

SELECTED EMAIL CORRESPONDENCE FROM DR. V. M. FICHERA (PHD) TO THE NYS DEC REGION 7 DIRECTOR AND/OR TO THE US ARMY CORPS OF ENGINEERS, WITHOUT REPLY AS OF 7-27-15

N.B. There are "forwards" within the "Forwarded Messages" below. The cover emails forwarded here are numbered to assist the reader in orientation through the document. There are fourteen (14) primary emails with their embedded correspondence. Sanford Road and Town of Sterling residents' correspondence, Dr. Young's independent expert geologist report, as well as Dr. Fichera's formal Comments to the DEC are attached as separate documents.

1----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>
Date: Tue, Jul 21, 2015 at 11:27 PM
Subject: Please respond with windows of opportunity for a meeting on the proposed Martville mine
To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>
Cc: Les Monostory <fishbugm5@twcny.rr.com>, william hecht wshecht01@gmail.com

Dear DEC Region 7 Director Lynch:

As you know, it has been almost a month and a half since your office was contacted with our formal request for a meeting at your headquarters. We have not had word from you or your secretary with any proposed meeting dates and times.

We do continue to learn from the permit applicant at the Town of Sterling government meetings what the DEC has been "arranging" for him: tonight he informed us that John Clancy assured him he will have his mining permit by next Thursday, the same day that the comments will be answered as well, that the draft has been written, etc. Of course, correspondence from the public, including this citizen, regularly goes unacknowledged by the DEC -- including but not limited to my request for a full environmental impact study of that Martville mine proposal in the wake of distinguished geologist Dr. Richard Young's review of the moving papers. In short, the DEC Region 7 appears to be continuing to show undue favoritism to mining permit applicants at the expense of sensitive environmental areas which may ultimately be permanently harmed by DEC negligence in the SEQR process.

Further, the Martville mine permit applicant is receiving these assurances even as the DEC mining division has not yet even formally requested that the Natural Resources Division review the permit application. This is in tandem with all of the other irregularities of the SEQR process by the mining division, including but not limited to the mining division's first contact with the NYS Department of Transportation: an email on the very same day that the Negative Declaration was issued, May 4, 2015 -- effectively eliminating that agency from the SEQR process and providing the permit applicant with a premature Negative Declaration. The SEQR process was and continues to be violated, multiple misrepresentations were made by the applicant and the DEC in the moving papers to "cook" the permit application, the archaeological studies have not yet all been completed, the studies recommended by the DOT have not yet been engaged, the independent geologist's recommendations about the testing of wells and water quality concerns, etc. have not been implemented, etc., etc., etc.

Therefore, we look forward to hearing from you by return email with suggested times/dates for our meeting in advance of next Thursday's premature permit so that you may consider our formal input concerning these ongoing irregularities and review the request for a full environmental impact study. My email address as well as those of Les Monostory and Bill Hecht are above in the header of this email.

Thank you for your anticipated assistance in arranging a meeting. These two glaring cases of essentially DEC-"rigged" EAF reviews granted to the same permit applicant and "geologist" appear to be the tip of a very large iceberg of ongoing Region 7 mining and permit non-compliance with multiple state laws and regulations.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

2----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>
Date: Fri, Jul 10, 2015 at 11:47 AM
Subject: Request for EIS and full environmental impact review of the Sanford Road-Martville mine proposal
To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, daniel.bishop@dec.ny.gov
Cc: John Clancy <john.clancy@dec.ny.gov>, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov, John Zepko <jzepko@cayugacounty.us>, Les Monostory <fishbugm5@twcny.rr.com>, william hecht <wshecht01@gmail.com>, CCDistrict01@cayugacounty.us, Richard Young <young@geneseo.edu>, "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, aaron.c.smith@usace.army.mil, Bridget LRB Brown <bridget.brown@usace.army.mil>, Sandra Doran <Sandra_Doran@fws.gov>, "Niver, Robyn" <Robyn_Niver@fws.gov>
Dear Region 7 DEC Regional Director, Permit Administrator, and Supervisor of Natural Resources:

In the wake of the potential serious positive impacts identified by the independent expert geologist Dr. Richard Young, as well as his recommendations which are in concert with this request -- together with all of the concerns expressed to the DEC by residents of Sterling and surrounding areas -- I am writing to ask the DEC to implement the EIS and a full environmental impact review of the Sanford Road Martville mine project proposed for the site at the confluence of the Sterling Creek (a tributary of Lake Ontario), its national wetland, a principal aquifer, steep slopes and flood hazard areas.

Especially now, given the information in Dr. Young's report, it appears imperative that a mining proposal on the land adjacent to and on the slopes to the protected waters of the Sterling Creek -- in what the Town of Sterling Land Use Regulations identify as a "sensitive environmental area" -- should be subjected to the most thorough and rigorous review at the disposition of the DEC, including but not limited to, consultation at last with the DEC's own natural resources division personnel as well as relevant Army Corps of Engineers and National Fish and Wildlife Service personnel..

The DEC may have already decided to launch this full review; if not, please consider this to be a formal request that it do so.

It is not an exaggeration to say that many, many neighbors of the proposed project -- residents of Martville and the Hamlet of North Victory as well as adjacent farm herds, the stocked trout in the stream, etc. -- risk either losing their water supply or losing the quality of their water supply, as their wells and springs and the Sterling Creek tributary of Lake Ontario and its wetland may become silted, sedimented, and otherwise blocked and/or polluted from this mining project. Inter alia, there are many, many issues of safety as well concerning the proposed mine operation's use of narrow town and county roads shared with the residential Hamlet of North Victory and the Town of Victory -- safety concerns which were among those which prompted the Cayuga County GML-239 Review Committee to vote against the project and thereby require a super-majority vote if the Town Planning Board ignores their recommendation against the granting of a Special Use Permit.

Further, the bonds which the DEC requires for these mining permits do not in any way address such potential catastrophic effects on the quality of life of residents and livestock, and/or the water quality of the tributary and its adjacent national wetland and principal aquifer. The permit applicant has already shown apparent disregard for the SEQR process and for his own proposed Storm Water Control Plan, as the DEC was informed, apparently after the premature Negative Declaration, of his clear-cutting of about ten acres of the Life of Mine that he had designated as "wooded" in his application from June 2014 on. Indeed, even the archaeologist engaged for the SHPO studies warned him in Fall 2014 not to clear the land above the Sterling Creek before she had the opportunity to conduct her study; when she returned in Spring 2015, she discovered he had ignored her warning and had earlier grubbed the land with no berms constructed for run-off control (source: personal conversation with Nikki Waters of Alliance Archaeological Services, July 2, 2015). In a personal conversation with me at Sterling Town Hall on June 23, 2015, the permit applicant admitted that logging took place during Summer 2014 under the previous owner and in Fall 2014 under his own auspices when the title of the land transferred to him.

Further, the permit applicant has already at least once declared bankruptcy, as recently as 2011 in his young career (cf. <http://www.bankruptreport.com/ny/oswego/ferlito-christopher-j>). It is not beyond the realm of possibility if not likelihood that any small mining operator granted a DEC permit would resort to such a filing to avoid responsibility for whatever serious deleterious effects his/her operation would have on the health and safety of neighboring residents and the environment. It appears of high importance that the DEC perform a thorough environmental impact study before any permitting is contemplated, in order to ascertain the extent of the risk of positive effects upon the environment from the proposed project.

I look forward to receiving confirmation that the DEC has stopped the clock on the SEQR process as a result of all of the new information it has received and the new studies which need to be conducted (e.g. water quality, well testing, etc.) -- and that the DEC is now engaged or will soon be engaging in a full environmental impact review.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

3 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Thu, Jul 23, 2015 at 3:53 PM

Subject: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

To: Sandra Doran <Sandra_Doran@fws.gov>

Cc: "Niver, Robyn" <Robyn_Niver@fws.gov>, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, Bridget LRB Brown <bridget.brown@usace.army.mil>, "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, aaron.c.smith@usace.army.mil, karl.d.jansen@usace.army.mil, michael.a.busby@usace.army.mil, R2_Web_Inquiry@epamail.epa.gov

Nota Bene:

The email below contains information concerning the status of the land at 13181 Sanford Road in Martville from September 2014 through June 2015, providing suspicion of runoff silt and sedimentation in the adjoining wetland and creek.

The documentation herein provides evidence of logging pre-October 2014, which could have endangered the habitat of the Indiana myotis bat and potentially other endangered species in the wetland and the stream. The USDA photographs at its Soil Map Website from September 14, 2014 (cf. <http://websoilsurvey.nrcs.usda.gov/app/> for the above address) show the intermediate stage of logging and the attached amateur drone photo shows the final grubbed status of approximately ten acres of the land above the national wetland and the Sterling Creek as of June 29, 2015 -- after the heavy snows and flash flood rains of the spring which almost certainly would have resulted in fill in the wetland and stream waters.

My personal conversation with the Alliance Archaeological Services owner (cf. email below) provides additional evidence of the timeline and of the lack of any storm water pollution control measures at the site subsequent to the logging and grubbing of the land by the permit applicant. The archaeologist also revealed that the permit applicant cleared the area with intentional disregard for the possible endangerment of the requisite archaeological studies because she verbally warned him about the area; his disregard of the logging, archaeological, and storm water protection protocols likely thereby threatened habitats of the endangered bat and other species, as well. The DEC was receiving multiple written assurances from the permit applicant throughout the period of June 2014 to May 2015 that the entire area was wooded, with the exception of the earlier mine location, and that the applicant would respect storm water pollution control practices; the controls apparently did not take place, as attested to both by the photographic evidence and the testimony of the archaeologist.

