

COMMENTS TO THE NYS DEC ON THE MARTVILLE MINE APPLICATION

June 5, 2015

N.B. The order of presentation of items discussed is not necessarily in order of importance.

Wetland issues

The application does not appear adequately sensitive to possible issues affecting the Sterling Creek, a national wetland area which, even according to the drawings submitted by the project geologist, falls within the property of the proposed toe of the mine. A map in the file, prepared by the DEC and dated 2/24/2015, when enlarged digitally on a computer screen, also shows that the mine footprint crosses the boundary of the federal wetland. Alarming, the applicant proposed, and the DEC apparently overlooked, the use of the land on and/or above the steep sloped area adjoining or part of the wetland as the location for fill covered by compacted materials and made such plans part of the conditional Negative Declaration. The Army Corps of Engineers is apparently issuing a letter of warning to the applicant that a formal delineation of the wetland should be made and that, should fill violations of the national wetland occur, there will be penalties imposed. The national wetland appears to be part of a major town aquifer near or adjoining the site, as well. Of course, it is not in the interest of the public or the planned reclamation and conservation of that land for fill and/or contaminant spills to occur, therefore the public is concerned that the DEC take all necessary steps to ensure that proper precautions are taken to prevent such violations from occurring.

Slope issues

Related to the wetland issues are the slopes of the mine footprint which overlook the Sterling Creek. 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; the maps appended to the Town's LUR clearly indicate that the property in question contains slopes of that magnitude. There is no evidence in the DEC file that the applicant has contracted for a topographical study. Further, the application shows signs of inexactitude, if not dissimulation, in this matter because slopes proposed for mining are described as 8% to 24% in the narrative of the applicant's formal documents, yet are entered into the formal DEC application questionnaire as no more than 15%. Further, the DEC was recently informed by the applicant or his representative that the area of the mine footprint located near the slopes down to the wetland was completely cleared by the previous owner during 2014. None of the images or narrative submitted by the applicant make note of that fact, despite its relevance for the Storm Water Control Plan. Without the anchoring of trees, slopes composed of soils of extreme drainage may pose challenges for the control of runoff, especially in the case of mining close to the water table which angles toward the creek, as is proposed by the applicant. The DEC has imposed a requirement that mining may not occur below the 5 foot highwater level above the water table, yet one entry on the DEC application questionnaire reports the average depth to the water table to be only 3 feet (probably an error although a testing site was 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. The applicant's Storm Water Control Plan consists overwhelmingly of reproduced pages of excerpts from the DEC's, etc. boilerplate documents and does not go into much detail as to how this will be tailored to the topography of the site, part of which may actually be part of the national wetland. Of course this lacuna is more than explained by the absence of the topographical study required by the Town LUR. The DEC should seek more details, and review the adequacy of, the applicant's plans to prevent runoff from filling the Sterling Creek.

Application date issues

The Cayuga County Image-Mate site reports that the applicant only acquired the property in question on 9/4/14 with the registration of the deed, etc. recorded the following month. However, the applicant apparently initiated the review process in June 2014. If the applicant had the permission of the owners to control and apply for a permit for that site for a mine before the formal closing date of the sale, and if the land was cleared and mining conducted on the site between June 2014 and the closing date, did the applicant ensure that all relevant precautions were taken for the protection of endangered species during such clearing and for the legal mining of gravel at the site which he was representing to the DEC as under his control as of the end of June 2014?

Endangered species

As noted above, a significant area of the site of the proposed mine, reportedly in the vicinity of the toe of the mine, was apparently cleared during 2014. While the application contains statements that forests will be cleared in conformance with the National Fish and Wildlife Service's forestry guidelines for the protection of the state and nationally endangered Indiana Myotis bat, there is no evidence in the file that any clearing done at the site was in conformity after the applicants June 2014 representation of his control of the site. The application and the file are also silent on any efforts to document whether or not the endangered species was present on the property proposed for the mine. Verbal statements that the bat is not present are not sufficient without documentation that a scientific check of the area was done. As the DEC knows, the 2012-adopted plan by the NFW includes safeguards not only for the properties where the bat has been sighted but for those properties within 10 and 20 mile radii of sightings. Similar concerns apply to bald eagles which are known to be in the area and possible nesting sites.

