

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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**TO:** Interested Parties

**RE:** Response to Public Comments on the Martville Mine (T) Sterling

**DATE:** 8 September 2015

Thank you for your comments on the DEC Martville Mined Land Reclamation Permit Application (DEC Permit Application No. 7-0556-00276/00001). The New York State Department of Environmental Conservation (Department) has reviewed the following comments from interested parties and organizations concerning the permit application. During the comment period, staff received comments from a single individual and four governmental agencies (the Town of Sterling, Cayuga County SWCD, NYS DOT, and the County Highway Department). Following the public comment period, comments were received from four individuals and one governmental agency (the Cayuga County SWCD). The comments are summarized and listed by topic. Although we originally focused on comments received during the public comment period, our responses incorporate comments received after the comment period closed. Below are the Department's responses to these comments.

## 1. Wetlands

**Comments:** The application does not appear to adequately address possible wetland issues affecting the Sterling Creek, a national wetland. The drawings submitted by the Applicant's geologist and the DEC shows that the Life of Mine footprint crosses the boundary of the federal wetland.

**Responses:** *The Mined Land Reclamation Permit Application Package does not make reference to specific state or federal wetlands within the Life of Mine Boundary. During DEC's review of the application using the Department's electronic geographic information system, it was noted that a national (federal) wetland and Sterling Creek (a Class C tributary) were mapped in proximity to the Life of Boundary. After further review, DEC staff determined that both the stream and the federal wetland were outside of the Life of Mine boundary and would not be impacted by the then proposed mining operations.*

*In response to comments received during the public comment period regarding potential impacts associated with the proposed mining to federal wetlands, Department staff decided to take another look, and on June 12, 2015, inspected the proposed Life of Mine Area and Boundary with the Applicant's geologist and a representative from the U.S. Army Corps of Engineers, Buffalo District. The*

*additional site visit confirmed that no federal or state wetlands are present within the Life of Mine Boundary. The U.S. Army Corps of Engineers is expected to issue a letter of non-jurisdiction in the near future. During the site visit, staff noted that there was absolutely no evidence that sediment or stormwater flow, allegedly caused by timber harvesting on site, had occurred along the slope to the wetlands in the vicinity of the edge of the Life-of-Mine. Also no timber harvesting had occurred on the slope or in the federal wetland as alleged by one commenter.*

*Additionally, during a follow-up site visit by Department staff (including participation from DEP, Minerals, Bureau of Habitat and Fisheries staff), no evidence was found either within the stream, wetland, or on the side slope adjacent to the wetland, of erosion or sediment accumulation. The US EPA, responding to commenter complaints of stormwater damage (erosion and sedimentation) as a result of logging activities on the site, conducted a site visit on August 21, 2015, with representatives of the Department, and confirmed staff's finding that no evidence of stormwater damage had occurred.*

## **2. Slopes and Life of Mine Topography**

**Comments:** The Town of Sterling Land Use Regulations (LUR) require that applications for Special Use Permits for lands with a slope of 15% or more must provide a formal topographic study and submit it to the town. There is no evidence in the DEC file that the Applicant has conducted a topographical study. The map appended to the Town's LUR clearly indicated that the property in question contains slopes of that magnitude. Without the anchoring of trees, slopes may erode and impact the water quality of Sterling Creek. The Mined Land Reclamation Permit Application Package does not adequately address soil, water and erosion control issues. The area of the mine footprint located near the slopes down to the wetland was completely cleared by the previous owner during 2014. The recent land clearing may have impacted federal wetlands and Sterling Creek. The proposed mining operations will impact surface water quality. The Applicant's Stormwater Control Plan does not provide sufficient detail regarding topography and protection of the stream and federal wetland.

**Responses:** *The Town of Sterling Land Use Regulations and local zoning requirements are under the jurisdiction and responsibility of the town. DEC has no regulatory jurisdiction in these matters. The DEC does not typically require formal topographic studies of the Life of Mine per se, and the Applicant has provided adequate provisions for management and control of stormwater in the Mined Land Reclamation Permit Application Package text and accompanying maps. The Mined Land Reclamation Plan requires drainage of surface water to be directed towards the center of the mine. As mining progresses, the topography of the mine perimeter would remain high enough to prevent offsite drainage of surface water. Grading, sloping, topsoil replacement and reseeding*

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*with grasses will be done as soon as possible after affected areas are no longer in use. In addition, a significant undisturbed forest buffer is being retained between Sterling Creek and the Life of Mine Boundary, which buffer the Life of Mine Area from adjacent lands that slope toward Sterling Creek and the federal wetlands. No federal or state wetlands are within the Life of Mine Boundary. The DEC Mined Land Reclamation Permit includes a condition that prevents unpermitted discharges to outside (of) the Life of Mine Boundary. All silt laden water and stormwater generated on or running across the site shall be retained within the approved project area.*