Please also consult the NFWS wetland finder maps as well as the DEC Christopher Construction map (cf. attached) which both clearly indicate the presence of a Federal palustrine wetland and protected Sterling Creek bordering the steep slopes upon which the permit applicant intends to mine gravel sixty feet deep above the wetland. If the Army Corps of Engineers has written documentation of a subsequent formal delineation of the wetland to justify the permit applicant's quoting the Army Corps as saying "There is no wetland there," please provide the name and date of the relevant documents so that I may add a request for their inspection to my July 5, 2015 formal FOIA request of the Army Corps which has not yet been acknowledged by the Buffalo District.

I would like to suggest that the NFWS and the Army Corps and the EPA consult the information contained on the NFWS wetland finder map as well as the attached DEC-generated map so that your multi-agency review and recommendations may be coordinated and include the Federal wetland and protected stream. I remind all parties that the information from these government maps and photographs, supplemented by amateur drone photography, supports my earlier and instant formal complaints to the Army Corps and to the NFWS that there may have been violations of the Federal laws and regulations which your agencies are sworn to protect by investigation and enforcement. To these I add the instant complaints to all three agencies, to include as well the EPA.

To date, the Army Corps of Engineers has failed to reply to correspondence, formal complaints, and evidence presented in these matters since the latter part of June 2015. The Army Corps of Engineers representative who visited the LOM on June 12, 2015 has, by her own admission, only walked the Life-of-Mine area, never visiting the wetland below. Therefore, the allegations proffered by the permit applicant that "There is no wetland there" are, to date, unsubstantiated by the Corps with any documentation in any of its minimal correspondence to the undersigned to date.

I therefore expect to receive responses to my FOIA request of the Corps, and to my formal complaints in these matters before both Federal agencies, with all agencies performing due diligence in these important environmental matters where the DEC, as well, has failed to perform due diligence in the NYS SEQR process, as documented in detail in correspondence sent to both the NFWS and the Army Corps of Engineers.

- Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

----- Forwarded message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Thu, Jul 23, 2015 at 12:23 AM

Subject: Re: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

To: "Clancy, John M (DEC)" <john.clancy@dec.ny.gov>

Cc: "Perazio, Philip (PARKS)" <Philip.Perazio@parks.ny.gov>, "Vandrei, Charles (DEC)" <charles.vandrei@dec.ny.gov>, "cif9679@yahoo.com" <cif9679@yahoo.com>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, "Nikki Waters, Alliance Archaeology" <nwaters@alliancearchaeology.com>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, "Clint Halftown" <clint.halftown@gmail.com>, timgwoguns@verizon.net, RachelPolansky@localsyr.com, neil@wayuga.com, Randy Lawrence <tsterlin@twcnv.rr.com>, lsomers2@twcnv.rr.com, Lisa Cooper <cooper2@nycourts.gov>

<barbara.mcgin@dec.ny.gov>, "Clint Halftown" <clint.halftown@gmail.com>, timgwoguns@verizon.net, RachelPolansky@localsyr.com, neil@wayuga.com, Randy Lawrence <tsterlin@twcnv.rr.com>, lsomers2@twcnv.rr.com, Lisa Cooper <cooper2@nycourts.gov>

Dear John Clancy:

It was my impression in speaking to both Mr. Perazio of the Parks Service and Mr. Vandrei, a DEC archaeologist, that the OPRHP's recommendation is that the entire Life of Mine area be subject to the archaeological studies before the formal granting of a mining permit to ensure the process of preservation of possible Native American heritage artifacts and remains within the area of the LOM.

I should add that Ms. Nikki Waters of Alliance Archaeological Services, who performed the first two of the studies of the four required "phase" areas of the proposed Martville mine, informed me in a phone conversation on July 2, 2015 that, while she was engaged in the first onsite study last fall, she warned the mine operator not to log or grub the next planned area for investigation before she had the opportunity to conduct the second area study. She recounted to me her surprise to discover that her warning was not heeded: when she went to the site for the second study around April 2015, she discovered that the land had already been cleared, that no runoff protection berms had been established, etc. She did feel that, luckily, she was able to find enough undisturbed land to do the requisite diggings. Indeed, aerial photos of the site, both from the USDA on September 14, 2014 and from a private amateur drone operator on June 29, 2015, confirm her statements.

It would appear that to avoid a repetition of this (and any/all such applicant) operator's "misunderstanding" of the expected protocols, the DEC should follow the recommendations of its own archaeologist, as well as the Parks Service, that all permit applicants complete the requisite archaeological studies for the entire proposed Life of Mine area before a mining permit is granted, for the protection of Native American heritage, the land itself, and to ensure compliance with the SEQR process.

Among other interested parties, I have cc'ed on this communication the Cayuga Nation leaders with whom I have been in contact concerning these matters.

Yours truly,
Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

On Wed, Jul 22, 2015 at 4:59 PM, Clancy, John M (DEC) <john.clancy@dec.ny.gov> wrote:

Hello Mr. Perazio. Thank you for your inquiry.

Our review on the above referenced mining permit application continues.

If a DEC mined land reclamation permit is issued, a permit condition would be included, specifically stating that an archeological investigation must be conducted in respect to cultural resources and reviewed/approved by NYS OPRHP prior to expansion of the mine into areas that have not yet been investigated.

Appropriate mitigation measures to protect cultural resources would be required, if and as needed, based on OPRHP's recommendations.

Thank you for the opportunity to clarify.

Respectfully yours,

John

From: Perazio, Philip (PARKS)

Sent: Wednesday, July 22, 2015 1:26 PM

To: Clancy, John M (DEC)

Cc: Vandrei, Charles (DEC); cif9679@yahoo.com; V. Fichera

Subject: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

Mr. Clancy,

I am contacting you regarding the above-reference project. We have reviewed archaeological reports for two segments of this property.

However, it is our understanding that the life of mine permit under review by DEC encompasses a larger area than what we have reviewed. We would like to inquire whether DEC will require that the remainder of the permit area be subjected to archaeological investigation before the permit is issued or if a stipulation will be included that an investigation be conducted prior to expansion of the mine into areas that have not yet been investigated.

Thank you for your attention to this matter.

Philip A. Perazio

Historic Preservation Program Analyst – Archaeologist

Division for Historic Preservation

New York State Parks, Recreation & Historic Preservation

Peebles Island State Park, P.O. Box 189, Waterford, NY 12188-0189

[518-268-2175](tel:518-268-2175)

Philip.Perazio@parks.ny.gov

www.nyparks.com/shpo

4 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Wed, Jun 17, 2015 at 3:50 PM

Subject: Counterpoint to: Are there penalties for deliberate misrepresentations on formal DEC permit applications?

To: "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>

Cc: "McGinn, Barbara A (DEC)" <barbara.mcgin@dec.ny.gov>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, Les Monostory <fishbugm5@twcny.rr.com>, "Clancy, John M (DEC)" <john.clancy@dec.ny.gov>, "Spadafore, Michael S (DEC)"

<michael.spadafore@dec.ny.gov>, "Lucidi, Christopher M (DEC)" <christopher.lucidi@dec.ny.gov>, "Tracy, Elizabeth A (DEC)"

<elizabeth.tracy@dec.ny.gov>

Dear David Bimber:

Unfortunately, your "preference" -- in the context of repetitively-submitted inaccurate information which substantively alters the veracity and validity of the conditions under which an application is evaluated -- fosters precisely the type of "gaming" which I have described in my email as the generic scenario. Applicants have every interest to make misrepresentations with the knowledge that an over-burdened DEC staff -- and the difficulty for the public to review the materials onsite in Syracuse -- virtually guarantee that applicants may commit fraud with impunity.

Obviously, anyone who has knowledge of fraud perpetrated against the DEC, the public, and the environment is free to himself or herself contact the NYS Attorney General and the NYS Department of Education. Of course, from the point of view of the citizenry, we would prefer that the DEC actually enforce the regulations and use the full force of the penalties at its disposal for the punishment of fraudulent activity.

Failure on the part of a state agency to perform due diligence, the appearance of an agency's provisional Negative Declarations as though it were definitive (as the Website link below attests), in online official agency documents which parrot the fraudulent representations of applicants as if they were the statements of the DEC itself, etc. -- all erode the rights of citizens under state and municipal laws by the pernicious inferences and adversary effects perpetrated by the Department's certification of those misrepresentations as if they were true, when they are not.

Is that not the subject matter of a potential Article 78 against the agency? Why would the agency choose to risk that rather than prosecute obvious offenders?

Yours truly,

Dr. V. M. Fichera (PhD)

On Wed, Jun 17, 2015 at 3:29 PM, Bimber, David L (DEC) <david.bimber@dec.ny.gov> wrote:
Dr Fichera:

Thank you for your note. If Department staff identify incorrect or inaccurate information in application materials we have several options in addressing those deficiencies.

1. Initially, if inaccuracies are identified; staff would likely return the application materials to the applicant, identify the error, and request that the applicant provide a correction. Our applications forms and supporting requirements are sometimes revised and can often be difficult to understand or confusing, so that even experienced applicants have difficulty completing them without assistance. Minor errors are not uncommon and are easily corrected.
2. If staff believe that the level of fraud rises to the level of criminal behavior, the case can be referred to either the local District Attorney, The NYS Attorney General's Office, or the US Attorney for suspected federal violations.
3. The Uniform Procedures Act, the regulation that governs the administration of permit applications authorized by the Environmental Conservation Law, identifies "materially false or inaccurate statements in the permit application or supporting papers" as one of the potential grounds for modification, suspension or revocation of an application/permit at any time.
4. Fraudulent plans or other documents that are stamped by a licensed professional engineer can also be referred to the NYS Education Department for review.