The disturbance and alteration of hamlets in the Town of Sterling

The Town of Sterling LUR are specific that mining activities are prohibited in hamlet districts and that the traffic of any mine operated in the Town of Sterling's residential/agricultural districts may not travel through hamlets. Yet the applicant has chosen a property for the proposed mine which shares Sanford Road with the Hamlet of North Victory in the Town of Sterling. The DEC in advertising the application on its DEC-7 site and in the required newspaper notice also dissimulates this fact, citing the mine's location as 1.8 miles away from the Hamlet of Martville rather than giving its North Victory location. Moreover, the Hamlet of Martville is just one of four hamlets which would be trafficked by the trucks of the proposed operation, yet the DEC's

disingenuous notices give the impression that the mine is located in a rural setting, away from hamlet communities. Indeed, the mine cannot be operated without traversing either/or both/and Route 38/Route 104 in the Hamlet of North Victory. It appears that Pople Road (County Route 112) is also within the Hamlet of North Victory, and Pople Road is targeted in some parts of the application as a main route for mine traffic of from five to ten trucks an hour. This reliance on Sanford and Pople Road, with their narrower (shoulderless and unstriped) road surfaces and problematic angles and sight line issues, together with the inter-municipal safety issues involved both there and on Routes 38 and 104 have led the Cayuga County Planning Committee to recommend to the Town of Sterling that the application be rejected.

In addition, and as the County Committee also in part noted in its comments, the applicant will have to seek multiple Town of Sterling LUR variances to permit him to locate and operate the proposed mine in violation of, inter alia, the LUR access road setbacks and setbacks from residences, as well, thus destroying the essentially communal and peaceful expectations of Hamlet of North Victory residents. Indeed, it appears that there were irregularities in the seeking and obtaining of the first variance, as the required public hearing notice to the owner of lot 20.00-1-63.2 was not requested, albeit likely accidentally. Further, and perhaps most importantly, the “hardship” of which the applicant complains as he is/will be seeking these multiple LUR variances is entirely self-created as the LUR was enacted in June 2014, at the time he was representing himself as in control of the property for this application but months before he entered into a formal August 2014 contract for the sale with a September 2014 closing. These sought variances will radically alter the essential nature of the neighborhoods involved, depressing property values, increasing noise levels, and endangering the safety of residents and drivers on the above-mentioned roads.

NYS Route 104 / NYS Route 38 intersection

The approval of this project will radically alter the traffic patterns and accident hazards of this already dangerous intersection and blind-curved hill, etc. at this central Hamlet of North Victory location. The NYS Department of Transportation is requiring the conduct of traffic gap and accident analyses of the area and would impose a radical alteration of the hamlet area’s interface with these roads by the installation of heavy duty shoulders to accommodate the travel and turns of such heavily-loaded vehicles (tri-axles and eighteen-wheelers are boasted of in the application). As of this writing, reportedly three accidents have already occurred at that intersection in 2015 – and this, before the addition of planned double-lane turns of trucks from the proposed mine every six to twelve minutes ten hours a day. Again, the nature of four hamlets and the North Victory Sanford Road/Route 104/Pople Road neighborhoods will be radically altered by the proposed mining operation which expects everyone and everything in its physical path to bend to the will of the applicant.

Noise levels

The file of the DEC made available for public inspection during the comment period, contains a chart with the following algorithm for determining the aggravation of ambient noise levels to be expected from the proposed mining operation: “Difference of 6, add 1...; Difference of 1, add 3...; Difference of 2, add 2...” and further “Difference of 8, add 1...” This algorithm was

apparently applied to the calculation of noise levels captured from 9:45 am to 10:38 am on Sanford Road and to the calculation of the “worst case scenario.” Yet, despite the fact that adding two decibels that are closer to each other increases the sound more, the DEC uses a maximum of “six” spread in its determination of the impact of additive noise, which effectively masks the fact that higher levels could be experienced. The DEC Region 7 Noise Analysis Procedures indicate that erecting barriers around the processing equipment (e.g. a brick wall) could radically reduce the noise levels, yet there is no evidence that the DEC has discussed such mitigation procedures, instead showing itself willing to have the applicant seek waivers from residents instead.

