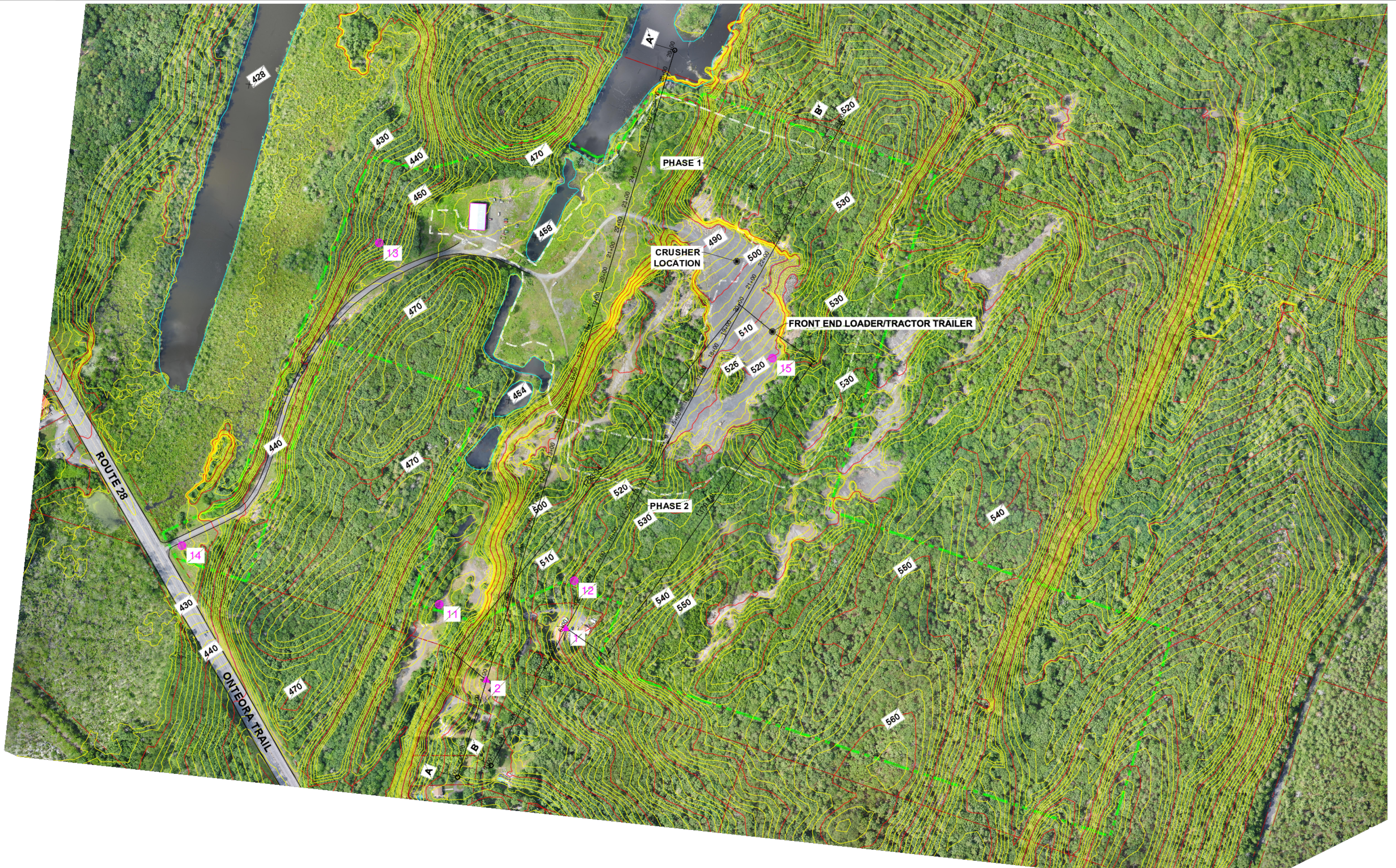


Michael Polacco
Project Geologist

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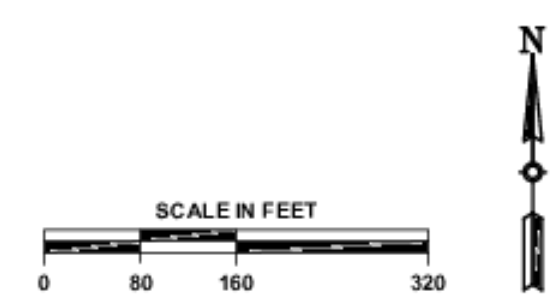
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Richard Hisert, PhD, PG, H2H Associates, LLC.



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ROUTE 28 NOISE STUDY	
850 ROUTE 28, LLC.	
WEST HURLEY	ULSTER COUNTY, NY



May 16, 2019
VIA EMAIL

Michael V. Grosso
NYSDEC
21 S. Putt Corners Road
New Paltz, NY 12561

Re: Application ID: 3-5130-00030 / 00015
Applicant: 850 Route 28 LLC, c/o Tom Auringer, 180 Meister Blvd., Freeport, NY 11520.

Dear Mr. Grosso:

We write concerning the above-noted application and the requested permits. Your recent public notice printed in the Kingston Freeman was the first time we were made aware of this applicant's project. This property is directly adjacent to the recently acquired Open Space Institute (OSI) property from the Aldulaimi family.

We are collaborating with OSI in its work there to create public multi-use recreational trails which is planned to be conveyed to New York State DEC to become part of the Catskill Park Forest Preserve in the coming year or so, and will enable the linking of two popular trail systems in the Bluestone Wild Forest, owned by NYSDEC, and promises a multi-use recreational area ten minutes from the NY State Thruway, which not only will be widely used by locals, but will be a destination area for the public benefit and the burgeoning popularity of the Catskills in the NY Metro area, and worldwide.

In closing we appreciate DEC's thoughtful review of the requested permits and with great concern for the potential impacts to proposed recreational uses on adjacent lands; changed hydrological pattern caused by the proposed disturbance and its potential threat to the quality of the Praymaher Brook, as well as the Southeastern corner of the pristine Pickerel Pond; as well as the diminishment of important wetlands that clearly serve an important flood remediation function - particularly with the increase in intense rainfall events resultant from climate change - we feel that the denial of these requested permits is warranted.

Sincerely,

Jeff Senterman
Executive Director

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Mark Ginsberg VICE CHAIR

Helen K. Chase VICE CHAIR
Calandra Cruickshank TREASURER
Camilla Lancaster SECRETARY

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Frank E. Sanchis III, Claude Shestal, Nan Stolzenburg



**OPEN SPACE
INSTITUTE**

VIA ELECTRONIC MAIL

New York State Department of Environmental Conservation
Division of Environmental Permits
Region 3 Headquarters
21 S. Putt Corners Rd.
New Paltz, New York 12561
ATTN: Michael V. Grosso
Mike.grosso@dec.ny.gov

May 16, 2019

RE: Comments by the Open Space Institute on the Application by 850 Route 28 LLC for Article 24 Freshwater Wetlands and Article 15 Title 5 Stream Disturbance Permits, DEC ID: 3-5130-00030/00015

Mr. Grosso:

Open Space Institute, Inc. ("OSI") protects scenic, natural, and historic landscapes to provide public enjoyment, conserve habitat, and sustain communities from Maine to Florida. Over the past 40 years in New York state alone, OSI has protected over 148,000 acres in the Adirondacks, Hudson River Valley, Shawangunks, and Catskills.

OSI would like to provide comment on the application by 850 Route 28 LLC (the "Applicant") to the New York State Department of Environmental Conservation ("DEC") for permits necessary for the construction of a 240,000 square foot steel and concrete manufacturing facility (the "Project") adjacent to both the Catskill Park's Bluestone Wild Forest (the "Wild Forest") and property recently acquired by OSI for addition to the Wild Forest.

The following comment is made regarding two permits being sought by Applicant. Pursuant to the Environmental Conservation Law, an Article 24 Freshwater Wetlands Permit ("Wetlands Permit") is required for any physical disturbance within 100 feet of a state-designated Freshwater Wetland. Construction of an access road to the Project site from Route 28 will disturb almost 500 square feet adjacent to Freshwater Wetland KW-3, Class 2; a Wetlands permit is therefore required. Completion of the Project will also necessitate an Article 15 Title 5 Stream Disturbance permit ("Stream Disturbance Permit") for impacts to, by Applicant's estimate, 1,000 square feet of the banks of Tributary #6 of Praynter Brook.

As detailed below, OSI believes the Negative Declaration adopted by the Town of Kingston Planning Board (the "Town") on March 18, 2019 under the New York State Environmental Quality Review Act ("SEQR"), fails to account for numerous adverse impacts to protected resources; this insufficient analysis prevents OSI from commenting with appropriate depth and accuracy on potential water

contamination, noise, and other impacts that the Project may cause. OSI therefore requests that DEC urge the Town to rescind the Negative Declaration and provide subsequent opportunities for public participation in the DEC permitting process. For the reasons described below, DEC cannot rely on the inadequate Negative Declaration as sufficient basis for determining whether to issue the permits requested for the Project.

Relationship of Project to the Onteora Lake Addition Property and the Bluestone Wild Forest

On February 11, 2019, OSI purchased a 208-acre property (the "Onteora Lake Addition" property) immediately adjacent to the Project, consisting of forested slopes and wetlands and the northern portion of a high-quality body of water known as Pickerel Pond. The Onteora Lake Addition property is identified on the Town of Kingston tax maps as parcels 38.4-2-2, 38.4-2-3, 38.4-1-30, 38.4-2-1.100, 38.4-2-10, 38.4-2-11, and 38.4-3-27, as shown on the attached map. This acquisition joins the two major sections of the Bluestone Wild Forest and will be integrated into the Catskill Park upon conveyance to New York State, which is anticipated to occur by the end of 2019. The Bluestone Wild Forest Land Protection Initiative in the New York State Open Space plan rates The Onteora Lake Addition property as the single most important infill holding in this area of the Catskill Park.

The Onteora Lake Addition property lies between the Jockey Hill and Onteora Lake sections of the Wild Forest. This area provides important recreational opportunities: The Jockey Hill section to the east contains loop trails popular with hikers and mountain bikers, and the Onteora Lake section to the west contains multi-use trails, as well as a 16-acre lake used as a year-round fishery and a summer swimming hole. Seven designated campsites are located along the west side of Onteora Lake and hunting for deer and turkey is permitted within the Wild Forest. OSI and Woodstock Land Conservancy ("WLC") have identified the existing woods roads and trails on The Onteora Lake Addition property as an opportunity to create a new recreational trail system that would connect with the official trails within the Bluestone Wild Forest, and have commissioned Tahawus Trails LLC to develop a recreational trail plan for The Onteora Lake Addition property. This trail plan was presented by representatives from OSI, WLC, and DEC at a public information meeting on May 7, 2019 in the City of Kingston to over 75 members of the public, to an enthusiastic response.

OSI is sensitive to the importance of economic development in this region. Nevertheless, DEC has a responsibility to ensure new facilities are not permitted to adversely impact the Catskills Park, itself a major economic driver for tourism and outdoor recreation and a natural treasure for all New Yorkers.

Insufficient SEQR Analysis

As noted in a letter from DEC to Applicant dated August 28, 2018, DEC designated the Town of Kingston Planning Board as Lead Agency for the SEQR process. The Project is a Type 1 Action under

SEQR, as it will physically alter an area in excess of ten acres.¹ Despite the scale of the Project, which impacts over 35 acres, and the presumption towards significance under SEQR, the Town issued a Negative Declaration in March.

Based on a review of the Negative Declaration and the materials submitted by Applicant, OSI does not have confidence that the Town appropriately considered the potential adverse impacts to existing protected land in the Wild Forest. Such impacts will be even more acute when the Ontario Lake Addition property is acquired by New York State for addition to the Wild Forest. Given that DEC must rely upon the Negative Declaration to determine whether permits should be issued for the Project, and given that the Negative Declaration contains serious inadequacies, OSI requests that DEC not issue permits until the Town has rescinded the Negative Declaration and has undertaken the level of SEQR review required by law.

OSI recognizes that comments raised regarding SEQR would ideally have been voiced at an earlier stage in the permitting process. Unfortunately, earlier comment on the Negative Declaration was precluded by lack of notice: OSI, as a landowner adjoining the Project, was entitled to receive notice of public hearings held in March by the Town Planning Board regarding the special use permit requested by Applicant, and at which the Negative Declaration was adopted. No notice from Applicant has yet been received.

OSI's specific concerns regarding the Negative Declaration and accompanying Application materials are as follows:

Traffic Impacts

According to the analysis submitted by Applicant's consultant, Creighton Manning Engineering, the proposed plant will receive an estimated 22 truckloads in steel and concrete deliveries per day. Outbound loads finished product will generate another 20 truck trips per day. When employee transportation is accounted for, approximately 121 new vehicles will enter and exit the property on an already busy stretch of Route 28 during peak traffic hours in the morning and evening. During construction, 12,500 truckloads are estimated to remove 162,000 cubic yards of material over seven to eight months, involving up to 80 loads of material per day and ten trucks per hour.

These are significant impacts meriting further review and mitigation. Applicant's consultant also limits its traffic analysis to the effects on Route 28—Applicant has not yet produced information regarding the potential impacts of traffic pollution and noise on the adjacent OSI property and Wild Forest.

¹ "[T]he fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." (6 CRR-NY 617.4)

Aesthetic Impacts

The Negative Declaration analyzed the aesthetic impacts of the Project primarily from the nearby residential subdivision; as a result, no visual mitigation other than maintenance of the existing trees along the property line has been proposed. Proper analysis under SEQRA would require analysis of the visual impacts of a 250,000 square foot warehouse and supporting infrastructure on neighboring land used extensively for public recreation, in this case is the Onteora Lake Addition property and the Bluestone Wild Forest. Further analysis should include, at minimum, proposed mitigation for aesthetic impacts to future recreational trails.

Water Contamination Impacts

The northern portion of Pickerel Pond is located on the Onteora Lake Addition property, the middle portion is located within the Bluestone Wild Forest, and the southern portion is located on Applicant's property, adjacent to the proposed Project. OSI is concerned that the stormwater pollution prevention plan ("SWPPP") provided by Applicant fails to fully address potential stormwater and other water contamination to the Wild Forest and the Onteora Lake Addition property.

Medenbach & Eggers, engineering consultant for Applicant, stated in a February 5, 2019 letter to DEC that the Applicant plans to treat all stormwater in what seem to be disused quarry ponds, "prior to discharging to the existing ponds on site." The consultant does not state whether the size of the quarry ponds on the Project site are adequate for the amount of likely sediment-filled stormwater generated from the 35-acre area being disturbed by the Project. OSI is concerned that stormwater containing pollutants and sediment could overflow these ponds during heavy rain events, as the consultant notes the ponds are prone to do, and enter adjoining water bodies. This could contaminate Pickerel Pond, an otherwise pristine fishing pond open to public access.

It also appears that Project requires the installation of a three-foot diameter culvert underneath a gravel road, thereby linking two previously separate ponds—one of which directly abuts Pickerel Pond—which could exacerbate the potential for overflow or leaching of pollutants from the Project into Pickerel Pond, thus impairing public recreational opportunities.

Finally, OSI also requests that Applicant be required to examine the potential for direct drainage from the Project site into Pickerel Pond. The Negative Declaration states that stormwater will be discharged into existing ponds on site or over the property line of "neighboring properties." Any stormwater discharged onto neighboring properties would end up in the Wild Forest or on the Onteora Lake Addition property and could have adverse water quality impacts. These should be analyzed and mitigated.

Noise Impacts

Construction of the Project will be phased over five years and will potentially include significant amounts of blasting, rock crushing, and other noisy activities. Applicant commissioned H2FI Associates

to conduct a noise study to identify and evaluate potential impacts from the Project. The consultant surveyed the area surrounding the Project and identified "single family residences to the south of the Site" as the only potentially sensitive noise receptors. In its analysis of receptors to the east—the direction of the Wild Forest and the Onteora Lake Addition property—H2H only examined residential receptors approximately 2,000 feet from the sound source, stating that "[a]t a distance of 2,000 feet, using natural sound attenuation and the noise levels produced by the on-site equipment, increases in sound levels are considered to be negligible."

The noise study did not place receptors on the Onteora Lake Addition property, where recreational trails are planned to be constructed just east of the Project boundary. This study fails to note the sound impacts that visitors to these trails will experience. According to the study, a rock crusher causes sounds of up to 96 decibels at a distance of 100 feet, a distance well within range of the proposed recreational trails on the Onteora Lake Addition property. Ninety-six decibels far exceeds the existing ambient conditions noted by H2H, which range from 37.2 decibels to 39.7 decibels, and as H2H states in Section 1.4 of its noise study:

[A]n increase in ambient noise of 10 dB (decibels) is perceived by the majority of people to be a doubling of the loudness of sound [...] noise source in a non-industrial setting] should not raise the total future ambient noise level above a maximum of 65dB. This maximum would be considered the upper-end limit because 65 dB is the limit for undisturbed speech at a distance of approximately three feet.

The analysis above should make it clear that the Town did not appropriately consider the noise impacts the Project will have on the Onteora Lake Addition property or the Wild Forest when issuing the Negative Declaration being relied upon by DEC.

Open Space and Recreation Impacts

The analysis of potential impacts to open space and recreation provided in the Negative Declaration reads entirely as follows: "The proposed plan creates no new residential uses and therefore no new demands for recreation and no harmful impacts on the same. No further consideration is needed."

It is evident this analysis falls short of the hard look at potential adverse impacts required by SEQRA, keeping in mind the extensive existing and proposed recreational activities in the Wild Forest that will surround the Project on all sides after the sale of the Onteora Lake Addition property to New York State.

Impermissible Segmentation


In the materials submitted by Applicant, the hours of operation for the Project during construction are proposed to be from 6AM to 7PM. OSI has also been informed that the Applicant is seeking changes to Town code so that it may operate the proposed facility 24 hours a day, seven days a week, once constructed. Impacts related to round-the-clock work were not considered by the Town in the Negative

Declaration. Segmenting the proposed changes to Town law from analysis of the overall Project would be impermissible under SEQR.

