



TOWN OF EAST HAMPTON

159 Pantigo Road
East Hampton, New York 11937

PETER VAN SCOYOC
Supervisor

(631) 324-4140
pvanscoyoc@eamptonny.gov

September 27, 2019

VIA EMAIL & REGULAR MAIL

John A. Wieland
NYS DEC Region 1 Headquarters
SUNY@Stony Brook,
50 Circle Rd.
Stony Brook, NY 11790

Dear Mr. Wieland,

East Hampton Town has received your Notice of Complete Application for DEC Application #: 1-4724-00027/00001 to allow the mining of 6.05 acres of land up to 110' below the groundwater table at 15 Middle Highway, East Hampton. The subject property is zoned Residence A3 by the East Hampton Town Code.

Earlier this week, East Hampton Town Attorney John Jilnicki, after receipt of the Department's FOIL response further delaying the date for release of documents to October 8th, emailed you a letter notifying you that the Town's FOIL request had not been fulfilled by your Department, and further requesting an extension of the public comment period for a period of two weeks following receipt of the requested application documents. The Town has been notified by DEC Counsel that the documents will be provided to the Town in the next few days, and will be allowed a two-week period from receipt of such documents, for further comment. In the meantime, however, we believe it is important to share with the Department our preliminary comments pending further detailed review of the documents.

Procedural Matters

Moreover, as a procedural matter, we also note that the Department staff has failed to comply with the express Notice provisions of ECL 23-2711.3 and therefore the timeframe for receipt of comments from the Town has not yet formally commenced. While the Town received a copy of the Notice of Complete Application, the Town of East Hampton's Supervisor, the "chief administrative officer" referenced in the statute, was never provided with the "copies of all documents which comprise the complete application," as required by the mining statute. This would also include the Full Environmental Assessment Form (including Parts 1,2 & 3) the

Negative Declaration and any additional reports provided by the Applicant or its consultants, copies of any Department Staff memoranda or analysis or written or electronic correspondence between the Applicant's representatives and the Department Staff. The statute provides that the Town will have 30 days to provide its comments and recommendations. Accordingly, the Town requests the extension for comments be for 30 days after receipt by the Town of the application documents.

Preliminary comments

As our September 2018 letters to you and Commissioner Seggos in relation to SEQRA lead agency coordination noted, "Sand mining and excavation" is a prohibited use in the Residence A3 zone in East Hampton. (See attached letters dated September 14 and December 20, 2018) The existing mining operation is a pre-existing non-conforming use and is permitted to continue pursuant to "§255-1-40 Nonconforming Uses" of the Town Code provided the use is not expanded. Therefore, as proposed, the project cannot be approved unless a use variance is first obtained from the East Hampton Zoning Board of Appeals.

In addition to the foregoing prohibition, the Town is also concerned about the adverse environmental impacts that could result from the proposed mining expansion. Of primary concern is the potential for groundwater contamination. The project site is located in a State designated Special Groundwater Protection Area (SGPA) as per Article 55 of ECL which has been characterized as an exceptional source of clean drinking water that is extremely vulnerable to contamination. This site is located within the South Fork SGPA and the report recommends in this reach "limiting commercial and industrial uses," and further states that the NYSDEC should "require the filling and regrading of mined sites" in this groundwater protection area. The proposed expansion of this commercial pre-existing non-conforming use in a residential district and groundwater protection area should be denied.

This site is located in close proximity to several public water well fields including the Suffolk County Water Authority sites on Spring Close Highway and Oakview Highway. In fact the proposed mine expansion is within the Spring Close well field capture zone. This industrial proposal to mine below the water table to a maximum depth of -100 feet above mean sea level has a significant potential to impact the nearby public wellfields. The Applicant's proposed groundwater monitoring wells do not obviate the risk of contamination, merely facilitate its discovery at some point in time. There is no plan for any curative action in the event of contamination. The Suffolk County Water Authority has also expressed its concerns about the proposed expansion of mining below the groundwater table. See attached October 24, 2018 letter from CEO Jeff Szabo.

In addition to the numerous environmental concerns raised by such an expansion, the project site is surrounded by small residential lots, including an affordable housing development. The creation of a lake or "water-hole" would be an attractive nuisance and raises serious safety concerns for the children who may trespass onto the site both during the mining operation and after the site is revegetated. Such trespass has occurred in the past and is

expected to occur in the future. Furthermore, the proposed depth of the final waterbody sets the stage for future difficulties for retrieval operations of any sort should they become necessary. In our view, the proposed lake does not and cannot meet the criteria for an acceptable mined land reclamation plan: "Acceptable basic reclamation requirements as contained in this section shall provide for the development of the affected land either to a condition or physical state which is similar to and compatible with that which existed prior to any mining or which encourages the future productive use of the land" as set forth in 6 NYCRR §422.3(b).

We also note that the plans for site restoration severely stretch the concept of native habitat. East Hampton's natural freshwater ponds are generally quite shallow and support diverse communities of native plants, insects, fish and wildlife. The proposed final size and depth are found nowhere in East Hampton nor do the plans include any provisions for underwater habitat establishment. The upland restoration plans simply provide for seeding with grasses in an area that was forested prior to any mining on the site. Moreover, we have not been provided with a biological evaluation or analysis of the reclamation plan that demonstrates the ecological benefits of the reclamation plan or the ecological risks that it might pose to the underlying groundwater regime.

The mining proposal clearly poses the potential for numerous significant adverse effects, including: direct effects on the South Fork SGPA, inconsistency with allowing expansion of industrial activity where the Groundwater Plan requires limiting expansion, mining activity and a reclamation plan which is inconsistent with local land use plans and zoning. SEQRA requires that a draft EIS prepared where the potential for one or more adverse effects **may** occur.

Until the Town of East Hampton is provided with the relevant filed application and SEQRA documents, required by statute and in response to our FOIL requests, the Town respectfully reserves its rights to further comment on the application and what we believe is an erroneous SEQRA Negative Declaration.

Sincerely,

Peter Van Scoyoc, Supervisor
East Hampton Town



CC:

Commissioner Basil Seggos
NYSDEC
625 Broadway

Albany, NY 12233-1011

Sen. Kirsten Gillibrand
155 Pinelawn Road
Suite 250
Melville, NY 11747

Rep. Lee Zeldin
30 West Main Street, Suite 201
Riverhead, NY 11901

Honorable Fred Thiele Jr.
2302 Main Street, Suite A
P.O. Box 3062 Bridgehampton, NY 11932

Hon. Steve Englebright
149 Main Street
East Setauket, NY 11733

Sen. Kenneth P. LaValle
28 North Country Road, Suite 203
Mt. Sinai, NY 11766

Legislator B Fleming
75 Washington St., P.O. Box 1827
Sag Harbor, NY 11963

Carrie Meek Gallagher,
NYSDEC Regional Director
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409

Craig Elgut, Esq.
NYSDEC Regional Attorney
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409

Jeff Szabo,
Chief Executive Officer, SCWA
4060 Sunrise Highway
Oakdale, NY 11769