In my experience; options 2, 3 or 4 are seldom used and only in the most egregious situations. My preference is to obtain accurate information in direct communication with the applicant.

If you need further clarification, please drop me a note.

Thanks

Dave

[David L. Bimber](mailto:David.L.Bimber@dec.ny.gov)
Regional Permit Administrator, Division of Environmental Permits
New York State Department of Environmental Conservation
615 Erie Blvd. West, Syracuse, NY 13204
P: [\(315\) 426-7440](tel:3154267440) | F: [\(315\) 426-7425](tel:3154267425) | david.bimber@dec.ny.gov
www.dec.ny.gov | |

From: V. Fichera [mailto:vmfichera@gmail.com]

Sent: Wednesday, June 17, 2015 10:59 AM

To: Bimber, David L (DEC)

Cc: McGinn, Barbara A (DEC); Lynch, Kenneth (DEC); Les Monostory

Subject: Are there penalties for deliberate misrepresentations on formal DEC permit applications?

Dear DEC Regional Director of Permits David Bimber,

Barbara McGinn referred me to you for a possible response to this question, with which she is unfamiliar in her experience: If an applicant for a DEC permit is found to have made multiple substantial misrepresentations in the formal documents submitted to the DEC in order to obtain a Negative Declaration, and ultimately a permit, are there any penalties, civil or criminal, for such transgressions?

As things stand, the permit process allows applicants to "game the system" in the following manner: submit false information to DEC upon which the DEC relies to issue a Negative Declaration. The Negative Declaration, even though subject to public comment, appears to be a final agency action (cf. e.g. http://www.dec.ny.gov/enb/20150506_not7.html) and the applicant then goes to Town government and asks that the relevant boards (Planning, Zoning Appeals, etc.) make their determinations on the basis of that Negative Declaration -- indeed, formally requesting that the Town not wait for the end of the comment period, etc. Again, this is a generic case I am posing for information and the Website cited was as an example of the format used by the DEC to convey such information to the public.

This is, of course, highly problematic because there can be major factual errors in the application which, once identified, might lead the DEC to significantly alter or even rescind its Negative Declaration, but in the meantime, the applicant has the opportunity to effectively suppress resident complaints to the Town about such misrepresentations of fact, citing the pre-emption by the mining statute, prejudicing the Town government against concerned residents -- all based upon the Negative Declaration which is posted as if it were the final agency action. Indeed, the applicant can have multiple permit applications and play this game multiple times, sequentially or concurrently.

Further, unscrupulous attorneys for applicants game this even further, telling Town Boards that the local government may not impose setbacks, etc. unless the DEC orders them specifically, even though the NYS Department of State instructs Town governments to read the *Schadow v. Wilson* case for the reaffirmation of all zoning authority except the regulation of only mining activities (at this URL with convenient links to the ruling's cited cases: http://www.leagle.com/decision/1993244191AD2d53_1239.xml/MATTER%20OF%20SCHADOW%20v.%20WILSON) -- to which I would myself add, the NYS Court of Appeals' specific reasoning in its ruling *In the Matter of Mark S. Wallach, Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden et al.* (cf. <http://www.nycourts.gov/ctapps/decisions/2014/jun14/130-131opn14-decision.pdf>). While City Planning and Zoning Boards might have members who can see through such attorney ruses and misrepresentations of law, Towns rarely have board members with such formal backgrounds, and thus misrepresentations of NYS Environmental Law and case law are added to the weight of the seemingly final Negative Declaration. [Yes, the specific case which I have commented upon in earlier emails includes this generic scenario, unfortunately.]

I am raising these issues generically above. Your response concerning the existence of such penalties does not depend upon the allegations made in the instant case. I would simply appreciate knowing if the DEC has any penalties, civil or criminal, for substantial misrepresentations of fact made in the application process. If not, then clearly there is no reason for any application to the DEC to be truthful on the part of applicants -- for if no one from the public submits comments identifying the misrepresentations, then the applicant can get away with a Negative Declaration and eventually even a DEC permit to proceed with questionable environmental practices -- because the benefits from lying are well worth the risk of discovery when no penalties are involved.

As Ms. McGinn has informed me, you have significant experience in not one but two DEC regions. I would hope that you will be able to reassure me that the DEC does indeed have in place a mechanism for penalizing applicants who make false representations on the official forms and in the formally-required submissions to the DEC.

These generic questions are independent of my formal request of the Department on June 16, 2015 that the Town of Sterling at the very least be informed that the DEC's process does not preclude the substantial revision and/or withdrawal of its issued Negative Declaration.

Yours truly,

Dr. V. M. Fichera (PhD)

5 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Mon, Jul 20, 2015 at 4:32 PM

Subject: Sterling Creek: "stressed" from silt/sedimentation in 2005 -- DEC needs to update the water quality indices for the proposed Martville mine area

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, John Clancy

<john.clancy@dec.ny.gov>, daniel.bishop@dec.ny.gov

Cc: Les Monostory <fishbugm5@twcnny.rr.com>, william hecht <wshecht01@gmail.com>, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov, "McGinn, Barbara A (DEC)" <barbara.mcginn@dec.ny.gov>, Richard Young <young@geneseo.edu>, CCDistrict01@cayugacounty.us, Randy Lawrence <tsterlin@twcnny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, lsomers2@twcnny.rr.com

Dear DEC Region 7 Director Kenneth Lynch, et al.:

In consulting this DEC water quality document online, http://www.dec.ny.gov/docs/water_pdf/pwillontcent.pdf, I note on p. 122 that since 2005 the Sterling Creek tributary of Lake Ontario is known to be stressed and that silt/sedimentation is an issue. I also note on other pages at the DEC Website that the Sterling Creek is stocked by the DEC with Steelhead trout and Pacific salmon. I further note, more than in passing, that the DEC does not appear to publish online all of the necessary referenced maps for the public to consult when reading these documents.

Yet the mining division of the DEC has permitted the formal EAF documents for the proposed Martville mine to list that there is no fishing in the Sterling Creek which runs on the property just below the LOM, and has not tested for water quality -- or air quality -- even as written concerns about dust and particulate matter pollution as well as silt/sedimentation from run-off into the wetland and the stream are without response from the DEC.

I have written to the DEC on July 10, 2015 to request that a full environmental impact study be performed; there has been no acknowledgement of receipt of that communication.

I am writing yet again because the Sterling Creek and its wetland and stocked fish almost certainly have suffered impacts from runoff from the watershed and from the grubbed acreage at 13181 Sanford Road, Martville during this spring and now this summer 2015 with the steep snow melts and heavy flash flood rains we have been enduring in this part of the state.

I ask that the status of the waters of the Sterling Creek be tested in the vicinity of that proposed mining site and that all relevant baseline water quality parameters be documented before any possible mining permit is issued. The DEC's inventory on that Lake Ontario tributary is at least a decade old; indeed, in other DEC documents, the last water quality testing of the Sterling Creek is listed as 2001. The DEC needs to be able to document impacts to the Sterling Creek and its wetland which have already arisen in order to recognize what may in the future arise as a result of onsite activities by a potential DEC-permitted land owner and his business associates (Riccelli-Northern, et al.).

Of course, this request is in addition to Sterling residents' and the independent expert geologist Dr. Young's concerns for the wells and springs located in the vicinity of that part of the Sterling Creek and the Life-of-Mine area. I have already documented that the DEC has permitted its formal EAF for a Negative Declaration to state that there will be no impact to any wells when not one single resident's well or spring has been tested in the vicinity of, or even on the site of, the proposed mining operation. The apparent lack of oversight exhibited by the DEC in these matters regarding mining permits is nothing short of astounding.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor
Binghamton University-SUNY

6 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Wed, Jul 22, 2015 at 9:54 AM

Subject: Allegations that DEC experts would dispute the findings/recommendations of Dr. Young's report with respect to the water table, wells, etc.

To: "Spadafore, Michael S (DEC)" <michael.spadafore@dec.ny.gov>

Cc: John Clancy <john.clancy@dec.ny.gov>, Richard Young <young@geneseo.edu>, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "McGinn, Barbara A (DEC)" <barbara.mcginn@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>

Dear Michael Spadafore:

I have just had a conversation with John Clancy, the contact person for the Martville mine permit application, in which he communicated to me that all of my communications to the DEC have been received but that the Division of Water experts within the DEC with whom you regularly consult dispute such deleterious effects on the water table and neighboring wells, etc. which Dr. Young stated were possible at or surrounding the LOM.

You will recall that in his report, Dr. Young recommended, inter alia, that wells be tested, etc. and it is my impression from my conversation with John Clancy that the mining division has no intention of ordering any further studies at all, let alone of water and wells, in its review of the permit application subsequent to received comments. I have spoken with members of the Natural Resources staff and apparently they have not been asked to review the permit application, either.

Please provide me with the name and contact information of the DEC water experts upon whose opinions the mining division is relying as it allows the applicant's geologist to "infer" the water table from the single well onsite, and to fail to do any of the testing recommended by the independent expert geologist who volunteered his review of the DEC permit application materials.

Further, John Clancy indicated that the NYS Department of Health would ordinarily become involved in the matter of wells and well water quality should an issue arise. I would like as well to have the name and contact information for the person or persons within the NYS DOH who would be the experts your division would consult in these matters were a problem to be identified.