*As a further note, the statement that the “area of the mine footprint located near the slopes down to the wetland was completely cleared by the previous owner during 2014” is incorrect. During site visits, staff noted that there was absolutely no evidence that sediment or stormwater flow, allegedly caused by timber harvesting on site had occurred. Also no timber harvesting had occurred on the slope or in the federal wetland as alleged. Staff further noted that a significant number of tree stumps remained in place on the harvested area which assists in stabilizing the soil.*

*Although there was absolutely no evidence of sediment or stormwater flow from past tree harvesting activities, the Applicant voluntarily agreed to submit a revised mining plan map to the DEC, which pulled back the Life of Mine Boundary several feet away from sloping ground in the southeastern corner of the mine. The Life of Mine Boundary is now at the top of the slope and on flat ground in the southeastern corner of the mine. This change provides additional protective measures by providing a wider forested buffer area along Sterling Creek and a federal wetland that connects to the stream. Both the creek and wetland have always been outside of the Life of Mine Boundary.*

*Additionally, during a follow-up site visit on August 17, 2015, Department staff (including participation from DEP, Minerals, Bureau of Habitat and Fisheries staff) inspected Sterling Creek, the federal wetland along the creek, and the side slope adjacent to the federal wetland. No evidence was found either within the stream, wetland, or on the slope, of erosion or sediment accumulation in the wetland or Sterling Creek. Fisheries staff confirmed that salmonids (including trout) are unlikely to be present in this stretch of Sterling Creek due to elevated stream temperatures that would preclude use of the stream as trout habitat. Sterling Creek is blocked downstream at its intersection with SR 104A where fish passage, and movement of spawning salmon and trout, is prevented by the presence of a historic mill dam. Fisheries staff noted that the stream, in the vicinity of the mine is characterized by numerous cyprinid species. This finding was consistent with a previous (2009) fisheries survey of Sterling Creek in the hamlet of Martville where three minnow species, pumpkinseed sunfish, rockbass and fantail darters, were found and there was no evidence of salmonids.*

### 3. Mining Above the Water Table

**Comments:** The DEC has imposed a requirement that mining may not occur below the 5 foot high water level above the water table, yet one entry on the DEC application questionnaire reports that the average depth to the water table to be only 3 feet, which implies that the Applicant may be planning to conduct mining operations below the 5 foot required depth and simply backfill the area with other soil.

**Responses:** *Per the DEC Mined Land Reclamation Permit, all mining must be conducted at least 5 feet above the mean high groundwater table. The permittee will be required, prior to the commencement of mining and annually, to dig several test holes during high groundwater conditions (usually in the spring) in the mine floor at least 5 feet deep in order to determine compliance with this condition. Backfilling in the DEC permitted Life of Mine Area (LOM) to comply with this condition is not anticipated. The Applicant reports that groundwater was encountered at three feet deep in a test pit in a previously mined area. The test pit was dug in the spring of 2014 in the floor of a previously mined area. Because the elevation of that area is less than 5 feet from the water table, no further mining will occur, but the area will ultimately be reclaimed as a part of this project. Based on available information from the Applicant, his geologist and a DEC site assessment, past mining operations in the test pit area did not remove 1,000 tons or 750 cubic yards during 12 successive months. As such, a DEC Mined Land Reclamation Permit was not required for previous low volume mining activities. The Applicant's geologist has provided a geologic cross section map which extrapolates the predicted water table based on surface elevations and predicted bedrock depth. The Applicant has recently shared information with staff that is consistent with the geologist's assessment. He reports that test pits, excavated at eight locations in the unmined areas of the mine to a depth of approximately 16 feet, did not result in the detection of groundwater at that depth. Past excavated areas within the Life of Mine Boundary will be reclaimed to grasses as described and mapped by the approved mined land reclamation application package. Any future modification which, in the judgment of the Department, results in a material change in the environmental conditions at the site, or in the scope of the permitted activity will be considered a new application and be reviewed pursuant to all applicable regulations.*

#### 4. Protection of Water Resources

**Comments:** I am very concerned about water resources and impacts to Sterling Creek and nearby wetlands, groundwater and residential well water quality and quantity, associated with mining operations. Most of us have spring fed wells supplying clear water from a source near Sanford Road. Mining could impact our drinking water.

Environmental concerns relating to changes in the water table involves the potential effects on local private water wells. Because such sand and gravel excavations tend to lower the area water table over time, they can have a corresponding impact on water levels in local residential wells. It is unclear how many local wells are close to the site and might be impacted. It would be important to know the water levels in residential wells surrounding the site to draw conclusions concerning this potential impact. Local hydrology may be impacted from mining operations. Local water well surveys should be conducted prior to the project's inception to avoid controversy in the future. Such a survey should include both high water and low water conditions during the different seasons, as well as basic water quality.