Further, while the standard DEC procedure is to take the “worst case scenario” – enacted with all equipment running at the same time in the same place – uniquely to accommodate (i.e., advantage) this applicant over the residents of the neighborhood, the DEC has showed itself willing to alter its standard practice and to integrate an intentionally deflated “worst case scenario” invented by the applicant into its conditional Negative Declaration, alleging that all four pieces of equipment would not be running in the same place at the same time. Further, the scenario included a screener but apparently not a crusher in operation – thus also “cooking” the data to reduce the analysis of noise levels to a scenario that is actually not at all the “worst case scenario” for the operation.

Additionally, this recalculation of the noise of the project does not appear to include the likely idling of one or more additional trucks which would be in operation for a potential ten truck per hour schedule exiting the mine, nor was it clear that diverted traffic and other off-site project-generated noise, documentable meteorological effects (e.g. winds, snow, etc.) were included in the calculation as suggested by the DOT Construction Noise Handbook. Therefore, this “accommodation” of the applicant appears unreasonable because it is more than likely that the noise levels discussed in the DEC analysis do not correspond to what the North Victory Hamlet residents will experience from mining operations, minimizing what will be the actual effects. Residents of the Town of Sterling at a distance of one and one half miles from last year’s mining activities at the site, reported being disturbed by the sound transmissions even at that distance. Further, the DEC file shows correspondence indicating that the applicant and the DEC may be seeking a waiver of rights to the EPA-recommended 55 decibels from a resident only 175 feet from the operation because the noise levels even of the minimized “worst case scenario” will apparently exceed that level. In other words, the data appear to be “cooked” and the residents placed under undue burden to “accommodate” this proposed project.

Heritage and archaeological issues

The application forms filled out by the applicant misrepresent the proposed mine as not falling within any possible heritage-protected archaeological sites. The file at the DEC does not include a copy of the Archaeology Assessment Form. However, the DEC did insist on the conduct of an analysis of Phase I of the project (an area of 5.5 acres) and Alliance Archaeological Services performed that analysis and cleared Phase I of the project free of heritage issues. The Park, Recreation, and Historic Preservation Commission, in its June 3, 2015 letter extends their clearance to Phase II of the proposed mine operation. It remains to be proven to the public and to the Native American communities that the appropriate archaeological studies were actually

conducted at the Phase II site because no such Phase II report was available for inspection in the file even as the Parks Commission was apparently in possession of such a document. Moreover, the report by Alliance Archaeological Services identified and provided photographs of a “twentieth century” dump on the Phase I site which apparently the DEC had not noticed until the comment period. An analysis of the possible contamination of the site should be performed, in the event that, for example, vehicle oils, etc. in addition to tires and waste, etc. were dumped at the site.

Document submission and availability irregularities

Accessibility to the public of the official document file is problematic. The Syracuse DEC office does not appear equipped to provide reasonable accommodation for members of the public with visual disabilities, even as the file’s paper contents are not made available on the Website or onsite in digital format and no magnification equipment appears to be in the office, etc. Additionally, access to information is complicated not only by the policy to not post materials on the DEC Website, but by the confusion concerning the dates and conflicting data in many of the submissions in the paper file made available for inspection and the obvious incomplete status of the paper file. When the issues described in this section, together with the distance of the DEC office from the project site, are coupled with the Town of Sterling’s intentional failure to post on its Website the minutes and agendas of any of the Town boards involved in decision making during the period of end of February 2015 to date – and with none of the Martville Mine SEQR or Special Use Permit application files available onsite in the Town Hall either, despite requests in writing for access – it appears that the requisite transparency in government concerning this Martville mine application is less than adequate at all levels of government except the Cayuga County Planning Committee. Unique among the agencies involved in this application, the Cayuga County Planning Committee promptly posted all materials received on this application on its Website, as well as the minutes of its May 29, 2015 meeting which contain its formal recommendation to the Town of Sterling to reject the application. However, whereas most of the public is unaware of the requirements of state law for intergovernmental review at the county level, very few residents of the Town of Sterling are familiar with their Website. The application is thus being shielded from much of the public, especially those residing in the hamlets of the Town, by the confluence of these facts and circumstances.