Conclusion

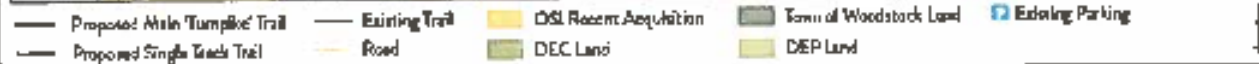
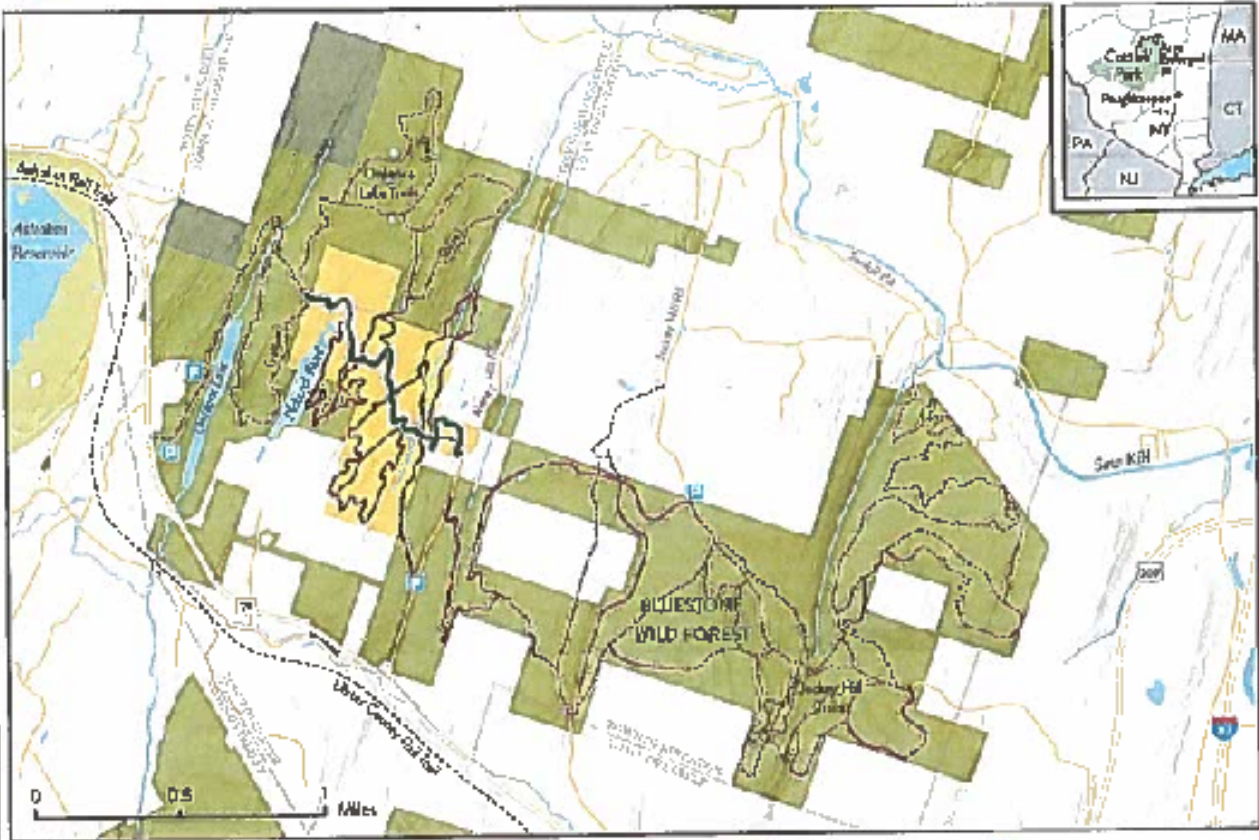
Irreparable harm to public resources could occur if DEC issues permits in reliance on the incomplete analysis in Negative Declaration. OSI requests that the Negative Declaration be rescinded and further environmental review under SEQR conducted prior to the issuance of any DEC permit. OSI also urges DEC to provide additional opportunity for comment so that other members of the public may request a careful re-examination of the noise, water, public recreation, and other impacts to the Wild Forest that were not properly assessed prior to the Town's adoption of the Negative Declaration.

Regards,


Christopher J. (Kim) Elliman
President & CEO

Attachments:

Map of Wild Forest and Proposed Ontario Lake Addition Property Trail Improvement Plan
Environmental Analysis Prepared by OSI Consultant Hudsonia Ltd.





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**Preliminary Biodiversity Assessment of the Proposed 850 Route 28 Industrial Facility,
Town of Kingston, Ulster County, New York**

by Erik Kiviat PhD

Hudsonia

Report to the Open Space Institute

New York, New York

16 May 2019

At the request of the Open Space Institute, I performed a preliminary biodiversity assessment of the 110 acre 850 Route 28 site where it is proposed to develop a large manufacturing facility for steel-and-concrete beams. Hudsonia does not advocate for or against land use projects; rather, we review environmental documents, make observations and measurements in the field, analyze plans and potential impacts on biology and ecology, and make recommendations for avoiding and reducing negative environmental impacts. Hudsonia methods of biodiversity assessment follow those presented in Kiviat and Stevens (2001) and updates. The very short time frame available for review and comment on the proposed project has substantially limited my ability to analyze this large industrial development project.

The 850 Route 28 site ("industrial site") is just northeast of Route 28 at the southern end of Pickerel Pond and southeast of Ontonara Lake in the Town of Kingston, Ulster County, New York. On the morning of 16 May 2019, I spent approximately three hours skirting portions of the periphery of the site, walking on lands of New York State (Bluestone Wild Forest) and the Open Space Institute. The weather was partly sunny, near-calm, with mild temperatures and no precipitation.

Site History

The U.S. Geological Survey Kingston West 1964, photorevised 1980, 7.5 minute topographic map sheet shows most or all of the proposed development site as having been altered between the two map editions. The photorevised map also shows that Pickerel Pond was altered between map editions. Although I do not know the exact history of the site, inference from obvious features of the site and regional history indicates that the site was extensively quarried for "bluestone" (sandstone) before and after 1964. Much of what I could see of the site, and portions of adjoining lands, had quarry pits, mine faces ("high walls"), piles of rock rubble ranging in particle size from gravel and smaller to boulders, and exposed bedrock both flat and ledgy. There were wetlands, ponds, and intermittent pools of variable size and appearance. I noted many dumps containing scrap metal, domestic refuse, tires, and other materials.

The industrial history of the site *does not mean the site lacks habitat value for wildlife and plants*. Abandoned quarries in the Northeast often support rare and uncommon species. Among those Hudsonia has found are slender knotweed (*Polygonum tenue*), variegated horsetail (*Equisetum variegatum*), peregrine falcon, common raven, and a ladies'-tresses orchid (*Spiranthes*). I found the last in a ditch in an eastern quarried section of Bluestone Wild Forest. The biodiversity of the industrial site can't be written off because of the site history, and expert, independent, biological surveys need to be conducted, at a minimum for breeding birds, herpetofauna (amphibians and reptiles), and plants (see below). Previously disturbed sites may be good sites for industrial development provided that 1. Biological surveys and assessments are conducted to allow conservation of rare fauna or flora that may be using a site; 2. The construction and operation of the project does not generate unacceptable offsite or cumulative impacts; and 3. The environmental review process is thorough and accurate. The extensive preserved lands surrounding the site heighten concern about potential impacts of the proposed industrial facility on biodiversity (including habitats, wildlife, and plants).

Wetlands and Hydrology

The application for the industrial project shows seven small wetlands, designated A through G. I do not see a description of whether these wetlands have surface water interconnections. The total wetland acreage is given as 12.3 acres in the Negative Declaration. Wetland boundaries are often under-delineated. The threshold for state regulation of freshwater wetlands is 12.4 acres. Smaller wetlands can be considered collectively if they have surface water interconnections and are no more than 165 feet apart.

I observed small wetlands, including intermittent pools, just offsite that were connected by surface water streams. The onsite wetlands could all have surface water interconnections. Those potential connections, and the wetland boundary delineation(s), should be fully checked for accuracy by an independent, expert wetland scientist. If the size and configuration of wetlands onsite (including connections to offsite wetland areas) equal 12.4 acres or more in a single connected complex, The New York State Department of Environmental Conservation should consider the wetland(s) state-jurisdictional. Wetlands of any size, if they have surface water connections to a stream system, are probably subject to federal jurisdiction. If this has not already been done, the U.S. Army Engineers should inspect the wetland boundary delineations, request corrections if necessary, and issue a letter of jurisdictional determination.

I observed a wooded wetland that straddles the northern boundary of the eastern "dogleg" of the site. There was no evidence of wetland boundary flagging. That wetland needs to be delineated and mapped.

The stormwater management plan for the industrial project apparently proposes that the two "Water Quality Ponds" (stormwater ponds and former quarry settling ponds) will overflow into the abovementioned wetlands B and D. Stormwater, even after residence in the ponds, may be polluted with silt, dust, nutrients, petroleum hydrocarbons, cement, metals, and other materials that would be deleterious to the ecology of the wetlands. Insufficient information has been provided by the applicant for me to assess the importance of the onsite wetlands for biodiversity (e.g., pool-breeding amphibians, clam shrimps, rare plants).

The U.S.G.S. map (cited above) indicates that most of the site drains westward into wetlands associated with Ontario Lake. These wetlands, at least as visible from Route 28, appear to be of high quality for biodiversity. The Ontario Lake wetlands also drain southward beneath Route 28 into another large wetland complex. The surface and subsurface hydrology of the industrial site needs to be assessed critically for potential movement of pollutants (legacy pollutants, or pollutants associated with the proposed industrial facility) into those wetlands.

The southernmost small ponds south of Picketrel Pond, as best I could see them, looked very turbid. Siltation from what appear to be site preparation activities may be affecting those ponds. Current and proposed activities on the site need evaluation for their potential to cause ecological damage to ponds and wetlands via siltation, leaks, spills, or other factors. Pollution could occur via subsurface routes (e.g., joints in the bedrock, or porous accumulations of mine tailings) or surface routes.

Siltation control on development sites typically depends on stormwater ponds and silt fences. Poor siltation control practices on construction sites are widespread (Paterson 1994; Kiviat, personal observations). Prefabricated silt fencing, the most commonly used siltation control technique, was considered subject to technical deficiency, poor installation, and inadequate maintenance (Paterson 1994), and field measurements showed that silt fencing removed little of the fine sediment from stormwater leaving construction sites (Barrett et al. 1995, 1998). The proposed stormwater management plan for the industrial project should be assessed by an independent stormwater management expert who can judge the adequacy of the size and volume of the proposed "water quality ponds" and the sufficiency of other proposed siltation control methods. Other issues that need to be addressed include the separation of oil and water from parking areas, equipment and materials storage, etc., prior to entry into stormwater ponds. The appropriate modern approach to stormwater management requires that stormwater be treated and infiltrated onsite, rather than being discharged to wetlands or streams, or otherwise allowed to leave the site.

Wildlife

Environmental documents for the industrial project assert that, since agency guidelines will be followed (e.g., tree removal during winter only), there will be no harmful effects to the federally-listed Indiana bat and northern long-eared bat. Even if the wooded areas of the site are preserved, the construction and operations noise (and night lighting) may make the site and nearby areas uninhabitable by those bat species. Published research indicates that chronic loud noise from industrial activities can make habitat unusable by certain bat species (e.g., Bunkley et al. 2015). Noise can also deter other wildlife from using otherwise suitable habitats (Francis and Barber 2013). Many bird species are sensitive to chronic noise. Because comprehensive biological surveys have not been conducted at and near the industrial site, it is impossible for me to judge the extent to which species of conservation concern might be affected by the proposed project.

Abandoned quarries with rock ledges and rock rubble (tailings) accumulations can be attractive to reptiles as a source of warmth and shelter. The industrial site needs to be assessed as potential habitat for the threatened timber rattlesnake, as well as other Species of Greatest Conservation Need (including eastern box turtle and eastern ribbon snake).

Plants and Fungi

Evidently the potential presence of rare plants has not been assessed, and I found no evidence of surveys of the flora of the site. In addition to rare vascular plants, abandoned quarries and other habitats present on the site can potentially support rare mosses, liverworts, lichens, and fungi. The site should be surveyed for vascular plants and mosses ranked S1, S2, or S3 by the New York Natural Heritage Program (each species is ranked from 1 to 5, with ranks 1-3 assigned to those species documented at relatively few localities in the state).

Recommended Surveys and Assessments

The environmental documents for the proposed industrial project do not address most of the species of conservation concern that could be using the site. In this time of decreasing populations of many wild animals and plants, it is critical for large development proposals to be planned with a firm basis in field biology and conservation science.

I recommend that the site and immediate surroundings on public-use lands (e.g., within 200+ meters) be surveyed by independent experts familiar with the regional biota. The following groups of organisms should be surveyed: vascular (seed) plants, bryophytes (mosses and liverworts), lichens, breeding-season birds, herpetofauna (amphibians and reptiles), butterflies, bees, and odonates (dragonflies and damselflies). My recommendations are based on the habitats that occur on and near the site, and current knowledge of the biota of the region.

As mentioned above, the proposed stormwater management system, and the wetland boundaries, need to be checked and assessed for completeness and sufficiency by independent experts. Dumps of any kind should be examined and tested for the presence of typical hazardous substances including pesticides, petroleum hydrocarbons, metals, and asbestos. Development plans should include remediation of any contamination, and clean-up of all refuse especially including tires (because dumped tires produce mosquito vectors of human disease).

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10 April 2019

ERIK KIVIAT

Recent Professional Experience

Hudsonia Ltd.: Executive Director; 1988- (excepting two years); *Ecologist*, 1981-1988; Co-founder.

Bard College: Associate Professor; then Professor of Environmental Studies; Graduate School of Environmental Studies, 1987-2005; Research Associate, Division of Natural Sciences and Mathematics, 2002-.

Technical assistance to: Non-governmental organizations (land trusts, environmental groups, citizens' groups); landowners; renewable energy developers; other businesses; planning, law, and engineering firms; sporting associations; federal, state and local government; in New York, New Jersey, Connecticut, Massachusetts, Ohio: more than 300 reports prepared, 1975-.

Professional workshops taught or co-taught: Winter Woody Plant Identification; *Phragmites* Ecology and Management; Reptile and Amphibian Survey Methods; Reptiles and Amphibians of the Hudson River; Wetland Habitat Creation and Turtle Conservation; Conservation of Urban Biodiversity; many others.

Fellowships: Cary Summer Research Fellowship 1993, Institute of Ecosystem Studies, Millbrook, NY: Vegetation and biogeochemistry of Blanding's turtle habitats. Short-term Visitor, 1995, Smithsonian Environmental Research Laboratory, Edgewater, MD: Freshwater-tidal and nontidal wetland studies.

Peer Reviewer: *Biological Invasions*; *Chelonian Conservation and Biology*; *Ecosphere*; *Environmental Monitoring and Assessment*; *Estuaries*; *Estuarine, Coastal and Shelf Science*; *Journal of Herpetology*; *Journal of the Marine Biological Association of the United Kingdom*; *Mires & Peat*; *New York State Museum Bulletin*; *Northeastern Naturalist*; *Studies in Avian Biology*; *Urban Habitats*; *Urban Naturalist*; *Wetlands*; *Wetlands Ecology and Management*; *Wilson Bulletin*; *American Museum of Natural History*; Countryman Press; Hudson River Foundation; Long Island Sound License Plate Fund; Marsh Ecology Research Program (Man.); Marsh Ecology Research Program (NJ); Rutgers University Press; San Francisco Bay-Delta Research Enhancement Program; Connecticut Sea Grant; Rhode Island Sea Grant; State University of New York Press; Nature Conservancy; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Office of Technology Assessment.

PhD thesis committees: SUNY Environmental Science & Forestry; Nelson Mandela Metropolitan University (South Africa; external reader). *Master's thesis committees*: Bard College; SUNY Albany; SUNY New Paltz.

Volunteer (selected field biology projects): Turtle research, Jug Bay Wetlands Sanctuary, Maryland, 1990s-2000s; Ontario Breeding Bird Atlas, James Bay - Hudson Bay Lowland, Canada, 1985; Herpetofaunal surveys, Jekyll Island, GA, 1979-2013; Osprey survey and herpetofaunal survey, St. Catherine's Island, GA, 1973; Reptile and amphibian population studies, Kalbfleisch Field Research Station, Long Island, NY, 1964; Additional reptile and amphibian surveys in New York, Massachusetts, Georgia (Sea Islands), and México (Querétaro), American Museum of Natural History, 1961-1979.

Education

Ph.D. Ecology, Union Institute and University, 1991. Thesis: *Wetland human ecology*.

M.A. Biology, State University at New Paltz, NY, 1979. Thesis: *Hudson Estuary shore zone: Ecology and management*.

B.S. Natural Sciences, Bard College, 1976. Thesis: *Snapping turtle ecology in a New York tidemarsh*.

Professional courses and workshops taken: Mosses: Structure, Ecology, and Identification (5 days), White Creek Field School, 2017; Wildlife Study Design (1 day), Wildlife Society, 2002; Spiders: Identification, Biology, and Ecology (5 days), Eagle Hill Institute, 2001; Mosquito Identification and Surveillance (2 days), New York State Department of Health, 2000; Applied Multivariate Methods (5 days), Institute for Professional Education, VA, 1995; Control of Mosquitoes and Mosquito-borne Diseases in the U.S. (5 days), International Center for Public Health Research, SC, 1993; Understanding Wetland Soils (2 days), Cook College, Rutgers University, NJ, 1989; Landscape Preservation: Ecological and Social Issues (1 day), Institute of Ecosystem Studies, Millbrook, NY, 1987; Energy Analysis (1 day), University of Georgia, Athens, 1977; Freshwater Fishes of New York (5 days), American Museum of Natural History, New York, NY, 1970.

Research Interests

Nonnative weed ecology and management; Wetland ecology and management; Herpetofaunal ecology and conservation (including estuary, fen, woodland pool, and barrier island faunas); Habitat ecology, assessment, monitoring, creation, restoration; Urban and rural biodiversity, rare or little-known species; Energy development impacts on biodiversity; Human cultural adaptations to wetlands and vector-borne diseases, and human interactions with wetlands; Ethnobotany and economic botany.

Current research projects (with staff, interns, and collaborators): Urban biodiversity and its management, a case study of the New Jersey Meadowlands (includes field surveys of mammals, birds, herpetofauna, butterflies, dragonflies, claw shrimp, land snails, vascular plants, bryophytes, lichens, macrofungi); Long-term response of the threatened Blanding's turtle to created wetland and upland habitats; An old-growth forest in the Hudson Valley after 40 years; Two prickly-pear species in rocky habitats of the Hudson Valley; Human-disturbed habitats as sentinels for early detection of nonnative weeds in the Catskill Mountain region; Habitat functions of *Phragmites*, purple loosestrife, and knotweed for organisms from cryptogams to mammals; Bioenergy and other uses of abundant nonnative plants.

Additional Field Work

Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington; British Columbia, Manitoba, Nova Scotia, Ontario, Québec, México; Trinidad; Czech Republic; France; Germany; Romania; England; Scotland; Hungary; Italy; Botswana.

Languages: French and Spanish (reading knowledge).

Professional Certification: Professional Wetland Scientist, Society of Wetland Scientists, 1995.

Honors

Awarded to Erik Kiviat or to Hudsonia for projects or programs he directed: Franklin and Eleanor Roosevelt Hudson Valley Vision Award 2018; John and Samuel Bard Award in Medicine and Science 2016; Environmental Consortium Great Work Award 2014; Coastal America Spirit Award, New Jersey Marine Sciences Consortium Habitat Initiative, 2006; Nominations for National Wetlands Award 2002, 2009-

2011; Certificate of Appreciation, New York State Department of Environmental Conservation, 2000; Good Land Award, Winnakee Land Trust, 1999, 2008; Project Facilitation Award, Society for Ecological Restoration, 1997; Marion Thompson Fuller Brown Conservation Award, Garden Clubs of America, 1996; Environmental Award, Museum of the Hudson Highlands, 1996; Award for Environmental Sensitivity, Mohonk Consultants on the Earth's Environment, 1995; Researcher of the Year Award, Hudson River Environmental Society, 1994; Service Award, Dutchess County Environmental Management Council, 1982.

Professional Societies

American Bryological and Lichenological Society; Association of Field Ornithologists; Association of State Wetland Managers; Hudson River Environmental Society; Natural Areas Association; Society for the Study of Amphibians and Reptiles; Society of Wetland Scientists; Southern Appalachian Botanical Society; Torrey Botanical Society; Wilson Ornithological Society.