**Responses:** *The Mined Land Reclamation Permit Application Package includes a Stormwater Control Plan, which requires the construction of an erosion control berm and the installation of silt fence to prevent sediment from leaving the mining area. Drainage will be vertical and radially inward as water is absorbed by the porous permeable sand and gravel soils. No surface water or runoff will be allowed to leave the site. To eliminate sources of possible water pollution there will not be storage or introduction of chemicals, fuel, waste, or refuse into the Life of Mine area. The Applicant also states that employees will be trained in proper fueling and lubricating practices, including spill prevention and DEC spill reporting requirements. The Applicant plans on withdrawing water from an existing water well shown on the Mining Plan Map for dust control as needed. The water withdrawal would be minimal, well below the DEC regulatory threshold of 100,000 gallons per day. Any facility capable of withdrawing water at or above a rate of 100,000 gallons per day would require a DEC Water Withdrawal Permit.*

*Based on a technical review by the DEC Division of Mineral Resources, information provided by the Applicant and his geologist, and a significant collective Department record of past experience with permitting and monitoring sand and gravel mines of similar size and scope, there is no evidence to support or suggest that sand and gravel mining as proposed and permitted will impact residential well water quantity or quality. Residential well quality and quantity studies are required on a case by case basis.*

*Also, see response to items #1 and #2, above*

## 5. Mined Land Reclamation Application and Endangered Species

**Comments:** Based on public records, the Applicant acquired the property on September 4, 2014. The Applicant initiated the review process in June 2014. If the Applicant had the permission of the owners to apply for a permit before the formal closing date of the land sale, did the Applicant ensure that all relevant precautions were taken for the protection of endangered species during land clearing and for the legal mining of gravel at the site that he was representing to the DEC as under his control as of the end of June 2014?

**Responses:** *Based on a site visit on June 12, 2015, northern hardwood pole and sawtimber sized forest products were recently harvested on about 10 acres of the Life of Mine Area. There was no evidence of new mining outside of the small area mined by the previous landowner. The harvest was a commercial clearcut, removing all trees, but a significant number of tree stumps were left in place. No DEC review or permits were required for the harvest of the timber. No state or federal threatened, endangered or special concern species are known to exist within 3 miles of the Life of Mine Boundary, within it, or immediately adjacent to it. According to Department data, multiple female Indiana bats (*Myotis sodalis*) a New York State and Federally endangered species, were radio tracked to five roost trees in 2006 to a location about 3.5 miles southeast of the Life of Mine boundary area. To reduce impacts to the endangered Indiana Bat, future tree clearing within the Life of Mine will be restricted to between November 15 and March 31. The Applicant reports that the timber harvest noted above occurred during late fall and winter 2014-15.*

*One commenter reported, after reviewing photographs of a drone flight over the project site, that the entire site had been grubbed (and subject to stormwater sediment/erosion damage) during the timber harvest, citing the observance of a number of tree root balls that were identified in the aerial photos. Actual ground reconnaissance by Department staff found this charge to be without merit. Numerous remaining tree stumps can be seen in photographs of the site. This was confirmed during site visits by a Department staff member who possesses nearly 25 years of experience in forestry management and timber harvesting. He concluded that the tree root balls noted above were characteristic of a site where the logger needed to clear an access road for cutting and harvesting timber. He also noted that the site was not seriously rutted (by logging equipment) indicating that the harvest activity likely occurred while the ground was frozen.*

*The dominant land cover in the area surrounding the Life of Mine Area is a mix of fields and forest. According to U.S. Forest Service statistics, about 40% of Cayuga County is covered by forest. This fact is confirmed by recent New York State GIS Clearinghouse aerial photography and a low altitude drone photo reportedly taken on June 29, 2015 and provided by a commenter. At the landscape level, significant forest cover, including the Sterling Creek riparian*

*buffer area south of the Life of Mine area, provides wildlife habitat, connectivity to adjacent habitats and cover.*

## **6. Disturbance and Alteration of Hamlets in the Town of Sterling**

**Comments:** The Town of Sterling Land Use Regulations (LUR) prohibits mining activities in hamlet districts and traffic associated with mining operations from traveling through hamlets. The Applicant will have to seek multiple town of Sterling LUR variances to operate the Martville Mine. The problem that I have with this project is that the new business they are proposing conflicts with so many of the zoning laws. There will be trucks every 5 minutes or so disrupting residents and that should be protected by the zoning laws. The project will negatively impact my quality of life and the value of my home.