Formal document content inconsistencies, inaccuracies, irregularities

The applicant has submitted multiple versions of the Mined Land Use Plan and the Storm Water Control Plan – all with the same month and year on the title page rather than the exact date of submission. The DEC should not permit this type of intentional confusion propagated by undated applicant submissions because the paper copies printed from electronic files cannot be distinguished one from the other without internal dating within the text. The applicant may later attempt to enforce an earlier version of the document with future DEC personnel or current personnel may fail to enforce the later document which was made to incorporate DEC requirements. Additionally, it appears that the applicant had contracted for an archaeological analysis of Phase II of the project which the Parks, Recreation and Historic Preservation Commission reviewed but the document was apparently never received by the DEC. The moving papers also show that the applicant’s geologist expected to have the DEC declare the application

complete before the submission of all required documents. Indeed, the file did not contain evidence that the applicant had ever submitted the requisite Archaeological Assessment Form. Meanwhile, the fact that the vast majority of the Sanford Road property, including the mine footprint, requires such review before disturbance is clearly indicated on the DEC's color map dated 2/24/2015.

There may also be more than one submitted version of the formal DEC application questionnaire which contain inaccurate statements, and even the DEC's own form submission reviewed onsite at the Syracuse office was at times inaccurate.

For example, in the 2/20/15 signed version of the Environmental Assessment form, the applicant:

- asserts in C.2.b, counter to fact, that there are no heritage issues to be reviewed;
- intentionally omits the wetland and slopes overlay districts in C.3;
- states in D.1.h that no pond will be created even as a pond is indicated in the narrative of application materials (cf. section 3.2 of the Storm Water Control Plan);
- states in D.2.a.iv that there will be no onsite processing of materials – which is contradicted, inter alia, by the DEC Negative Declaration;
- states in D.2.b that no wetland will be affected without having performed any wetland delineation or topographical survey;
- fails to mention the use of crushers in D.2.f and the need for review and permits for such machinery in D.2.g, despite affirmations of the use of crushers in other moving papers and in the Negative Declaration of the DEC;
- reports only dust as an emission from the operations, intentionally omitting diesel fumes, etc. in the D.2.i concerning air pollutants;
- fails to report in D.2. j any peak traffic hours before 9 am or the estimated maximum of 100 trucks per day described consistently in the narrative submissions and fails to report how parking of vehicles will be accommodated onsite;
- lists construction on Saturdays from 9 am to 4 pm in D.2.l even though Town of Sterling LUR clearly provide only for residential deliveries on Saturdays;
- does not answer accurately the question in D.2 m.i and answers no to the box check in section ii despite the fact that woodland natural barriers will be removed as part of the project;
- falsely answers D.2.o, denying that there are any diesel fumes, etc. of equipment that will be emitted on the site despite the fact that such mining uses equipment with such emissions, and that such emissions, despite being regulated on each vehicle, collectively produce odors that may disturb neighboring residences, especially one that is only 175 feet from the proposed project site;
- intentionally conceals in E.1.a that there is forest onsite and in the neighboring vicinity, and that the project is across the road from and will drive through the Hamlet of Victory, a residential section of the Town of Sterling in existence for two hundred years, despite Town of Sterling LUR forbidding such traffic through hamlets by Town of Sterling-based industrial and mining operations;
- fails to report in E.1.g the existence of a “twentieth century” dump onsite, identified by the analysis performed by Alliance Archaeological Services and even referred to in the narratives submitted by the applicant, which has not been analyzed for the existence of potential hazardous wastes therein;

- cites only Alton cobbly loam in E.2.d as 100% while the DEC's Negative Declaration and the applicant's Storm Water Control Plan in 2.2.2 lists additional types of soils, Palmyra and Howard;
- intentionally suppresses from E.2.f the fact that there are slopes of 8% to 25% in the proposed mining area, which are described both in the applicant's submitted narratives and in the DEC's conditional Negative Declaration;
- answers no to E.2.h without having performed a formal delineation of the wetland boundaries, while planning to bury fill on the slope that is in or adjacent to the wetland even as the DEC map generated on 2/25/2015, when enlarged, shows that a portion of the
- does not provide documentation for the assertions made in E.2.m, n, and o, although the site is within a multiple-mile radius where the protected species of bald eagle and Indiana Myotis bat are suspected or have been identified;
- does not provide evidence that the site has been verified by any certified biologists for rare or endangered plant species to justify the negative response to E.2.p.