Thank you for your anticipated assistance in contacting the DEC Water Division and the NYS DOH in this matter of the DEC's extraordinary insistence on no further testing of anything (water quality of the Sterling Creek, wells, water table, archaeological studies, etc.) in the wake of voluminous comments detailing the manifold errors and misrepresentations in the DEC's conduct of the SEQR process.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor

Binghamton University-SUNY

7 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Sat, Jul 25, 2015 at 10:27 PM

Subject: Re: A one-hundred year old house adjacent to Martville mine lot on its northwest corner: an historic structure?

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>, "Bimber, David L (DEC)" <david.bimber@dec.ny.gov>, John Clancy john.clancy@dec.ny.gov

Cc: "Vandrei, Charles (DEC)" <charles.vandrei@dec.ny.gov>, "Perazio, Philip (PARKS)" <philip.perazio@parks.ny.gov>, daniel.bishop@dec.ny.gov, "Mcginn, Barbara A (DEC)" <barbara.mcginn@dec.ny.gov>, Randy Lawrence <tsterlin@twcny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, Isomers2@twcny.rr.com, John Zepko <jzepko@cayugacounty.us>, CCDistrict01@cayugacounty.us

Addendum to the email below:

While reading the Alliance Archaeological Services report of the study of one area of the proposed Martville mine/quarry LOM which had been cleared by the permit applicant (while he was affirming to the DEC that it was wooded and would be subject to storm water protection controls, which were then never instituted), I discovered this reference to the "hundred year old house" which appears to be even older, indeed:

"In 1875 (Figure 6) the R. Fry residence is shown to the north along the east side of Sanford Road. By 1900 (Figure 7) a private residence is still shown at this location and in 1903 (Figure 8) this residence is identified as belonging to W.H.Frye. A private residence is still shown at the location in 1960 and on the modern topographic map (Figure 2). A private residence was still at this location during the original evaluation [2014]." cf. attached pdf, page 20.

I would therefore like to inquire whether there has been any attempt to inventory this structure as an historical site. If not, could an evaluation be done? [Mr. Perazio?]

In any event, the DEC has for months been in possession of concrete documentation that a structure in the close vicinity of the property of the LOM was constructed before 1940 and might indeed suffer damage from excavation vibrations, etc., and that the information on the SAAF was incorrect.

In the somewhat parallel case of the Hannibal Harris Hill Road permit application, the DEC failed to consult OPRHP at all, although formally required to do so for that type of permit, with the result that a mining permit was formally issued for excavation on lands which are "sensitive" archaeological sites with no prior formal studies conducted at all.

It would appear that, in the DEC's Lead Agency and SEQR reviews, the only goal of Region 7 has been the granting of mining permits to any and all comers from the industry, as the Permit Administrator's earlier email to me essentially attested -- regardless of the truth and accuracy of their formal applications -- rather than allegiance to the DEC formal mission: *"To conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being."* (<http://www.dec.ny.gov/24.html>)

Perhaps Mr. Perazio could investigate the historical significance of that residence. Nevertheless, regardless of what that inquiry reveals, the age of the structure requires that the DEC conduct an inquiry into the potential dangers to its foundation, etc. from a major gravel and sand excavation operation.

In closing, I state and restate the concerns outlined in the email below.

- Dr. V. M. Fichera (PhD)

On Fri, Jul 24, 2015 at 1:19 PM, V. Fichera <vmfichera@gmail.com> wrote:

Nota Bene:

At the July 21, 2015 Town of Sterling Planning Board meeting, the former owner of the house located on lot 20.00-1-64.11 informed the Town government that that residence, now owned and occupied by Frank J. Nicodemus and his family, is one hundred years old and has a stone foundation or basement.

The misrepresentation on the Structural Archeological Assessment Form (SAAF) in question 6 of Part 1 that no structures surrounding the mine property pre-date 1940 is yet another of the serious problems with the DEC's flawed review of the Martville mine permit application as Lead Agency. That the current owner of that residence bordering the 13181 Sanford Road Martville mine property also works nights and would be impeded from sleeping in the daytime by such an operation -- and that members of his family have serious medical conditions which would be impacted by the effects of mining on air quality -- should also be of interest and concern to the DEC.

In fact, a survey of and by several residents of Sanford Road reveals that at least eight of the residences have household members with diagnoses of one or more of the following: COPD, asthma, allergies, cardiac conditions, emphysema, PTSD and other stress-related disabilities which would be affected by the vibrations, the noise, the dust, and the diesel fumes of such a mine/quarry operation.

These are among the many important environmental, archaeological, and health facts which the applicant and the DEC did not take into account during the incomplete SEQR review preceding the prematurely-issued Negative Declaration on May 4, 2015.

Also, at that July 21, 2015 Sterling Planning Board meeting, residents gave testimony that the permit applicant did visit them at their houses earlier in the application process, but that he misrepresented his proposed mine as being substantially the same as the past small operation, informing them that he owned only a few trucks, etc. Only later, at the official Town of Sterling Zoning Board of Appeals meeting in April 2015 did the residents who attended that meeting learn that the proposed mining operation was several times over as large and that other contractors with much larger trucking equipment, including Riccelli-Northern, would be hauling gravel and sand from the proposed mine for major projects in other counties.

Further, the Sterling Zoning Board of Appeals, also ignorant of many of these missing facts and health circumstances, granted an unprecedented entrance/egress variance from the 1000 foot setback requirements from houses mandated by the June 2014 Land Use Regulations -- regulations which doubled the required 500 foot setback of the earlier Sterling Zoning Law of 1997.

The DEC and the Town of Sterling are obligated by state law and their own regulations to take the time necessary to perform the requisite studies to redress the many misrepresentations and errors of fact in the moving papers of the DEC files which have unfortunately become replicated in the Town of Sterling's files as well -- and, inter alia, to engage the missing archaeological and transportation studies which the applicant eschews for obvious reasons, as well as to conduct the necessary water quality and well studies which the independent geologist/hydrologist recommends to better ascertain how low the water table might drop from the planned removal of up to sixty feet of overburden, affecting residential wells and springs of the vicinity.

To do less would appear to be a violation of the public trust -- and of the rule of law.

- Dr. V. M. Fichera (PhD)

8 ----- Forwarded Message -----

From: Clancy, John M (DEC) <john.clancy@dec.ny.gov>

Date: Thu, Jul 9, 2015 at 9:13 AM

Subject: RE: Independent expert geologist's report on the Sanford Road-Martville mine DEC and Town of Sterling mining permit application

To: "V. Fichera" <vmfichera@gmail.com>, "young@geneseo.edu" <young@geneseo.edu>

Dear Dr. Fichera and Dr. Young:

Thank you for providing this additional information. Just wanted to let you know that we received it.

Respectfully yours,

John

From: V. Fichera [mailto:vmfichera@gmail.com]

Sent: Wednesday, July 08, 2015 10:55 AM

To: Lynch, Kenneth (DEC); Bimber, David L (DEC); Clancy, John M (DEC); Mcginn, Barbara A (DEC); Lucidi, Christopher M (DEC); Spadafore, Michael S (DEC); Tracy, Elizabeth A (DEC); tsterlin@twcny.rr.com; LCooper2@nycourts.gov; lsomers2@twcny.rr.com; info@ontarioorchards.com; Crawford, Margaret A LRB; Robinson, Judy A LRB; aaron.c.smith@usace.army.mil; Bridget LRB Brown; sandra_doran@fws.gov; Niver, Robyn

Cc: Bishop, Daniel (DEC); Lemon, David (DEC); Joule, Steven J (DEC); Vandrei, Charles (DEC); Perazio, Philip (PARKS); Parmley, Elizabeth (DOT);

Covert, Christopher P. (DOT); John Zepko; ccdistrict01@cayugacounty.us; Jean wilkinson; vfairhav@twcny.rr.com; Richard Young

Subject: Independent expert geologist's report on the Sanford Road-Martville mine DEC and Town of Sterling mining permit application

Please see the below email just received from Dr. Richard Young with his geologist report and recommendations, together with its appended materials, also sent by him, in the forwarded attachments.

Dr. Richard Young is Distinguished Service Professor Emeritus of Geological Sciences at SUNY-Geneseo. He was one of the authors of the USGS NYS Finger Lakes Surficial Map and has served as an expert consultant on myriad geology, hydrology, etc. projects throughout his career. He attached his resume as well as his report, and also appended a July 8, 2015 *Democrat and Chronicle* editorial on open government. Please note that the documents submitted to Dr. Young for his review included all those publicly posted on the Cayuga County GML-239 Committee's Website preceding their formal vote to the Town of Sterling recommending that the Town government reject the mining application for multiple inter-municipal safety and highway issues. These documents, publicly posted on the Internet by that committee were supplemented by electronic documents provided to me by the DEC subsequent to my visit to the Syracuse Region 7 headquarters during the official comment period on the pre-mature Negative Declaration, as well as copies or links to the Town of Sterling Land Use Regulations and the Town of Sterling / Village of Fair Haven Comprehensive Plan, formally adopted in 2010 and made part of the Town of Sterling Land Use Regulations in 2014.

These documents are hereby formally submitted to the DEC, the Army Corps of Engineers, the National Fish and Wildlife Service and all of the members of the Town of Sterling government, prior to the announcement of any final decisions on the Sanford Road Martville Mine DEC mining permit and Town of Sterling Special Use Permit application in this matter.

This information and its important recommendations are submitted in the hope that all Federal, state, and local agencies will at long last respect all of the laws of the United States of America, the State of New York, and the Town of Sterling.