**Responses:** *Land use regulations and decisions are the sole responsibility of local government. The DEC does not make, identify areas of non-conformance, or enforce local land use decisions. The DEC Mined Land Reclamation Permit and referenced mined land reclamation text and maps includes appropriate conditions and requirements to minimize noise, conserve and protect air, and water quality.*

*The status of the Department as Lead Agency pursuant to the State Environmental Quality Review Act (SEQR) does not change the jurisdiction of respective agencies, nor the jurisdiction between or among state and local agencies (SEQR 6NYCRR Part 617.3 (b)). The Town continues to retain those approvals that Town Law incorporates. The Town is not preempted from addressing potential impacts within their respective jurisdictions. The Town retains jurisdiction over the routing of transport vehicles on roads it controls and continues to maintain its jurisdictions under its special use permit or zoning authority. The site plan review process (Article XI of the Town's Land Use Regulations) identifies that process as key to implementing the recommendations of the Town's comprehensive plan and furthermore is intended to determine compliance with the land use regulations.*

*The Town of Sterling land use regulations allow mining as an acceptable use within an Agricultural/Residential district in accordance with the issuance of a Special Use Permit by the Town Planning Board. The DEC will not intrude into matters of local jurisdiction. Article X of the Town's Land Use Regulations describe the Special Use Permit Review Process and Article XI specifically addresses traffic issues: "Adequacy and arrangement of vehicular traffic access and circulation including intersections, road widths, pavement surfaces, dividers and traffic controls." Additionally, site plan review requires compliance with the Town of Sterling Road Preservation Law.*

## 7. Traffic

**Comments:** The project will impact traffic patterns and highway safety on local, county and state highways. The local neighborhood, public health and the community will be negatively impacted by heavy truck traffic associated with the mine. The New York State Department of Transportation is requiring a traffic gap analysis and the installation of heavy shoulders to accommodate heavy truck traffic associated with mining operations.

**Responses:** *Significant adverse traffic impacts are not anticipated from the operation of this facility as proposed. An assessment of traffic volumes and types is provided in the Mined Land Reclamation Permit Application Package. The Applicant projects an average of 5 truck trips per hour during typical mining operations and 10 trucks per hour at maximum production rates. The Towns of Sterling and Victory retain sole authority to regulate truck traffic and truck movement on Sanford Road and other roadways within their jurisdictions. Additionally the Applicant will have to comply with the Town of Sterling Road Preservation Law.*

*In response to concerns, NYS DOT has suggested the following: a traffic gap analysis for the Pople Road/NYS 38 intersection, the construction of heavy duty shoulders on NYS 38; documentation of sight distances, an accident analysis, and a gap analysis at the NYS 38/NYS 104 intersection. This information has been provided to the Applicant. NYS DOT has noted that these studies and road work might be required if a State Highway Work Permit was needed for the project. NYS DOT has also indicated that no State Highway Permit is needed for the project. NYS DEC does not have the authority to require these items as part of our review pursuant to the Mined Land Use Law or SEQR.*

*Our goal in this assessment was to provide the Town, County, and NYS DOT with basic traffic information regarding traffic levels proposed by the mining operations for use in their decision making processes. The State Environmental Quality Review Act (SEQR) does not change the jurisdiction of respective agencies, nor the jurisdiction between or among state and local agencies (SEQR 6NYCRR Part 617.3 (b)). The Town continues to retain those approvals that Town Law incorporates. Although impacts to local road infrastructure and traffic flow are considered by the Department to be non-significant, the Town, County and/or NYS DOT are not preempted from addressing those impacts within their respective jurisdictions. The Town retains jurisdiction over the routing of transport vehicles on roads it controls under its special use permit authority. The jurisdiction of the Town and County Highway Departments and NYS DOT is not impacted by any permit decision made by the Department.*



*The Town's Special Use Permit Review Process specifically addresses traffic issues such as the adequacy and arrangement of vehicular traffic access and circulation including intersections, road widths, pavement surfaces, dividers and traffic controls. A Road Use Permit will be required from the Town of Sterling; additionally the site plan review process requires compliance with the Town of Sterling Road Preservation Law. Sanford Road was rebuilt in 2014 with the understanding of a possible gravel mine in the near future (March 12, 2015 letter from Brian Soper, Town Highway Superintendent to John Clancy, NYS DEC).*

*On the afternoon of June 12, 2015, a meeting was held with Town and County highway officials to create an opportunity for further dialogue regarding potential impacts to roads associated with mining operations. Town and County highway officials shared information and discussed the project with the Applicant.*

*All trucks will be required to observe the posted speed limits. If needed, speed limits and traffic controls can be applied by the local Town, County or State jurisdictions. If necessary, the Applicant has agreed to install additional signs, in coordination with applicable Town and County Highway Department requirements, alerting motorists to truck traffic. All vehicles will be required to observe the posted speed and weight limits. Road usage must comply with local, state and federal laws.*

*To further address potential traffic issues, the Applicant has agreed to the following as a part of the Mined Land Use Plan: (1) identify traffic routes to avoid certain intersections; (2) eliminate one of the mine entrances to minimize traffic and noise issues; and (3) identify the average (5) and maximum (10) truck trips per hour to assist in identifying traffic issues and traffic planning efforts of local, County, and State Agencies.*

## **8. Noise Levels and Impacts**

**Comments:** The DEC Noise Analysis accommodates the Applicant and is unreasonable because it is more than likely that the noise levels discussed and assessed by the DEC Noise Analysis do not correspond to what the North Victory Hamlet residents will experience from mining operations. Residents of the Town of Sterling one and one half miles from the mining site report being disturbed by past noise originating from the mine site. Weather related impacts to noise from factors such as wind and snow were not included in the noise assessment as suggested by the DOT Construction Noise Handbook. Noise mitigation measures such as the placement of a barrier around processing equipment do not appear to have been discussed.