The Environmental Assessment Form for Mined Reclaimed Projects 6/23/14 also contains inaccuracies reported by the applicant:

- the location of the Sterling Creek is described in A.1 as 200 feet from the project while the DEC's and the applicant's maps submitted show that the toe of the mine and the footprint of the mine appear to actually intersect the Sterling Creek wetland even if the flowing water may be at 200 feet distance;
- once again the applicant reports the existence of only one type of soil, in A.4;
- the distance to the nearest property is listed as 300 feet in A.6. while the moving papers and the noise analyses in other moving papers list 175 feet because, of course, the mine's operations include its use of access road on the project site and not just where the actual excavation occurs;
- the distance listed to the nearest well in A.7 is 300 feet while the moving papers discuss the use of a well that is pictured on the applicant's accompanying map as less than 50 feet just north of the mine footprint;
- the depth to the water table is listed in A.8 as 3 to 60 feet while elsewhere in the moving papers the "average" is listed as 3 feet;
- the applicant misrepresents the conformity of the project site to all zoning regulations in A.12. Only one variance was granted by the Town of Sterling Zoning Appeals Board, for the location of the access roads less than 1000 feet from residences (a decision which needs to be revisited because of the applicant's and Town's failure to provide written notice to the property owner of 20.00-1-63.2 before the decision was made), the County Planning Committee identified the unaddressed zoning requirement of 1000 feet from residences which has not yet been applied for, the Town Planning Board has been informed of multiple other zoning violations by the project, as well, including but not limited to the requirement of a topographical study and the requirement than no traffic from a mining operation drive through a hamlet (this project borders the Hamlet of North Sterling and would potentially drive through at least three other hamlets of the Town located on Route 104);
- the response to section B.8 neglects to indicate the plan to bury fill at or above the Sterling Creek wetland located at the toe of the mine, described in the narratives;

- the response to B.9 indicates only screening equipment will be used but in other parts of the moving papers, the applicant and the DEC discuss the use of crushers, even as the applicant attested to the DEC air quality engineer that no crushers would be used to avoid testing, etc. for air quality for the elsewhere mentioned crushing operations, listed as not exceeding 200 tons per hour (which would require a permit for anything over 150);
- the response to B.10 misrepresents the number of trucks, listed elsewhere as averaging at a minimum five trucks per hour and averaging as a maximum 10 trucks per hour which would, of course, enable the applicant to exceed ten trucks per hour provided his maximum averaged 10 trucks per hour;
- no pond is reported in C but a pond is discussed in 3.2 of the applicant's Storm Water Control Plan;
- the map submitted with the form declares the land in the lower section of the mine footprint to be wooded while the applicant later revealed to the DEC that the area was in fact cleared in 2014

The DEC's filled sections of the Full Environmental Assessment Form Part 2 as Lead Agency also contained glaring inaccuracies:

- no indication in 1.d that more than 1,000 tons of natural material would be excavated and removed, when the project proposes 1.4 million cubic yards of sand and gravel to be so removed;
- the DEC indicates in 2. that no geographical structures like cliffs will be affected even though the excavation will essentially level an area down to 60 feet below its current height;
- the DEC answered no to 3 concerning any wetland impact without having any topographical or wetland delineation study upon which to base its clearance;
- the DEC declared no impact on water (area wells, etc.) in 4.a without ever having the applicant report the amount of water to be extracted from the onsite existing well, and does not admit in 4.f the known risks of the storage onsite of fuels for the equipment and trucks above groundwater and near the principal aquifer in the area; the applicant admits such storage in his document "Best Management Practices for Ground Water Protection";
- the agency answered no impact to air in 6.a despite having elsewhere been informed of and approved in the Negative Declaration the use of crushing equipment requiring an air permit – all the while allowing the applicant to avoid an air quality impact assessment by the DEC on his statements to a DEC engineer that no crushing equipment will be used (see 2/17/15 and 2/14/15 letters from the Mr. Giles to Mr. Clancy of the DEC);
- the DEC is assuring no impact on plants and animals in section 7 – even denying in subsection h that more than 10 acres of forest will be converted – and this is all with no written reports from any recognized expert studies of the 35 acre site to be entirely transformed, destroying any possible habitat as well as all vegetation, despite known spottings of bald eagles within a few miles radius of the property, the possible presence of the Indiana Myotis bat, and the failure to even name any of the species of plant and forest vegetation on the property so that the public may check on their rare or endangered condition in the official listings; Dr. Robyn Niver of the National Fish and Wildlife Service should be consulted about the Indiana bat and the bald eagle and the FWS office contacted as well for a biologist to be assigned to the project;