- Dr. V. M. Fichera (PhD)

----- Forwarded message -----

From: Richard Young <young@geneseo.edu>

Date: Wed, Jul 8, 2015 at 9:54 AM

Subject: Sanford Road-Martville gravel

To: "V. Fichera" <vmfichera@gmail.com>

Dear Dr. Fichera:

I am attaching my comments from my review of the proposed Sanford Road-Martville gravel mining operation.

These comments are based on the official documents, maps, and records forwarded to me by yourself.

I hope my comments provide a reasonable geologic perspective on the important issues you have raised.

I have also attached my updated resume (vita), as the college's online version is several years out of date due to the college's never ending chore of trying to

maintain accurate records for our numerous and productive faculty.

I hope this format is satisfactory for your needs. It is unfortunate that the citizenry must go to such lengths to ask their leaders and public officials to conform to the laws they were elected or appointed to uphold, as per the timely editorial in today's Democrat & Chronicle (as attached).

Sincerely,

Richard A. Young, PhD
Professor Emeritus, Department of Geological Sciences

--

Richard A. Young, PhD
Department of Geological Sciences (Emeritus)
SUNY Geneseo
1 College Circle
Geneseo, NY 14454
[585-245-5296](tel:585-245-5296) office
[585-243-0087](tel:585-243-0087) home
young@geneseo.edu

"TIME IS NATURE'S WAY OF KEEPING EVERYTHING FROM HAPPENING AT ONCE"
Woody Allen

9 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Thu, Jul 9, 2015 at 12:53 PM

Subject: Additional comments by Dr. Fichera, submitted to Dr. Young for his review in his independent geologist report

To: Randy Lawrence <tsterlin@twcny.rr.com>, Lisa Cooper <lcooper2@nycourts.gov>, Isomers2@twcny.rr.com, info@ontarioorchards.com, "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>, "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, aaron.c.smith@usace.army.mil, Bridget LRB Brown <bridget.brown@usace.army.mil>, Sandra Doran <Sandra_Doran@fws.gov>, "Niver, Robyn" <Robyn_Niver@fws.gov>

Cc: vfairhav@twcny.rr.com, Jean wilkinson <jwilkinson@rccsd.org>, charles.vandrei@dec.ny.gov, philip.perazio@parks.ny.gov, eparmley@dot.state.ny.us, ccovert@dot.state.ny.us, John Zepko <jzepko@cayugacounty.us>, CCDistrict01@cayugacounty.us

The below email was sent to Dr. Young for his review as an independent geologist. His ratification of my comment submissions is included in his report.

N.B. At the time the below email was composed, I was unaware of the fact that the DEC formally stocks the Sterling Creek with Steelhead trout each year for fishing in the region, and thus the permit application also inaccurately denies in part E.2.q. that any such fishing activities occur -- despite the presence of the Sterling Creek on the very lot which contains the LOM.

Again, the DEC Region 7 mining division did not perform due diligence in the matter of its review of this mining permit application, completely bypassing the staff of the DEC's own natural resources division whose formal opinion of the impact of such a proposed mine on the natural resources implicated by the site was never sought by the mining division during the SEQR review. Such breaches of protocol call into question the validity of the DEC's entire SEQR process in the matter of this and other mining permit applications in Region 7.

Please see the analysis of the "new" Environmental Assessment Form submitted by the applicant, in the email below, included in the materials to which Dr. Young makes reference in his report. For your reference, links to the Town of Sterling / Village of Fair Haven Comprehensive Plan can be found on this official Town of Sterling Website: <http://www.cayugacounty.us/portals/1/sterling/government/laws/index.htm>.

- Dr. V. M. Fichera (PhD)

----- Forwarded message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Tue, Jun 16, 2015 at 8:47 AM

Subject: IMPORTANT: Martville Mine permit applicant's updated 2/20/15 EAF misrepresents the compliance of the project with the Town Comprehensive Plan amid multiple other misstatements of fact

To: John Clancy <john.clancy@dec.ny.gov>, david.bimber@dec.ny.gov, charles.vandrei@dec.ny.gov

Cc: kenneth.lynch@dec.ny.gov, Les Monostory <fishbugm5@twcny.rr.com>

[...]

Yours truly,

Dr. V. M. Fichera (PhD)

Enc. (separately-forwarded) Parts 1 and 2 of the "Town of Sterling / Village of Fair Haven Comprehensive Plan"

Martville Mine EAF submitted by the applicant, dated 2/20/15:

- B. e. fails to report the necessary GML 239 review by the Cayuga County Planning Committee
- C. 2. a and b misrepresent the fact that town's Comprehensive Plan does indeed include the majority of the proposed mine site in its "Mixed-Use Hamlet Transition Area"
- C. 4. c and d incorrectly states Hannibal services and parks (likely from his Harris Hill mining project application)
- D. 1. e indicates the applicant intends to begin mining operations in 4/2015 and misrepresents the fact that a site of an upcoming phase had already been clear-cut for excavation
- D. 1. h. states that no pond will be created yet the Storm Water Plan clearly refers to a pond for the control of run-off
- D. 2. a. iv falsely states that there will be no processing of excavated materials when a screener and crusher are in the moving papers as well as permitted in the Negative Declaration
- D. 2. b and i through iv declare no effect on a wetland yet the DEC's own map shows an encroachment and a formal delineation of the wetland was never performed; the Army Corps of Engineers is issuing a warning letter because of the potential for run-off, etc. fill in the national wetland of the Sterling Creek; storm runoff from the approximately 10 acres that had been cut-cleared with grounding of stumps during the application period was not mitigated; the water table level is high in that area and a disturbance could cause sedimentation of the creek, etc.
- D. 2. c. falsely states no water use when the Mined Land Use Plan calls for the use of water to control dust, the use of a current well onsite, and no evaluation of the impact of that use on neighboring wells, which is of concern to Sanford Road resident
- D. 2. d does not indicate how human liquid, etc. waste will be accommodated at the site which does not appear to have a septic system
- D. 2. e misrepresents the land as vegetated when a third of more of the projected LOM has already been clear-cut, the statement about retaining water onsite refers back to misrepresentation of the use of a pond above; affirms the use of barrier materials for run-off yet, on information and belief, none are in use in the clear-cut area near the cliff/slope to the national wetland
- D. 2. f conceals the use of crushers and screeners and their impact on air pollution of the area
- D. 2. g conceals the fact that the crushers will need permits over 150 tons/hr and no estimates are given of the combined total generation of pollutants from the trucks, excavators, screeners, crusher, etc. despite the fact that the site is across the road from a hamlet
- D. 2. i refers only to dust as emissions, concealing the pollutants of the heavy machinery themselves
- D. 2. j i misstates the hours of traffic generation as 9 am to 5 pm when the mine would open M-F at 7 am and
- D. 2. j. ii appears to under-state the number of semi-trailer trips/day,
- D. 2. j. iii and iv ignore the issue of the parking of vehicles belonging to the operators of equipment that will be left onsite,
- D. 2. j. v. misstates the adequacy of the hamlet road and of a county road which have no shoulders and do not appear to even meet the commercial 22-foot width recommendations of the American Association of State Highway and Transportation officials [N.B. the inappropriate road structures, sight lines and angles were among the safety and road concerns of the Cayuga County GML 239 Committee which formally voted to recommend the rejection of the permit on May 29, 2015] and
- D. 2. j. viii makes no accommodation for the pedestrian use of that hamlet road by Sanford Road residents to access the other residences and businesses of the hamlet
- D. 2. m. i admits the sound problem but the noise testing does not substantiate the mitigation statements [applicant was permitted to "cook" the data by spreading out the machinery, omitting the planned crusher, omitting planned idling vehicles, etc.]
- D. 2. m. ii overlooks the fact that the wooded barrier is partly seasonal and would therefore not provide sound insulation during winter months
- D. 2. o denies that the equipment produces odors, apparently simply because the machinery must meet pollution control standards, as if such standards produced odorless operations
- D. 2. p states that the onsite storage of petroleum will be under the permitted amount, yet the hourly truck rate of 5 to 10 vehicles ranging from tri-axes to 18-wheelers indicate that this amount bears inspection for adequacy and therefore, if inadequate, potential violation requiring a permit

- D. 2. r denies that there would be the need to bury wood waste even though the DEC has approved in the Negative Declaration the burial of such fill under compacted cover near the cliff/slopes contiguous to the Sterling Creek wetland
- E. 1. a intentionally conceals the residential hamlet and its road which the project will share and denies that the project itself lies in a formal "Mixed-Use Hamlet Transition Area" formally delineated in the Town of Sterling / Village of Fair Haven Comprehensive Plan
- E. 1. b formally denies the existence of the later-admitted clear-cut of an additional ten acres of forested land which was effectuated in fall 2014 and denies wetland encroachment without having a formal delineation made or even contracted for the formal topographical study required by the Town of Sterling Land Use Rules for any slope activity where the slopes exceed 15%
- E. 1. g and h deny the existence of an onsite dump that was noted in the moving papers and documented in the Alliance Archaeological Services Phase I report
- E. 2 c and f conceal two additional soil types that will be excavated from 8 to 25% slope inclusions
- E. 2. h makes assertion in i concerning the wetland delineation which the DEC map when enlarged itself denies and fails to identify the size of the Federal wetland in iv which it admits is on the site
- E. 2. m, n, o and p make wildlife declarations that were never verified with the Fish and Wildlife Service to rule out endangered species, either plant or animal
- E. 2. q denies the fact that the neighbors of that area use their adjoining lands for hunting, etc. and that the project will disturb if not destroy such activities
- E. 3. b is contradicted by the "Town of Sterling / Village of Fair Haven Comprehensive Plan" soil maps which show that the topsoil on virtually the entire site is valued at one of the highest rates in the entire town (cf. Part II Maps labeled p. 77 "prime farmland" and p. 83 among the highest assessed value of the town)
- E. 3. f and g admits the archaeologically sensitive area denied in the earlier submission and elsewhere in the moving papers yet reports no findings even though the entire four Phases/areas of the project were never completed -- most likely to conceal the cut-clearing of the Phase IV area
- E. 3. h merits further exploration because the distance of the project from formal trails (e.g. inter alia in the vicinity of the Martville and Crocketts hamlets) have, on information and belief, not been verified and the site's distance from, inter alia, the town's nature center and museum and the scenic village and town waterfront areas, as well as the wetlands at Lake Ontario of the Sterling Creek, appear to be within five aerial miles from the site at their southernmost boundaries