Public Service

Citizens' Advisory Group, Rebuild by Design Meadowlands Flood Protection Project, 2016-2018; Editorial Board, *Urban Naturalist* 2014-; Lower Hudson Partnership in Invasive Species Management, 2012- (Steering Committee 2013-2015); Invited participant, recovery workshops for bog turtle, U.S. Fish and Wildlife Service (FWS) and New York State Department of Environmental Conservation (DEC), 2011-2015; Steering Committee, Northeast Natural History Conference, 2010; Invited participant, recovery workshops for Blanding's turtle, timber rattlesnake, northern cricket frog, New England cottontail, DEC, 2009-7; Scientific Advisory Committee, Hudson River Almanac; Advisory Committee for Quadricentennial Exhibit, Albany Institute for History and Art, 2008; co-sponsor, Japanese Knotweed Managers' Workshop, 2005; co-convenor, Hackensack Meadowlands Symposium, 2003, Greene County (NY) Habitat Management Advisory Committee, 2003-2006; Advisory Committee for Hudson River Estuary Exhibit, Liberty Science Center, 2002-2007; Scientific Advisory Committee, New York - New Jersey Trail Conference, 2002-2008; Co-sponsor, *Phragmites* Forum, 2002; Convenor of workshop *Purple Loosestrife and Wildlife in North America*, Northeast Fish and Wildlife Conference, 2001; Conservation and Recovery of the Bog Turtle (invited participant), FWS, 1998; Jug Bay Wetlands Sanctuary (MD) Advisory Committee, 1998-2013; Scientific Advisory Committee, Friends of the Great Swamp, 1998-; New York State Department of Environmental Conservation Hudson River Biodiversity Committee, DEC, 1997-; Scientific Advisory Committee, Hudson River Habitat Restoration Program, U.S. Army Corps of Engineers, 1994-95; Editorial Board, *Water Ways: New York's Waterfront News*, 1990-92; Hudson River National Estuarine Research Reserve Advisory Committee, 1983-84, Hudson River Fisheries Advisory Committee, 1979-83, Hudson River Valley Study Advisory Committee, 1978, DEC; Wildlife Society New York Chapter, Committee on Exotic Plants, 1981-87; Advisory Board of the Trevor Zoo, 1981-94; Dutchess County Environmental Management Council Significant Areas Committee, 1980-82; Storm King School Environmental Institute Advisory Board, 1983-85; Convenor of Hudson River Marsh Workshop, Hudson River Environmental Society, 1976; Hudson River Sloop Clearwater Board of Directors 1975-76.

Presentations at Scientific Conferences: More than 80 beginning in 1974.

Technical Publications (* Peer reviewed)

(Papers in preparation with various collaborators on Blanding's turtle habitat restoration, human uses of an urban-fringe wetland complex, Atlantic Coast leopard frog response to Hurricane Sandy, first records of the potentially invasive plant *Cyperus difformis* in New York, bryophytes and loosestrifes, organisms associated with knotweed.)

- Caponera, V. & E. Kiviat. In press. Painted turtle ecology in a freshwater tidal marsh: Concluding survey. Final Reports of the Polgar Fellowship Program, Hudson River Foundation.
- Kiviat, E., L. Stickle & E. Hafferban. Submitted; in revision. Re-survey of flora and vegetation after four decades in a circumneutral hog lake, New York. Castanea. *
- Palmeri, J. & E. Kiviat. Submitted. Allelopathic effects of knotweed (*Polygonum cuspidatum*) rhizome on the mosses *Atrichum angustatum* and *Thuidium delicatulum*. Journal of Bryology. *
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- Schmidt, R.E., E. Kiviat, N. Trigoboff & J. Vanek. 2018. New records of clam shrimp (Lacvicaudata, Spinicaudata) from New York. Northeastern Naturalist 25(2):N7-N10. *
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WOODSTOCK LAND CONSERVANCY

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VIA ELECTRONIC MAIL
May 16, 2019

Michael V. Grosso
New York State Department of Environmental Conservation
Division of Environmental Permits
Region 3 Headquarters
21 S. Putt Corners Road
New Paltz, NY 12561
Mike.grosso@dec.ny.gov

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Re: Comments on the Application by 850 Route 28 LLC for Article 24
Freshwater Wetlands and Article 15 Title 5 Stream Disturbance Permits
DEC ID: 3-5 130-000 30/00015

Dear Mr. Grosso:

We write concerning the above-noted application and the requested permits. Your recent public notice printed in the Kingston Freeman was the first time we were made aware of this applicant's project. This property is directly adjacent to property recently acquired by the Open Space Institute (OSI) from the Aldulaimi family, and is also directly adjacent to NYS Department of Environmental Conservation's (NYS DEC) Bluestone Wild Forest and its Onteora Lake Day Use Area and trail network.

We are currently collaborating with OSI and local stakeholders to create a public multi-use recreational trail system on the former Aldulaimi lands. The resulting expanded multi-use recreational trail network is ten minutes from the NY State Thruway and will not only be widely used by locals, but also will be a destination area for the public coinciding with the burgeoning popularity of the Catskills from the NY Metro area, nationally and worldwide.

Since 2005 WLC has been a key partner in the multi-year Bluestone Wild Forest Protection Initiative, in order "to permanently protect property in and adjacent to the Bluestone Wild Forest (BWF)". This strategic land protection partnership with NYS DEC, the Open Space Institute and Fats in the Cats and other local conservation and user groups, resulted in the previous acquisition, protection and incorporation into BWF of: in 2008 of the (Frazer) property with the specific goal of a feasible expansion of the multi-use trail system including for mountain biking; and in 2013, WLC accepted donation of a fee-owned parcel (formerly Von Stutterheim) off Morey Hill Rd at the request of NYSDEC. It was gifted to NYSDEC at the end of 2014 and incorporated into BWF, including for its potential for additional multi-use recreational trails.





The following comments are made regarding two permits being sought by Applicant. Pursuant to the Environmental Conservation Law, an Article 24 Freshwater Wetlands Permit (“Wetlands Permit”) is required for any physical disturbance within 100 feet of a state-designated Freshwater Wetland. Construction of an access road to the Project site from Route 28 will disturb almost 500 square feet adjacent to Freshwater Wetland KW-3, Class 2; a Wetlands permit is therefore required. Completion of the Project will also necessitate an Article 15 Title 5 Stream Disturbance permit (“Stream Disturbance Permit”) for impacts to, by Applicant’s estimate, 1,000 square feet of the banks of Tributary #6 of Praymaher Brook.

As detailed below, Woodstock Land Conservancy believes the Negative Declaration, adopted by the Town of Kingston’s Planning Board (the “Town”) under the New York State Environmental Quality Review Act (“SEQR”), fails to account for numerous adverse impacts to protected resources; this insufficient analysis prevents WLC from commenting with appropriate depth and accuracy on potential adverse air and water quality, noise, community character, impact on open space and recreation, and other impacts that the Project may cause. WLC therefore requests that DEC call for more stringent environmental review of the Project under SEQR, and extend the comment period to provide subsequent opportunities for public participation in the DEC permitting process.

Relationship of Project to the OSI Addition Property and the Bluestone Wild Forest

On February 11, 2019, OSI purchased a 208-acre property (the “Addition” property) immediately adjacent to the Project, consisting of forested slopes and wetlands and the northern portion of a high-quality body of water known as Pickerel Pond. The Addition property is identified on the Town of Kingston tax maps as parcels 38.4-2-2, 38.4-2-3, 38.4-1-30, 38.4-2-1.100, 38.4-2-10, 38.4-2-11, and 38.4-3-27. This acquisition joins the two major sections of the Bluestone Wild Forest and will be integrated into the Catskill Park upon conveyance to New York State.

The New York State Open Space Plan (2015) identifies the Bluestone Wild Forest as a Priority Conservation Project Area (Catskill River & Road Corridors {39):

A.

Blue Stone Wild Forest: Just west of Kingston in Ulster County, covering and connecting four towns, this area is actively used by mountain bikers, hikers and birders but holds great potential for expansion and further development of its trail system as a mountain biking destination. The topography, terrain and precipitation pattern in this part of the Catskills are conducive to more intensive recreational uses with minimal damage to natural resources. Within the boundaries of Bluestone Wild Forest are areas of significant historical and cultural significance, including the bluestone quarry industry. Significant portions of several historic roads and trails connecting area towns—Jockey Hill Rd., Evergreen Road and the Waughkonk Trail—lie within Blue Stone Wild Forest. State lands within the core area between Route 28 and Sawkill Road should be consolidated, and those parcels along Route 28 should be acquired to provide trailhead access points, protect historic trails and roads where possible, and preserve this impressive scenic viewshed. It is recommended that the Blue Stone Wild Forest boundaries be extended to incorporate numerous, now isolated DEC tracts increasingly used for recreation. Two lie south of Route 28 in the Towns of West

B



Hurley and Ulster, seven lie north of Sawkill Rd. in the Towns of Woodstock and Kingston. Protecting, connecting and potentially expanding some of these tracts as part of the overall protection plan for Blue Stone Wild Forest will facilitate their consolidation into larger, coherent open space resources within and between communities facing ever increasing development pressures.

Moreover, the Bluestone Wild Forest Land Protection Initiative rates the new Addition property as the single most important infill holding in this area of the Catskill Park, specifically relating to the requirement for Consistency with Community Plans, #17 on the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts. This project would seem (#17.d.) *inconsistent with these plans*, and additionally is (#17.a.) *in sharp contrast to the surrounding land use*. The “Yes” boxes were not checked for either of these characteristics on this form.

The Addition property lies between the Jockey Hill and Onteora Lake sections of the Wild Forest. This area provides important recreational opportunities: The Jockey Hill section to the east contains loop trails popular with hikers and mountain bikers, and the Onteora Lake section to the west contains multi-use trails, as well as a 16-acre lake used as a year-round fishery and a summer swimming hole. Seven designated campsites are located along the west side of Onteora Lake and hunting for deer and turkey is permitted within the Wild Forest. OSI and Woodstock Land Conservancy (“WLC”) have identified the existing woods roads and trails on The Addition property as an opportunity to create a new recreational trail system that would connect with the official trails within the Bluestone Wild Forest, and have commissioned Tahawus Trails to develop a recreational trail plan for The Addition property. This trail plan was presented by representatives from OSI, WLC, and DEC at a public information meeting on May 7, 2019 in the City of Kingston to over 75 members of the public, to an enthusiastic response.

WLC is sensitive to the importance of economic development in this region. Nevertheless, DEC has a responsibility to ensure new facilities are not permitted to adversely impact the Catskills Park, itself a major economic driver for tourism and outdoor recreation and a natural treasure for all New Yorkers.

Insufficient SEQR Analysis

As noted in a letter from DEC to Applicant dated August 28, 2018, DEC designated the Town of Kingston Planning Board as Lead Agency for the SEQR process. The Project is a Type 1 Action under SEQR, as it will physically alter an area in excess of ten acres.¹ Despite the scale of the Project, which impacts over 35 acres, and the presumption towards significance under SEQR, the Town issued a Negative Declaration on March 18, 2019.

Based on a review of the Negative Declaration and the materials submitted by Applicant, WLC does not have confidence that the applicant fully identified, and the Town appropriately considered, the potential adverse impacts to existing constitutionally protected land, which offers park and recreation in the Wild Forest. Such impacts will be even more acute when the Addition property is

¹ “[T]he fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.” (6 CRR-NY 617.4)



acquired by New York State for inclusion in the Wild Forest. Given that DEC must rely upon the Negative Declaration to determine the scope of review and whether permits should be issued for the Project, and given that the Negative Declaration contains serious deficiencies, WLC requests that DEC not issue permits until WLC and OSI have had sufficient time to study and raise its concerns regarding the Negative Declaration with the Town.

We recognize that comments raised regarding SEQR would ideally have been voiced at an earlier stage in the permitting process. Unfortunately, earlier comment on the Negative Declaration was precluded by the lack of legally required notice being provided to OSI. As a landowner adjoining the Project, OSI was entitled to receive notice of public hearings held in March by the Town Planning Board regarding the special use permit requested by Applicant, *prior* to the determination per SEQRA of a Negative Declaration by the Town of Kingston Planning Board. No notice from the Applicant for the Project has yet been received.

WLC additionally requests an extension of the public comment period, in order for OSI, WLC and other stakeholders to be afforded the opportunity to see comments submitted by DEC Region 3 Division of Natural Resources as managers of the NYSDEC Bluestone Wild Forest and the Onteora Lake Day Use Area and the recreational multi-use trail network.

WLC's specific concerns regarding the Negative Declaration and accompanying Application materials are as follows:

Traffic Impacts

According to the analysis submitted by Applicant's consultant, Creighton Manning Engineering, the proposed plant will receive an estimated 22 truckloads in steel and concrete deliveries per day (though it should be noted that Table 1 in their report reflected 28 truckloads). Outbound loads finished product will generate another 20 truck trips per day. When employee transportation is accounted for, approximately 121 new vehicles will enter and exit the property on an already busy stretch of Route 28 during peak traffic hours in the morning and evening. During construction, 12,500 truckloads are estimated to remove 162,000 cubic yards of material over seven to eight months, involving up to 80 loads of material per day and ten trucks per hour, totaling an estimated 70-80 trucks/day. We have great concern about this volume of truck traffic entering and exiting on to the busy route 28, and imagine that this proposed project will create frequent slowdowns to accommodate the trucks which may not have been adequately studied. We question whether the analysis is applicable to these large tractor trailers. We did not see an analysis by State DOT reflecting their opinion on this issue.

These are significant impacts meriting further review and mitigation. Applicant's consultant also limits its traffic analysis to the effects on Route 28—Applicant has not yet produced information



regarding the potential impacts of traffic pollution and noise on the adjacent OSI property and Wild Forest.

Aesthetic Impacts

The Negative Declaration analyzed the aesthetic impacts of the Project primarily from the nearby residential subdivision; as a result, no visual mitigation other than maintenance of the existing trees along the property line has been proposed. Is the Town assured that the proposed tree clearing maintains this buffer? Proper analysis under SEQRA would require analysis of the visual impacts of a 240,000 square foot warehouse complex and supporting infrastructure on neighboring land used extensively for public recreation, in this case, which is the Addition property and the Wild Forest. We note that on a recent site visit to the new OSI Addition property and contiguous NYSDEC lands, our group (which included a Forester from DEC Region 3), noted what appeared to be multiple, apparently very recently cut-down trees, apparently within a few yards of the boundary line between the applicants' property and existing NYDEC Wild Forest lands. Further analysis should include, at minimum, proposed mitigation for aesthetic impacts to future recreational trails. On the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts, item #9 Impact on Aesthetic Resources relates to this, and #9.e. specifically addresses whether there will be a *diminishment of public enjoyment and a appreciation of the designated aesthetic resource*. Based on our on-the-ground knowledge of the area, WLC believes there are potentially significant aesthetic impacts in the areas and trails, both existing and proposed, in the areas near Onteora Lake and Pickerel Pond. Again the "Yes" box was not checked here.

Water Quality Impacts

The northern portion of Pickerel Pond is located on the Addition property, the middle portion is located within the Bluestone Wild Forest, and the southern portion is located on Applicant's property, adjacent to the proposed Project. WLC is concerned that the stormwater pollution prevention plan ("SWPPP") provided by Applicant fails to fully address potential stormwater and other water quality impacts to the Wild Forest and the Addition property, which ultimately may degrade a pristine water body, Pickerel Pond, and impact the surface and groundwater.

Medenbach & Eggers, engineering consultant for Applicant, stated in a February 5, 2019 letter to DEC that the Applicant plans to treat all stormwater in what seem to be disused quarry ponds, "prior to discharging to the existing ponds on site." The consultant does not state whether the size of the quarry ponds on the Project site are adequate for the amount of likely sediment-filled stormwater generated from the 35-acre area being disturbed by the Project, but did note that in heavy rains the ponds overflow. WLC is concerned that stormwater containing pollutants and sediment could overflow these ponds during heavy rain events and enter adjoining water bodies.



This could contaminate Pickerel Pond, an otherwise pristine fishing pond open to public access. NYS (2008) and the National Climate Assessment (2014) long-range weather modeling for our region lists the following regarding predicted future precipitation patterns in NYS:

- Modelling shows that New York is also likely to experience more precipitation and more variability in precipitation. Compared to the 1971-2000 period, average precipitation in New York will increase
 - up to 8% by the 2020s.
 - up to 12% by the 2050s.

Source: <https://www.dec.ny.gov/energy/94702.html>

It also appears that Project requires the installation of a three-foot diameter culvert underneath a gravel road, thereby linking two previously separate ponds—one of which directly abuts Pickerel Pond—which could exacerbate the potential for overflow or leaching of pollutants from the Project into Pickerel Pond, thus impairing both habitat and public recreational opportunities as well.

Finally, WLC also requests that Applicant be required to examine the potential for direct drainage from the Project site into Pickerel Pond and/or Onteora Lake. The Negative Declaration states that stormwater will be discharged into existing ponds on site or over the property line of “neighboring properties.” It is imperative that stormwater generated as a result of the project be treated and mitigated *on-site*. Any discharges onto any of the neighboring properties including residences on Waughonk Road, NYSDEC Bluestone Wild Forest lands, and the OSI’s Addition should only be permitted within the scope of an executed easement agreement.

Furthermore, WLC recommends the use of green infrastructure techniques, where feasible, as an alternative to what is proposed, as natural mimicry has been shown an effective absorption method.

Noise Impacts

Construction of the Project will be phased over several years and will potentially include significant amounts of blasting, rock crushing, and other noisy activities. Applicant commissioned H2H Associates to conduct a noise study to identify and evaluate potential impacts from the Project. The consultant surveyed the area surrounding the Project and identified “single family residences to the south of the Site” as the only potentially sensitive noise receptors. In its analysis of receptors to the east—the direction of the Wild Forest and the Addition property—H2H only examined residential receptors approximately 2,000 feet from the sound source, stating that “[a]t a distance



of 2,000 feet, using natural sound attenuation and the noise levels produced by the on-site equipment, increases in sound levels are considered to be negligible.”

The noise study did not place receptors on the Addition property, where recreational trails are planned to be constructed just east of the Project boundary, nor on the existing Bluestone Wild Forest lands, which are actively used now near Onteora Lake and Pickerel Pond. This study fails to note the sound impacts that visitors to these trails will experience nor the effect on habitat. Many species are highly sensitive to both persistent loud noise, noise frequencies and vibration. According to the study, a rock crusher causes sounds of up to 96 decibels at a distance of 100 feet, a distance well within range of the proposed recreational trails on the Addition property. Ninety-six decibels far exceeds the existing ambient conditions noted by H2H, which range from 37.2 decibels to 39.7 decibels, and as H2H states in Section 1.4 of its noise study:

[A]n increase in ambient noise of 10 dB (decibels) is perceived by the majority of people to be a doubling of the loudness of sound [...] noise source in a non-industrial setting[] should not raise the total future ambient noise level above a maximum of 65dB. This maximum would be considered the upper-end limit because 65 dB is the limit for undisturbed speech at a distance of approximately three feet.

The analysis above makes it clear that the Town did not appropriately and sufficiently consider the noise impacts the Project will have on the Addition property or the Wild Forest when issuing the Negative Declaration being relied upon by DEC. WLC requests that further noise studies be required that specifically focus on the above identified impact zones and areas.