The DEC Noise Analysis included a screener but not a crusher, nor did it take into account idling of one or more additional trucks associated with mining operations. The DEC file shows correspondence indicating that the Applicant and

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the DEC may seek a noise waiver from a resident 175 feet from the operation because the noise levels are predicted to exceed the EPA recommended level of 55 decibels. Effects from noise levels of the minimized “worst case” scenario will apparently exceed that level. In other words, the data appear to be “cooked” and the residents are being placed under undue burden to accommodate the proposed project. Noise from the project will negatively impact public health and the community.

***Responses:*** *The DEC Noise Analysis was compiled using DEC noise policy guidance and information from the Applicant. Potential weather related impacts to noise generated from the mine are noted in the DEC Negative Declaration. Weather related influences on noise generated from human induced sources are difficult to predict and are not typically part of the DEC noise analysis procedure.*

*Upon consultation with DEC Division of Minerals staff, it was determined that the Applicant Scenario was a reasonable approach. As such, the Applicant Scenario was used in concert with the Worst Case Scenario to assess the potential noise impacts and mitigation needs associated with mining activities. No crusher is currently planned; the DEC Mined Land Reclamation Permit specifies screening as the currently permitted processing equipment.*

*The use of Noise Waivers is an acceptable noise mitigation technique. However, a waiver for the residence at 13177 Sanford Road was not needed because the Applicant agreed to close and reclaim the existing North Entrance Road to the mine, which is directly across from the residence. The closure and seeding of the North Entrance Road is conditioned in the DEC Mined Land Reclamation Permit. The closing of the North Entrance road changes the Life of Mine Boundary, increasing the horizontal distance between the residence and the Life of Mine Boundary from 175 to about 380 feet. This represents a 74% increase in distance between the Life of Mine Boundary and the home (residential receptor). At 380 feet using the Worst Case Scenario (all mining and processing equipment operating at the same time and place) and assuming a 16 decibel reduction in sound from the required soil berm, vegetation and mining face, the estimated sound received at the receptor is 53 decibels, 2 decibels less than the EPA recommendation. Mining and processing equipment will not be operating at the same time 380 feet from the residential receptor. The EPA states that noise levels at or exceeding 55 decibels in outdoor areas are identified as annoying and interfering with typical daily human activities such as sleeping, working and recreation.*

*Additionally, the mining plans have changed from the originally proposed mining sequence. As such, the initial excavation will take place in the southeast corner of the mine, more than 1,300 linear feet from the closest home. Mining will then gradually proceed toward the residential receptors on Sanford Road, with a significant working mine face mitigating noise generated within the mine.*

*The DEC Noise Analysis and conclusions provided in the State Environmental Quality Review (SEQR) Negative Declaration issued by the Department shows that noise impacts from the mine will be effectively mitigated by sequencing of mining phases, the application of appropriate Best Management Practices including the installation of soil berms, and the use of a significant mine face, initially exceeding 35 feet in height, to produce a noise shadow. The noise shadow will effectively reduce noise impacts to residential receptors. Observing posted speed limits, operating during permitted hours and the use of properly maintained and muffled mining equipment will also reduce noise impacts. The use of properly maintained and muffled equipment is conditioned in the DEC permit. The Mining Land Reclamation Plan retains existing forest cover along the Life of Mine perimeter for additional noise and visual screening. (See the Negative Declaration for additional discussion.)*

## **9. Air Quality Impacts**

**Comments:** The description of dust issues is patently ridiculous. I have never worked around any sand and gravel operation that did not generate dust under some condition (such as drought conditions or a few dry and windy days). Water trucks are never in continuous operation on a site-wide basis in any such operation I am familiar with. Generally, such excavations have erratic schedules depending on demand for the resource. This means there are varying times, including weekends, when dust is not and cannot be realistically controlled. Trucks and equipment associated with the mining operation will negatively impact air quality, health of residents and quality of life.