- the DEC denies any impact whatsoever on aesthetic resources despite the validity of section 9 despite the fact that 9.c is true (it is likely that the woodlands in winter will provide a view of the operation, and 9.d is also true (there are residents of the Hamlet of North Victory across the road from the operation on Sanford Road who will view the site daily during routine travel and recreational activities); the neighboring residents have expressed concern at the destruction of their Hamlet of North Victory property values, at the dangers to their health and safety on roads not meant for industrial truck travel, and the noise and air pollution which such a major mining operation will produce, all in contravention of the Town of Sterling LUR zoning regulations, yet the DEC makes no record of these major negative impacts in its formal reporting on the form;
- the DEC has recorded no or no significant impact on archaeological sites in section 10, even though only two of the four Phase zones of the 35 acre site have been formally reviewed by an archaeologist;
- further, in section 10.e, the DEC absurdly affirms that there will be no alteration of all or part of the site or property and no alteration of the property's setting (adjacent to a 200-year old residential hamlet) or integrity (the excavation and removal of 1.4 million cubic acres) – even going so far in its Auburn newspaper advertisement and its DEC-7 Website announcement as to dissemble the location of this proposed mine (which would share a road of the Hamlet of North Victory and drive its trucks through that hamlet and three others five to ten times an hour), stating in those formal notices that the site is 1.8 miles south of the Hamlet of Martville, conveying to the public that the entire area of the operation is rural agricultural when it manifestly is not;
- in 11, the DEC again makes conclusory statements of no impact to wildlife without any formal expert opinions concerning plants and animals on state and/or national rare or endangered lists;
- the DEC gave an unqualified no to the questions in 13 about impact on transportation, traffic, road integrity, the patterns of movement of people and vehicles – all without having heard back from the County Planning Committee (which on May 29, 2015 formally voted to recommend to the Town of Sterling that this application be denied for exactly such traffic and safety reasons) no having heard back from the NYS Department of Transportation which has expressed, again, on May 29, 2015 the need for traffic gap analyses, accident analyses, and possible heavy duty shoulder construction at an intersection within the Hamlet of Routes 38 and 104 before such assurances might possibly be made and the DOT did not yet address the alternate route where trucks would exit Pople Road onto Route 38; however, the applicant's additional/alternate route (Sanford to Pople Roads to Rte 38), not in the Mined Use Plan but in correspondence to the DEC dated 2/17/15 and 2/24/15 was evaluated by the Cayuga County Planning Committee which, for reasons of safety (road angles, sight lines, etc.) and degradation of roads not intended for such industrial use) and all such inter-municipal effects, has instead indicated the exact opposite of what the DEC affirms on its mandatory form: the project poses all sorts of serious high-impact problems;
- the DEC has entered no in questions in 15 about noise and odors, despite having allowed the applicant to “cook” the noise data and to avoid an air quality review of a site that will be operating multiple trucks and equipment at the same time across the road from Hamlet of Victory residences;

- in section 17, the DEC misrepresents the community and zoning of the adjacent lands as consistent with such a mining operation when the neighborhood of the operation is zoned as the Hamlet of Victory where no mining operations from elsewhere within the Town of Sterling may be conducted within its borders or traffic therefrom traverse the hamlet; the operation is totally inconsistent with the zoning of the hamlet which borders the proposed mine site and the hamlet will be radically altered by such a project: property values will decline, health and safety will be affected by inordinate increases in truck traffic, noise, and odors, and an historic 200-year old hamlet may be reduced to a ghost town from the imposition of this project which acquired a Negative Declaration in part by means of false representations by the applicant, the DEC and the irregular proceedings of Town of Sterling government in this matter;
- in 18.d the DEC misrepresents the radical alteration that will result in the radical alteration of the use and enjoyment of the officially-recognized 200-year old Hamlet of North Victory.