Open Space and Recreation Impacts

The analysis of potential impacts to open space and recreation provided in the Negative Declaration reads entirely as follows: “The proposed plan creates no new residential uses and therefore no new demands for recreation and no harmful impacts on the same. No further consideration is needed.”

It is evident this analysis falls short of the hard look at potential adverse impacts required by SEQRA, keeping in mind the extensive existing and proposed recreational activities in the Wild Forest that will surround the Project on all sides after the sale of the Addition property to New York State. This includes the fact of year over year increasing visitorship at the Onteora Lake Day Use Area and multi-use trail network. It is our understanding that NYSDEC has invested considerable funds in this fully accessible public access area and trail network, and anticipates making further investments in the near future. Requirement #11 on the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts, Open Space & Recreation references a *site’s proximity to State Wild Forest*. The “Yes” box here went unchecked.



Community Character

The analysis of #18 on the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts, Consistency with Community Character warrants further review, with #18.d. positing whether the Project *would interfere with use or enjoyment of officially recognized or designated public resource*; and #18. f. *whether the Project is inconsistent with the character of the existing natural landscape*. Neither of the “Yes” boxes were marked for this.

Impermissible Segmentation

In the materials submitted by Applicant, the hours of operation for the Project during construction are proposed to be from 6AM to 7PM. WLC has also been informed that the Applicant is seeking changes to Town code so that it may operate the proposed facility 24 hours a day, seven days a week, once constructed. Impacts related to round-the-clock work were not considered by the Town in the Negative Declaration. Segmenting the proposed changes to Town law from analysis of the overall Project would be impermissible under SEQR. In WLC’s view, studies of impacts conducted and predicated on the application statement of “6am to 6pm” hours of operation, are deficient in light of the now proposed “24/7” operation.

Conclusion

We will be pursuing with the Town these same considerations. But we request that DEC defer any decision on the permits applied for. We believe irreparable harm to public resources could occur if DEC issues permits in reliance on the inadequate and incomplete identification of potential impacts and the analysis in Negative Declaration. WLC requests that the Negative Declaration be rescinded and further environmental review under SEQR conducted prior to the issuance of any DEC permit. WLC also urges DEC to provide additional opportunity for public comment. Members of the public and the many stakeholder groups involved may request a careful re-examination of the noise, air and water quality, public recreation, community character, traffic and other impacts to the Addition and to the Wild Forest that were not properly assessed prior to the Town’s adoption of the Negative Declaration.

In closing we appreciate DEC’s thoughtful review of the requested permits. We remain greatly concerned about the potential for changed hydrological patterns caused by the proposed disturbance to the stream and its potential threat to the quality of the Praymaher Brook, as well as the Southeastern corner of the pristine Pickerel Pond and/or Onteora Lake. We are concerned as well about the potential impairment and diminishment of important wetlands that clearly serve important flood remediation, water quality and habitat functions – particularly with the intense



increase in recent years in volume during rainfall events resultant from climate change – we feel that the denial of these requested permits is warranted. Additionally, OSI was never properly notified about the proposed Project. Finally, we specifically direct DEC’s attention to the Preliminary Biodiversity Assessment of the Proposed 850 Route 28 Industrial Facility, attached to OSI’s letter, by Hudsonia (Dr. Erik Kiviat).

Sincerely,

Maxanne Resnick
Executive Director



CATSKILLCENTER

May 20, 2019

John Konior, Chair - Town of Kingston Planning Board
908 Sawkill Road
Kingston NY 12401
via email: tokclerk@gmail.com

**RE: Comments for May 20th Public Hearing
850 Route 28 LLC Site Plan / Special Permit Applications**

Dear John Konior and the Town of Kingston Planning Board:

The Catskill Center opposes the Negative Declaration issued earlier this year by the Planning Board for the 850 Route 28 LLC proposed project, and we urge you to keep the public comment period open and not approve the project's site plan nor issue a special permit for this project until a more thorough review is conducted. As proposed, this is an extremely large, noisy, and unsightly project, requiring the clear-cutting of 21.7 acres of trees, the removal of 162,000 cubic yards of material from the site, optional blasting and crushing, and construction of two buildings totalling 240,000 square feet with additional adjacent impervious space for oversized vehicles. Moreover, the proposed project is located in proximity to existing protected open space and hiking and biking trails in the Catskill Park's Bluestone Wild Forest and in proximity to additional planned recreational areas recently purchased by the Open Space Institute. Planning for recreational access on these lands is nearing completion and implementation is set to begin this year.

While our review of the project is not yet complete, we note that the project, on its face, poses serious adverse impact on Aesthetic Resources and on Open Space and Recreation. We urge you to re-evaluate these and other potential impacts in relation to the beautiful and economically valuable nearby public resources in the Catskill Park. Noise should be assessed in relation to levels in protected recreational areas. We are also concerned about potential impacts on wildlife, especially threatened and endangered species.

Please rescind your Negative Declaration under SEQRA and offer an extended public comment period, in order for all potential adverse impacts to be considered fully. We strongly urge that you withhold permits until this application can be fully assessed and suitable mitigations and alternatives investigated.

Sincerely yours,

Jeff Senterman
Executive Director

BOARD MEMBERS
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Mark Ginsberg

Aileen K. Chang
Calandra Cruckshank
Camilla Lancaster

Rosal Aguino, Kerissa Battle, Stephen Berg, David Boreto, Susan Clark, Michael Connor,
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Freddy E. Sanchez III, Claude Shemat, Ron Stolzenburg



Protecting the future of the Catskills

John Konior, Chair
Town of Kingston Planning Board
906 Sawkill Road
Kingston NY 12401

May 20, 2019

via email: tokcJerk@gmail.com

**RE: Comments – for May 20th Public Hearing
850 Route 28 LLC Site Plan / Special Permit Applications**

Dear John Konior and the Town of Kingston Planning Board:

Catskill Mountainkeeper's mission is to protect our region's wild lands and natural resources, support smart development to sustainably grow our economy, nurture healthy communities, and accelerate our transition to a 100% clean energy future in New York and beyond. Our work includes considerable attention to the development of hiking and mountain biking trails in the region and particularly within the Catskill Park and on Catskill Forest Preserve Lands.

Catskill Mountainkeeper strongly opposes the Negative Declaration issued earlier this year by the Planning Board for the 850 Route 28 LLC proposed project, and we urge you to keep the public comment period open and not approve the project's site plan nor issue a special permit for this project until a more thoroughgoing review is conducted. This is an extremely large, noisy, and unsightly project, requiring the clear-cutting of 21.7 acres of trees, the removal of 162,000 cubic yards of material from the site, optional blasting and crushing, and construction of two buildings totaling 240,000 square feet with additional adjacent impermeable space for oversized vehicles. Moreover, the proposed project is located in proximity to existing protected open space and hiking and biking trails in the Bluestone Wild Forest and in proximity to additional planned recreational areas recently purchased by the Open Space Institute. Planning for recreational access on these lands is nearing completion and implementation is set to begin this year. The Planning Board should also consider and mitigate potential adverse impacts on Ulster County's nearby Ashokan Rail Trail, currently under construction and expected to open this fall.

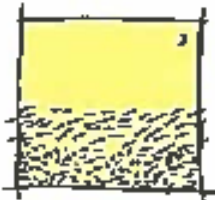
While our review of the project is not yet complete, we note that the project, on its face, poses serious adverse impact on Aesthetic Resources and on Open Space and Recreation. We urge you to re-evaluate these and other potential impacts in relation to the beautiful and economically valuable nearby public resources. Noise should be assessed in relation to levels in protected recreational areas. We are also concerned about potential impacts on wildlife, especially threatened and endangered species.

Please rescind your Negative Declaration under SEQRA and offer an extended public comment period, in order for all potential adverse impacts to be considered fully. We strongly urge that you withhold permits until this application can be fully assessed and suitable mitigations and alternatives investigated.

Very sincerely,

Kathleen Nolan, MD, MSL
Senior Research Director

Catskill Mountainkeeper
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VIA ELECTRONIC MAIL
May 20, 2019

John Konior
Chairman
Town of Kingston Planning Board
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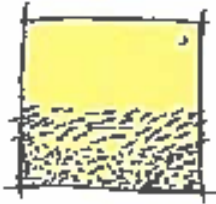
Re: Comments for the May 20th Public Hearing
Site Plan / Special Permit – 850 Route 28 LLC
Project for the construction of two 120,000 square foot buildings for steel and concrete manufacturing

Dear Chairman Konior and Members of the Planning Board:

The Woodstock Land Conservancy (WLC) permanently protects open lands, natural resources, scenic areas, and historic sites in Woodstock and the surrounding eastern Catskills (see attached map). Our area of service includes significant areas of the Catskill Park and NYS Department of Environmental Conservation's (NYSDEC) Catskill Forest Preserve lands. This includes the NYSDEC Bluestone Wild Forest Management Unit (BWF) Jockey Hill and Orteora Lake areas. Since the mid-2000's we have been active partners in a collaborative partnership with the Open Space Institute (OSI), NYSDEC and local stakeholders to expand and protect the Bluestone Wild Forest, and help realize a connected recreational multi-use trail network there of destination quality, including across lands directly adjacent to a property and application on the agenda tonight. We very much appreciate the opportunity to provide comment.

WLC believes the Negative Declaration adopted by the Town of Kingston's Planning Board under the New York State Environmental Quality Review Act ("SEQR") for 850 route 28 LLC project ("Project"), is fundamentally flawed as it was based on incomplete information relating to nature, scope and location of the operations associated with the Proposed Action, and thus failed to identify / evaluate the full range of reasonably anticipated potentially adverse impacts resulting from the implementation of the Project on adjacent and surrounding land uses. Pursuant to SEQR 6 CRR-NY 517.7(e) and (f) a lead agency "may amend" or "must rescind" a negative declaration when substantive:

- (i) changes are proposed for the project;
- (ii) new information is discovered; or
- (iii) changes in circumstances related to the project arise; that were not previously considered and the lead agency determines that a significant adverse environmental impact may result.



Based on our review of the applicant's Part 1 and Part 2 EAF, the related Part 3 analyses and studies presented to support the Negative Declaration, and the rationale set forth in the adopted Negative Declaration of Significance for a Type I Action, there are numerous discrepancies in the description of the Proposed Action that if considered consistently throughout the evaluations, would constitute changes to the Project. For example, in some instances normal manufacturing hours and days of the week are utilized as the basis for impact evaluations, yet the Part 1 EAF indicates that there will 24/7 operations in the future. Furthermore, the SEQR evaluation failed to fully identify and evaluate anticipated impacts, particularly in regard to the adjacent residential lands and public park and recreation resources (as detailed below and in the attached EAF Review Report), the information presented herein constitutes the discovery of "new information."

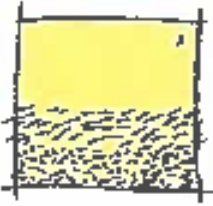
Therefore, WLC respectfully requests that the Planning Board immediately refrain from taking any further actions on the Project application at this time and until such time as there has been a comprehensive identification and evaluation of reasonably anticipated environmental impacts, and proper coordination with all involved and interested agencies. The Public Hearing should remain open and the Planning Board should consider taking an appropriate action to address the previous flawed Negative Declaration.

Our comments and concerns would have been conveyed much sooner in this process, but despite the Project's adjacencies with NYSDEC Bluestone Wild Forest and the newly acquired OSI property purchased from the Abdulaimi family, we only recently learned of this project through a DEC public notice printed in the Kingston Freeman on May 6th. For the past six months WLC has been working with NYSDEC and OSI and local stakeholders on the multi-use trail improvement and connectivity plan for the recently acquired OSI property, "the Addition". *It is our understanding that neither the Abdulaimi family or OSI ever received any notifications as required to be sent to adjacent property owners.*

Since 2005 WLC has been a key local partner in the Bluestone Wild Forest Protection Initiative, "to permanently protect property in and adjacent to the Bluestone Wild Forest (BWF)". This strategic land protection partnership with NYSDEC, OSI, 'Fats in the Cats' and other local conservation and user groups, has resulted in the previous acquisition, protection and incorporation into the NYSDEC BWF of several properties, including:

- OSI acquired 2 parcels (Frazer) totaling approximately 20 acres in 2008, saving from imminent destruction the key 'gateway' section of the historic Wintergreen Rd (a quarry road dating back to the heyday of the bluestone industry at Jockey Hill), and protecting a high quality tributary stream to the Sawkill. The property was also acquired with the specific goal of a feasible expansion (since completed) of the BWF multi-use trail system including for mountain biking;
- WLC accepted donation of 14 acres in 2013 (Von Stutterheim) off Morey Hill Rd at the request of NYSDEC. In 2014 this parcel was then gifted to NYSDEC and incorporated into the Ontario Lake section of BWF, including for its potential future connectivity to DEC's Ontario Lake multi-use recreational network..

In fact, OSI's public multi-use recreational trail planned for the newly acquired property is expected to be conveyed to New York State DEC in the near future, and will link two popular and established trail systems in the BWF. This expanded multi-use recreational area is just ten minutes from the NY State Thruway, and is not only widely used by area residents for fishing, swimming, hiking and mountain biking, but its compact



and comprehensive trail system and natural setting will provide a destination area for visitors to the Catskills from the NY Metro area and beyond. These visitors, and the locals that frequent the trail system, patronize and support the local commercial district on route 28 in Town of Kingston, bringing substantial economic benefit to the Town and Ulster County with far less environmental impacts than would be expected with the implementation of the Project. The commercial area adjacent to the Onleora Lake access point has seen significant growth in the last few years, specifically with businesses (deli, takeout food / drink, etc) that would be utilized by people also using the BWF resources.

As detailed in the attached EAF Review Report, the Environmental Assessment Review failed to account for numerous adverse impacts to protected resources; including potential adverse air and water quality, noise, community character, impact on open space and recreation, traffic and other impacts that the Project may cause.

Relationship of the OSI Property and the Bluestone Wild Forest to the Project Site

On February 11, 2019, OSI purchased a 288-acre property (the Adulaimi or "Addition" property) immediately adjacent to the Project, consisting of forested slopes and wetlands and the northern portion of a high-quality body of water known as Pickerel Pond. The Addition property is identified on the Town of Kingston tax maps as parcels 38.4-2-2, 38.4-2-3, 38.4-1-30, 38.4-2-1.100, 38.4-2-10, 38.4-2-11, and 38.4-3-27. Please refer to the attached Map. This acquisition joins the two major sections of the Bluestone Wild Forest -- Onleora Lake and Jockey Hill -- and upon conveyance to New York State will be incorporated into the Catskill Forest Preserve and Catskill Park. The quality and utility of these publicly-accessible recreation, open space and natural resources directly adjacent to the Project can not be overstated, but yet they have been completely omitted from the environmental impact evaluation process. It is critical that the Town ensure that new developments do not adversely impact the natural resources and recreational appeal of the Catskills Park, as it is a major economic driver for tourism and outdoor recreation locally, and a natural treasure for all New Yorkers.

The New York State Open Space Plan (2015) identifies the Bluestone Wild Forest as a Priority Conservation Project Area [Catskill River & Road Corridors (39):

A.

Blue Stone Wild Forest: Just west of Kingston in Ulster County, covering and connecting four towns, this area is actively used by mountain bikers, hikers and birders but holds great potential for expansion and further development of its trail system as a mountain biking destination. The topography, terrain and precipitation pattern in this part of the Catskills are conducive to more intensive recreational uses with minimal damage to natural resources. Within the boundaries of Bluestone Wild Forest are areas of significant historical and cultural significance, including the bluestone quarry industry. Significant portions of several historic roads and trails connecting area towns—Jockey Hill Rd., Evergreen Road and the Waughkonk Trail—lie within Blue Stone Wild Forest. State lands within the core area between Route 28 and Sawkill Road should be consolidated, and those parcels along Route 28 should be acquired to provide trailhead access points, protect historic trails and roads where possible, and preserve this impressive scenic viewshed. It is recommended that the Blue Stone Wild Forest boundaries be extended to incorporate numerous, now isolated DEC tracts increasingly used for recreation. Two lie south of Route 28 in the Towns of West Hurley and Ulster, seven lie north of Sawkill Rd. in the Towns of Woodstock and Kingston. Protecting, connecting and potentially expanding some of these tracts as part of the overall protection plan for Blue Stone Wild Forest will facilitate their consolidation into larger, coherent



open space resources within and between communities facing ever increasing development pressures.

Moreover, in 2009 the Bluestone Wild Forest Land Protection Initiative (OSI, NYSDEC, WLC, Cats in the Cats, Catskill Center) rated the Aldulaimi holdings (the new 'Addition' property) as the single most important Infill holding in this area of the BWF for both its unfragmented habitat and public recreational access potential. As the Addition property lies between the Jockey Hill and Onteora Lake sections of the Wild Forest, it provides the unique and missing connection between existing and important recreational opportunities: The Jockey Hill section to the east contains established and marked loop trails popular with hikers and mountain bikers. The Onteora Lake section to the west contains multi-use trails, plus Onteora Lake – a 16-acre lake used as a year-round fishery, seasonally for swimming and boating, and has designated handicapped-accessible amenities including fishing, picnicking and water access. There are also seven (7) designated campsites located along the west side of Onteora Lake, and hunting for deer and turkey is permitted within the Wild Forest. These lands also have historical significance in that they were utilized by early settlers and retain evidence of early wagon trails (including the historic "Waughank Road" between Stony Clove and the hamlet of Zena through what is now BWF), leading to Route 28's "Onteora Trail" moniker.

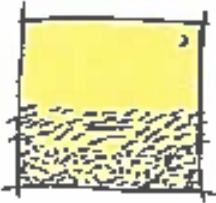
OSI and WLC have identified the existing woods roads and trails on The Addition property as an opportunity to create a new recreational trail system that would connect with the larger existing official trail networks within the BWF, and have commissioned Tahawus Trails to develop a recreational trail plan for The Addition property. This trail plan was presented by representatives from OSI, WLC, and DEC at a public information meeting on May 7, 2019 in the City of Kingston to over 75 members of the public, to an enthusiastic response. The potential adverse impact to the property, and the greater BWF recreational system must be evaluated and mitigation provided as appropriate.

Insufficient Compliance with Required SEQRA Analysis

The Planning Board declared itself Lead Agency for the SEQRA process ⁴since the anticipated impacts are of primarily local significance.⁴ The Project is a Type I Action under SEQRA, as it will physically alter an area in excess of ten acres.⁴ It is worth noting that even if the Project didn't alter more than 10 acres, it would still have been a Type I Action as SEQRA provides reduced thresholds for Unlisted "occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space." Despite the scale of the Project which impacts over 35 acres, its sensitive and unique location relative to the BWF and the Addition property, and the presumption towards significance under SEQRA, the Planning Board as Lead Agency improperly issued a Negative Declaration on March 18, 2019.

Based on a non-exhaustive review of the Part 1, 2 and 3 EAF, Negative Declaration and the materials submitted by Applicant, WLC does not have confidence that the applicant fully identified, and the Lead Agency appropriately considered, the potential adverse impacts to existing constitutionally-protected land, that provides park land, open space and recreation in the Wild Forest. It should be noted that such impacts will be even more acute when the Addition property is acquired by New York State for official inclusion in the Catskill Park's Wild Forest.