10 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Tue, Jul 7, 2015 at 1:48 AM

Subject: Fwd: No response to: Request for a meeting on the Martville Mine Application, Town of Sterling, before any permit is issued

To: daniel.bishop@dec.ny.gov, david.lemon@dec.ny.gov, steven.joule@dec.ny.gov

Cc: Les Monostory <fishbugm5@twcnv.rr.com>, william hecht <wshecht01@gmail.com>, jim.petreszyn@madisoncounty.ny.gov

Dear DEC Region 7 Natural Resources Supervisor Daniel Bishop,

Please review with your team at your earliest convenience the materials I have sent you last week per our discussion. There is some urgency in this matter (see email forwarded below).

I will soon have geologist Professor Richard Young's comments on the MLUP, etc. which reveal groundwater issues, etc. Now the mining permit applicant plans on altering his mining plan, eliminating certain phases and areas within the LOM which will dramatically affect the nature of the reclamation (all puns intended) because the resultant land structure will be very different topographically from what was originally proposed -- all of which should trigger an entirely new SEQR review for the altered MLUP he plans to submit only to the Town Planning Board.

It is nothing short of scandalous that the natural resources division was never contacted in the SEQR process for a proposed mine adjoining a national wetland, the Sterling Creek, and a principal aquifer. I ask that you please consider contacting Director Lynch directly to formally request that no permit be issued until your division reviews all of the files and informs the Director of your evaluation of the conclusions of the mining division, conclusions fabricated with no input from DEC or any other natural resources experts..

- Dr. V. M. Fichera (PhD)

11 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Mon, Jul 6, 2015 at 11:32 PM

Subject: No response to: Request for a meeting on the Martville Mine Application, Town of Sterling, before any permit is issued

To: "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>

Cc: Les Monostory <fishbugm5@twcnv.rr.com>, william hecht <wshecht01@gmail.com>

Dear DEC Region 7 Director Lynch:

As you know from my and Les Monostory's email correspondence, we are asking that a permit not be issued to the applicant for the Martville Mine at the very least until we have first had the opportunity to meet with you in person at your office. Mr. William Hecht has also asked to be part of that meeting. As of this writing, we have not heard back with any proposed date and time. I must renew the urgency of this request in

no small part because of representations made to the Town of Sterling Planning Board this evening, July 6, 2015, concerning the DEC mining division's actions in this matter.

The mine applicant stated that he had a phone conversation with the Permit Administrator on Friday, July 3, 2015, during which he was assured that the DEC's response to comments had already been drafted and that when the response went out the week of July 6, 2015, he would simultaneously receive his permit.

Further, at the Town Planning Board meeting, the permit applicant described major alterations to his mining plan, including but not limited to changes in the mining area sequences, location of haulage roads and entrances/exits, in response to Town of Sterling Land Use Regulations that, inter alia, he may not conduct any sand, gravel or excavation operations (which he erroneously interprets to mean "excavation") within 1000 feet of a structure. The Town Planning Board has advised him to revise his maps, narratives, and Site Plan for their review, yet the applicant has informed the Planning Board that he has no need to submit any of these changes to the DEC. He has twice declared that the DEC doesn't require him to follow the Army Corps of Engineer representative's advice to not bury fill on the slope to a national wetland -- but he generously stated that it made sense to keep it on the top of the land there, even as he bragged that the DEC had reviewed and approved his original plan.

The DEC has been apprised of major, endemic misrepresentations in the permit application yet the Permit Administrator has essentially declared in writing in an email upon which you were openly cc'ed that he prefers to grant permits in the matter of potentially fraudulent applications by working with mining operators -- to essentially "handle" the voiced concerns of the public. I note, more than in passing, that the DEC intentionally fails to post SEQR materials for public comment -- lest the public actually comment, apparently. Those of us who made the trip to your Division's headquarters have documented in writing the dizzying irregularities in these multiple Negative Declarations. Ironically, the Cayuga County Planning Board's GML 239 Committee's Website posted many of the materials the mining division seeks to conceal by deliberately not posting them on the DEC Website.

Indeed, the DEC Region 7 does not even bother to respect the basic protocols of SEQR review: In the matter of the Martville mine, the DEC failed to consult with the NYS Department of Transportation until May 4, 2015 -- after it had already granted a formal Negative Declaration that very day. A representative of the DOT revealed his dismay in a July 6, 2015 email to the Town Planning Board Chair that the DEC as Lead Agency in the SEQR process had excluded the DOT. The Hannibal Harris Hill Road mining permit was granted by the DEC with both the applicant and the DEC failing to consult with the Parks Division about sensitive archeological areas that require further study, falsely certifying on all forms that there are no such areas. And on and on and on.

It appears that there is literally everything that the DEC Region 7 mining division won't do (won't contact Parks, won't contact DOT, won't require a permit for a DEC registered wetland, etc.) in order to grant mining permits to applicants who misrepresent the facts and circumstances of their operations. Indeed, I was informed last week by the archeologist who conducted studies of parts of the proposed Martville mine LOM that she warned the operator in the fall of 2014 not to disturb the Phase 2 area near the Sterling Creek until she had been engaged to perform the archeological study; when she returned in the spring of 2015, she saw that she had been ignored and the land had been grubbed. No matter, of course, as the permit applicant told the Town of Sterling Planning Board on more than one occasion, he has been informed by the DEC 7 Permit Administrator that he will have his permit -- and most recently he appears to have been informed that he will have his permit this week. And, I would add: once he has it, why should he bother to respect its limitations and expectations when he was not even held accountable for the truth and accuracy of his permit application. Why indeed? No natural resources staff of Region 7 were contacted in the SEQR review, either, of course -- lest any inconvenient truths about dangers to the water quality or the stocked trout of the Sterling Creek get in the way of the mining division's granting of a permit.

Within the next few days, I will be receiving an emailed review of several of the Martville mine DEC permit application documents by a noted geologist, Professor Richard Young, PhD, who was one of the geologists who developed the USGS NYS Finger Lakes Surficial Maps (cf. <https://www.geneseo.edu/geology/young>). In a discussion of his forthcoming comments, he raised multiple concerns about the project and its environmental effects which will be brought to your attention as soon as I receive his emailed comments within the next few days.

In closing, multiple irregularities continue to characterize the DEC Region 7's review of mining permit applications, and a pattern of practice is beginning to emerge. The mining division reports, I understand, directly to your office, and therefore you are, it appears, both immediately and ultimately responsible for their actions.

Please arrange for us to meet before the DEC Region 7 grants yet another irregular permit to yet another highly problematic mining project.

Yours truly,

Dr. V. M. Fichera (PhD)

----- Forwarded message -----

From: <fishbugm5@twcny.rr.com>

Date: Thu, Jun 25, 2015 at 8:37 PM

Subject: Request for a meeting on the Martville Mine Application, Town of Sterling

To: kenneth.lynch@dec.ny.gov

Cc: vmfichera@gmail.com

Ken Lynch,

Dr. Virginia Fichera has asked for a meeting with you on the Martville Mine Application, and has asked me to join her at the meeting as someone familiar with SEQR and wetland regulations. The NYSDEC is apparently preparing a response to formal comments submitted by Dr. Fichera. Her main concern is that a mining permit or revised negative declaration not be declared prematurely regarding the mine application.

Sincerely, Les Monostory

12 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Wed, Jun 24, 2015 at 8:35 AM

Subject: The status of DOT May 29, 2015 9:21:46 AM email to the DEC in the matter of the traffic impacts of the proposed Sanford Road Martville Mine operation

To: eparmley@dot.state.ny.us

Cc: ccovert@dot.state.ny.us, lsomers2@twcny.rr.com, kevincox@camardo.com, CCDistrict01@cayugacounty.us, John Zepko <jzepko@cayugacounty.us>, John Clancy <john.clancy@dec.ny.gov>, ssmaldon@nysenate.com, "Lynch, Kenneth (DEC)" <kenneth.lynch@dec.ny.gov>

Dear Ms. Parmley:

The DEC, as Lead Agency in the SEQR evaluation of the above-named DEC mining permit application, sought the comments of the NYS Department of Transportation concerning the complex intersections which will be impacted by the proposed Martville mine; your above-referenced email communication (cf. attached scan) was apparently in response to a request of the DEC which was sent to you, I believe I was told, around May 2, 2015.

The Cayuga County GML-239 Committee, for reasons which included concerns for safety at the intersections of Route 38 and Route 104 as well as of the intersections involving Route 38, Pople Road, and Sanford Road, voted to formally recommend to the Town of Sterling that the Special Use Permit application for the mine be rejected by the Town, coincidentally on the same day as your email to the DEC contact person, John Clancy (cf. http://www.cayugacounty.us/Portals/0/planning/239/MINUTES_May292015_DRAFT.pdf). It is my understanding that all of these concerns correspond to requirements for review in the SEQR process as well.