**Responses:** *The DEC Mined Land Reclamation Permit requires dust to be controlled with water or other Department approved dust palliatives. Dust control measures must be applied to haul roads and other parts of the mine, as often as necessary, to prevent visible dust from leaving the mine property. All vehicles must comply with state and federal air emission standards. See attachment A for a summary of DEC regulations and federal emission standards for heavy trucks.*

## **10. Archeological Impacts**

**Comments:** The application forms filled out by the Applicant misrepresent the proposed mine as not falling within any possible heritage protected sites. The file at the DEC does not include a copy of the Archeological Assessment Form. It remains to be proven to the public and to the Native American communities that the appropriate archaeological studies were actually completed. The complete Life of Mine Area should be reviewed for archeological concerns. Conducting phased studies, or assessing portions of the Life of Mine is not appropriate. Historic structures near the Life of Mine which may be negatively impacted by mining activities were not considered. Past timber harvesting with the Life of Mine Area impacted archeological resources. Additionally, a twentieth century

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trash dump site within the Phase 1 area was not noticed by the DEC until the comment period. The dump site should be further assessed for possible contamination.

***Responses:*** *During the initial DEC review of the Mined Land Reclamation Permit Application Package, the Applicant was advised by the Department that a portion of the proposed Life of Mine area was mapped as an archeologically sensitive area. The Applicant was further advised that an archeological assessment and approval by the New York State Office of Parks and Historic Preservation (OPRHP) was required before the mining land reclamation package could be deemed complete.*

*As with past applicants, the DEC permitted the Applicant to conduct the study in phases. In other words, the DEC required that a portion of the Life of Mine be assessed and approved by OPRHP prior to mining. To date, DEC and OPRHP have received and reviewed two archeological and architectural survey investigation reports authored by Alliance Archeological Services.*

*An archeological literature search and field reconnaissance were conducted. The reports assessed two specific areas within the Life of Mine. Those areas are referred to in the Mined Land Reclamation Permit Application Package as mining phases. Both archeological investigation reports have been reviewed and approved by OPRHP. The initial DEC Mined Land Reclamation Permit authorizes mining in Phase 1A.*

*The Life of Mine areas designated and mapped phases 1B and Phase 4 have also been investigated by Alliance Archeological Services and approved by OPRHP as having no impact on cultural resources. The DEC Mined Land Reclamation Permit requires all phases of the mine to be assessed for archeological concerns prior to mining activity taking place. During the comment period, the DEC reached out to the Cayuga Nation in writing, providing information on the proposed mine and asking for comments. No comments concerning the archeological studies or the Mined Land Reclamation Permit Application Package were received from the Cayuga Nation.*

*The archeological investigations approved by OPRHP do in fact address historic structures within and in close proximity to the Life of Mine Area. No structures eligible for nomination to the State and/or National Registers of Historic Places were identified within or in close proximity to the Life of Mine Area. As stated in the Alliance Archeological Services Assessment Reports, no National Register eligible historic resources and no structures included on the Building and Structures Inventory List are present within approximately 250 feet of the Life of Mine Boundary. Additionally, a review of available historic maps indicated that no map documented historic structures are present within or in close proximity to the Life of Mine Area. A letter of concern from a commenter to OPRHP regarding*

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*the historical significance the Frye/Nicodemus house on Sanford Road immediately north of the project site received the following response from that agency: "I asked our National Register reviewer for Cayuga County, Virginia Bartos, to look at the Fry / Nicodemus house. Based on an examination of photos in Google street view, Bartos concluded that the building, while possibly having an historic core, has been so altered that it has lost its historic integrity. Therefore, we would have no architectural concerns regarding this building should we be asked for a formal review. While it is possible that there are significant historic period archaeological deposits on this property, mining operations in the project segments that we have reviewed so far are unlikely to have any effect on such deposits, should they be present." The mining phase adjacent to this house must be surveyed prior to any mining disturbance occurring in that phase. A cultural resources/archaeological survey will be required, OPRHP will review the survey, and determine the need for any additional surveys or mitigation. Mining will not be approved in that phase until all of the recommended surveys and/or mitigation requirements are complete.*

*The author of the Alliance Archeological Services Report mentions that the Phase 2 investigation area consists of secondary growth woodland which was harvested for timber. However, significant disturbance was limited to specific tree removal and with the exception of excavated tree holes, no widespread removal of the topsoil was identified. Minimal excavation by hand shovel uncovered intact soils underneath. The impact of timber harvesting on the archaeological survey was not significant as noted in the report for Phase 2 investigation area: "Therefore, with the exception of minor variations of less than 1 meter (3 feet) to avoid root balls or timber piles, no variations in the standard shovel test interval were necessary. As a result, no widespread previous significant disturbances were identified and no portions of the Phase 2 APE were eliminated on the basis of previous disturbance".*

*During the June 12, 2015 DEC site visit, staff assessed the small trash dump and the timber harvest area. There was no evidence to suggest that the trash had contaminated soils at the site. The Applicant will remove and properly dispose of the trash in accordance with applicable regulations. As previously mentioned, DEC staff noted that a significant number of tree stumps remained in place on the timber harvesting area.*

## 11. Availability and Access to Documents

**Comments:** Public access to the official document file is problematic. The Syracuse DEC Office does not appear equipped to provide reasonable accommodations for members of the public with visual disabilities. The paper contents of the file are not available electronically, and no magnification equipment appears to be in the office. There is confusion concerning the dates and conflicting data in the paper file. The town of Sterling and the DEC do not (electronically) post the contents of official file or the town of Sterling meeting agendas.