⁴ "[T]he fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." (6 CRR-NY 617.4)



WLC's specific concerns regarding the Parts 1, 2 and 3 EAF, associated Negative Declaration and accompanying Application materials are provided in the attached EAF Review Report (noting that we have had limited time to process the information and that additional shortcomings are likely to be identified). Given the deficiencies in the environmental review, and the potentially significant adverse impacts that the Project may have on open space, natural resources and habitat, community character and the use and enjoyment of an established public park, it is clear the Planning Board must, in addition to refraining from issuing further approvals, take action on its prior Determination, and appropriately revisit the analysis prior to any further action on the Site Plan / Special Permit application.

In closing, thank you very much again for the opportunity to comment. The attached EAF Review Report gives more detailed identification of issues / impacts which require additional evaluation and analysis, and mitigation measures as appropriate.

Sincerely,

A handwritten signature in black ink that reads "Maxanne Resnick". The signature is written in a cursive, flowing style.

Maxanne Resnick
Executive Director

Att.

850 ROUTE 28, LLC
850 Route 28
Kingston, New York 12401
646-773-2172
tom@uscraneriggingllc.com

Tuesday, May 21, 2019

Town of Kingston
Planning Board
ATTN: John Konior-Chairman
906 Sawkill Road
Kingston, New York 12401

RE: 850 Route 28, LLC

Dear Mr. Konior,

Please be advised that this is to clarify the above referenced project's work schedule and number of employees upon completion of construction. In addition, this is to respond to the inquiries made at the Planning Board meeting on May 20, 2019 in connection to noise levels associated with operations during construction.

At full contract demand, there will be three shifts defined as: shift #1, 6am to 2pm; shift number #2, 2pm to 10pm and shift #3, 10pm to 6am. Shift #1 and shift #2 will be comprised of a combined inside and outside (a majority of work to be conducted inside) of thirty (30) employees per building.

Shift #3 will be comprised of a maximum 15 employees primarily responsible for maintenance, up keep, set up, break down, removal of materials and safety duties. Of the fifteen (15) employees the third shift outside operations will be comprised of two to four (2-4) employees responsible for fork lift and yard horse operations when needed. Therefore, our maximum estimate of outside employees on the third shift will range from 2 to 4 as necessary.

In connection to the inquiries made concerning noise levels during construction please see the attached purchased receipts of the recommended white sound reversing alarms which are OSHA regulated standard during construction operations. Please also see attached the OSHA safety and health regulations during construction operations relative to these reversing alarms. During construction, all current back up beepers will be replaced with these white sound reverse alarms. These noise remediation procedures will substantially reduce noise levels during construction. The white sound reverse alarms have been purchased and will be installed 24 hours of receipt from the manufacturer.

We respectfully request that we be placed upon the Planning Board Agenda within two (2) weeks from the date of this letter. Time is of the essence in that we are now delayed in meeting our construction schedule contractual obligations.

If you should have any questions please do not hesitate to contact me at the above referenced number.

Respectfully submitted,



Thomas Auringer

Cc: Timothy P. McColgan
Attorney at Law
20 Duzine Road
New Paltz, New York 12561

(844) SAS.SEAT

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Brigade Electronics - White Sound "Noiseless" Back-Up Alarm - 92 Decibels

Item Code: CAM-0115

Our Price:

\$101.00

Add to cart

Quantity: 1

In-Stock: Ships Same Day

The BBS-92 is a medium duty, white sound, broadband back up alarm, ideal for trucks working in typical ambient noise levels. The safest backup alarm on the market! Brigade products are not eligible for returns or exchanges. All sales final.

Features:

- 12-24 Volts
- IP68
- Size (WxHxD) 4.1 x 2.6" x 1.5"
- Lifetime Warranty
- 92 Decibel equipment with BBS Tek ideal for Class 9 truck safety.
- Multi frequency broadband sound
- Instantly locatable
- Eliminates noise nuisance
- Sounder unit: Speaker
- Hole centers (Inches) 3

Durability & Standards:

- Mechanical vibration: 10G
- Operating temperature: -40 degrees to +185 degrees
- CE marked
- EMC approved: 3
- SAE J694
- OSHA & MSHA compliant (providing appropriate unit correctly installed)

Power:

- Maximum Current Amps: 0.5

Shipping:

\$13.50 ANYWHERE IN THE CONTINENTAL US

Variations

Medium Duty - 92
DecibelsMedium Duty - 87
DecibelsHeavy Duty - 102
DecibelsMedium Duty - 97
DecibelsMedium Duty - 97
Decibels Smart
Alarm

Joe Bruning

From: Tom Auringer <tom@uscraneriggingllc.com>
Sent: Tuesday, May 21, 2019 4:02 PM
To: Joe Bruning
Subject: Fwd: Suburban Seats - Thank you for your order!

Sent from my iPhone

Begin forwarded message:

From: August Hochenberger <august@uscraneriggingllc.com>
Date: May 21, 2019 at 3:41:09 PM EDT
To: Tom Auringer <tom@uscraneriggingllc.com>
Subject: Suburban Seats - Thank you for your order!

Order #: 15518, placed on 5-21-2019
Thank you for your order!

Thank you for purchasing from Suburban Seats!
This is an acknowledgement with all of your order information. Please save this email for your records.

Please [CLICK HERE](#) to leave a Google Review about your positive shopping experience with Suburban Seating & Safety!

Shipping Address:

US Crane LLC
Thomas Auringer
2-4 Kieffer Lane
Kingston, NY 12401
United States
Primary Phone: 7184182020
Ship Location: commercialNoDock

Billing Address:

US Crane & Rigging LLC
Thomas Auringer
1520 Decatur Street
Ridgewood, NY 11385
United States
Primary Phone: 7184182020
Email: august@uscraneriggingllc.com

Payment Info:

AMEX (*****)

7184182020

Item	Price	Qty	Subtotal
Brigade Electronics - White Sound "Noiseless" Back-Up Alarm - 92 Decibels (CAM-0115)	\$101.00	4	\$404.00

Sub Total: \$404.00

Tax: \$0.00

Shipping: Ground \$62.00: \$62.00

Total: \$466.00

By Standard Number / 1926.601 - Motor vehicles.

- **Part Number:** 1926
 - **Part Number Title:** Safety and Health Regulations for Construction
 - **Subpart:** 1926 Subpart O
 - **Subpart Title:** Motor Vehicles, Mechanized Equipment, and Marine Operations
 - **Standard Number:** 1926.601
 - **Title:** Motor vehicles.
 - **GPO Source:** e-CFR
-

1926.601(a)

Coverage. Motor vehicles as covered by this part are those vehicles that operate within an off-highway jobsite, not open to public traffic. The requirements of this section do not apply to equipment for which rules are prescribed in 1926.602.

1926.601(b)

General requirements.

1926.601(b)(1)

All vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.

1926.601(b)(2)

-

1926.601(b)(2)(i)

Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two headlights and two taillights in operable condition.

1926.601(b)(2)(ii)

All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

1926.601(b)(3)

All vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

1926.601(b)(4)

No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

1926.601(b)(4)(i)

The vehicle has a reverse signal alarm audible above the surrounding noise level or:

1926.601(b)(4)(ii)

The vehicle is backed up only when an observer signals that it is safe to do so.

1926.601(b)(5)

All vehicles with cabs shall be equipped with windshields and powered wipers. Cracked and broken glass shall be replaced. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

1926.601(b)(6)

All haulage vehicles, whose pay load is loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield and/or canopy adequate to protect the operator from shifting or falling materials.

1926.601(b)(7)

Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

1926.601(b)(8)

Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried.

1926.601(b)(9)

Seat belts and anchorages meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Vehicle Safety Standards) shall be installed in all motor vehicles.

1926.601(b)(10)

Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

1926.601(b)(11)

Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device which will prevent accidental starting or tripping of the mechanism.

1926.601(b)(12)

Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

1926.601(b)(13)

1926.601(b)(13)(i)

All rubber-tired motor vehicle equipment manufactured on or after May 1, 1972, shall be equipped with fenders. All rubber-tired motor vehicle equipment manufactured before May 1, 1972, shall be equipped with fenders not later than May 1, 1973.

1926.601(b)(13)(ii)

Mud flaps may be used in lieu of fenders whenever motor vehicle equipment is not designed for fenders.

1926.601(b)(14)

All vehicles in use shall be checked at the beginning of each shift to assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use: service brakes, including trailer brake connections; parking system (hand brake); emergency stopping system (brakes); tires; horn; steering mechanism; coupling devices; seat belts; operating controls; and safety devices. All defects shall be corrected before the vehicle is placed in service. These requirements also apply to

equipment such as lights, reflectors, windshield wipers, defrosters, fire extinguishers, etc., where such equipment is necessary.

UNITED STATES DEPARTMENT OF LABOR

Occupational Safety & Health Administration
200 Constitution Ave NW
Washington, DC 20210
☎ 800-321-6742 (OSHA)
TTY
www.OSHA.gov

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Barry Medenbach, P.E.
N.Y. Lic. No. 60142
N.J. Lic. No. 27648

William R. Eggers L.S.
N.Y. Lic. No. 45785

June 5, 2019

Town of Kingston
ATTN: John Konior, Chariman
906 Sawkill Road
Kingston, NY 12401

Re: 850 Route 28 LLC,
Town of Kingston, Ulster County

Public Comment Letters:

Open Space Institute – May 16, 2019 to NYSDEC

Woodstock Land Conservancy – May 16, 2019 to NYSDEC and May 20, 2019 to the Town of Kingston

Catskill Mountainkeeper – May 16, 2019 to NYSDEC and May 20, 2019 to the Town of Kingston

Catskill Center – May 16, 2019 to NYSDEC and May 20, 2019 to the Town of Kingston

Dear John Konior,

Please be advised that all the issues raised in the comment letters listed above on the 850 Route 28 LLC project have previously been addressed and do not cause a need to rescind the Negative Declaration. The following is our summary response to the concerns in the comment letters.

1. Consistency with Community Plans

There are several areas around the project site that are industrial in nature and the project site has had prior mining activities. The projects property is specifically zoned for industrial use. Prior to this application, Auto dismantling was approved on the site. The proposed action is not inconsistent with County or town Plans. The proposed project is taking an existing un-reclaimed stone quarry and developing it into a usable area used for concrete and steel manufacturing.

2. Insufficient SEQRA Analysis

The project may impact 35 acres, however over 27 of the acres have been previously disturbed and un-reclaimed. The Planning Board Issued proper notification for the public hearing being held in March. The Town of Kingston Planning Board has a certified mail receipts for all the neighboring property owners on the tax roll record.

3. Traffic Impacts

The existing Annual Average daily traffic for NYS Route 28 is 15,000 vehicles at the existing driveway. The maximum of 121 new vehicles entering and exiting the site will not significant increase the existing traffic. Section 5.0 of the November 8, 2018 Creighton Manning Traffic Assessment prepared for the project concluded that Tractor-trailers can safely enter and exit at the existing driveway location. The project is required to get a Highway Work Permit for the commercial entrance from the NYSDOT. The project is currently being reviewed by the NYSDOT. There is to be little to no impacts of traffic pollution and noise on the adjacent OSI property and Wild forest. The proposed project does not share a connecting road with the recently acquired OSI property and trucks within the project site will produce less noise than the existing traffic along NYS Route 28. The residents along Waughkonk road will not be able to see truck traffic along the driveway and within site due to terrain and tree coverage throughout the site.

4. Aesthetic Impacts

It is not possible to see any of the proposed work areas from NYS Route 28 with the current tree coverage. The closest excavation, blasting and processing of material is a minimum of 1400 feet away from NYS Route 28. There are 7 residences south of the proposed excavation and blasting area within 1500 feet with the closest being 500 feet. Onteora Lake is approximately 1500 feet west of the closest excavation and blasting area. Remaining tree cover you cannot see the proposed work areas from any of the 7 residences or Onteora Lake. However, there is a trail accessed from the Onteora Lake Trailhead Parking that leads to a spot on the west side of Pond A (see sheet I-1 for location of Pond A "Pickeral Pond") where there is an obscured view of the project site. With little to no visibility of the project site from public spaces, we propose to maintain the existing trees within at least 50 feet of the property line to mitigate visual impacts to the surrounding properties. Attached are two line of site sections to determine the lack of visual impact from the proposed project.

5. Water Quality Impacts

A SWPPP for the proposed project has been prepared in accordance to the New York State Stormwater Design Manual and complies with the General Permit (GP-0-15-002) for the stormwater discharge from the proposed construction activities. No new point discharges across the projects property lines will be created from the proposed project. 4 of the 8 Stormwater design points indicated in the SWPPP are proposing no changes to the existing

stormwater runoff. The other 4 stormwater design points will significantly reduce the peak flows off the property. The proposed buildings, parking areas and roads stormwater will first be treated using dry swales that infiltrate water through a layer of sand before discharging into one of two large Water Quality Ponds. The property that discharges stormwater toward Pond A "Pickeral Pond" is proposed to be greatly reduced. None of the projects new impervious surfaces will discharge into Pickeral pond. Currently Pickeral Pond discharges to the south during heavy rain events into the proposed projects property and flows as part of the Tributary 6 of Praymaher Brook. Therefore there should be no contamination of Pickeral Pond from the proposed project.

6. Noise Impacts

The Onteora Lake Trailhead and Parking lot is located over 2,200 feet away from the proposed crusher location and has an approximate 70 foot difference in elevation with a ridge between Trailhead and crusher. The area between the proposed crusher location and Onteora Lake is also heavily forested (see attached line of sight sections). Therefore, the noise from the crusher that reaches the Trailhead and Parking lot would be less than the noise to the two residential houses mentioned in the report. The crusher is a temporary noise impact that will go away after construction is completed. The existing Eastern Materials mining operation which is in close proximity of the proposed trails runs crushers as a normal part of their daily operations.

The excavation, blasting and processing of the rock material on site during construction is to be performed within the limit of disturbance shown on the current site plan and during normal weekday work hours (No Sundays or holiday construction). All machinery used during the excavation and processing shall not exceed regulated noise levels. Any processing of rock shall be done on a level area near the blasting and excavation. Hours for construction will be limited to 7am to 5pm on weekdays, 7am to 12 pm on Saturdays and no construction on Sundays or Holidays. Due to the distance, construction timeline, tree cover, and that the construction work will be 20 to 30 feet below the adjacent grade of the residences we believe the potential noise impact will be limited as concluded in the previously submitted Noise Study

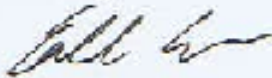
The Habitat Suitability Assessment performed concludes that proposed blasting will not interfere with the closest known hibernacula and that noise generated by construction equipment during the day could disturb roosting bat during the day. No blasting or construction operations are anticipated on the site at night and therefore should not disturb the bats at night.

7. Impermissible Segmentation

The Full EAF Part 1 on page 7 of 13 indicates that the facility will need to have 24 hour operation. The third shift is needed for maintenance, up keep, set up, break down, removal of materials and safety duties. The majority of third shift will be inside the manufacturing buildings with a maximum estimate of outside employees will range from 2 to 4 as necessary. The work hours for Construction are only to be during the day.

If you have any questions on the above or need additional information, please contact our office.

Sincerely,



Caleb Carr EIT

Medenbach and Eggers Civil Engineering and Land Surveying PC

Cc: Ryan Loucks
Dan Lefever

Attached: Line of site Sections

Medenbach & Eggers

Civil Engineering and Land Surveying P.C.

4305 US Highway 209
Stone Ridge, New York
12484-5620

Phone (845) 687-0047
Fax (845) 687-4783
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Barry Medenbach, P.E.

N.Y. Lic. No. 60142
N.J. Lic. No. 27676

William R. Eggers L.S.
N.Y. Lic. No. 49785

June 5, 2019

Town of Kingston
ATTN: John Konior, Chariman
906 Sawkill Road
Kingston, NY 12401

Re: 850 Route 28, LLC – Special Permit and Site Plan Review
Town of Kingston, Ulster County

Dear John Konior,

The following is our response to the Ulster County Planning Board recommendations on the 850 Route 28 LLC project dated 05/1/2019.

Access

The Traffic Assessment Report from Creighton Manning dated November 8, 2018 says the removal of rock will require approximately 12,500 truck loads, with a peak volume of 16 to 20 total truck trips per hour.

Manufacturing Activities

The concrete batch plant has been moved inside the proposed building. All manufacturing activities are proposed to be inside the buildings.

Stormwater

We assume the planning board will require the Town's Engineer to make regular visits to the site during construction to monitor the stormwater and erosion and sediment control activities throughout construction and all the regular stormwater reports performed shall be shared with the Town's Engineer and zoning enforcement officer.

Onteora Lake/State Impacts

Onteora Lake is approximately 1500 feet west of the closest excavation and blasting area. However, with remaining tree cover you cannot see the proposed work areas from Onteora Lake. There is a trail accessed from the Onteora Lake Trailhead Parking that leads to a spot on the west side of Pond A "Pickerel Pond (see sheet I-1 for location of Pond A) where there is an obscured view of the project site. With little to no visibility of the project site from the public spaces, we propose to maintain the existing trees within 50 feet of the property line to mitigate visual impacts to the surrounding properties (See Onteora Lake section attached).

The Onteora Lake Trailhead and Parking lot is located over 2,200 feet away from the proposed crusher location and has an approximate 70 foot difference in elevation with a ridge between Trailhead and crusher. The area between the proposed crusher location and Onteora Lake is also heavily forested. Therefore, the noise from the crusher that reaches the Trailhead and Parking lot would be less than the noise to the two residential houses mentioned in the report. The crusher is a temporary noise impact that will go away after construction is completed. The existing Eastern Materials mining operation located off Morey Hill Road which is in close proximity of the proposed trails runs crushers as a normal part of their daily operations.

if you have any questions on the above or need additional information, please contact our office.

Sincerely,



Caleb Carr EIT

Medenbach and Eggers Civil Engineering and Land Surveying PC

Cc: Ryan Loucks
Dan Lefever

Attached:
Onteora Lake Section

From: [REDACTED]

Sent: Friday, June 07, 2019 9:13 AM

To: doc.sm.f3admin <f3admin@doc.ny.gov>

Subject: concerns about the 850 Route 28 LLC Site Plan / Special Use Permit Application

Dear Mr. Petronello,

I am very concerned about a proposal before the Town of Kingston Planning Board to construct a large-scale concrete manufacturing facility on land surrounded by the Catskill Park's Bluestone Wild Forest and other property conserved by the Open Space Institute (OSI). This proposed facility could have significant environmental impacts on the adjacent Bluestone Wild Forest and OSI Property. I respectfully request that the Planning Board rescind the Negative Declaration issued in March, and require the developer to prepare a comprehensive Environmental Impact Statement, and keep open the public hearing for site plan/special use permit until a thorough review has been completed.

The production of concrete is linked to many environmental impacts including:

- Landscape degradation. A thorough analysis of the impacts of the proposed construction and operations on the adjacent Bluestone Wild Forest and on the OSI Property has not been conducted.
- Dust can be hazardous due to the presence of some substances in concrete, including useful and unwanted additives, and can cause health concerns due to toxicity and (usually naturally occurring) radioactivity
- Visual impact on some areas of outstanding natural beauty. No thorough analysis of the visual impacts of the construction of a huge manufacturing plant within the Bluestone Wild Forest nor the OSI Property has been conducted.
- Use of potable water to wash aggregates, dust suppression and in the manufacturing process. How much water will this facility use and where will it come from? How will it impact the surrounding communities?