At the Town of Sterling Planning Board meeting yesterday, June 23, 2015, the applicant represented to the board that a meeting took place onsite at 13181 Sanford Road with DEC mining staff, an Army Corps of Engineers representative, one or more Town officials (including Planning Board member/s), as well as the applicant and his attorney on June 12, 2015. It was communicated to and by the board in open meeting that the DOT was invited to that onsite meeting but that no DOT representative took part. Can you confirm that the DOT received an invitation and provide a copy of it?

The applicant further communicated to the board what appears to be his understanding from recent discussions with DEC mining staff: that the DEC has nothing to do with the DOT; that the DOT's requests and requirements are not a part of DEC requirements for the issuing of a mining permit; that the DEC may issue a mining permit without first ensuring that the DOT's requests and requirements are being met or making them a condition of such permit; that, in effect, he, the applicant is free to ignore the requests made by the DOT in your emailed communication, with no effect on his DEC permit application. The applicant further indicated that the DEC communicated to him recently that none of the comments received by the mining division during the official comment period which ended on June 5, 2015 were worthy of any concern or response by the applicant. The DOT's comments, as well as the comments of residents and the Cayuga County GML-239 Committee are comments received by the DOT during that period.

I am concerned that the applicant's expressed understandings may not conform to the actual legal expectations of the regulations of either or both state agencies. However, inasmuch as there are so many errors of fact in the moving papers and so much hearsay involved in the communications concerning this permit application as well as the same applicant's permit application for a Hannibal Harris Hill Road mine, that I am writing to the DOT, an involved agency, to be informed of the actual status of the content of the above-referenced and attached email from yourself to the DEC mining staff contact person.

Does the DOT have the power to enforce its request to the DEC to receive and review accident and traffic gap analyses at the referenced intersections? Does the DOT have the power to require the studies and the shoulder construction, as communicated in the email? What is the formal role of the DOT as an involved agency in this and any SEQR review? Please communicate to me the specific regulations or other authority for your emailed requests/requirements to the DEC because the applicant and the Town Planning Board expressed sentiments that the highways in question are open to the public and that the DEC and the applicant may indeed be free to essentially ignore your email communication.

In closing, please realize that I am only reporting the direction and tenor of the discussion between the applicant and the Town of Sterling Planning Board at that meeting on June 23, 2015; no action was taken at that meeting concerning the application for the Town's Special Use Permit. There was no representative of the DEC present nor do I know of the existence of any formal communication responding to your email at this time. Therefore, please inform me as to what was the original request made to the DOT by the DEC, what, if any, further correspondence or reports in this matter have been communicated to the DOT, and what, if any, DOT communications in this matter have been further

communicated to the parties. Emailed copies of these correspondence, reports, relevant URLs, etc. are requested so that I may review and understand the official record in this confusing matter.

If these requests should be communicated to another member of the DOT staff, please provide me with the name and contact information for that person or persons by forwarding this communication to him/her/them with cc to me and Senator Nozzolio's staff.

Thank you for your anticipated assistance in the matter of our mutual concern for safety on the roads and highways of the State of New York.

Yours truly,

Dr. V. M. Fichera

13 ----- Forwarded Message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Mon, Jun 29, 2015 at 6:14 PM

Subject: Re: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

To: "Crawford, Margaret A LRB" <Margaret.A.Crawford@usace.army.mil>

Cc: "Robinson, Judy A LRB" <Judy.A.Robinson@usace.army.mil>, "Niver, Robyn" <Robyn_Niver@fws.gov>, Sandra Doran <Sandra_Doran@fws.gov>, "Brown, Bridget LRB" <Bridget.Brown@usace.army.mil>, aaron.c.smith@usace.army.mil

Dear Ms. Crawford,

Thank you for your preliminary response to my email communications.

You will recall that I have asked specifically for the location of the wetlands which your reply below does not provide. Simply stating that they are outside the proposed perimeter of the mine does not let the public know whether the wetland plants rise onto the slopes, for example, how near they are to the slope, etc. The water quality of the Sterling Creek, as well, appears to be off the radar screen of the Army Corps.

Your reply has not addressed the issue of the effects of the clear-cut land inside the LOM perimeter above the slope to the wetland. As I indicated to you, I have been informed by foresters that such clear-cutting and removal of stumps, etc. last summer and fall could have led to fill in the wetland and even the creek from the heavy snows and rains we have suffered since those events. Amazingly, I have not heard you address the actual location of the wetlands at all let alone whether there is any fill in them at this time -- in fact, as I reported to you, the applicant claims there are no wetlands there at all, which the maps of the DEC and the NFWS, however, do delineate.

Please inform me what, if any written reports you have made of this site visit, at which you apparently verbally communicated to the applicant that the DEC's permitted bury of fill on the slopes would be unacceptable, and apparently also reassuring the applicant that there are no concerns about the Sterling Creek or its wetland -- because, he alleges, you told him there is no wetland there.

In other words, your response to me does not address the majority of the issues I raised in the communications. If these issues are addressed in a report, please inform me of the title and date of such report/s so that I may make the appropriate request through FOIA to read them.

Your response also does not address possible or actual violation of the wetland by fill run-off. Did you actually inspect the wetlands and the Sterling Creek at the site themselves? Your report seems to indicate that all you did was walk the perimeter of the proposed mine up on the cliff, about twenty feet away from the slope to the wetland. It was my understanding that the applicant had received a warning letter sent by Ms. Robinson and neither of you have addressed the status of that warning which, I recall, was to advise the applicant to engage a professional delineation of the wetland. Please provide me with the date of that warning letter so that I may also arrange to receive an electronic copy of it under FOIA. The applicant does not apparently consider himself to be warned about anything, even as his clear-cutting activities were in the context no storm water control precautions last year. The applicant may be assuming that there is no wetland for him to bother to protect -- he was very firm that "Maggie" said he had nothing to worry about at all because "there is no wetland there."

As things stand, I allege that there may be run-off fill on the slopes -- parts of which may have wetland plants and constitute wetland rather than "buffer" -- and the lower wetland as well. And there may in the future also be fill on the slopes burying wetland plants and encroaching into the wetland. I have not been assured that the Army Corps is performing due diligence to be able to prosecute such violations either now or in the future because your message does not actually respond to my complaints and concerns.

I look forward to receiving answers to all of my questions in these matters -- and to evidence that the Corps' took seriously my complaint about possible fill in the wetlands and the Sterling Creek below the site of the clear-cutting and logging -- again, activities performed the preceding summer and fall without any of the applicable storm water protection procedures to which the applicant verbally engaged himself throughout the application.

Therefore, I look forward to your completed response. As you know, the Army Corps was indeed invited by the DEC to inspect the site, therefore there was no impediment to the Corps' performing due diligence in the matter of my formal complaints -- complaints which did _not_ limit themselves to the mere perimeter of the proposed Life of Mine.

Yours truly,

Dr. V. M. Fichera (PhD)

On Mon, Jun 29, 2015 at 2:39 PM, Crawford, Margaret A LRB <Margaret.A.Crawford@usace.army.mil> wrote:
Classification: UNCLASSIFIED
Caveats: NONE

Hi Dr. Fichera,

I conducted a site inspection on June 12, 2015, with the applicant, his consultant, members of the NYSDEC Regional Offices, and local representatives. We walked the perimeter of the proposed mine. We found that the wetlands are located outside of the proposed limits of mine. Due to some concerns associated with the grades, the applicant modified the plan to reduce the encroachment into the slopes that go down to the wetland.

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States, including freshwater wetlands. When there is no discharge of dredged or fill material into the wetland, the Corps has no involvement over the project. The Corps has no authority over buffers to wetlands.

If you would like copies of information from the file, you will have to request those through the Freedom of Information Act. Our procedures can be found at: <http://www.usace.army.mil/FOIA.aspx>

I hope that this helps to answer your questions.

Thank you,
Maggie Crawford

-----Original Message-----

From: V. Fichera [mailto:vmfichera@gmail.com]
Sent: Wednesday, June 24, 2015 4:57 PM
To: Crawford, Margaret A LRB
Cc: Robinson, Judy A LRB; Niver, Robyn; Sandra Doran; bridget.brown@asace.army.mil
Subject: Re: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

Dear Ms. Crawford:

Thank you for your reply.

Unfortunately I and the NFWS members I have been in contact with would clearly best benefit from your addressing in writing the issues I have raised. Please cc your response to all of those whose email addresses appear in the header above.

I am concerned about the fish aquatic life in the Sterling Creek and the health of its waters, as well as the wildlife which inhabits the woods and trees, including possible bald eagle and Indiana bat nestings. In fact, I am also waiting for a FWS biologist to be assigned to this complaint as I requested as well as well. The concerns about the wetland are concerns which affect the fish and wildlife but also the larger wetland into which the Creek flows at Lake Ontario.

Further, the Creek at the location of the mine is adjacent to a major town aquifer. Therefore I am very concerned that the DEC has not addressed any issues concerning the quality of the water which might be affected by pollutants used at the mine, including but not limited to petroleum storage onsite that will not be subject to permitting simply because the applicant promises never to have more than 1100 gallons on site at any one time. Given the fact that the DEC was officially permitting the burial of fill on the slope to what I feel sure from the NFW and DEC maps is a national wetland -- something I alone first identified and which I understand you did address during your onsite visit -- I believe that a warning letter was and is still appropriate. Please confirm its existence and provide me with copies of the letter and all reports in this matter.