**Responses:** *All documents from the Martville Mined Land Reclamation Permit Application Package were open, available and provided to the public for inspection during the comment period. Reasonable accommodations may be available to the greatest extent possible with our existing facilities with advance notice to the Regional Office. For example, magnifying glasses for reading documents are made available upon request. The DEC does not currently have an electronic filing process but plans to do so in the future. Applicants are not required to submit documents electronically, but are encouraged to do so. Documents which were available electronically were shared with potentially affected interests when requested by the Department upon request. The Town of Sterling has sole jurisdiction regarding town planning documents and processes.*

## 12. Formal Document Irregularities

**Comments:** The Applicant has submitted multiple versions of the Mined Land Use Plan and the Stormwater Control Plan all with the same month and year on the title page rather than the exact date of the submission. This creates confusion for DEC personnel and the public. The Environmental Assessment Forms and SEQR Negative Declaration completed by the Applicant and the DEC are not accurate.

**Responses:** *The Department reviewed the Mined Land Reclamation Permit Application Package and during the review process requested changes as appropriate. The Applicant has included specific dates on final resubmissions. In any event, Department staff date stamp the receipt of paper copies of application materials on the date they arrive to reduce the confusion you cite. The Department believes that the Environmental Assessment Forms are accurate and that the SEQR Negative Declaration adequately assesses and addresses the potential environmental impacts associated with project.*

### **13. DEC Reporting Structure**

**Comments:** The Region 7 DEC Mining Division does not report to or consult with the DEC Division of Natural Resources.

**Responses:** *DEC Region 7 Minerals, Permits and Natural Resources staff communicate and collaborate on a regular basis as was the case with the Martville Mined Land Reclamation Permit Application. Department staff from DEP, Bureau of Habitat, Minerals, and Fisheries have made visits to the Martville site. Additionally, DEC staff visited the site with the following Town and County officials: Mr. Randall Lawrence, Sterling Town Supervisor, Ms. June Ouellete, Sterling Planning Board Chairman, Mr. George Wethey, and Mr. Richard Wheeling, Cayuga County Highway Superintendent and Senior Engineering Technician, respectively; Mr. Brian Soper, Town of Sterling Highway Superintendent and Mr. Stephen Yonker, Town of Victory Highway Superintendent. Federal representatives from the US Army Corps of Engineers and the US Environmental Protection Agency have also met with DEC staff at the project site.*

### **14. State Environmental Quality Review (SEQR)**

**Comments:** One commenter has alleged that the DEC did not appropriately follow SEQR and that the Negative Declaration was inadequate and should be rescinded.

**Responses:** *The attached Negative Declaration includes a detailed summary and review of the potential environmental impacts including potential impacts related to water, traffic, noise, dust, cultural and visual resources, land use planning and zoning, as well as other potential impacts. In reviewing the application, submissions, DEC data bases and other information, the DEC determined that the proposed action will not have a significant effect on the environment. After a hard look at all available information, the DEC determined that there were no impacts that could not be mitigated by the terms of the Mined Land Reclamation Plan, mining permit conditions, and other provisions to address impacts.*

*The DEC has received additional information since the May 4, 2015 Negative Declaration and the commenter has requested that this information be considered to rescind the Negative Declaration. Rescission of negative declarations can be made any time prior to a final action when substantive:*

- (i) changes are proposed for the project; or*
- (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 impacts may result.*

*The DEC has reviewed all additional information received after the May 4, 2015 Negative Declaration, including information received after the formal public comment period, and determined that none of the information is substantively new or results in substantive changes to the project that would warrant additional SEQR review. DEC conducted several additional field visits to the site and consulted with other agencies to confirm no new circumstances warrant rescission of the Negative Declaration. Field observations and additional review of information confirmed that the May 4, 2015 Negative Declaration appropriately addressed the potential environmental impacts.*

## **15. Summary**

The Department has carefully reviewed the comments received by potentially affected interests and has given them due consideration as part of the decision making process. The Department has determined that the proposed project meets DEC permit issuance standards and has issued a permit for the project. This determination was made based on site visits, information provided by the Applicant and his geologist, coordination with federal, state and local jurisdictional agencies and expert technical feedback from the Department's Division of Mineral Resources and Division of Fish and Wildlife. Enclosed is a copy of the permit for your reference and information.