- **Water Contamination:** The developer's storm water pollution prevention plan fails to fully address storm water and other potential impacts to Pickerel Pond.
- **Noise:** Construction will include significant amounts of blasting, rock crushing, and other noisy activities that will affect recreation and wildlife in the Bluestone Wild Forest and in the OSI Property.
- **Hours of Operation:** Impacts related to proposed round-the-clock work were not considered by the Planning Board in the Negative Declaration.
- **Traffic:** The developer only analyzed the effects of traffic on Route 28. There is no information regarding the effect of truck pollution and noise on the Bluestone Wild Forest or on the OSI Property.
- **Climate change:** The cement industry is one of the largest producers of carbon dioxide (CO₂), creating up to 5% of worldwide man-made emissions of this gas, of which 50% is from the chemical process and 40% from burning fuel.

The developer, 850 Route 28 LLC, has not fully accounted for numerous potential adverse environmental impacts from the construction and operation of the plant. It proposes to clear 21 acres of trees, blast 405,000 cubic yards of rock, and construct a plant totaling 240,000 square feet. Construction will take at least five years of work lasting from 6 AM to 7 PM, and nearly 12,500 trucks will be required to remove 162,000 cubic yards of material. After construction, the facility could be run 24 hours a day, seven days a week and would cause more than a hundred new vehicles to use Route 28 daily (including 42 trucks).

A comprehensive review of the proposed project is needed to fully understand the potential adverse environmental impacts to the Bluestone Wild Forest and surrounding communities.

Please rescind your Negative Declaration determination and require the developer to examine all potential adverse environmental impacts, as is clearly required under the State Environmental Quality Act. I strongly

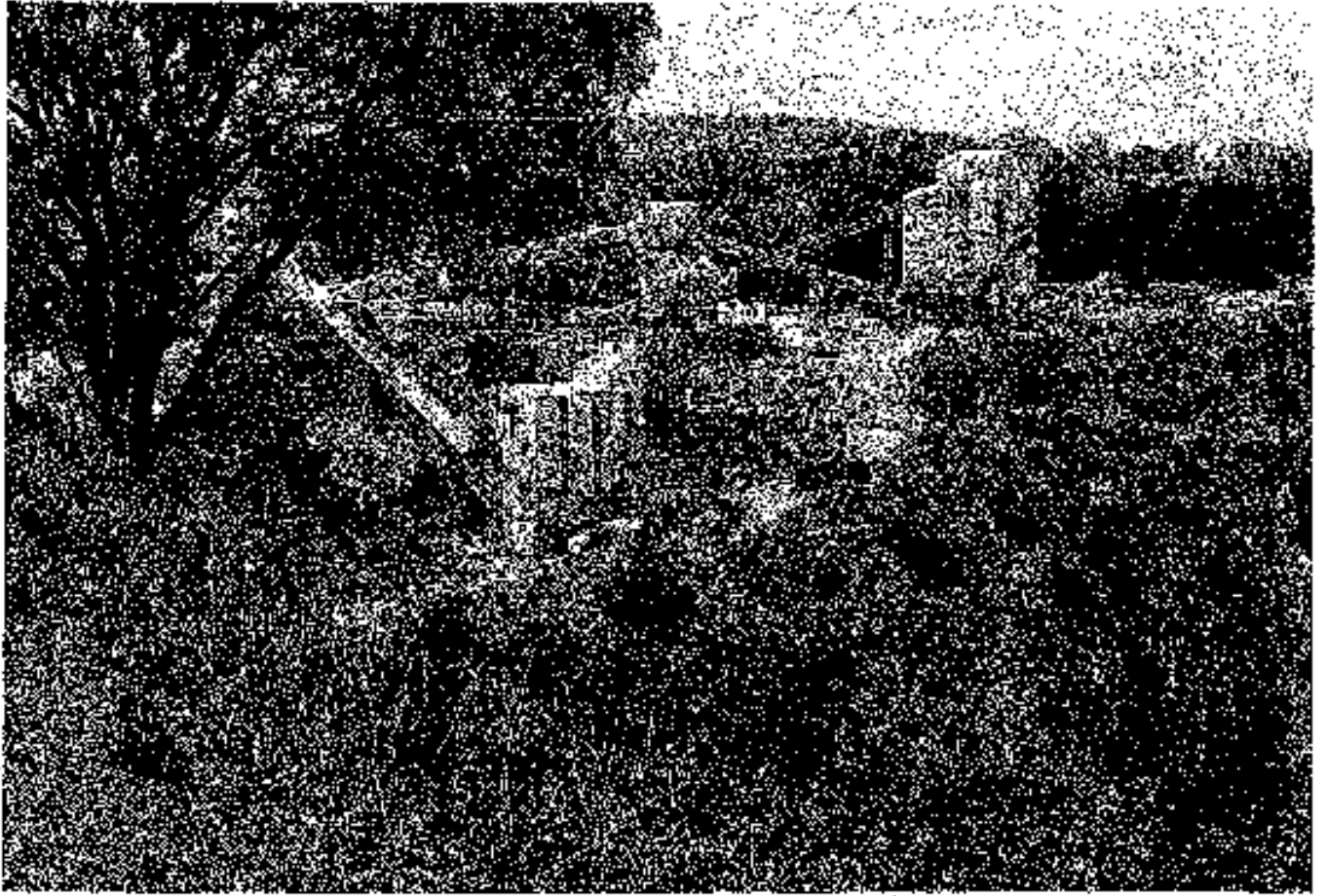
urge the Planning Board to take no further action on this application with respect to site plan/special use permit until all impacts have been assessed and suitable mitigation techniques and alternatives have been investigated.

We are living in a time of overwhelming environmental damage done by human activity that threatens all of life on this beautiful Earth. I understand that economics are a consideration but we have to find ways to improve our economic reality without compromising our children's future any further. Economics won't matter if we have no clean air to breathe, water to drink or food to eat. We are running out of time to deal with these very real threats to our existence. Please, think very carefully before you approve a project that has the potential to do great environmental harm.

Thank you for considering my views.

Sincerely,

A solid black rectangular redaction box covering the signature of the sender.



Medenbach & Eggers

Civil Engineering and Land Surveying P.C.

4305 US Highway 209
Stone Ridge, New York
12484-5620

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Harry Medenbach, P.E.
N.Y. Lic. No. 60142
N.J. Lic. No. 27646

William R. Eggers L.S.
N.Y. Lic. No. 49783

June 7, 2019

Division of Environmental Permits, Region 3
ATTN: Michael Grosso
21 South Putt Corners Road
New Paltz, NY 12561-1620

Re: 850 Route 28 LLC, Site Plan
Town of Kingston, Ulster County

CHID: 7784

Public Comment Letters:

Open Space Institute – May 16, 2019 to NYSDEC

WoodStock Land Conservancy – May 16, 2019 to NYSDEC

Catskill Mountainkeeper – May 16, 2019 to NYSDEC

Catskill Center – May 16, 2019 to NYSDEC

Email from Individual dated June 7, 2019 to NYSDEC – Individual name redacted

Dear Mr. Grosso,

Please be advised that all the issues raised in the comment letters listed above on the 850 Route 28 LLC project have previously been addressed and do not cause the need for any further studies or remediation. The following is our summary response to the concerns in the comment letters.

1. Consistency with Community Plans

There are several areas around the project site that are industrial in nature and the project site has had prior mining activities. The projects property is specifically zoned for Industrial use. Prior to this application, Auto dismantling was approved and conducted on the site. The proposed action is not inconsistent with County or town Plans. The proposed project is taking an existing un-reclaimed stone quarry and developing it into a usable area used for concrete and steel manufacturing.

2. Insufficient SEQR Analysis

The project may impact 35 acres, however over 27 of the acres have been previously disturbed and un-reclaimed. The Planning Board issued proper notification for the public hearing being held in March. The Town of Kingston Planning Board has a certified mail receipts for all the neighboring property owners on the tax roll record. All of the issues in the public comment letters were considered by the Town of Kingston Planning Board being lead agency when the Negative Declaration was approved.

3. Traffic Impacts

The existing Annual Average daily traffic for NYS Route 28 is 15,000 vehicles at the existing driveway. The maximum of 121 new vehicles entering and exiting the site will not significant increase the existing traffic. Section 5.0 of the revised November 8, 2018 Creighton Manning Traffic Assessment prepared for the project concluded that Tractor-trailers can safely enter and exit at the existing driveway location. The project is required to get a Highway Work Permit for the commercial entrance from the NYSDOT. The project is currently being reviewed by the NYSDOT. There is to be little to no impacts of traffic pollution and noise on the adjacent OSI property and Wild forest. The proposed project does not share a connecting road with the recently acquired OSI property and trucks within the project site will produce less noise than the existing traffic along NYS Route 28. The residents along Waughkonk road will not be able to see truck traffic along the driveway and within site due to terrain and tree coverage throughout the site. See attached Traffic Assessment revised

4. Aesthetic Impacts

It is not possible to see any of the proposed work areas from NYS Route 28. The closet excavation, blasting and processing of material is a minimum of 1400 feet away from NYS Route 28. There are 7 residences south of the proposed excavation and blasting area within 1500 feet with the closest being 500 feet. Onteora Lake is approximately 1500 feet west of the closest excavation and blasting area. Remaining tree cover you cannot see the proposed work areas from any of the 7 residences or Onteora Lake. However, there is a trail accessed from the Onteora Lake Trailhead Parking that leads to a spot on the west side of Pond A (see sheet I-1 for location of Pond A "Pickerel Pond") where there is an obscured view of the project site. With little to no visibility of the project site from public spaces, we propose to maintain the existing trees within at least 50 feet of the property line to mitigate visual impacts to the surrounding properties. Attached are two line of sight sections to determine the lack of visual impact from the proposed project.

5. Water Quality Impacts

A SWPPP for the proposed project has been prepared in accordance to the New York State Stormwater Design Manual and complies with the General Permit (GP-0-15-002) for the stormwater discharge from the proposed construction activities. No new point discharges across the projects property lines will be created from the proposed project. 4 of the 8

Stormwater design points indicated in the SWPPP are proposing no changes to the existing stormwater runoff. The other 4 stormwater design points will significantly reduce the peak flows off the property. The proposed buildings, parking areas and roads stormwater will first be treated using dry swales that infiltrate water through a layer of sand before discharging into one of two large Water Quality Ponds. The property that discharges stormwater toward Pond A "Pickerel Pond" is proposed to be greatly reduced. None of the projects new impervious surfaces will discharge into Pickerel pond. Currently Pickerel Pond discharges to the south during heavy rain events into the proposed projects property and flows as part of the Tributary 6 of Praymaher Brook. Therefore there should be no contamination of Pickerel Pond from the proposed project.

6. Noise Impacts

The Onteora Lake Trailhead and Parking lot is located over 2,200 feet away from the proposed crusher location and has an approximate 70 foot difference in elevation with a ridge between Trailhead and crusher. The area between the proposed crusher location and Onteora Lake is also heavily forested (see attached line of sight sections). Therefore, the noise from the crusher that reaches the Trailhead and Parking lot would be less than the noise to the two residential houses mentioned in the report. The crusher is a temporary noise impact that will go away after construction is completed. The existing Eastern Materials mining operation which is in close proximity of the proposed trails runs crushers as a normal part of their daily operations.

The excavation, blasting and processing of the rock material on site during construction is to be performed within the limit of disturbance shown on the current site plan and during normal weekday work hours (No Sundays or holiday construction). All machinery used during the excavation and processing shall not exceed regulated noise levels. Any processing of rock shall be done on a level area near the blasting and excavation. Hours for construction will be limited to 7am to 6pm on weekdays, 7am to 12 pm on Saturdays and no construction on Sundays or Holidays. Due to the distance, construction timeline, tree cover, and that the construction work will be 20 to 30 feet below the adjacent grade of the residences we believe the potential noise impact will be limited as concluded in the previously submitted Noise Study

The Habitat Suitability Assessment performed concludes that proposed blasting will not interfere with the closest known hibernacula. As long as tree clearing occurs during the clearing restrictions, the bats will not be on site and therefore not likely to be adversely effected. No blasting or construction operations are anticipated on the site at night and therefore should not disturb the bats at night.

7. Impermissible Segmentation

The Full EAF Part 1 on page 7 of 13 indicates that the facility will need to have 24 hour operation. The third shift is needed for maintenance, up keep, set up, break down, removal of materials and safety duties. The majority of third shift will be inside the manufacturing buildings with a maximum estimate of outside employees will range from 2 to 4 as necessary. The work hours for Construction are only to be during the day.

8. Water Usage

The water usage on site for the two manufacturing buildings is estimate to be 2,900 gallons per day. The water usage for the site estimates 2000 gallons per day for the proposed concrete manufacturing building and 900 gallons per day for the employees. The projects applicant currently operates a concrete manufacturing facility where they collect rain water for use in the concrete manufacturing processes. The applicant plans to collect rain water within the proposed concrete facility. Attached is the Bedrock Well BW-1 Testing Final Report that was performed on the existing well on the site. The Testing Final report finds that the existing well on site was able to produce 5.0 gpm (7200 gpd) or approximately 2 times the average daily usage.

If you have any questions on the above or need additional information, please contact our office.

Sincerely,



Caleb Carr EIT



Barry Medenbach P.E.

Medenbach and Eggers Civil Engineering and Land Surveying PC

Cc: John Konior, Town of Kingston, Chariman
Ryan Loucks, Crawford Associates Engineering, PC
Dan Lefever
Timothy P. McColgan Attorney at Law

Attached: Line of sight Sections

Supporting documents available upon request:

- Wetland Mapping and Affected Area-Habitat Assessment dated August 16, 2017
- Creighton Manning Traffic Assessment dated November 8, 2018, Amended January 17, 2019 and May 1, 2019.
- Noise Study by H2H Associates LLC last revised February 15, 2019
- Blasting Plan by H2H Associates LLC last revised February 15, 2019
- Threatened & Endangered Species & Habitat Suitability Assessment Report last Revised February 18, 2019
- SWPPP by Medenbach and Eggers last revised May 14, 2019
- Bedrock Well BW-1 Testing Final Report – Miller Hydrogeologic Incorporated dated May 28, 2019



**OPEN SPACE
INSTITUTE**

June 17, 2019

Mr. John Konior
Chairman, Town of Kingston Planning Board
906 Sawkill Road
Kingston, NY 12401

RE: Comments by the Open Space Institute on the Application by 850 Route 28 LLC

Dear Mr. Konior:

Open Space Institute, Inc. ("OSI") has retained environmental firm CHA Consultants to provide further analysis of the significant environmental impacts that the concrete manufacturing facility proposed by 850 Route 28 LLC ("Applicant") will have on the adjacent Bluestone Wild Forest, as well as the 208-acre property recently acquired by OSI. Please review CHA Consultants' analysis in the attached report dated June 12, 2019. The report describes the potential adverse environmental impacts that have not been fully disclosed to the Planning Board by Applicant.

OSI has also retained attorney John Privitera of McNamee and Lochner P.C., who has prepared the attached letter dated June 17, 2019 outlining legal concerns raised by the Planning Board's issuance of the Negative Declaration in March. Based on the analysis provided both by CHA Consultants and Mr. Privitera, OSI believes the Planning Board must rescind the Negative Declaration and require Applicant to prepare a full environmental impact statement.

Regards,

Christopher J. (Kim) Elliman
President & CEO

Attachments:

Map of Bluestone Wild Forest and OSI Property Trail Improvement Plan
Environmental Analysis Prepared by OSI Consultant CHA Consultants
Legal Analysis Prepared by OSI Consulting Attorney John Privitera of McNamee and Lochner P.C.



- | | | | | |
|--------------------------------|----------------|---------------------------------|------------------------|------------------|
| Proposed Main 'Turnpike' Trail | Existing Trail | OSI Recent Acquisition | DEC Land | DEP Land |
| Proposed Single Track Trail | Road | Proposed Manufacturing Facility | Town of Woodstock Land | Existing Parking |



June 12, 2019

Mr. Tom Gravel
Project Manager
Open Space Institute – New York
1350 Broadway, Suite 201
New York, NY 10018
Via: tgravel@osiny.org

RE: Project Review
850 Route 28 LLC Project, 850 Route 28, Town of Kingston, New York
CHA Project No. 36233

Dear Mr. Gravel:

An industrial structural steel and precast concrete manufacturing facility is proposed at 850 Route 28 in the Town of Kingston, Ulster County, New York. The industrial facility will be constructed in a former shale quarry over two phases. During construction, stone will be actively quarried to provide onsite building pads as well as shipped offsite as surplus aggregate. Quarry activities will involve blasting and significant earth-moving equipment. Approximately 150,000 cubic yards of quarry material will be removed from the Site during the first phase, and approximately 50,000 cubic yards will be removed during the second phase. Two 120,000 sq. ft. buildings are slated for the project construction phase with a total land disturbance of approximately 35 acres. Hours of operation during construction will be 6am to 7pm on all days of the week. Operating hours during facility operations will be 24 hrs./day on all days of the week. Except for the immediate corridor along Rt. 28, this use is in sharp contrast to the surrounding land uses.

The Open Space Institute (OSI) has recently purchased property along the northern and northeastern sides of the quarry (Site). OSI's property links existing NYSDEC park land parcels that are part of the Bluestone Wild Forest, which the public uses for a variety of outdoor recreational activities year round. OSI plans to transfer ownership of the property to NYSDEC to connect existing trail systems. OSI is concerned about the adverse impact the proposed project will have on their property and has retained CHA Consulting, Inc. (CHA) to review existing project documentation and provide an opinion on the impact assessment provided by the Applicant as well as the comprehensiveness of the impact findings by the Town of Kingston in the Negative Declaration determination.

CHA conducted a visit to OSI's property and the surrounding area on June 7, 2019, and also reviewed Project documents at the Town of Kingston Town Hall on that day. CHA has prepared this letter report to summarize our findings of this review.

Impacts on Surface Waters and Wetlands

Impacts to surface waters and wetlands were evaluated by a Professional Wetland Biologist (PWS) from CHA. As described in the various documents supplied by the applicant and various commenters on the project, wetlands are located on site, and through nearby adjacent parcels. Wetlands on site have been mapped by a consultant for the Applicant and should be verified by state and federal officials, especially in the area along the access road where encroachment into the State Regulated Wetland associated with Onteora Lake will occur.

The Wetland Report indicates that the onsite wetlands are isolated. However, it does not consider the disturbed nature of the Site. Based on aerial photographs, the Site seems to have significant rock fragments over the surface suggesting significant infiltration rates and potential subsurface hydrologic flow. Therefore, we do not believe the hydrologic connection between these wetlands has been thoroughly analyzed. The connection of these onsite wetlands to offsite wetlands has also not been evaluated and should be.

Due to the amount of cut and fill activity, the potential for increasing runoff and subsequent siltation is of concern. Regular as well as impromptu inspections of the storm water controls will be required during excavation, construction, and daily operation of the facility. Perimeter controls will be required along Pickerel Pond and nearby state-regulated Wetland KW-3 as these are the most susceptible to impacts. An Article 15 and Article 24 wetland permits have been submitted to the NYSDEC and is under review. Additional stormwater comments are presented below.

Vegetated buffers have been discussed by others to mitigate noise and visual impacts. However, there is a strong correlation between the size of vegetated buffers and the ability of the buffer to protect aquatic resources and water quality. Therefore, buffer sizes surrounding the active work areas should be increased due to the multiple beneficial mitigative effects (visual, noise, water quality, aesthetics) that vegetated buffers will impose on the project.