Storm Water Control Plan

- comments have been integrated into the sections above by topic and interface with other documents (e.g. Full Environmental Assessment Form, etc.).

Mined Use Plan

- many of the comments have been integrated into the sections above, also by topic interface with other documents, and frequently referred to / included in “the moving papers.”
- “Location” and “Adjacent Land Use Features”: the applicant conceals the location of the proposed mine adjacent to a two-hundred year old hamlet by giving its location as thirteen miles away from Fulton, New York, not even identifying it as in the Town of Sterling, and indicating its boundary on the west by Sanford Road and not even mentioning the Town of North Victory, the character of whose neighborhood would be radically altered, if not destroyed, by the proposed mining operation – indeed the applicant’s included map clearly marks the Hamlet with its name “North Victory.”
- “Existing Condition of Land” is declared by the applicant to be exempt from DEC regulations simply because of the alleged (not proven) low volume of “take” – disregarding the fact that the current mine appears to be deeper than 20 feet at its lowest/highest point and located far less than 500 feet from multiple residences;
- “Mineral and Mining Method,” again states no crushing is proposed, even though in other moving papers and in the DEC conditional Negative Declaration the DEC grants permission for crushing even after having performed no air quality studies whatsoever;
- “Air Quality” discussion is limited to only the mitigation of dust with no discussion of diesel odors, etc. and the dust is referred to as small quantities with no estimates communicated;
- “Water Quality”: conclusory statements of no impact on neighboring wells, the Sterling Creek, etc. are presented with no indication of the amounts of water expected to be used in the mining operations;

- “Visual” and “Noise” discussion refers to only the activities within the footprint and calculates distances in order to minimize the fact that the nearest residence is 175 feet from the proposed access road in the moving papers (see related discussions above); the applicant proposes mining activities Monday through Saturday, even though Town of Sterling LUR zoning ordinances forbid anything but residential deliveries on Saturdays;
- “Traffic” in the revised MLU document (digital version dated 5/2/15) reveals the Pople Road route and downplays any of the issues which the Cayuga County Planning Committee and the NYS DOT ultimately easily identified;
- “Wildlife”: with no submissions of any NWF experts on endangered species or plants, the applicant provides conclusory affirmations with no third-party documented evidence;
- “Cultural Resources”: the applicant states that information with respect to the entire site has been submitted to the OPRHP whereas Ms. Nikki Waters of Alliance Archaeological Services confirmed on 6/5/15 that only Phases I and II of the four planned phases has undergone official analysis;
- “Re-Vegetation”: although the applicant indicates that Cornell Cooperative Extension will be involved, his presented list of seeds to be used, fertilizers, etc. is unsupported by any document indicating consultation with that organization;
- The appendices show that the noise testing – without the apparently planned crusher use which was authorized by the DEC with air quality testing – was conducted without the noise of the crusher and screener and vehicles waiting for transport, etc.; it is therefore clear that the data have been “cooked,” and even so will border on or at times exceed the requisite 55 dB limits; the discussion of vegetation as a screen does not provide information as to the possible seasonal nature of such vegetative screening; further, the applicant appears to believe that what may or may not have been sporadic mining operations on that land justify the imposition of higher levels on the surrounding community, relying on the mining face alone to shield from excavator noise with no consideration of creating a barrier to shield processing noise which may or may not take place behind the face of the excavation.

DEC SEQR Negative Declaration

- see all of the above comment sections which include multiple references to statements made in the Negative Declaration, inter alia, the Negative Declaration contains statement which contradict and/or supplement the statements made by the applicant in the moving papers and/or by the applicant and/or by the DEC on official application forms, etc.
- the Negative Declaration is noteworthy for its failure to acknowledge the location of the zoned Hamlet of North Victory and its status as a 200-year residential community across the road from the Sanford Road location and for its failure to note that, inter alia, the traffic from the mine would violate the Town of Sterling LUR for hamlets and that other zoning regulation violations that the mine would perpetrate have not yet been addressed by the Town of Sterling;
- the DEC’s own map dated 2/24/2015 (zoomed out to 500x) contradicts its statement that there are no known wetlands in the LOM, and the failure to have the applicant acquire a true and accurate professional delineation of the wetland or the Town LUR-required topographical study does not justify the conclusory statements concerning the Sterling Creek and its national wetland in the document;