I would also ask that, if possible, the Federally-protected waters of the Sterling Creek be tested near the site to document any current contamination of the bed, etc. and so that it will be easier to identify additional foreign contaminants down the line. Residents of the area are concerned about the road treatments and possibly synthetic dust treatments that may pollute the water as well as the air pollutants from machinery which will settle onto the waters -- in an area which may become a high risk for a petroleum spill from the mining traffic and the fueling activities.

From the many errors of fact, contradictions, and omissions in the applicant's moving papers submitted for the mining permit through the SEQRA process, I believe that it is also important to document the current state of affairs with respect to water quality and the possible presence of endangered species onsite. The applicant represented in the EAF and the Mined Land Use Plan that the entire site was wooded with the exception of two acres, promising to exercise storm water control practices, etc. -- knowing full well all along that about ten acres of the archaeologically sensitive site had already been cleared. The logging occurred in two phases last year, once in the summer and once around September 2014, as the applicant admitted to me yesterday evening in conversation. Thus it is not clear that the habitat of, for example, the Indiana bat was not endangered, because of the timing of the clear-cutting.

Given all of the problematic facts and circumstances of this permit application, I do not feel comfortable "trusting" that the measures instituted by the DEC will adequately protect the wetland and the Sterling Creek and therefore I am most eager to have the Army Corps and/or the FWS at least document the current status quo -- because, sadly, it is actually possible that your visit was too late to save parts of the wetland from fill according to the likely scenario I described. The manner in which your visit was characterize was, I hope, contrary to the facts of the situation -- I await enlightenment thereon.

I will look forward to reading your response which will also help inform my further contact with NFWS, as well. I am aware that there are jurisdictional requirements that must be met; I am asking you to do all that you can to protect the wetland, the stream, and the wildlife from the massive assault on their integrity which are the likely outcomes of the DEC's lax standards for the granting of mining permits.

Thank you for your anticipated attention to these matters.

Yours truly,

Dr. V. M. Fichera (PhD)

On Wed, Jun 24, 2015 at 3:08 PM, Crawford, Margaret A LRB <Margaret.A.Crawford@usace.army.mil> wrote:

Classification: UNCLASSIFIED
Caveats: NONE

Hi Dr. Fichera,
Thank you for your e-mail. I think that it would be easier to discuss this with you over the phone. Can you provide me with your phone number, or call me at the number below? I will be in our Buffalo office for the next couple of days. I will be at my desk until approximately 4pm today. Otherwise, I will be back in the office on Monday.
Thank you,

Maggie

Margaret Crawford, Biologist
U.S. Army Corps of Engineers, Buffalo District
Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
[315/704-0256](tel:3157040256) <tel:315%2F704-0256>
margaret.a.crawford@usace.army.mil
<http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

-----Original Message-----

From: Robinson, Judy A LRB
Sent: Wednesday, June 24, 2015 2:50 PM
To: Crawford, Margaret A LRB
Subject: FW: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY Army Corps site visit (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

FYI

Judy A. Robinson, MS
Biologist
U.S. Army Corps of Engineers
Auburn Field Office
7413 County House Road
Auburn, New York 13021
judy.a.robinson@usace.army.mil

Buffalo District website: <http://www.lrb.usace.army.mil>
Regulatory Website <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

[315-704-0255](tel:315-704-0255) (Phone)

[315-255-1492](tel:315-255-1492) (FAX)

-----Original Message-----

From: V. Fichera [mailto:vmfichera@gmail.com]

Sent: Wednesday, June 24, 2015 2:03 AM

To: Robinson, Judy A LRB

Cc: Niver, Robyn; Sandra Doran

Subject: [EXTERNAL] Clarifications needed: 13181 Sanford Road, Martville NY
Army Corps site visit

Dear Army Corps Member Ms. Judy Robinson:

On June 4, 2015, you phoned me to tell me that Mr. Christopher Ferlito would be receiving a warning letter from the Army Corps and that he would be advised to delineate the wetland on his property and that there would be penalties if there were any fill in regulated waters.

On June 23, 2015, at a meeting of the Town of Sterling Planning Board, Mr. Ferlito asserted that on June 12, 2015, a member of the Army Corps named "Maggie" accompanied several DEC mining staff as well as Mr. Ferlito, his attorney and one or more Town officials to the LOM site. Mr. Ferlito related that "Maggie" said there is no Federal wetland there on the Sterling Creek -- contrary to the maps available from the National Fish and Wildlife Service and the DEC, as well, which so indicate. I asked if there had been a formal delineation and apparently, contrary to what you stated the letter would say, "Maggie" reportedly said no delineation is necessary. Apparently, "Maggie" effectively rescinded the warning letter (if it has indeed been sent).

She did note that part of the questionable practices that the DEC had blessed with a "Negative Determination" (and what I was the first and only person to have complained of to both the DEC and the Corps) was indeed problematic: namely the authorization to bury fill on the slope into the waters of the Sterling Creek -- now declared by "Maggie" (according to Mr. Ferlito) to have no wetland.

Has the wetland been buried with fill, one wonders, so that the damage was done already? How would "Maggie" document or determine that? Does the Army Corps actually care?

I learned from Mr. Ferlito that the land above this slope was cleared in part by the previous owner in summer 2014 and then Mr. Ferlito cleared the remainder of that section in fall 2014 -- stump grinding and all -- no concern for the Indiana myotis bat, apparently, no concern for the misrepresentations of that site (deemed archeologically "sensitive" on the state register) as "wooded" throughout the permit application. No need to be concerned about fill in the Sterling Creek from heavy snows and heavy rains this spring and summer because, with no before and after photos, "Maggie", said he, declared there is no fill in the Sterling Creek.

Unfortunately, the number of inaccurate statements in Mr. Ferlito's permit application to the DEC required fifteen pages to begin to delineate in my comments alone, so I cannot be sure of the veracity of anything he reported. The applicant and the DEC made no evaluation of the possible effects on neighboring wells of using a well on the property for major operations at the mining site, for example -- even though one resident reported a well drying up three years ago with no mining operation present. If I appear to digress, consider this: the DEC didn't notice that one of its own registered wetlands was "missing" on the Hannibal Harris Hill Road mine permit application to which it had given its usual rubber-stamp "Negative Declaration. A resident, just like me, discovered the "missing" wetland in the moving papers and cried foul. Therefore I am writing to you for clarification: Has a member of the Army Corps also "missed" a Federal wetland?

I will want a copy of the "warning letter" that was reportedly being sent to

Mr. Ferlito and I will want to see the full report of the visit of "Maggie" to 13181 Sanford Road in Martville. Did "Maggie" actually visit the cleared area of the site at the top of the steep slope? And what is her documented basis for declaring there is no wetland on the Sterling Creek in that vicinity? I can see the wetland flora from the road as it heads in the direction of that slope.

I will need full documentation of these startling reassurances given to Mr. Ferlito and the DEC which contradict the NFWS maps and information to the public. It is difficult for the NFWS to help protect the fish and turtles, etc. in the stream if the Army Corps declares wetlands to be non-existent without formal delineation. Again, I say "if" because, of course, this is Mr. Ferlito's version of the story.

I left you a voicemail earlier in the day on June 23, 2015 about my concerns for fill because a certified forester had informed me that, in general, land of the size of ten acres on a slanted steep slope can indeed produce run-off, generally for the first year until heavier vegetation can set in. I am not asking the Army Corps to regulate run-off -- I am asking it to actually care about fill and/or the potential for fill in what I am sure are regulated waters, Mr. Ferlito and his perhaps fictitious "Maggie" notwithstanding.

Thank you for your anticipated assistance in addressing all of the above issues. I look forward to your reply.

Yours truly,

Dr. V. M. Fichera (PhD)

cc: Ms. Sandra Doran, Dr. Robyn Niver (NFWS)

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

14----- Forwarded message -----

From: V. Fichera <vmfichera@gmail.com>

Date: Sun, Jul 5, 2015 at 12:50 PM

Subject: FOIA request for inspection access of records generated by and/or on file with USACE staff of the Auburn Field Office re: Sterling Creek and wetlands

To: foia-lrb@usace.army.mil

Dear FOIA Officer for the Auburn Field Office of the Buffalo District of the USACE:

This is a request under the Freedom of Information Act (5 U.S.C. § 552).

I request inspection access, with a view to selecting and receiving electronic copies of, any and all records relating to the proposed Sanford Road Martville mine, its DEC permit application, and any documents generated and on file involving any and all staff of the Army Corps of Engineers relative to the DEC permit application, a USACE onsite visit, my complaint concerning suspected fill in the national wetlands adjacent to (or potentially affected by) the proposed Life-of-Mine, as well as in the Sterling Creek, nationally protected waters.

It is my understanding that the entirety of the USACE involvement, contacts, reports, and documents are all within the Buffalo District, specifically with the Auburn Field Office. I wish to come onsite to the Auburn Field Office with an assistant to inspect the records during normal business hours.

In order to help you determine my status for the purpose of later assessing fees, you should know that I am both

X affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use, and

X an individual seeking information for personal use and not for a commercial use.

I am willing to pay any appropriate fees for this request upon prior notification of an estimated amount, but only in the event that the records selected after onsite inspection cannot be scanned and emailed to me at the email address above.

I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request; however, email is the preferred method of communication inasmuch as I am difficult to reach by phone. Therefore, please email me first with any questions or concerns you may have with this request as well as the proposed dates and time frame for onsite inspection in Auburn.

Thank you for your anticipated assistance with this FOIA request.

Sincerely,

Dr. V. M. Fichera (PhD)
P.O. Box 44
Sterling, NY 13156
315 three nine one 5678
Adjunct Professor, Binghamton University-SUNY