Flora and Fauna

As pointed out in the May 2019 report prepared by Hudsonia for OSI, the prior industrial/mined use of the proposed project area does not reduce the viability of the Site for habitat for a variety of species that potentially carry a conservation status of concern. CHA agrees with Hudsonia that a more in-depth investigation of what species exist at the Site should be conducted. The Habitat Assessment Report prepared by the Applicant's consultant is inadequate as it only addresses "listed" species and does not appear to contain onsite or site-specific information.

The area on Site and surrounding the Site does contain a diverse array of common habitats and some micro habitats and/or uncommon geologic features. These include cliffs, talus and rock outcrops, and others. These features do have the potential to contain localized very site-specific populations of plant and animal species that have not been fully documented. Once disturbed, the opportunity to document these resources is lost. Therefore, CHA recommends additional onsite and offsite studies be conducted to document these resources prior to Project commencement.

Excavation, construction, and operational noise will impact surrounding wildlife species. In general, a growing number of studies indicate that animals, like humans, are stressed by noisy environments



(Shannon et al. 2015). Loud noises make habitat undesirable for species and have been shown to reduce mating and breeding success in bird species. These impacts will most likely affect a decline in resident wildlife species. Specifically, activities such as finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories are all dependent on the acoustical environment. In order to continue with these life function activities, animals are being forced to adapt to increasing noise levels. Shannon et al. (2015) cited studies that indicated terrestrial wildlife responses begin at noise levels of approximately 40 dBA, and 20% of researchers documenting impacts below 50 dBA.

Blasting can also affect people and wildlife as a result of the air blast or over pressure wave and through ground vibration. Compression waves had been suggested to impact the swim bladders in fish in nearby water features. Insufficient information has been provided to address any of these potential impacts.

Some researchers have also indicated that explosive residues have the potential to pollute surface and groundwater supplies. Mahtab (2005) indicates that explosive residues, which are toxic to aquatic life forms, can enter surface water through infiltration with precipitation and washing of aggregate materials. The pollution potential is dependent on the chemical composition of the blasting explosives. Special precautions should be in place to prevent contamination of Pickerel Pond and the state regulated wetland surrounding Onteora Lake.

Emergent wetland areas along the access road are shown to occur near Palm Muck soils that occur in the state regulated wetland. These types of habitats are known to potentially be inhabited by isolated pockets of bog turtles (*Clemmys mühlenbergii*), a state and federally protected species. This species also warrants a larger buffer (300 feet) from occupied habitats which could affect the Site plan. While the Applicant's consultant has concluded that bog turtles are not present onsite, there is no definitive statement regarding habitats in the adjacent State Regulated Wetland. Therefore, we recommend that a second opinion by a certified bog turtle surveyor be provided on this species, as Site operations have the potential to severely degrade this habitat offsite and impact (i.e., water quality runoff, road salts, invasive species) the wetland along the access road.

Stormwater Management

A licensed Professional Engineer familiar with stormwater management from CHA reviewed the Medenbach and Eggers May 14, 2019 Stormwater Pollution Prevention Plan and the January 31, 2019 Site Plan set (for erosion and sediment control features) to ensure that surface water and wetland features were being properly protected by the proposed Project. Our review of the existing documents found the following:

1. The Project is proposing to disturb approximate 37 acres in two phases. Based upon NYSDEC SPDES General Permit for Stormwater Discharges (GP-0-15-002) regulations, the owner or operator of a construction activity shall not disturb greater than five (5) acres of soil at any one time without prior written authorization from NYSDEC. Since the project will disturb approximately 37 acres, the Applicant will either need to create a sequence of multiple construction phases with 5 acres of soil disturbance or submit a request to NYSDEC Regional office for a 5-acre waiver. Current documentation does not mention the intent to obtain a waiver.

2. The amount of existing impervious area and the amount of future impervious area stated in the SWPPP and the NOI do not match. The Notice of Intent (NOI) stated that the nature of this project is "redevelopment with increase in impervious area" on question #2, however, the amount of existing impervious area to be disturbed (26.0 acres) is less than the future impervious area within disturbed area (3.8 acres) on question #4. In addition, the SWPPP listed 37 acres of disturbance with 23.5% of impervious area before construction (8.7 acres) and 28.3% impervious area after construction (10.5 acres), with future impervious cover of 6 acres. The Applicant should confirm the amount of existing impervious area and the amount of future impervious area and make appropriate corrections to documents.
3. According to Figure 6.3 of the NYS Stormwater Management Design Manual, the permanent pool for a wet extended detention pond (P-3) shall be 6 to 8 feet deep. The proposed "Water Quality Basin #1" and "Water Quality Basin #2" are considered as wet extended detention on the NOI on question #29. However, the proposed condition HydroCAD model has defined both these basins to be 12 feet deep. Therefore, both water quality basins are deeper than what is required by the NYS Stormwater Management Design Manual. The Applicant may redesign the water quality basins to meet the approved 6-8-foot depth; this would mean shallower and wider basins to have the same capacity. The applicant may also ask NYSDEC to review the design as a non-standard design; this involves a 60-day review period.
4. Since the proposed "Water Quality Basin #1" will be 12 feet deep with 130,978 cubic-feet of storage and "Water Quality Basin #2" will be 12 feet deep with 96,149 cubic-feet of storage, they may require a Dam Permit from NYSDEC's Dam Safety Division. No mention of the Applicant's intent to obtain a Dam Permit was found in the existing documents. The Applicant should ensure that water quality basins are designed to ensure dam safety and follow the Guidelines for Design of Dams.
5. Documentation states that surface water from ponds D and E discharges to a Class C(T) perennial stream. However, this stream is not depicted on the Site Plan set. With the stream supporting trout, proper stormwater management at the Site is essential. NYSDEC stormwater officials should review the applicability of this new discharge to the need for permit requirements.
6. Erosion and sediment controls on large construction sites use silt fences, filter socks, or other engineered methods of control, which have little effect on stormwater quality beyond sediment control. They also fail to capture fine sediment which may pass through, around, or over engineered controls. Because of the sensitive nature of downgradient ecosystems, we recommend that enhanced stormwater controls be employed. These could consist of redundant erosion controls in parallel or use of a vegetated berm or swale to capture fine sediments.

Noise Impacts

A licensed Professional Engineer familiar with noise surveys from CHA reviewed the February 2019 Noise Study by H2H Associates for the Project. We found that noise impacts were not adequately evaluated. Specifically:



- The noise study did not place any receptors in the lands, or at the property lines, to the north of the Site. These areas should be analyzed because of the existing or planned recreational trails in this area.
- The noise study only performed measurements for 6 hours (8:00 AM to 2:30 PM). There is no way to know if this is the peak noise level that may be experienced during the day. We recommend that 24-hour noise measurements be taken.
- Noise surveys should conduct measurements during ambient conditions (no onsite operations), existing conditions (typical onsite operations occurring), and proposed conditions. During the noise study at the Site, "ambient" measurements were taken with a "Liebherr 586 front end loader loading shot rock into a tractor trailer".
- Table 2 shows Logging Station information was collected, but it does not specify the hours. It is hard to know what ambient levels were recorded under such a sample size. If measurements were obtained, we would know the high and low noise levels to compare against.
- Table 2 shows that for Logging Station #12 and #14 the measurements were done in two separate sessions to replace the batteries. Typically, when performing noise measurements, as the battery life diminishes noise meters will not always record noise levels properly. This may or may not have been the case, but these data points need to be evaluated further.
- The paragraph at the top of page 5 talks in generalities regarding the "average" noise levels at the Site property boundary (38.6 dB) and for the Site as a whole (48.0 dB). This information does not appear to be prudent in evaluating noise and seems irrelevant when looking at noise level increases at receptor locations.
- Projected sound levels were provided with a tremendous amount of undocumented assumptions (i.e. distance, berms, vegetation, topography). It was difficult to determine from the report if these values are correct or have just been manipulated and presented to be in the favor of the Applicant.
- The projected sound levels look at the possible noise levels only from the one operating piece of equipment. Noise emitted from multiple pieces of equipment operating simultaneously with trucks idling and/or transporting materials on and off site should be evaluated. Noise receptors could experience a significantly higher noise level if multiple operations are occurring at once.
- The report does not specify how or why they only projected sound level changes to Receptors R-1 and R-2. This does not seem to fully evaluate the entire project Site and property boundaries.
- Through the projecting of noise levels and as documented in the Findings and Mitigating Measures sections, none of the reported values are shown with cumulative noise effects to model multiple equipment running simultaneously. This does not provide a true representative value of what can be anticipated.
- In Section 5.0, statements are made that a forklift will produce a lower Leq dB than a blast hole drill rig. This statement cannot be substantiated without analysis. Additionally, all equipment that may be operating at one time should be analyzed together because multiple pieces of equipment will logarithmically increase noise reaching receptors.
- Mitigation measures recommended moving the crushing pan farther to the north; this will have a negative effect on users of the existing and planned recreational trails in the lands to the north of the Site. This would also have a negative impact to the serene and natural conditions surrounding the recreational trails.

Visual Assessment

A licensed landscape architect from CHA familiar with visual assessments performed a review of existing documentation from a visual/aesthetic standpoint. Since the Project is located directly adjacent to the Bluestone Wild Forest and in the Catskill Forest Preserve (a.k.a. Catskill State Park) Boundary, CHA reviewed the Unit Management Plan (UMP) for this wild forest. NYSDEC in drafting the UMP noted that "We have reviewed the available application and SEQRA materials as it relates to aesthetic resources and potential visual impacts for consistency and conformance with NYSDEC Policy DEP 00-2, Assessing and Mitigating Visual Impacts". This document sets out the basic components and criteria that need to be considered and to evaluate visual impacts on aesthetic resources when conducting a review of a project that has the potential to impact aesthetic resources. The process, that is prescribed within this document, to conduct a review of an application is as follows:

- Verify the applicant's inventory of aesthetic resources.
- Verify the applicant's visual assessment, using either graphic viewshed and line-of-sight profile analysis as illustrated in Appendix A, or more sophisticated visual simulations and digital viewshed analysis, as needed.
- Determine or verify the applicant's assessment of the potential significance of the impact.
- Confirm that applicant's mitigation strategies are reasonable and are likely to be effective or assure mitigation by requiring the applicant to submit a design that includes the required mitigation, or, impose permit conditions consistent with those mitigation requirements.

Based on a review of the available material, it does not appear that the any of these steps were taken or followed, and the Town of Kingston Planning Board did not require the Applicant to provide a visual impact assessment. Since this action is a Type I action the omission of this evaluation demonstrates that the Town of Kingston did not take the requisite "hard look" during the environmental review and that only a cursory review of one resource was included. Below are some examples of the lack of basic analysis that the Lead Agency failed to request from the Applicant prior to making the determination of significance:

- **Inventory of aesthetic resources-** The only resource that was identified on the SEQRA documentation was Onteora Lake. Based on our review of the vicinity directly adjacent to the project site, Pickerel Pond, hiking trails within Bluestone Wild Forest (state park) are available as well as trails that are located on OSI property are available and may be impacted the development of the project Site as proposed. Typically, photos from these critical resources are provided to determine what level of visual impact may occur and assist the Lead Agency in determining what level of visual impact assessment the applicant should prepare.
- **Verify the applicant's visual assessment-** It does not appear that the Lead Agency required a visual impact assessment for this project. As a Type I action, not to have even a basic cross-sectional analysis to determine what the visibility of the project might be from critical viewpoints demonstrates a failure by the Lead Agency to take the requisite hard look.
- **Determine the applicant's assessment of the potential significance of the impact-** The Lead Agency made a finding of "no impact" on the SEQRA form and subsequently made a buffer requirement of 50 feet during their determination. In both cases the determination is without basis of fact and without any qualitative or quantitative analysis. Nothing was submitted to base a determination on: no photos from critical views; no cross-sectional

analysis to determine the projects visibility; and no analysis of the height and density of the existing vegetation to determine if the 50-foot buffer is sufficient mitigation.

- **Determine if the applicant's mitigation strategy is sufficient-** The Lead Agency determined that a 50-foot buffer was sufficient without any basis of fact or analysis to make that determination.

Based on this it is clear that aesthetic impacts from critical resources were not considered in the decision-making process, and the Lead Agency did not follow even the basic and bare minimum analysis as it relates to aesthetic resources. Therefore, the Lead Agency's determination was made without any basis of fact.

Traffic Assessment

Although, a thorough review of the traffic assessment was not completed by CHA, we noted several concerns during our review that could be an impact on traffic from the Project.

- Laden trucks leaving the Site and turning south on Route 28 will be trying to accelerate on an uphill grade.
- If trucks entering or leaving the Site are oversized loads, traffic controls may be impacted.
- The only proposed traffic controls were to improve the access road entrance to meet NYSDOT truck turning distances and to clear roadside brush to the north to improve sight distance.

CHA recommends that the Applicant address the issues of accelerating upgrade and oversized loads.

EAF Form Review

Using existing project documentation and information readily available from a desktop review of pertinent online databases, a permitting specialist from CHA familiar with the SEQRA process performed a review of Part 1 and Part 2 of the EAF that was submitted by the Applicant. Overall, we found several key discrepancies which should be brought to the attention of the Planning Board.

On Part 1 of the EAF:

1. There was no mention that the Project was located in the Hudson River National Heritage Area or within the boundaries of the Catskill Forest Preserve/Catskill Park (C.2.b and C.4.d). The New York State Office of Parks, Recreation, and Historic Preservation may want to be a stakeholder for the project. We do not know if this agency is aware of this Project. These are aesthetic and recreational resources that do not appear to have been included in the evaluation.
2. The Applicant stated that stormwater runoff will be directed to existing ponds (D.2.e.iii). Based on site plans, the existing ponds discharge to a perennial stream that supports trout (Class C(t)). The perennial stream was not mentioned and is not shown on the Site plans.
3. The evaluation of air emissions during construction and operation as well as the potential need for air permits from NYSDEC did not appear to be thorough. Mobile emission sources during operations did not include truck and heavy equipment exhaust (D.2.f.i). Stationary sources during operations did not include heating/cooling emissions (D.2.f.iii). Other stationary sources from operations may include manufacturing process emissions and/or backup

- generator emissions. The Applicant should revise what stationary and mobile sources will be present. Based on our review and NYS Air Permitting Regulations 6 NYCRR Part 201, air permitting is needed for manufacturing operations and quarrying/crushing operations (D.2.g) unless all sources are considered exempt or trivial. It is the responsibility of the owner/operator to maintain documentation on exempt or trivial determinations. The Applicant should provide the exempt/trivial determinations for all air contamination sources proposed such as but not limited to crushers, screeners, baghouses, mixers, dryers, silos, forges, welding, cutting etc.
4. Applicant answered that the proposed action will not result in the release of air pollutants from open-air operations and processes such as quarry (D.2.i). Based on our information and knowledge, this answer should be YES; there will be emissions of dust from quarrying and heavy equipment exhaust.
 5. Hours of operation during construction are shown as 6 am to 7 pm on Saturdays and Sundays (D.2.l). We find that excessive given the nearby residential and recreational areas.
 6. Applicant answered that the proposed action would not remove existing natural barriers or screen for noise or light (D.2.m.ii & D.2.n.ii, respectively). However, E.1.b states that 19 acres of forest will be lost.
 7. Applicant answered that there will be no bulk petroleum or chemical storage (D.2.p). We would like information on how the heavy equipment will refueled and serviced during construction. We would also like to know if any chemicals are used during manufacturing and will there be a diesel-powered backup generator as part of the design.
 8. The Applicant stated that there will be no solid waste management or disposal at the site (D.2.r). There will be solid waste generated at the site that must be managed at the site prior to offsite disposal.
 9. Applicant did not list public recreational areas as an adjoining/nearby land use (E.1.a)
 10. No lakes or ponds were listed by the Applicant (E.2.h.iv). Pickerel Pond should be listed as the southern boundary of the pond falls on the Applicant's property.
 11. Applicant listed only Onteora Lake as officially designated and publicly accessible federal, state, or local scenic or aesthetic resources within 5 miles of the Site (E.3.h). There are others, namely Bluestone Forest, Ashokan Reservoir, Catskill Park/Catskill Forest Preserve, other local parks, and the Hudson River National Heritage Area.

Some other minor findings from the review of Part I EAF include:

D.2.q The Applicant stated that there will be no use of pesticides or herbicides. We would like additional information on whether there will be any rodent or insect control or weed control practices as part of routine operations at the Site.

D.2.t Additional information is needed to verify that no hazardous waste is generated during the manufacturing or from the maintenance of equipment during construction or operation.

E.1.c Applicant did not list the existing footpath easement across the access road which links public recreational lands on both sides.

E.1.e Applicant did not list any dams. Based on current detention pond design in the SWPPP, dams and dam permits will be required for both detention ponds.

E.1.g If the quarry serviced their own machinery, there may have been hazardous waste (parts cleaner or automotive fluids) generated at the Site.

E.2.b With bedrock at 0 feet below ground, we believe more than 20% of the site has bedrock outcroppings.

E.2.d The Applicant reported not knowing the depth to water. The surface elevation of Pickerel Pond should approximate depth to water.

E.2.g Route 28 is listed as a Unique Geologic Feature. Route 28 is not a geologic feature.

Review of the EAF Part 2 showed:

- Clarifications on Part 1 of the EAF regarding stormwater and management and its relation to the perennial stream may affect 3.h and 3.i.
- Clarifications on Part 1 of the EAF regarding chemical or petroleum bulk storage may affect 4.f. relating to impacts to groundwater.
- Clarifications on Part 1 of the EAF regarding stationary and mobile emission sources may affect the need for air permits (6.a)
- Since 19 acres of trees are slated for removal, 7.h should be a moderate/large impact since it is more than 10 acres of forest.
- We found that "Impact on Aesthetic Resources" should be checked "Yes". The proposed action will be visible from an officially designated federal, state, or local scenic or aesthetic resource. Bluestone Forest is adjacent. The project is within the boundaries of Catskill State Park/Catskill Forest Preserve. The proposed action will be visible from a publicly accessible vantage point (Pickerel Pond). The project will also be visible by travelers on Route 28 (heading south) and from recreational based activities (Bluestone Forest).
- During construction and operations, laden trucks entering Route 28 heading south will be entering a busy highway on an uphill grade. CHA recommends that this should be identified on 13.f as "Other Impact".
- For Impact to Energy, the project may require the installation of an onsite transformer (14.b) and will heat/cool more than 100,000 sq. feet (14.d).
- Noise impacts should be revisited based on our comments on the noise study.

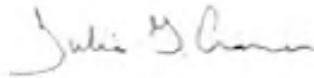
Conclusions

Based on our review of the existing documentation and Site conditions, initiation of the proposed project will alter the site and surrounding area. The most impacted receptors will be the surrounding residences and the physical and aesthetic resources of Pickerel Pond and Onteora Lake. The residential homes will have their neighborhood changed by the quarry/excavation of rock materials and the operation of the facility on a 24-hour basis. The serene character of the parkland will be permanently changed, especially if operational activities are 24 hours a day, seven days a week. Further, water quality degradation and runoff have a high potential to affect the state regulated wetland and Pickerel Pond.

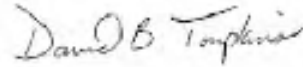
Based on CHA's review, we believe that a more thorough review of nearby resources and potential impacts is required by the Lead and involved agencies to ensure that appropriate inquiry is made on this application. Specifically, noise, visual, stormwater, air emissions, and traffic impacts should be re-evaluated. There are other issues (e.g., petroleum or chemical bulk storage) where we feel additional information on the proposed operations is needed to determine the level of impacts and potential mitigation measures.