- the Negative Declaration states that there is no pumping of water planned, yet the Mined Land Use Plan clearly indicates that water will be taken from an onsite well;
- the Negative Declaration states that no chemicals will be stored onsite despite the fact that the Mined Land Use Plan clearly states that a facility will be maintained onsite for petroleum, albeit below the gallon limits required for a formal permit; the lack of need for a permit does not erase the fact of the presence of the hazardous materials and the risks attendant to their use above ground water, a national wetland and a principal town aquifer;
- the DEC's declaration that traffic from the mining operations would not have a significant impact on local roads was made with the opinion of only the Town of Sterling Highway Supervisor and is contradicted by the concerns expressed on May 29, 2015 by the NYS DOT as well as the Cayuga County Planning Committee which voted to recommend to the Town of Sterling to reject the application based in part on expected negative impacts on inter-municipal local roads; the online NYS DOT data relied upon by the DEC are four years out of date and the DOT has written to the DEC to recommend current traffic gap and accident analyses be conducted as well as to indicate that even the current condition of the state roads would be negatively impacted, requiring the construction of extra wide shoulders;
- the DEC's "worst case scenario," as analyzed in above sections of this document, was not the actual worst case scenario authorized by its Negative Declaration as it omitted the concomitant use of a crusher; further, the DEC permitted the applicant to "cook" the data by designing an alternate scenario – by which it would in no way be bound in its actual subsequent operations – to lower the dB values observed;
- in discussing dust, the DEC acknowledges that the well onsite will be used to fill trucks and the reader is left to wonder how the truck will be filled inasmuch as an earlier section of the Negative Declaration affirms that there will be no pumping of water onsite; further, the Negative Declaration only speaks of dust from processing operations without addressing whether excavation operations also produce significant dust; in fact no estimate of dust impact is provided for either type of operations;
- the air section of the Negative Declaration only addresses the regulation of machines and does not address what the Full Environmental Assessment Form includes: the impact of odors on air quality;
- despite the fact that DEC visits to the site were not conducted during the past owners' conduct of mining, the Negative Declaration's assertions that the site's vegetation – and setbacks well below the 500 foot limit – handled noise issues in the past is not supported by any data or studies and is contradicted by informal testimony of neighborhood and area residents (up to a distance of one and one-half miles) solicited by this commenter;
- the DEC refers to the setting of the mine as in "a rural and agricultural setting with low residential density," discounting the zoned hamlet community adjacent to the mine and the disturbances which such a major mining operation will impose upon that community;
- without contacting the National Fish and Wildlife Service or the Army Corps of Engineers for their evaluation of wetland boundaries and the potential presence of endangered species, plant or animal, the DEC makes conclusory statements about the lack of negative impact of the proposed operation; however, this is to be remedied in the coming days and weeks by the participation of both of those Federal agencies; note that

the Army Corps is issuing a warning letter to the applicant concerning the national wetland;

- the DEC opines in the Negative Declaration, a document which has suppressed the fact of the zoned hamlet adjacent to the proposed mine, that there would be no significant other land use impacts from such an operation; the DEC needs to retract that statement in its final declaration as other land use impacts – especially those in the Town of Sterling LUR which are violated by this application – are not within its jurisdiction and amount to improper advocacy for and cheerleading of the proposal to the Town; again such conclusory statements are contrary to the facts of the hamlet location which the DEC and the applicant have intentionally suppressed from the application, the moving papers, and the Negative Declaration;
- the Negative Declaration falsely states that the surrounding lands to the mine area are all zoned agricultural/residential – this is manifestly not the case, as can be seen by consultation of the Town of Sterling LUR documents at the very link provided by the DEC.

Concluding remarks

- the DEC's Negative Declaration is pre-mature for all of the above-stated reasons; the application needs to be revisited and all misrepresentations and counter-factual statements withdrawn; further, the Army Corps and the FWS need to be formally consulted, the Town of Sterling's mandated topographical study conducted, the DOT's requirements for study implemented, all errors in the application corrected to reflect accurately the zoning laws, etc., etc. before the final determination should be made.

VMF (6-5-15)