## **Attachment A**

### **NYS DEC Heavy Duty Vehicle Regulations**

There are three NYS DEC regulations which apply to emissions from in-use, on-road heavy duty vehicles (buses and trucks) with a gross vehicle weight rating (GVWR) greater than 8,500 pounds. The 6NYCRR regulations include:

- Subpart 217-3: Idling Prohibition for Heavy-Duty Vehicles
- Subpart 217-5: Heavy-Duty Inspection and Maintenance Program
- Part 248: Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology for Heavy-Duty Vehicles

Subpart 217-3 is the idle prohibition regulation for heavy duty vehicles, and generally limits the idling of on-road heavy duty vehicles to five minutes. Exceptions to the five minute idle restriction are noted in Section 217-3.3. (Note that there could be more restrictive motor vehicle idling requirements in municipalities which may have their own idle restriction law/regulation.)

Subpart 217-5 is the regulation establishing the inspection and maintenance program for in-use heavy duty diesel vehicles (HDDVs) operating in New York State. It is a program established to ensure that HDDVs are not grossly emitting smoke and are properly maintained and operating effectively. The emissions inspection of the vehicle includes the performance of an opacity (smoke) test at the vehicle's exhaust pipe using an approved smoke opacity meter. Opacity means the property of a substance whereby it partially or wholly obstructs the transmission of visible light expressed as the percentage to which light is attenuated. There are two primary program components:

- An annual emissions inspection is required for those HDDVs registered in the New York Metropolitan Area (Long Island, New York City, Westchester and Rockland Counties). Official Diesel Emission Inspection Stations (ODEIS) are stations licensed by NYS DMV, which are authorized to perform annual emission inspections of HDDVs.
- All HDDVs operating in the state on public roadways are subject to roadside or random emissions inspection. DEC's authorized inspection personnel include certified environmental conservation officers (ECOs) that perform this function.

Subpart 217-5 program requirements include the emission (opacity) standards based on the engine model year of the vehicle, vehicle owner/operator requirements, emissions inspection procedure and test methods, test equipment specifications and test procedures, enforcement/penalties and hardship waiver.

The Part 248 regulation requires the use of ultra low sulfur diesel (ULSD) fuel and Best Available Retrofit Technology (BART) on certain (primarily on-road) HDDVs. The requirements apply to those HDDVs owned or operated by or on behalf of state agencies and affected public authorities. The “on behalf of” requirement applies to agency/authority prime contractor vehicles. The program was established primarily to reduce the public health threat posed by diesel vehicle exhaust particulate matter (PM). The program requires the use of ULSD

fuel which is diesel fuel containing sulfur content of 15 ppm or less. BART requires that owners/operators of certain HDDVs install verified retrofit devices that will reduce the PM from those vehicles to the greatest extent possible. The devices must be selected from the USEPA list or the California Air Resources Board (CARB) list of verified retrofit technologies (devices). Part 248 requirements include waiver provisions, vehicle labeling, reporting, and record keeping.

Part 248 currently requires BART on all subject vehicles to occur by December 31, 2013. However, due to a change in the underlying statute in 2015, DEC will not enforce the requirement to complete the application of BART on subject vehicles until after January 1, 2017 (per a May 18, 2015 letter issued by NYS DEC Office of General Counsel).

### **HDV Emission Standards**

6NYCRR Part 218 (Emission Standards for Motor Vehicles and Motor Vehicle Engines) applies to all 2005 through 2007 model-year motor vehicles which are heavy-duty diesel engines or vehicles which use such engines offered for sale or lease, or sold, or leased, for registration in this State. Those vehicles/engines must meet the California emission certification standards and apply to on-road vehicles. Federal USEPA emission certification standards apply to all other on-road (highway) heavy duty compression ignition (diesel cycle) engines. The standards apply to heavy duty vehicles used on roads for transportation of passengers or freight and can be found at: <http://www.epa.gov/otaq/standards/heavy-duty/hdci-exhaust.htm>

There are also federal USEPA emission certification standards for non-road compression ignition (CI) engines. The standards apply to non-road CI engines and equipment (including construction vehicles such as excavators, paving equipment, bulldozers and non-road trucks) and can be found at: <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>

The federal emission standards noted above include standards for HC, NMHC, NMHC + NO<sub>x</sub>, NO<sub>x</sub>, PM and CO.

The USEPA and the National Highway Traffic Safety Administration (NHTSA) also developed the first-ever program to reduce greenhouse gas (GHG) emissions and fuel consumption in the HD highway vehicle sector beginning with model year 2014 vehicles. The rulemaking was developed as a single, national program with both EPA and the NHTSA promulgating complementary standards that allow manufacturers to build one set of vehicles to comply with both agencies' regulations. The final rule, dated September 15, 2011, established NHTSA fuel consumption standards and USEPA CO<sub>2</sub> emission standards to each of three categories of heavy duty trucks: combination tractors; heavy duty pick-up trucks and vans; and vocational vehicles (ie, delivery trucks, buses, garbage trucks). In addition to CO<sub>2</sub> standards, EPA also adopted emission standards for nitrous oxide (N<sub>2</sub>O) and methane (CH<sub>4</sub>). Further information on the program and standards can be found at: <http://www.epa.gov/otaq/climate/regs-heavy-duty.htm>