If you have any questions, please do not hesitate to contact Dave Tompkins at (845) 764-7515 or Julia at (845) 325-2329 or via email at dtompkins@chacompanies.com or jcraner@chacompanies.com.

Sincerely,



Julia Craner, PG
Project Manager



David B. Tompkins, PWS CWB
Principal Sr. Scientist

REFERENCES

Shannon, G. et al. 2015. A synthesis of two decades of research documenting the effects of noise on wildlife. <https://doi.org/10.1111/brv.12207>

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NYSDEC Air Permitting Regulations : 6 NYCRR Part 201



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McNAMEE LOCHNER PC
ATTORNEYS AT LAW

June 17, 2019

John Konior
Chairman
Town of Kingston Planning Board
906 Sawkill Road
Kingston, New York 12401

Re: Public Hearing on 850 Route 28 LLC

Dear Mr. Chairman:

Please accept this letter in my capacity as counsel to the Open Space Institute Land Trust, Inc. ("OSI") in this matter. OSI protects scenic, natural and historic landscapes to provide public enjoyment, conserve habitat and sustain communities across the eastern seaboard.

The applicant's proposed project is directly adjacent to the Bluestone Wild Forest, which forms the easterly border of the Catskill Forest Reserve, public lands whose wilderness character is protected by the New York State Constitution (Article XIV, Section 1).

In February 2019, OSI purchased a 208-acre property known as the Onteora Lake Addition immediately adjacent to the proposed project, including forest, wetlands and the northern portion of a wild body of water known as Pickerel Pond. OSI purchased the Onteora Lake Addition because it is important to join the two major sections of the Bluestone Wild Forest. The Addition will be integrated into the Catskill Park upon conveyance by OSI to New York State. Thus, as the proposed project is being built and operated, it will be surrounded on three sides with wild, protected lands used by the public for wilderness recreation.

The Negative Declaration Must Be Rescinded as a Matter of State Law

Remarkably, the Planning Board's March 18, 2019 Negative Declaration does not even mention the Bluestone Wild Forest, the surrounding recreational uses or the Onteora Lake Addition in its analysis of environmental impacts of the proposed project. Since the Negative Declaration was issued, the Planning Board has received detailed comments from OSI, including the May 16, 2019 letter from OSI Executive Director, Kim Elliman, accompanied by the report of Dr. Eric Kiviat, a highly regarded professor of ecology; detailed comments from the Woodstock Land Conservancy; focused comments by Mr. Robert Leibowitz of the Ulster County Planning Board, with specific recommendations; and, a number of factual findings and environmental impact observations by CHA, delivered today to the Board, pointing out many environmental matters that have been overlooked.

[M1902500.1]

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Of course, the Negative Declaration states, at the outset, that the finding is based on the Board's "consideration of available information". In light of all of the additional, new information the Board now has, it has a legal obligation under New York State Law to rescind the Negative Declaration and to engage in a hard look and meaningful analysis of all of the potential environmental impacts that have been raised on the record before you. Title 6 NYCRR Part 617.7(f), provides as follows:

"At any time prior to its decision to undertake, fund or approve an action, a lead agency **must rescind** a negative declaration when substantive new information is discovered." (6 NYCRR Part 617.7(f)(1)(ii)).

The record conclusively establishes that the Board was fully unaware of the OSI ownership of the adjacent Onteora Lake Addition, much less aware of its destiny to become forever wild lands protected by the New York State Constitution. This is proven by the mailing of notice of last month's public hearing to the prior, private owner. There can be no doubt that the institutional, public and ultimate wilderness character of the Addition is totally new information as a matter of fact.

Since the Negative Declaration makes absolutely no reference to the Bluestone Wild Forest, the Catskill Preserve or the adjacent Onteora Lake Addition, soon to be public and part of the Catskill Preserve, the comments, reports and letters submitted by OSI, the Woodstock Land Conservancy, and the Ulster County Planning Board constitute "new information" as a matter of law. Thus, the mandatory duty set forth in SEQRA applies and the Negative Declaration **must** be rescinded.

The Negative Declaration is Unlawful in Failing to Follow the Town Zoning Law

Special Use Permits, such as that sought here, are a technique or category in local land use law in which a municipality seeks to encourage a particular land use in a specific zone, but only when it is fully regulated and "conditioned" in a manner suitable for the particular location. Special Use Permits, as a zoning law category, demand strict and close scrutiny of all potential "conditions" to be imposed upon the applicant in order to make the use of the property reasonably compatible with the surrounding land uses. Thus, a special use permit applicant has the burden of proving compliance with each of the special use permit criteria that are set forth in the local zoning ordinance. See generally, North Shore Steakhouse, Inc. v. Board of Appeals of the Village of Thomaston, 30 NY2d 238 (1972); Town Law § 274-b(1). See also, Town Law § 274-b(8) (mandating full compliance with SEQRA in evaluating the issuance of special use permits.) The applicant here has not met this burden and the Planning Board has fully disregarded the Town Zoning Law relating to Special Use Permits.

Special Use Permit legislation necessarily delegates power and responsibilities to the Planning Board to closely evaluate the criteria for special use permits listed in the local law and to make use of each of these criteria in fashioning a conditional use that minimizes the impact of the contemplated use on the surrounding area.

Here, the Ulster County Planning Board's recommendation to the Town of Kingston Planning Board (date reviewed May 1, 2019) specifically recommends close scrutiny of visual and noise impacts from the proposed industrial use upon the public's wilderness recreational use of the Bluestone Wild Forest, including Onteora Lake and Pickerel Pond.

The Ulster County Planning Board's recommendation is reasonable, because it generally draws upon the list of conditions set forth in the Kingston Town Law, for close scrutiny by the Planning Board, in an effort to mitigate impacts upon surrounding land uses.

As set forth in the Kingston Town Law, the purpose of Article V of the Zoning Law is to establish the standards that must be applied by the Planning Board in reviewing Special Use Permit applications. Overall, the purpose of this Zoning Law provision is to "ensure the compatibility of such uses by applying appropriate standards." *Id.*

Specifically, the Town Law relating to special use conditions demands Planning Board analysis and imposes a mandate upon the Board to:

1. "[T]ake into consideration the public health, safety, general welfare, the comfort and convenience of the public in general and that of the immediate neighborhood in particular". Town of Kingston Zoning Law, § 425-20.
2. "[T]ake into strict account" adjacent land uses, such that "The Planning Board shall not approve the Special Use unless, in its determination, the proposed use will not have a negative effect on adjacent land uses." *Id.* At Subsection A.
3. Consider "the impacts of lighting on adjacent areas and areas within viewing distance". (*Id.* at subsection M)
4. Impose such conditions, which allow it to find that the proposed use "should not discourage the appropriate development and use of adjacent land and buildings or impair the value" of adjacent land. *Id.* At Subsection C.

Surely, adding the OSI parcel to the Wild Forest is appropriate development of lands adjacent to the project. As a matter of law, the Town Planning Board is mandated to thoroughly consider under SEQRA all of these Town Law factors and to not issue a special use permit until the impacts have been fully vetted and mitigated.

Upon the record before the Board, there is no evidence that the Board has taken into consideration the comfort and convenience of the public and that of the "immediate neighborhood in particular", which is constitutionally protected wilderness. The Board has not taken into "strict account" the adjacent land uses. Indeed, the adjacent public lands are not even considered in the Negative Declaration. Thus, the Board cannot make the mandatory finding that the excavation, rock processing and manufacturing operation "will not have a negative effect on the adjacent land uses". The Board has not done any visual impact analysis, so there is no documentation of the visual impacts of lighting on the wilderness lands. Finally, the Board has not imposed any conditions such that it can make a finding that the proposed project will not impair the value of the wilderness lands or the value of the adjacent Addition. See generally, Zoning Law § 425-20.

As accurately pointed out by the Ulster County Planning Board, the Town Planning Board has not even considered the impacts of this project upon the Wild Forest and the Ontcora Lake Addition, to be conveyed to the State for inclusion in the Wild Forest. Most importantly, the Negative Declaration is void of any reference to the four listed mandatory considerations set forth in the Town of Kingston Zoning Law. This is an error of law.

**The Proposed Project Appears to Need a Mining Permit From
the New York State Department of Environmental Conservation**

The Negative Declaration describes the proposed project site as an "unreclaimed rock mine", where the applicant proposed to construct a "concrete manufacturing facility" that will use "cement, sand and aggregate" as the raw materials for concrete. (emphasis added) The Negative Declaration finds further that over the course of at least 3 to 4 years, the applicant will excavate 405,000 cubic yards of rock from the proposed project site and use at least 185,000 cubic yards as aggregate to manufacture concrete.

Under New York State's Environmental Conservation Law, any person who mines or proposes to mine from each mine site more than 1,000 tons or 750 cubic yards of material within 12 months needs a permit. 23 ECL § 2711(1).

"Mine" means any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use..." 23 ECL § 2705(5) As used, "mineral" means, essentially, all earth materials. 23 ECL § 2705(7).

Thus, if earth materials are extracted and produced for sale or exchange or for commercial, industrial or municipal use, the place of the extraction is a "mine".

"Mining" means:

[t]he extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

23 ECL § 2705(8).¹

Obviously, 405,000 cubic yards is more than 1,000 tons. Since the applicant proposes the use of at least 185,000 cubic yards of aggregate, to be extracted, broken, crushed and screened for use by the applicant in the manufacture of concrete, the excavated rock has value. The applicant cannot maintain that 185,000 cubic yards of aggregate has no value. Thus, a "mine" will be created, and the applicant will be "mining".

The applicant has presented various volumes of rock that will be hauled away. The Negative Declaration finds that 162,000 cubic yards of rock will be removed from the site. The applicant provides no explanation, and the Board has no factual basis in the record to establish a need to haul this rock away from such a large, 110-acre site. Further, the applicant declines to defend the need for the environmental impact of this heavy truck traffic over a number of years. Since the rock that will be excavated clearly has significant industrial value to applicant, it is fair to infer that the 162,000 yards of rock to be hauled away has some "commercial, industrial or municipal value", thus also falling within the definition of "mining".

As the Negative Declaration finds, the applicant states a need to excavate 154,000 yards of rock to use as fill material. No cut and fill plan has been drawn by an engineer or geologist to establish this need, so it must be the subject of inquiry by the Board and DEC. The DEC may find that this volume falls within the "construction project" exception to the definition of "mining" upon close scrutiny of a proper cut and fill plan filed with them, but there is certainly no aggregate production exception set forth in the state law that regulates mines. Therefore, a rock "mine" of at least 185,000 cubic yards and as much as 250,000 yards in volume will be created. A DEC Permit is required.

¹ According to this definition, the manufacturing process that is proposed to occur in the batch plant is not "mining", but all other proposed activities are included in the definition except excavation for construction projects.

The Board is obliged to rescind the Negative Declaration and to engage in coordinated review under SEQRA with DEC as an involved agency to determine the applicability of the state mined land laws to the proposed project.

The Record Establishes That the Board Has Not Taken a Hard Look at the Impact of Heavy Industrial Noise From the Project Upon the Wilderness Character of the Forest Preserve and the Addition

The Applicant proposes to create hundreds of thousands of yards of aggregate material at the site from virgin rock and the Board has failed to evaluate, much less mitigate, the impact of this industrial noise upon the public's use and enjoyment of adjacent wilderness lands and the Addition.

Specifically, the production of aggregate involves blasting; large payloaders; at least one breaker; at least one crusher; screeners; sorters and the movement of earth materials.

The record does not establish the specific noise levels that will be created by this activity.

Therefore, the Board is obliged to inquire as to every piece of heavy equipment that will be on-site during the site excavation activities, an explanation as to the duration of these activities, and the specific measure of noise that is anticipated in the wilderness land during the excavation work. Specifically, questions include:

1. What is the reason for blasting and how many blast events will occur?
2. What are the decibel measurements from drilling, blasting, the payloaders/backhoe, a breaker (if used), which creates different noise levels depending on whether it is a 5,500-pound breaker or a 10,000-pound breaker; the stone crusher (often over 100 decibels at the source) and the screener.

DEC often requires, as a condition of a mining permit, that rock walls be built around pieces of heavy equipment like a breaker or a crusher, in order to mitigate noise impacts. This has not been considered.

A focused noise study must be prepared that identifies each piece of heavy equipment, the anticipated noise levels based upon vendor specifications, evaluates the cumulative impact of the machines running at the same time and mitigates the sound to protect the public interest in the character and solitude of protected wilderness lands.

Indeed, the accompanying technical comments of CHA on behalf of OSI establish at least twelve deficiencies in the Noise Study submitted by the applicant, including a failure to place

any receptors at the applicant's property lines to the north of the site. Certainly, the applicant's expectation as set forth in EAF Part 1 of operating all of the excavation/mining equipment during construction for a period of years from 6 a.m. to 7 p.m. on weekends must be evaluated and mitigated by the Board in accordance with law. See EAF Form 1(D)2.1. See also Section E.1.a, which fails to list public recreational areas and the Addition as adjoining/nearby land uses. Other parts of the EAF Form 1 fail to list Pickerel Pond as a lake or pond on the applicant's property. See EAF Form 1E.2.h.iv. Remarkably, the applicant's deficient Noise Study, uninformed by the surrounding wilderness, suggests moving the "crusher pan" closer to the Pickerel Pond, much of which is a recreational, unmotorized public body of water. The mitigation measures recommended in the noise study establish a lack of regard, or lack of knowledge regarding the recreational uses of the bordering lands.

For all of these reasons, the deficiencies in the Noise Study must be rectified. The Board is entitled to know the actual sound levels by the pieces of excavation and processing equipment that are going to be used during the excavation operation in order to take a hard look at the noise impact of the proposed project.

The Stormwater Management Plan is Deficient

The applicant began the application process with the Planning Board by submitting Part 1 of the Environmental Assessment Form that is inaccurate and incomplete in many respects. There is no mention that the proposed project is located in the Hudson River National Heritage Area and within the boundaries of the protected Catskill Forest Reserve/Catskill Park.

The applicant states in the EAF that the stormwater runoff will be directed to existing ponds (D.2eiii), but site plans indicate that the existing ponds discharge to a perennial Catskill Mountain trout stream and its associated wetlands. This trout stream is not mentioned in the EAF and is not shown on the site plans. The Board has an obligation to protect the trout stream from runoff that may impair its function and classification.

Applicant has a legal obligation to comply with two stormwater discharge permits: (1) the SPDES general permit for stormwater discharges from construction activity (GP-0-15-002) (2016); and (2) the SPDES multi sector general permit for stormwater discharges associated with industrial activity GP-0-17-004 (2018). The materials now before the Board reveal that the applicant is unaware of the rigors of these permit requirements.

Specifically, as pointed out in greater detail by CHA, the two "water quality basins" proposed for collection, retention and detention of stormwater on site propose to hold 1.7 million gallons of water through construction of some kind of structures that allow the basins to be twice as deep as the stormwater regulations require. The heavy metals, suspended solids and other runoff from the excavation/mining activity discharges from the massive "water quality basins" to

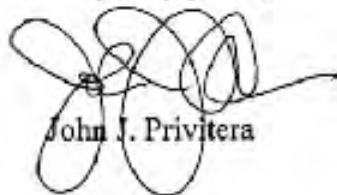
a Catskill trout stream are not discussed. These impacts must be fully reviewed by the Board once a complete Stormwater Management Application for both construction and industrial operations are submitted by the applicant in accordance with State and Federal law.

In addition, New York State reviews the design and construction of large structures that are planned to hold huge volumes of water. DEC should make a determination as to whether the design of any of the ponds are such that the applicant requires a dam permit. See 6 NYCRR Parts 608.3 and 673.

CONCLUSION

For all of these reasons, the Planning Board is obliged to rescind the Negative Declaration of March 2019. The applicant should be directed to provide amended, accurate Environmental Assessment Forms for the Board's review prior to acceptance. The Board must then take a hard look at all of the Special Permit requirements in Town Law that require critical review prior to consideration of a Special Use Permit. Finally, the New York State Department of Environmental Conservation should be notified under SEQRA so that coordinated review will be conducted so that DEC may bring its expertise to bear regarding its stewardship of public recreational lands within the constitutionally protected Catskill Forest Preserve and the Addition. DEC may then coordinate its technical review of the proposed project under New York's mining regulations, wetlands protection laws, stream protection laws and stormwater permit requirements so that the Board can take a hard look at all of the environmental impacts of this proposed project.

Very truly yours,



John J. Privitera

JJP/klh

WOODSTOCK LAND CONSERVANCY

June 17, 2019

Box 864
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New York
12498
845.679.6481

John Konior
Chairman
Town of Kingston Planning Board
906 Sawkill Road
Kingston, New York 12401

Re: Addendum to May 20, 2019 comment letter
Site Plan / Special Permit -- 850 Route 28 LLC

Dear Chairman Konior and Members of the Planning Board:

Our letter tonight is an addendum to our May 20th letter. We believe the application materials for the development of 850 Route 28 do not identify a perpetual NYS trail access easement. Thus, there has been no evaluation of impacts and mitigation measures relating thereto. The SEQR review did not include adequate evaluation of impacts to the adjacent public recreational lands, should have identified the existing NYSDEC Bluestone Wild Forest Unit Management Plan (BWF UMP 1997)¹ and should have considered potential impacts from the proposed action in the context of that existing land use plan.

As noted in the BWF UMP (p.11) and shown on DEC maps (p.9), there is a permanent public footpath easement over the access road to the old quarry (A2). "This footpath easement, described in Deed Liber 1946, Page 202, allows the public to cross over the main access road to the abandoned quarry currently owned by Aarjen Development Corporation (Liber 2523, Page 226), over an approximately five foot wide strip connecting the Onteora Lake parcel to Lands of the State of New York described in Deed Liber 465, Page 311." The right of way can be of "Sufficient dimensions to accommodate without limiting the generality of 'the public,' backpackers, and game hunters with full field equipment, and enable them to pass each other in opposite directions, in single files."

Whether NYSDEC has or has not exercised its rights to utilize the trail easement is irrelevant. The perpetual trail easement exists in the UMP and underlying Deeds. It should be appropriately identified as an impact and, we believe, as an encumbrance upon the project property and appropriately addressed. To the best of our knowledge it has not been.

¹ http://www.dec.ny.gov/docs/lands_forests_pdf/bluestoneump.pdf

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Woodstock Land Conservancy
June 17, 2019
Page two

The UMP also includes a section **LAND ACQUISITION - THE COMPLETION OF A VIABLE BLUESTONE WILD FOREST**, that includes *"Priority 3 L. To complete the incorporation of the mine properties, surrounded by state lands, which could have a large impact on the water quality/levels, scenic values and impair the viability of the Bluestone Wild Forest, if developed insensitively."* As stated previously, we do not believe the SEQR review adequately evaluated the impacts to the BWF resulting from the proposed development and site operations.

It isn't clear if the Site Plans are based on a current survey or if the applicant has provided a recent title report, therefore we are unable to comment about any other easements that may encumber the project site and affect the location and extent of site development.

We note that the applicant's representatives have made references to the Planning Board about NYSDEC staff not voicing or filing objections on various issues and impacts we have raised in recent weeks and again here. It is our understanding that DEC as a rule typically does not weigh in on "local land-use issues".

Thank you for your further consideration.

Sincerely,



Maxanne Resnick
Executive Director